



Fiona Solomon  
Executive Director  
Aluminum Stewardship Initiative

Re: Comments on ASI's Standards Revision Process

April 14, 2021

Dear Ms. Solomon,

I hope that this message finds you well and thank you for meeting with us last month. As you know from our discussions, we are currently engaging with downstream users in aluminum supply chains, particularly the car industry, to raise awareness of human rights abuses in bauxite mining and to advocate for strengthened human rights due diligence in the aluminum sector.

We are hopeful that downstream users will push their suppliers, and the mining companies that they source from, to do more to respect international standards and best practices, including through engagement with multistakeholder initiatives like the Aluminum Stewardship Initiative (ASI) and through other steps necessary to implement effective human rights due diligence.

We understand that ASI is currently in the process of revising its 2017 Performance Standard and Guidance, Chain of Custody Standard and Guidance, and Assurance Manual, and we are keen to ensure ASI's standards provide the maximum protection to communities affected by bauxite mining.

We have therefore worked together to review ASI's proposed revised standards and to develop comments to feed into the ongoing revision process. Our comments are by no means an exhaustive analysis but have targeted the parts of the standard that we believe have the most resonance for the communities that we work with.

Our comments on the Performance Standard welcome the increased focus in the standard on human rights due diligence, while proposing changes to ensure that standard's human rights due

diligence requirements adequate capture the full range of potential human rights abuses linked to bauxite mining. We also offer comments on the protections the Performance Standard gives to the land rights of affected communities.

Our comments on the Assurance Manual, set out in detail in Annex II, largely focus on difficulties that we believe affected communities might face in participating in, and influencing, the ASI certification process. We believe that ASI's assurance process should provide more detail on how affected communities can participate in audits and ensure communities have access to complete versions of audit reports in accessible formats. We also believe that companies implicated in serious human rights abuses should not only be denied certification for facilities linked to those abuses but should also be required to address those abuses or face a publicly announced suspension of their ASI membership.

We are grateful for the opportunity to weigh in on ASI's standards revision process, and we would welcome the chance to discuss these comments with you, members of the ASI Secretariat revising the standards, or the ASI Standards Committee. We also plan to publish this commentary on our websites.

Sincerely,



Natalie Bugalski, Ph.D.  
Legal and Policy Director  
Inclusive Development International



Jim Wormington  
Senior Researcher, Africa Division  
Human Rights Watch

## Annex I: Human Rights Watch and Inclusive Development International Commentary on ASI Performance Standard

### **Supply Chain Due Diligence**

#### *C. Social (sections 9-11) 9. Human Rights 9.8 Conflict-Affected and High-Risk Areas.*

We welcome the inclusion of strengthened language in the Performance Standard (section 9.8) that addresses the need for human rights due diligence in aluminum supply chains in Conflict-Affected and High-Risk Areas, and which draws heavily on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>1</sup>

We believe strongly, however, that ASI's revised standards on supply chain due diligence should not be limited only to the OECD Guidance in Conflict-Affected and High Risk Areas, but should include an additional standard – likely in addition to section 9.8 – requiring human rights due diligence for aluminum-related materials sourced in all areas and regardless of the human rights issues at stake.

We understand from the revised ASI Guidance to the Performance Standard that reference to the OECD Guidance is, at least in part, a product of the London Metal Exchange (LME) in October 2019 introducing new responsible sourcing requirements, underpinned by the OECD Guidance, that apply to its listed brands.<sup>2</sup> ASI has committed to align its standards with the OECD Guidance to support implementation of the LME's rules, and to be independently assessed for alignment via an OECD assessment tool.<sup>3</sup>

While respect for the OECD Guidance would be a positive step, it would not on its own satisfy companies' obligations under the UN Guiding Principles to address all forms of human rights abuses in their supply chains. The content of the OECD Guidance is heavily influenced by its focus on Conflict-Affected and High-Risk areas, as well as its historical focus on materials whose mining industries are characterized by a high degree of informality, including artisanal mining and small producers.<sup>4</sup> The OECD Guidance, for example, focuses to a large extent on a limited set of human rights violations, such as torture and child labor, which are frequently present in either conflict environments or informal mining sectors.<sup>5</sup>

---

<sup>1</sup> OECD, "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas," third edition, 2016, <http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf> (accessed April 14, 2021).

<sup>2</sup> ASI Performance Standard V3 – Guidance Draft 1.0 for Consultation – March 2021, p. 93.

<sup>3</sup> Ibid.

<sup>4</sup> The OECD Guidance was initially design to address "conflict minerals" and associated human rights impacts, with the guidance initially limited to tin, tantalum and tungsten, before being expanded to gold and eventually, in 2016, to all minerals sourced from Conflict-Affected and High-Risk areas.

<sup>5</sup> OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, p. 20. There are several examples in ASI's revised guidance to section 9.8 where ASI's own language on human rights due diligence appears limited to the human rights violations contained in the OECD Guidance's Model Supply Chain Policy, rather than the broader range of human rights violations that

The aluminum sector, in contrast, is largely a heavily industrialized mining industry, dominated by multinational mining companies. Although some bauxite mining does occur in “High-Risk Areas,” as in Guinea, the human rights issues at stake in bauxite mining are in no way limited to those described in the OECD Guidance. Indeed, limiting human rights due diligence to the violations listed in the OECD Guidance neglects a vast array of human rights abuses for which companies should conduct human rights due diligence, particularly regarding economic, social, and cultural rights and the right to a healthy environment. Examples of human rights violations not explicitly listed in the OECD Guidance, but which might be threatened by aluminum extraction and production, include arbitrary land expropriations that threaten the right to an adequate standard of living and the right to property, among other rights; damage to water sources that threatens the right to water; and other forms of pollution that threaten the right to health and to a healthy environment.

We are also concerned that, by limiting supply chain due diligence language to the OECD Guidance on Conflict-Affected and High-Risk Areas, the ASI Performance Standard is out-of-step with wider global trends towards comprehensive human rights due diligence. Many of ASI’s members, for example, are located or have operations in countries, particularly in Europe, which are moving towards legislation making it mandatory for companies to conduct human rights due diligence for all materials, whether they are produced in conflict-affected and high-risk areas or otherwise.<sup>6</sup>

### **Recommendations:**

- **We believe that there are several possible ways to integrate broader supply chain due diligence requirements into the Performance Standard.**
- **We note, for example, that section 9.8 on Conflict-Affected and High-Risk Areas complements the existing responsible sourcing language contained in the Performance Standard (section 2.4), which requires companies to “implement a responsible sourcing Policy covering environmental, social and governance issues.”**
- **To more fully integrate human rights due diligence into the Performance Standard, section 2.4 could be strengthened to include explicit reference to human rights due diligence as a core component of responsible sourcing.**

---

might be affected by bauxite mining and the aluminum supply chain. The following sections of the revised ASI guidance, for example, replicate the limited scope of human rights abuses described in the OECD Guidance: Publicly available resources for identifying Conflict-Affected and High-Risk Areas (CAHRAs), p. 121; Appropriate response where you identify a reasonable risk of adverse impacts under Step 2 (based on the OECD Guidance Annex II Model Supply Chain Policy), p. 128; Example Policy for Conflict-Affected and High-Risk Areas, p. 162.

<sup>6</sup> See, for example, Human Rights Watch, “Recommendations for New EU Legislation on Mandatory Human Rights and Environmental Due Diligence,” June 24, 2020, <https://www.hrw.org/news/2020/06/24/recommendations-new-eu-legislation-mandatory-human-rights-and-environmental-due>. See also Human Rights Watch, “Germany: MPs Should Strengthen Proposed Supply Chain Law,” February 23, 2021, <https://www.hrw.org/news/2021/02/23/germany-mps-should-strengthen-proposed-supply-chain-law>.

- **Alternatively, the Performance Standard could include an entirely new section on human rights due diligence in aluminum supply chains.**
- **Some of the detailed guidance on how to conduct human rights due diligence currently under section 9.8 (Conflict-Affected and High-Risk Areas) could be moved to section 2.4 (Responsible Sourcing) or a new section on human rights due diligence. The guidance currently set out under section 9.8 – such as embedding human rights due diligence into management systems – are key elements of responsible business conduct, wherever a company operates.**
- **The detailed advice on establishing supply chain due diligence processes set out in the revised Guidance (p. 113 to 133) could be split between guidance that applies to all responsible sourcing/human rights due diligence systems – which should fall under section 2.4 or a new section – and that which relates only to Conflict-Affected and High-Risk Areas, which would fall under section 9.8.**

*C. Social (sections 9-11) 9. Human Rights 9.8 Conflict-Affected and High-Risk Areas.*

#### Obligations of Downstream Companies

- The Guidance to section 9.8 contains welcome and extremely practical guidance as to how entities should conduct human rights due diligence in Conflict-Affected and High-Risk Areas for their aluminum supply chains. The Guidance, for example, identifies aluminum smelters as the “choke point” for the aluminum supply chain, noting that the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas states that smelters or refiners in mineral supply chains “generally have higher visibility and control over identifying the origin of mined ore.”<sup>7</sup>
- The Guidance recommends that aluminum smelters, or what it calls the “primary production supply chain,” are the appropriate actor to collect and share information on bauxite origin and countries of transit.<sup>8</sup> The Guidance recommends that primary production companies share information on both the “specific mines and/or country/countries where the Bauxite was mined, and a list of any other countries through which the Bauxite ore transited.”<sup>9</sup>

---

<sup>7</sup> ASI Performance Standard V3 – Guidance Draft 1.0 for Consultation – March 2021, p. 117.

<sup>8</sup> ASI Performance Standard V3 – Guidance Draft 1.0 for Consultation – March 2021, p. 118.

<sup>9</sup> Ibid.

- Downstream actors, the Guidance recommends, should focus their own responsible sourcing efforts on examining and strengthening the human rights due diligence efforts of the smelters they source from.<sup>10</sup> In discussion of risk identification, assessment, and response, the Guidance therefore largely limits downstream actors' obligations to efforts to evaluate and strengthen aluminum smelters' human rights due diligence, rather than encouraging or recommending direct engagement by downstream actors with other entities, including bauxite mines.
- While we agree that downstream actors should focus a large part of their human rights due diligence efforts on aluminum smelters, there are frequently circumstances where direct engagement with mining companies and refineries by downstream actors, including acting collectively with their peers and suppliers, is vital both to identifying and resolving supply chain risks. Car companies, for example, have conducted their own on-the-ground assessments of human rights risks at the mining level for critical minerals needed for electric vehicles, such as cobalt, and directly contacted mining companies to seek to resolve concerns. Car companies have also supported in-country development and capacity building programs to address human rights issues at the mining level.<sup>11</sup>
- We believe that direct engagement by downstream actors with bauxite mining companies, particularly acting collectively with their peers and suppliers, is particularly important where aluminum smelters lack a strong commitment to human rights due diligence. In such circumstances, direct engagement at the bauxite mining level is necessary for downstream actors to adequately understand human rights risks and develop a mitigation strategy.
- **Recommendations:**
  - o **The Guidance to section 9.8 should be amended to demonstrate that downstream actors' obligations are not limited to assessing aluminum smelters' human rights due diligence processes, but include any and all steps necessary to identify and mitigate human rights risks in their supply chain. Where aluminum smelters lack adequate due diligence processes, this may require downstream actors to conduct human rights due diligence at the bauxite mining level.**

---

<sup>10</sup> Ibid.

<sup>11</sup> BMW and Volkswagen, for example, are working with a German development agency, "to examine over a period of three years how the living and working conditions in small-scale mining in the Democratic Republic of the Congo can be improved," including through, "workshops and trainings on occupational safety and protection of the environment." See, for example, "Greater Transparency in Cobalt Mining," BMW Group, January 22, 2020, <https://www.bmwgroup.com/en/news/2020/kobaltabbau.html> (accessed February 2, 2021) and "Volkswagen joins cobalt group supporting artisanal DRC miners," Mining.com, November 19, 2020, <https://www.mining.com/volkswagen-joins-cobalt-group-supporting-artisanal-drc-miners/> (accessed February 2, 2021).

- o **ASI should both amend any statement of principle in the Guidance that suggests downstream actors’ human rights due diligence obligations do not extend beyond aluminum smelters and add practical guidance as to how, and in what circumstances, downstream actors should extend their due diligence efforts further up the supply chain.**

## **Human Rights Impact Assessments**

### *A. Governance (sections 1-4) 2. Policy and Management. 2.6 Human Rights Impact Assessments*

- We welcome the inclusion of a human rights impact assessment requirement for new projects or major changes to existing facilities, as well the emphasis on consulting with Indigenous groups and rights holders when conducting human rights impact assessments. We also note that, as described in the Human Rights Impacts Assessment Decision Tree in Appendix 1, human rights impact assessments should consider all rights in the Universal Declaration of Human Rights, which reflects the broad range of civil and political and economic, social, and cultural rights, including the right to a healthy environment, potentially impacted by bauxite mining.
- **Recommendation: The Performance Standard should be amended to require a human rights impact assessment for all facilities seeking or renewing ASI certification.**

## **Land Rights of Local Communities**

### *C. Social (sections 9-11) 9. Human Rights 9.6 Resettlement and 9.7 Local Communities.*

- The current and revised ASI Performance Standard offer detailed guidance as to how companies should engage with Indigenous communities where projects “may have significant impacts on the Indigenous Peoples associated culturally with and living on the relevant land,” including a requirement to obtain Indigenous communities’ “free and informed consent prior to the approval of any project.”<sup>12</sup> This reflects the protections accorded to Indigenous Peoples in international law, including the United Nations Declaration on the Rights of Indigenous Peoples and the International Labor Organization’s Convention on Indigenous and Tribal Peoples.<sup>13</sup>

<sup>12</sup> ASI Performance Standard: Version 2, December 2017, para. 9.4. ASI Performance Standard V3, Draft 1.0 for Consultation – March 2021, para 9.4.

<sup>13</sup> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/47/1. International Labour Organization (ILO), Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169), 72 ILO Official Bull. 59, entered into force Sept. 5, 1991,

- The ASI Performance Standard offers far less guidance, however, as to what rights other local communities have regarding mining and natural resource development on their land, including communities with customary tenure that may not identify or are not recognized as Indigenous but have a high degree of socio-economic and/or cultural connection to their lands and natural resources.
- The Performance Standard states that entities should, “respect the legal and customary rights and interests of local communities in their lands and livelihoods and their use of natural resources.”<sup>14</sup> The Performance Standard, however, does not offer any additional guidance as to how companies should respect the land rights of local communities, particularly those with customary land tenure. International human rights instruments protect individuals and communities, including those with customary or collective land tenure, from arbitrary interference with their rights to property and land and other related rights, including the right to culture and the right to food. The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, for example, state that, irrespective of whether people hold title to property, evictions (including displacement from land) should only be undertaken solely for the purpose of promoting the general welfare and in full respect of international human rights.<sup>15</sup>
- The lack of clear guidance in the ASI Performance Standard over how to respect the rights of communities with customary land tenure is exacerbated by the failure of ASI Performance Standard on Resettlement (9.6) to require that companies respect the International Finance Corporation (IFC)’s Performance Standard 5 (Land Acquisition and Involuntary Resettlement) where land acquisitions do not displace communities from their homes but instead result in impacts to the livelihoods of affected people (referred to as “economic displacement”). IFC Performance Standard 5 contains detailed requirements for compensation and other mitigation measures to address economic displacement and land loss and ensure that communities can improve or at least restore their livelihoods.<sup>16</sup> Our research and work with communities in Guinea and elsewhere has shown that loss of land, even if not accompanied by forced relocations, can have a devastating impact on communities’ way of life, livelihoods and poverty levels. Other industry standards, such as the IRMA Standard, contain detailed guidance on economic displacement.<sup>17</sup>
- **Recommendation:**

---

<sup>14</sup> ASI Performance Standard: Version 2, December 2017, para. 9.7.a. ASI Performance Standard V3, Draft 1.0 for Consultation – March 2021, para 9.7.a.

<sup>15</sup> UN Human Rights Committee, “Basic Principles and Guidelines on Development-Based Evictions and Displacement,” A/HRC/4/18, p. 13, 21.

<sup>16</sup> International Finance Corporation, Performance Standard 5 Land Acquisition and Involuntary Resettlement, para. 25-29.

<sup>17</sup> IRMA, IRMA Standard for Responsible Mining IRMA-STD-001, para. 2.4.5.



- o **ASI Performance Standard 9.6(b) should provide more detailed guidance as to how mining companies should respect the land and property rights of local communities, particularly those with customary land tenure that have a high degree of socio-economic reliance and/or cultural connection to their land and natural resources.**
- o **ASI Performance Standard 9.6(b) should require companies to respect IFC Performance Standard 5 for both physical and economic displacement, and integrate detailed guidance on how to conduct economic displacement with full respect for the rights of customary landowners.**

## **Community Benefits from Natural Resource Exploitation**

### *C. Social (sections 9-11) 9. Human Rights 9.7 Local Communities.*

- The ASI standards should more clearly articulate communities' right to benefit from bauxite mining or refining on their lands. International human rights law increasingly recognizes the right of communities to benefit from the development of natural resources on their land.<sup>18</sup> The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, for example, requires that states take measures to ensure that natural resource exploitation includes "modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas."<sup>19</sup> International environmental and social standards, including the IFC's Performance Standard 5, also place an expectation on companies to provide opportunities to affected people and communities to derive development benefits from the project.<sup>20</sup>
- Some multistakeholder initiatives have sought to integrate communities' right to benefit from natural resource projects. The Initiative for Responsible Mining Assurance (IRMA), for example, requires companies to commit to "maintaining or improving the health, social and economic wellbeing of affected communities," and to develop, "in collaboration with affected communities...a participatory planning process to guide a company's contributions to community development initiatives and benefits in affected

---

<sup>18</sup> The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, for example, states that: "Peasants and other people working in rural areas have the right to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, in accordance with article 28 of the present Declaration. They also have the right to participate in the management of these resources." Article 5(1). The United Nations Declaration further requires that states take measures to ensure that natural resource exploitation includes, "modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants and other people working in rural areas." United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, A/HRC/RES/39/12, Article 5(2)(c).

<sup>19</sup> *Ibid.*, Article 5(2)(c).

<sup>20</sup> International Finance Corporation, Performance Standard 5 Land Acquisition and Involuntary Resettlement, para. 9.

communities.”<sup>21</sup> The International Council on Mining Metals’ (ICMM) Mining Principles require its members to “pursue continual improvement in social performance and contribute to the social, economic and institutional development of host countries and communities.”<sup>22</sup> ICMM’s guidance on how companies should fulfill this requirement states that companies are expected to, “Implement inclusive approaches with local communities to identify their development priorities and support activities that contribute to their lasting social and economic wellbeing, in partnership with government, civil society and development agencies, as appropriate.”<sup>23</sup>

- The ASI Performance Standard does include some language requiring companies to contribute to community development. The revised ASI Performance Standard requires companies to, “develop a plan in consultation and in cooperation with local Communities to monitor, avoid, minimize, reduce and compensate for any significant adverse impacts, including health and safety and environmental on the local Community resulting from its activities.”<sup>24</sup> It also requires companies to “commit resources to community development.”<sup>25</sup> The Guidance to the standard states that, “Businesses are not expected to take on the responsibility to sustain the livelihoods of local communities in general, but to avoid and minimize negative impacts that they may cause or contribute to.”<sup>26</sup> The Guidance does, however, encourage companies to “explore options for supporting community livelihoods and for contributing to local development,” noting that the “introduction of governance models for management of shared natural resources,” is one model that has “had success in different contexts.”<sup>27</sup>
- **Recommendation: ASI Performance Standard 9.7 should clearly articulate communities’ right to benefit from natural resource exploitation, and the related Guidance should provide more details on how to achieve that, particularly through shared management of natural resources.**

## **Economic versus Physical Displacement**

### *C. Social (sections 9-11) 9. Human Rights 9.6 Resettlements.*

- The ASI Performance Standard requires companies to respect the requirements of IFC Performance Standard 5 when forcibly displacing communities from their homes –

---

<sup>21</sup> IRMA, IRMA Standard for Responsible Mining IRMA-STD-001, June 2018, para. 2.3.1 "Commitments to Affected Communities" and para. 2.3.3 "Planning and Delivering Community Benefits."

<sup>22</sup> "Social Performance," International Council on Mining & Metals (ICMM), undated, <https://www.icmm.com/mining-principles/9> (accessed February 24, 2021).

<sup>23</sup> "Social Performance," ICMM, undated, Principle 9.1.

<sup>24</sup> ASI Performance Standard V3, Draft 1.0 for Consultation – March 2021, para. 9.7.

<sup>25</sup> Ibid.

<sup>26</sup> ASI Performance Standard V3 – Guidance Draft 1.0 for Consultation – March 2021, p. 113.

<sup>27</sup> Ibid.

referred to as “physical displacement” in IFC Performance Standard 5 and in the ASI Performance Standard.<sup>28</sup>

- However, ASI Performance Standard 9.6(b) does not explicitly require companies to comply with the IFC Performance Standard 5 requirements where land acquisitions do not displace communities from their homes but instead result in impacts to their livelihoods (referred to as “economic displacement”). IFC Performance Standard 5 contains detailed requirements for compensation and other mitigation measures to address economic displacement and ensure that communities can improve or at least restore their livelihoods.<sup>29</sup> Our research and work with communities in Guinea and elsewhere has shown that loss of land, even if not accompanied by forced relocations, can have a devastating impact on communities’ way of life, livelihoods, and poverty levels.
  
- **Recommendation: ASI Performance Standard 9.6(b) should require companies to respect IFC Performance Standard 5 for both physical and economic displacement.**

---

<sup>28</sup> ASI Performance Standard V3, Draft 1.0 for Consultation – March 2021, para. 9.6(b).

<sup>29</sup> International Finance Corporation, Performance Standard 5 Land Acquisition and Involuntary Resettlement, para. 9, para. 25-29.

## Annex II: Human Rights Watch and Inclusive Development International, Commentary on ASI Assurance Manual

In general, the ASI Assurance Guidance would be strengthened by integrating the standards and recommendations set out in the UN Guiding Principles on Business and Human Rights (UNGP) Assurance Guidance, developed by the Human Rights Reporting and Assurance Frameworks Initiative (RAFI).<sup>30</sup> The UNGP Assurance Guidance provides practical guidance for assuring companies' human rights reporting and performance. The ASI Assurance Manual should, in all respects, adhere to the recommendations put forth in the UNGP Assurance Guidance.<sup>31</sup> We have referred to the UNGP Assurance Guidance at relevant points in the comments below.

### **Need for Strengthened Community Participation in Third-Party Audits**

- Our understanding is that companies in the “production, transformation, and industrial users” membership classes seeking or renewing certification for a facility submit a self-assessment and then select an ASI accredited auditor to conduct a third-party assessment. The audit report is reviewed by ASI’s Secretariat, which then either issues a full three-year ASI certification for the facility, awards only a one-year provisional certification along with a corrective action plan to address problems identified, or denies certification.
- There are, however, insufficient opportunities during ASI’s third-party audit process for participation from local communities affected by mining operations. Such participation is crucial to ensure that ASI members not only have sufficient policies and procedures in place to satisfy the Performance Standard criteria, but that members are implementing them effectively and consistently throughout their operations. Local community participation will go a long way to ensuring that ASI certification is not a box-checking exercise, but instead takes steps to meaningfully assess ASI members’ ability and willingness to operationalize ASI standards in practice.
- ASI’s Assurance Manual currently lists affected communities and Indigenous Peoples as one potential stakeholder group to be interviewed during an audit but does not require that either group be consulted.<sup>32</sup> The revised Assurance Manual provides some improvement in this regard, stating that, “at Facilities located within the vicinity of Indigenous Peoples and affected Communities, Auditors are required to conduct outreach and interviews with Indigenous Peoples and other Rightsholders and Stakeholders with an interest in the

---

<sup>30</sup> "UN Guiding Principles Assurance Guidance," UN Guiding Principles (UNGP), undated, <https://www.ungpreporting.org/assurance/> (accessed February 24, 2021).

<sup>31</sup> See UNGP, UN Guiding Principles Assurance Guidance: Guidance Part ii, undated, Section C.

<sup>32</sup> ASI’s guidance on preparing for an audit, for example, states that “interviews may be conducted with employees, contractors and external stakeholders, including affected communities and Indigenous peoples.” ASI, ASI Assurance Manual V1, 2017, p. 62.

operation.”<sup>33</sup> However, the manual fails to provide guidance on how this outreach should be conducted or how much consultation with rightsholders is required. Our experience in Guinea during environmental and social impact assessments and other third-party-led audit and consultation processes is that, in the absence of clear standards, consultants too often fail to conduct meaningful consultations with affected communities in a manner that sets the conditions for free and open discussion of the impacts of projects on their lives without fear of reprisals.

- Other multistakeholder initiatives, such as the Initiative for Responsible Mining Assurance (IRMA), provide more detailed guidance on how to effectively engage community stakeholders during audits, although IRMA’s guidance would also benefit from more detail.<sup>34</sup> Similarly, the UNGP Assurance Guidance emphasizes the need for human rights assurance processes to engage directly with key external stakeholders, including local communities, with special attention to potentially vulnerable groups, and provides guidance for doing so effectively.<sup>35</sup>
- To integrate more effective language on community participation in audits, the ASI Assurance Manual should integrate relevant guidance from the UNGP Assurance Guidance.<sup>36</sup> Ensuring adequate community engagement in audits would include, for example, a requirement that auditors pay special attention to culturally and linguistically appropriate modes of engagement and ensure that representatives engaging in the process have the legitimacy to speak on behalf of communities. Auditors should also be aware of and address risks of reprisals faced by local communities engaging in such processes (including confidentiality measures and robust security protocols). They should also assess communities’ capacity to meaningfully engage in the audit, offer appropriate assistance to facilitate their engagement, ensure that relevant information is supplied to them in an accessible form, and ensure that women, marginalized, and vulnerable groups can meaningfully participate in the audit process.
- The ASI Assurance Manual should also recommend explicitly that, in addition to directly affected stakeholders, auditors engage with nongovernmental organizations (NGOs) and civil society organizations. NGOs that work directly with the relevant communities or have authorization to represent them can help to facilitate meaningful, effective, and culturally sensitive dialogue between third-party auditors and community representatives.

---

<sup>33</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 46.

<sup>34</sup> IRMA, IRMA Certification Body Requirements Version 1.0, [https://responsiblemining.net/wp-content/uploads/2020/01/Certification-Body-Requirements\\_v1.0.pdf](https://responsiblemining.net/wp-content/uploads/2020/01/Certification-Body-Requirements_v1.0.pdf) (accessed February 24, 2021), p. 46-47 and p. 65.

<sup>35</sup> See UNGP, UN Guiding Principles Assurance Guidance: Guidance Part ii, Section B.4, p. 20-21, and Section C.6.

See also relevant sections of assurance industry standards, including International Auditing and Assurance Standards Board, International Standard on Assurance Engagements (ISAE) 3000, 2013, <https://www.iaasb.org/publications/international-standard-assurance-engagements-isaec-3000-revised-assurance-engagements-other-audits-or-0> (accessed February 24, 2021), para. 48-51. See also AccountAbility, AA1000 Stakeholder Engagement Standard, 2015, <https://www.accountability.org/standards/> (accessed February 24, 2021), AT-1-1, para. 52.

<sup>36</sup> *Ibid.*

These groups often have specialized knowledge of community perspectives, interests and concerns; have engaged in evidence-gathering and other research; and possess data that should inform third-party assessments of companies' practices.<sup>37</sup>

- **Recommendation: ASI's Assurance Manual should set out clearer standards requiring meaningful consultation with and participation by affected people, including community groups and Indigenous Peoples, and relevant stakeholders in third-party audits. Auditors should not be prevented from consulting with third parties and should not be required to obtain permission from companies being audited before contacting third parties.**

### Increasing Transparency in Audits

- The ASI Secretariat currently does not publish adequate detail about audits to enable external stakeholders, including local community and civil society groups, to investigate the quality of the audit and its findings. The ASI Secretariat publishes a Summary Audit for each certification, but the summaries are limited to one or two sentence statements as to whether the company is in conformity with each criterion in the ASI Performance Standard, and contains very little explanation.<sup>38</sup> The revised Assurance Manual does require that some additional information be included in Summary Audit Reports, such as a sampling methodology and the strategy for engagement with affected populations and organizations, as well as the number of parties contacted and interviewed (including Indigenous Peoples, Community members and NGOs). The revised manual does not, however, require additional substantive information explaining or justifying the statement of conformance.<sup>39</sup> As it currently stands, external stakeholders have no way of knowing why a company was judged in conformity (or otherwise) for each criterion in the Performance Standard and what corrective actions might be required.
- Although the Initiative for Responsible Mining Assurance (IRMA) had, at writing, only published one certification audit report, the report offers significantly more detail than ASI's summary audit as to why a mining company has or has not met IRMA's standards.<sup>40</sup> Other industry performance standards, such as those developed by the Fairwear Foundation for the garment sector, also offer more detail in their brand performance check reports.<sup>41</sup>

---

<sup>37</sup> For additional guidance, see UNGP, UN Guiding Principles Assurance Guidance: Guidance Part ii, Section C.6, p. 19.

<sup>38</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 82.. See, for example, audit summaries available for each member on the ASI website.

<sup>39</sup> Ibid.

<sup>40</sup> IRMA, Mine Site Assessment Public Summary Report, October 21, 2020, <https://responsiblemining.net/wp-content/uploads/2020/10/Carrizal-Audit-Report-Public-Summary-Oct2020.pdf> (accessed February 24, 2021).

<sup>41</sup> Fairwear Foundation assesses brands' performance based on a Brand Performance Check Guide. See Fairwear, Brand Performance Check Guide, 2019, [https://api.fairwear.org/wp-content/uploads/2020/03/FWF\\_BrandPerformanceCheckGuide-DEF.pdf](https://api.fairwear.org/wp-content/uploads/2020/03/FWF_BrandPerformanceCheckGuide-DEF.pdf) (accessed February 24, 2021).

- Our experience in Guinea and elsewhere suggests that lack of transparency from mining companies is a key challenge to civil society and community participation in environmental and social governance. In Guinea, for example, very few companies publish annual environmental and social audits, denying community and civil society groups the opportunity to compare audit findings with their own experience of mining companies' practices and their impacts on communities.
- **Recommendation: ASI's Assurance Manual should require companies to publish in full the audits assessing compliance with ASI's Performance Standard. In addition, ASI should maintain a searchable database of all full audit reports on its website.**

### **Consequences for Serious Breaches of the Performance Standard**

- We believe that ASI's Assurance Manual should make clearer the consequences for ASI members of their involvement in serious human rights abuses, both for facilities that have ASI certification and other facilities that, although not ASI certified, are still under the control of an ASI member. A company should not be able to become or remain an ASI member while implicated in serious human rights abuses at their facilities, whether those facilities are ASI Certified or otherwise.
- We understand that a key objective of multistakeholder initiatives in general, and of ASI in particular, is to promote continuous improvement of company practices, which requires admitting member companies that do not necessarily meet ASI's Performance Standard across their operations.<sup>42</sup> However, we do not believe that companies implicated in serious human rights abuses should become or remain ASI members if they do not take effective measures to promptly remedy those abuses. Membership of ASI provides a reputational benefit that should not be granted to companies implicated in serious human rights abuses. Setting benchmarks for admittance of members and their continuous improvement is also necessary to meet multistakeholder initiatives' responsibilities under the OECD Due Diligence Guidance for Responsible Business Conduct.<sup>43</sup>
- The ASI Assurance Manual states that certification for a facility will be denied where there is a "Critical Breach" of the Performance Standard.<sup>44</sup> A Critical Breach includes,

---

and publishes the assessment guide and the brand performance reports. This assessment is not just focused on the labor practices of its suppliers but also on the business practices of its member brands that may be causing or contributing labor abuses. All brand performance reports are transparently available online on Fairwear Foundation's website as part of a searchable brand database and these are written up in detail.

"Brands," Fairwear, undated, <https://www.fairwear.org/brands> (accessed February 24, 2021).

<sup>42</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 7-8.

<sup>43</sup> OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

<sup>44</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 17.

“repeated Major Non-Conformances not satisfactorily addressed,” “serious human rights abuses, including of workers, communities and/or Indigenous peoples,” “serious environmental, social or cultural impacts caused by negligence or total lack of control to prevent or mitigate the severity of the impacts,” and “fraudulent representation of Free Prior Informed Consent (FPIC).”<sup>45</sup>

- It is our understanding, however, that denial of certification due to a “Critical Breach,” does not necessarily affect a company’s membership of ASI if the member has other certified facilities. The Assurance Manual states that, “depending on the nature of the Critical Breach, and feasibility and commitments for Corrective Action, disciplinary proceedings (as set out in the ASI Constitution) against the relevant Member may commence.”<sup>46</sup> A new provision in the revised Assurance Manual states, “[w]hen potential Critical Breaches are alerted to ASI, ASI will determine the process and consequence, including whether any existing certifications should be suspended or revoked during the investigation.”<sup>47</sup> The ASI Constitution provides that the ASI Directors may “expel a member whose conduct, in the opinion of the Directors, is or has been materially prejudicial to the interests of ASI.”<sup>48</sup> ASI has also developed a complaint mechanism through which stakeholders can submit complaints against members for alleged breaches of ASI’s Performance Standard.<sup>49</sup>
- We are not aware, however, of further detail in ASI’s Constitution, Assurance Manual, or Complaints Mechanism as to consequences for ASI members who are implicated in serious human rights abuses. While, as described above, the ASI Constitution appears to give ASI’s directors the discretion to discipline a member for a Critical Breach, including implication in serious human rights abuses, we are not aware of any ASI policy or document that describes when and how they will exercise this discretion.
- **Recommendation: ASI should not admit companies implicated in serious human rights abuses until they have effectively remedied the human rights issue in question. Moreover, where a member controls a facility that is implicated in serious human rights abuses, the member should be required to develop and implement a time-bound corrective action plan that provides a meaningful remedy to affected communities. A failure to develop and implement the action plan in a timely manner should result in suspension of ASI membership until serious human rights issues are**

---

<sup>45</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 50.

<sup>46</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 17.

<sup>47</sup> ASI, ASI Assurance Manual V2.0 Draft 1.0 for Consultation, p. 50.

<sup>48</sup> ASI, ASI Constitution, April 26, 2016, <https://aluminium-stewardship.org/wp-content/uploads/2015/08/ASI-Constitution-Adopted-26.4.16.pdf> (accessed February 24, 2021), para. 5.15(a)(3).

<sup>49</sup> "ASI Complaints Mechanism," ASI, undated, <https://aluminium-stewardship.org/asi-certification/asi-complaints-mechanism/> (accessed February 24, 2021).



**resolved. A full list of the status of all members, including suspensions and reasons for and duration of suspension, and the conditions for lifting it, should be published.**