



# **THE NEW REGULATORS?**

## **ASSESSING THE LANDSCAPE OF MULTI-STAKEHOLDER INITIATIVES**

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*Findings from a database of transnational  
standard-setting multi-stakeholder initiatives*

MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics

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# OVERVIEW

How, in today's complex global economy, can states cooperate to ensure that businesses respect human rights, preserve the environment, and follow good governance practices throughout their global operations? The failure to address this question has left a "governance gap" that allows the widespread violation of human rights, environmental, and anticorruption norms in various industries to persist. In response, many actors — companies and NGOs in particular — have turned toward voluntary compliance initiatives, working together to create or apply standards which member companies (and sometimes governments) agree to follow.

These collaborative initiatives, frequently called multi-stakeholder initiatives (MSIs), have become popular instruments of global governance and have been incorporated into government policy, civil society initiatives, and corporate compliance practices. Having created novel rules for corporate and government conduct that exist outside of traditional government regulatory frameworks, MSIs have gained prominence as a new category of regulatory institution. But even as these "new regulators" have grown in influence and have taken on increasingly complex global issues, much remains unknown about MSIs. For example, how many MSIs are there? What industries do they operate in? How do these initiatives make decisions or enforce their standards?

To help answer these questions, the Duke Human Rights Center at the Kenan Institute for Ethics and MSI Integrity have developed an online database of transnational standard-setting MSIs. Over a two-year period, researchers identified 45 MSIs that set standards, govern corporate or government conduct, and have transnational reach. Researchers catalogued fundamental features of each MSI's scope, governance, and implementation structures, such as the types of stakeholders included in initiatives or whether they monitor members for compliance with their standards. Although the database examines only a handful of characteristics for each MSI, it provides insights into the emergence of standard-setting MSIs as a field and, importantly, whether or not they are actually closing the governance gap.

This project studies how MSIs present themselves publicly through self-reported information and is not a comprehensive examination of the structure of MSIs. Although the database contains important descriptive information about the landscape and design of MSIs, it examines the existence of MSI design characteristics and not their implementation or quality. It does not evaluate whether an initiative's features or practices are well-designed, effective, or even followed. As such, the database does not evaluate, rate, or rank MSIs' effectiveness and should not be treated as a "scorecard" for MSI performance.

This report highlights findings from the MSI database and provides analysis from the perspective of MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics at Duke University. It also includes recommendations for MSIs and researchers and focuses on persisting knowledge gaps about MSIs that could potentially benefit from future research. We welcome debate on these findings and recommendations and invite others to use the database to identify additional findings and areas for inquiry.

Key findings from the database include the following:

- **MSIs have become established governance instruments, although the creation of new standard-setting MSIs has slowed significantly.** The database identifies 45 transnational standard-setting MSIs. Although they have important contextual differences, **these initiatives comprise a critical mass of institutions that share the same basic design:** formalized decision-making processes, an agreed-upon set of standards that are mandatory for all members,

and an external auditing process that is designed to provide some assurance about whether members are meeting those standards. Most of these initiatives were developed in the late 1990s and 2000s, with only a handful of new initiatives launched in the current decade.

- **MSIs appear to be creating an uneven patchwork of industry-specific standards** that are largely clustered in a handful of industries. Almost 80% of the surveyed MSIs set industry-specific standards, with almost 90% of industry-specific MSIs clustered in three industries: consumer goods; agriculture, forestry, and fishing; and mining and energy. By comparison, researchers for this project found no industry-specific initiatives for finance, healthcare, or telecommunications.
- **The overwhelming majority of MSIs are failing to meaningfully engage communities affected by the operations of participating companies** in either MSI governance or implementation. Only 14% of the surveyed MSIs report that they involve any members of communities or other populations affected by MSI member companies in their primary decision-making body. Only 49% of MSIs involve their affected communities in any of their activities or implementation at all. This means the intended beneficiaries of initiatives — such as workers, representatives from local communities, or indigenous groups — are not permitted input into the design or operation of initiatives. Individuals, workers, and communities who often have the most at stake in MSIs are thus among the most marginalized when it comes to shaping an initiative's implementation and decision-making.
- **Almost half of MSIs over-represent a single stakeholder group** on their primary decision-making body. Forty percent of the initiatives surveyed have governing bodies on which representatives from a single stakeholder group, such as companies or civil society, exceed the number of stakeholders from any other group by a ratio of 2:1 or greater. This calls into question whether other stakeholder groups have meaningful influence or opportunities to affect decisions at these MSIs and highlights the need for additional research to better understand how stakeholder *representation* translates into stakeholder *participation*.
- **Many initiatives do not have the mechanisms necessary to hold members to account** if they breach MSI standards. For example, one in five initiatives lacks any power to sanction members who violate standards, such as by suspending or expelling them from the initiative. This raises serious questions about whether MSIs are setting and enforcing standards that are sufficiently robust and reliable to close critical governance gaps related to human rights, environmental, and governance norms.
- **Several MSIs also lack mechanisms to address complaints about potential abuses by members.** Only 40% of the surveyed MSIs have any form of complaints process that would allow communities or individuals to report instances of human rights or environmental abuse that violate the initiative's standards. The fact that so many MSIs do not have remedial functions is especially significant given the expectation of the UN Guiding Principles on Business and Human Rights that MSIs provide remediation mechanisms to address potential human rights violations.

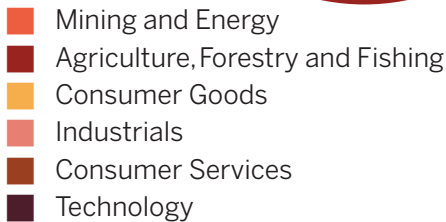
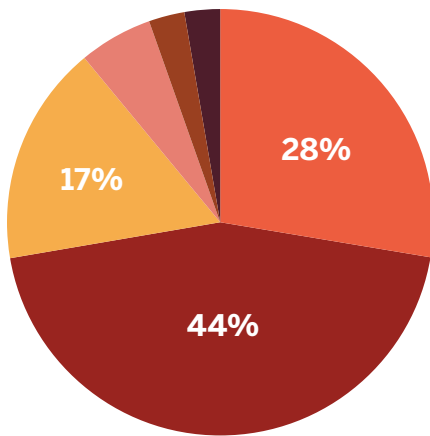
Our hope is that this database contributes to debate and discussion about the voluntary governance of the private sector and that it encourages further research and critical reflection into the roles, functions, and effectiveness of individual MSIs, as well as MSIs as a field. Researchers and other stakeholders are encouraged to contact MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics to discuss lessons learned, interpretations of the database's significance, and potential updates to the database's content.

## MSIs AT A GLANCE

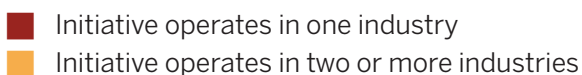
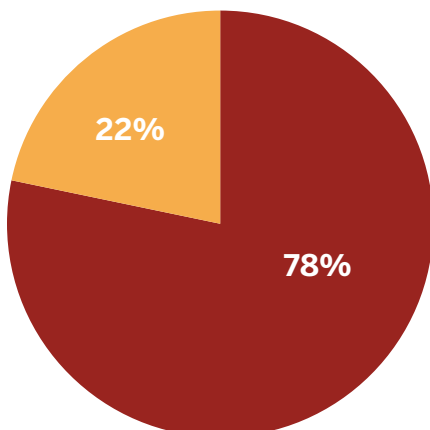
This database identifies

**45** transnational standard-setting MSIs.

### Distribution of Industry-Specific MSIs



### Industry-Specific vs. Multi-Industry MSIs



### These Initiatives...

operate in over **170 countries** on **six continents**<sup>1</sup>

and regulate over **9,000 companies**, including **65 Fortune Global 500 businesses**

engage over **50 national governments**<sup>2</sup>

with combined annual revenues of more than **\$5.4 trillion dollars**.<sup>3</sup>

### What Do MSIs Regulate?

Almost 90% of industry-specific MSIs are clustered in three sectors: (1) agriculture, forestry and fishing; (2) mining and energy; and (3) consumer goods.\* There are no industry-specific MSIs for:

- Health Care
- Telecommunications
- Financial Services

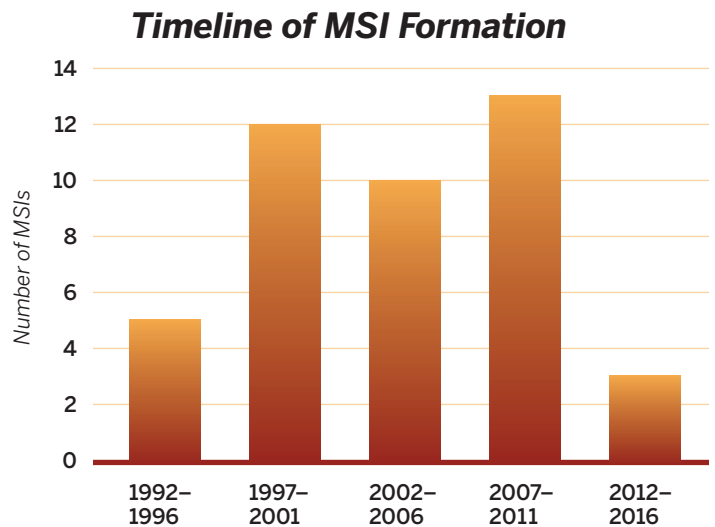
78% of surveyed MSIs set standards for just one industry, with 13% of initiatives focused on 2-4 industries and 9% setting standards applicable to all industries.

\*The database utilizes a modified version of the Industry Classification Benchmark (ICB) for industry classification. For more information on the industry categories and classification processes used, see the project's methodology document.

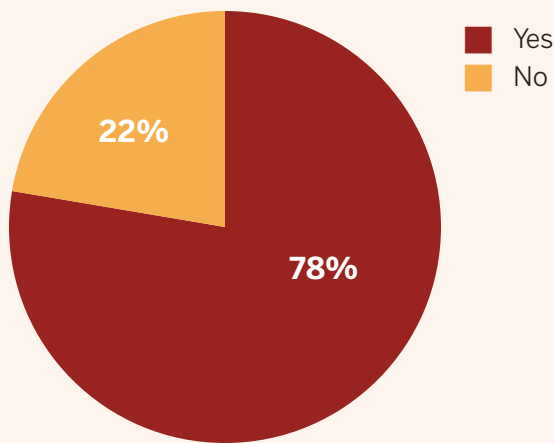
## When Were MSIs Formed?

Over **80% of surveyed MSIs were formed prior to 2010.**

Only three initiatives have been created in the past five years — the lowest rate of growth in MSIs since the 1990s.



## MSIs with International Law Reference



## What Is the Relationship Between MSIs and International Human Rights or Environmental Law?

Over three-quarters of the MSIs surveyed cite international laws or norms in their standards. Examples include:

- The United Nations Declaration on Human Rights
- The International Labor Organization Core Conventions
- The United Nations Guiding Principles on Business and Human Rights

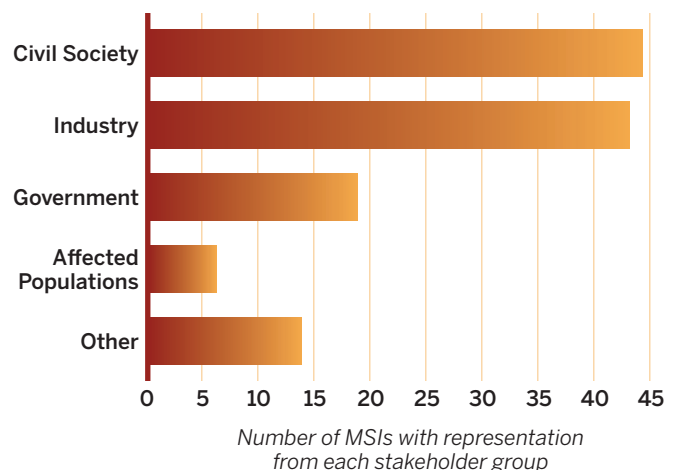
## Who Has the Power to Make Decisions in MSIs?

Among MSIs that publicly disclose information about the composition of their primary decision-making body:

- 98% include both industry and civil society representatives;
- 43% include government representatives;
- 14% include affected populations; and
- 32% include other\* representatives.

\*Other includes: other MSIs, socially responsible investors, independent consultants, etc.

## Representation of Stakeholder Groups in MSI Decision-Making Bodies



# BACKGROUND TO THE PROJECT

*Below is a summary of our methodology, a brief background on MSIs, and an outline of the scope and limitations of the database. We encourage all interested readers to view our methodology and FAQ. Both are available on the database website: [www.msi-database.org](http://www.msi-database.org).*

## What are MSIs?

There is no commonly agreed-upon definition of what constitutes an MSI. However, at the most basic level, MSIs can be understood as efforts to bring together various stakeholders — such as corporations, civil society, government, and affected populations — to collaborate in addressing a specific issue, often related to corporate accountability.<sup>4</sup>

Beyond this basic format, MSIs may take a variety of different forms and functions. Some initiatives focus on establishing dialogues or encouraging shared learning while others may set standards for supply chains or industries, seek to mobilize resources, or encourage collective action for policy development. Some may have a narrow focus, such as eliminating child labor, while others may examine the broader environmental, human rights, and social issues relevant to a particular sector. MSIs may also go by different names with varying degrees of specificity, from multi-stakeholder networks and private standard initiatives to private transnational governance or public-private partnerships. The database and this report focus on a narrower subset of MSIs that are transnational in scope and set standards for government or corporate conduct.

## What types of MSIs are included in the MSI database?

The database includes MSIs that set transnational standards for business or government conduct on issues of public concern, such as human rights, the environment, and corruption. Specifically, to be included in the database, an initiative had to meet all of the following criteria:

- The initiative involves multiple stakeholder groups (i.e., industry, civil society, government, or communities affected by business operations) and has a governance structure that mandates the participation of more than one stakeholder group in its primary decision-making body;<sup>5</sup>
- The initiative sets standards for its members to follow;
- The initiative is “voluntary” (i.e., optional for companies and other stakeholders to join, although once a member, compliance with certain standards may be mandatory);
- The initiative’s standards operate in more than one country; and
- The initiative focuses on addressing business or government conduct relating to issues of public concern (e.g. human rights, environmental protection, corruption prevention, etc.).

The form or organizational structure of an initiative — such as whether it is an incorporated entity — was not a consideration in determining whether initiatives qualified for inclusion in the database. Over time, the database may be expanded to include other types of initiatives, but to make the project workable, some limits had to be placed on the scope of the database for this initial version. The decision to focus on transnational standard-setting MSIs was made because of the significance of these initiatives in the context of global and national “governance gaps” related to environmental and human rights protection — and the potential of these MSIs to address these gaps as compliments to international and national laws.



## Who participated in the project and how was the database developed?

The database and data collection methodology were designed and developed by MSI Integrity, the Duke Human Rights Center at the Kenan Institute for Ethics at Duke University, and Miller & Chevalier (a law firm based in Washington, D.C.) between 2014–2016. During this time, the three organizations worked together to define the scope of the project, including the types of initiatives that would be catalogued in the database, as well as the specific data points that would be collected for each initiative.

The project had four stages:

- Project Design and Review (Winter 2014–Winter 2015)
- Pilot Research, Review, and Preparation for Data Collection (Spring 2015–Fall 2015)
- Data Collection and Internal Review (Spring 2016–Summer 2016)
- External Review of Data Accuracy with MSIs (Summer 2016–Fall 2016)

A full explanation of the project methodology is available on the database website: [www.msi-database.org](http://www.msi-database.org).

This paper reflects the views of MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics at Duke University. To help ensure the independence of our analysis and recommendations, the assistance we received from other parties (including *pro bono* counsel from Miller & Chevalier) was limited to gathering information on MSIs and identifying information to include in the database. This paper does not reflect the views of any of these parties.

## What data did researchers collect about each MSI?

The database catalogues basic information about the design characteristics of each MSI's scope, governance, and implementation structures. The data points catalogued were included because they are considered, generally and in MSI Integrity's own research, to be important for an initiative's potential efficacy. A detailed description of data point definitions, the rationale for including each data point, and the processes used for researching them is included in the Classification Guide section of our project methodology document, available on the database website: [www.msi-database.org](http://www.msi-database.org). In summary, the database includes the following information about MSIs:

- The industry or industries in which the MSI operates;
- When the MSI was launched;
- Stakeholders represented in each MSI's primary decision-making body;
- Whether MSIs involve community members and populations affected by the initiatives' member companies or governments in their operations;
- Whether MSIs reference international human rights or environmental laws in their standards;
- Whether MSIs conduct evaluations of member compliance with standards;

- Whether MSIs require that publicly available reports be produced as a result of compliance evaluations;
- Whether MSIs provide a mechanism for individuals to file complaints about member non-compliance with standards, allegations of wrongdoing, or rights abuses; and
- Whether MSIs have the power to sanction members for non-compliance with initiative standards.

## How was data collected about each MSI?

Researchers relied on self-reported information by MSIs on MSI websites as the source material for data collection. Two researchers were assigned to each MSI and catalogued information on each initiative separately. A third researcher then compared the two data sets and reconciled any discrepancies. MSI Integrity and Kenan staff provided a final check on the data collected, devoting particular attention to any unresolved discrepancies or questions and reviewing all data points concerning the involvement of affected populations and external complaints mechanisms. In the final stage of the project, researchers shared data with MSIs for feedback. Of the 45 initiatives included in the database, 10 responded with corrections or clarification. Corrections were made if they could be verified with publicly available information and if they were consistent with the project's Classification Guide.

## Does the database rank, evaluate, or rate MSIs? Does it assess the impact or effectiveness of the MSIs?

As noted in the Overview, the database does not evaluate, rate, or rank MSIs, nor does it assess the impact or effectiveness of MSIs. Therefore, it should not be treated as a “scorecard” or “benchmark” for MSI performance.

## What are some of the constraints related to the database methodology?

As a first effort to map standard-setting initiatives, this project has three important limitations:

- (1) **The project does not collect information on the rigor, depth, or impact of MSI standards** — for instance, it does not assess whether an MSI requires meaningful changes to existing corporate practices, or sets standards that are less rigorous than what is already common practice in an industry.
- (2) **The project relies on self-reporting by MSIs on their own websites** in order to represent MSIs as the general public might see them. The exclusive use of publicly available information highlights the varying levels of transparency and accessibility across initiatives. The database does not verify whether an initiative's stated features are followed or implemented in practice.
- (3) **The project does not evaluate the implementation of the features catalogued** (for example, whether an MSI actually uses its sanctioning mechanism against non-compliant members), **nor their quality or effectiveness**. Instead, the project and resulting database aim to serve as an initial resource for researchers, civil society, MSI staff, and the private sector to support further research and critical reflection on MSIs.

# KEY INSIGHTS AND ANALYSIS FROM THE DATABASE

## MSI GOVERNANCE

### *Exclusion of Affected Communities and Questions about Stakeholder Power Imbalances*

#### **Issue: Stakeholder Representation and Power in MSI Governance**

The distinguishing characteristic of MSIs is that they bring together stakeholders with different interests, experiences, and resources to address an issue of mutual concern. Inclusive and accountable decision-making processes undergird initiative legitimacy and are critical to member buy-in. MSIs with robust collective decision-making structures also enable stakeholders to navigate and address complex problems that no single actor could solve alone. Understanding who participates in the governance of an MSI is an essential first step toward understanding who has power within the initiative — in terms of both shaping the initiative's goals and leveraging its resources.

The database catalogues the presence or absence of different stakeholder groups — including industry representatives, members of civil society, governments, and populations affected by business operations — in each MSI's primary decision-making body.<sup>6</sup> Numerical representation offers only limited insight into the actual diversity of voice and balance of power within an MSI, as it does not account for issues such as the inclusiveness of decision-making processes or the quality of the individual representatives on the decision-making body, as we discuss further below. Despite these limitations, numerical representation does reveal which groups sit at the table and which groups are denied a voice in decision-making processes altogether.

#### **Data:**

##### ***MSI Decision-Making Bodies: Who's In and Who's Out?***

- 98% (43/44) of the initiatives surveyed include both industry and civil society representatives in their primary decision-making bodies.\* In addition:
  - 43% (19/44) of initiatives include government representatives;
  - 14% (6/44) include affected populations; and
  - 32% (14/44) include other representatives (including MSIs, socially responsible investment firms, sector-independent consultants, and more).
- Most MSIs do not have equal representation amongst stakeholders in their primary decision-making body: only 5% (2/44) include industry, civil society, government and affected populations. Instead, decision-making bodies tend to be predominantly populated by either industry or civil society. Even here, only 16% (7/43) of MSIs include an equal number of industry and civil society representatives.
- There are slightly more initiatives where civil society has the largest representation in the decision-making body (42%, 18/43) than there are initiatives where industry is the most represented group (37%, 16/43). However, those initiatives that are majority-industry are much more likely to be disproportionately industry-heavy, with at least three majority-industry initiatives having four times as many industry representatives on the decision-making body than any other type of representative.

\*See note 8 for information about why the statistics in this section use a denominator of 43 or 44.

## Analysis

### **1. Exclusion of affected communities from governance and wider decision-making undermines the potential effectiveness and legitimacy of MSIs**

One of the most important insights offered by the database is that affected populations — including the workers, small-scale farmers, and local communities that many MSIs intend to protect — are drastically underrepresented in MSI decision-making bodies.<sup>7</sup> Only 14% (6/44) of MSIs include these individuals in their primary decision-making processes, and no MSI identified had a majority of affected community members on its board.<sup>8</sup> While 49% (22/45) of the MSIs surveyed engaged affected community members in some way outside of decision-making processes, such as by offering local implementation workshops or conducting interviews with community members during compliance monitoring or initiative review, consultation of communities is not a proxy for providing communities with an opportunity for representative decision-making.<sup>9</sup>

The involvement of affected populations is integral to an MSI's legitimacy and the initiative's potential to have a positive impact on local communities.<sup>10</sup> Affected individuals hold critical information about the relevant industry and the local context, such as the local culture and the underlying issues that may have led to the initiative's development. This makes such individuals uniquely positioned to help an initiative build local trust and capacity around local implementation programs, as well as to both reach and genuinely benefit the affected population. Affected populations may, for example, help guide an initiative on how to design a compliance mechanism or monitoring system that engenders local trust so that communities feel comfortable raising concerns about their employer or other powerful actors in the community. These individuals could also steer initiatives toward addressing the human rights or environmental issues of greatest importance to communities, or may help advance learning and dialogue within an initiative by directly engaging and providing feedback to company representatives. Conversely, if such communities are excluded from MSI processes, they may be left unaware of an MSI's presence in their communities or workplaces and may not use the protections and mechanisms that initiatives afford to them.

For these reasons, it is troubling that a majority of MSIs appear to lack formalized mechanisms for basic community participation and involvement. This, in turn, raises questions about the legitimacy of MSIs from a localized perspective: exclusion of affected communities denies these populations a degree of their right to self-determination, which may not only be belittling but also deprives these stakeholders a voice in decisions that may significantly and directly affect their lives. The fact that most MSIs have not been driven by rights holders themselves, and that governing processes may not be adequately responsive to the perspectives of their most vulnerable stakeholders, calls into question their credibility and capacity to have positive local-level impacts.<sup>11</sup>

Robust community involvement in an MSI's governance and implementation can improve initiative legitimacy and impact. At the same time, such involvement must be thoughtful rather than symbolic. "Token" inclusion of affected populations in the MSI's decision-making body, or other superficial engagement with communities, could further disempower rights holders by contradicting their perceived ability to contribute to the initiative's mission and goals or reinforcing existing power imbalances at the community level.

More research is needed to understand why communities have largely been excluded from MSIs, both in implementation and in initiative governance. Research could also analyze how and to what extent communities desire to be involved in initiatives or assess good practices for incorporating community participation at both the governance and implementation levels of MSIs.

## **2. Greater scrutiny and research into whether, or how, MSIs are governed effectively and inclusively is needed**

The database findings on the composition of MSI decision-making bodies warrant a few additional observations:

- (a)** The degree of disproportionate stakeholder representation in decision-making bodies is troubling, and imbalances in an MSI should lead to deeper scrutiny

Power dynamics among stakeholders in MSIs are highly dependent on numerous qualitative factors (discussed below) as well as on the decision-making processes of the initiative. For example, some initiatives may use qualified or balanced decision-making processes, whereby industry, civil society, government, or community stakeholder groups are each given equal decision-making power as a way to offset any divergence in numerical participation (such as by requiring two-thirds of each stakeholder group to support a decision).<sup>12</sup>

Numbers alone cannot speak to the balance of power between stakeholders in the practice of decision-making or the actual degree of inclusion within an initiative. This means that equal *representation* on the decision-making body does not necessarily ensure equal *participation* in decision-making processes. It is not enough for an MSI to simply have equal numbers of seats for each stakeholder group, or to conclude that if it does have equal numerical representation that it has achieved equity. Yet 40% (17/43) of the initiatives surveyed have highly imbalanced representation of stakeholder groups, meaning that representatives from one stakeholder group exceed the number of stakeholders from any other group by a ratio of 2:1 or greater. At the most extreme end are three initiatives where the number of industry representatives exceeds the number of stakeholders from any other group by a ratio of 4:1 or greater: ICTI Care Process, Program for Endorsement of Forest Certification (PEFC), and Roundtable on Sustainable Palm Oil (RSPO). Furthermore, none of these initiatives have qualified voting or balanced decision-making structures (i.e., where industry, civil society, and government stakeholder groups are each given equal voting power).<sup>13</sup> This raises clear questions about whether other stakeholder groups have meaningful influence or opportunities to affect decisions. It also suggests there is an inequitable balance of power between stakeholder groups, which undermines the value and legitimacy of these initiatives. MSIs that do not provide a sufficient rationale for their decision to have an imbalanced decision-making structure should reflect on their processes and come under greater external scrutiny.

Alongside these findings, we acknowledge that it is important to understand not only which stakeholder groups have seats at the decision-making table, but also what the power dynamics between and within stakeholder groups are. MSI Integrity's previous research into MSI governance has highlighted the importance of (i) a thorough understanding of the skills, experience, and expertise of those who fill individual decision-making seats, (ii) the qualitative factors that affect decision-making, such as trust, as well as (iii) the motivations of each individual and their accountability to their constituency.<sup>14</sup> MSI Integrity has found that certain stakeholders, particularly civil society or community representatives, may lack the resources to adequately prepare for and attend meetings, may experience pressure or intimidation to conform to certain opinions within the decision-making body, or lack adequate industry-specific knowledge, which may prevent their full participation in an initiative. In addition, the term "civil society" covers a wide and ambiguous group. This can lead to the inclusion of individuals in the governance of an MSI who may not be appropriate — for example, individuals who work for an NGO or university, and therefore may be considered civil society, but whose institutions or backgrounds indicate that they do not have relevant issue-specific expertise, connection to communities, or other qualifying characteristics. All of this highlights the need for research into the inclusivity and effectiveness of decision-making processes across different initiatives.

**(b)** The level and desirability of government participation in MSIs requires more research

MSIs are often perceived as “private” governance mechanisms, removed from government actors and institutions. The fact that almost half of the MSIs in the database included government representation (defined as representation from individuals affiliated with local and national governments as well as international governmental organizations such as the UN) may therefore come as a surprise to some.<sup>15</sup> The impacts and effects of including governments in MSIs are unknown. MSI Integrity has heard anecdotal evidence that government involvement in MSIs may help with resourcing, improve national compliance levels with initiative standards, and increase norm diffusion into domestic policy. However, we have also heard others observe that government involvement can risk bureaucratizing or slowing down decision-making processes and may negatively increase the politicization and formality of initiatives. We encourage more research into this issue in order to understand whether, or how, MSIs should encourage government involvement in their initiatives.

**(c)** MSIs appear to be increasingly interlinked, with some initiatives including MSI representatives in their decision-making bodies, providing certification for other MSI standards, or including compliance with other MSI standards in their own certification requirements

Several initiatives appear to have interlinked decision-making bodies, including amongst initiatives that operate in different sectors. For example, the ICTI Care Process includes a board member from the Extractive Industries Transparency Initiative’s international secretariat, and the Alliance for Water Stewardship includes a board member from the Better Cotton Initiative Council. This interlinking has also manifested in implementation. For example, the Rainforest Alliance, in addition to governing its own standard, also provides certification for the Forest Stewardship Council and Global Sustainable Tourism Council, while the Initiative for Responsible Mining Assurance has included compliance with the Extractive Industries Transparency Initiative as part of its own standard. These findings suggest that MSIs are recognizing that they have valuable experiences to share, and perhaps that in some industries there is significant overlap and complementarity among MSIs in terms of scope and implementation. These trends are worth closer examination.

## **Recommendations and Further Research:**

- **For MSIs:** More involvement of affected populations is needed in the governance, design, and decision-making of MSIs.
- **For researchers:** Qualitative research is needed to provide context to the above finding. Research is also needed into who has decision-making power within MSIs, whether governance structures genuinely mitigate imbalances of power and give voice to key stakeholder groups, and good practices for involving affected populations and governments in MSIs.

## **MSI ACCOUNTABILITY MECHANISMS**

### ***Concerns about the Ability of MSIs to Ensure Member Compliance***

#### **Issue: MSI Processes for Holding Members Accountable to Standards**

The basic function of standard-setting MSIs is to delineate a voluntary commitment on the part of the initiative's corporate and/or government members to meet a set of standards for responsible conduct or good practice. As other companies or governments may not meet these standards, most standard-setting MSIs communicate that their members are exceeding ordinary practice or otherwise agreeing to take steps to protect human rights or the environment or address issues of major public importance, such as reducing corruption.

Not all MSIs set standards, as many focus on influencing the practices of their members through shared learning and cross-sector collaboration rather than (or in addition to) monitoring and evaluation. Moreover, we do not suggest that standard-setting MSIs *have* to assure the public that their members are exceeding ordinary business practices and that the initiative is taking steps to ensure that its members are, in fact, meeting initiative standards or taking steps to come into compliance.<sup>16</sup> Nevertheless, if an MSI *does* make claims or public assurances that its members are meeting a set of standards or taking steps to come into compliance over time, it should follow through on these commitments. Where companies or governments egregiously violate an MSI's standards, they should be publicly held to account, such as through suspension or expulsion from the initiative or through requirements to provide a remedy to address any harm caused.

The database identifies whether MSIs have mechanisms to hold companies and/or governments accountable to their commitments, including whether they monitor member compliance with initiative standards, produce and publicly disclose reports from this compliance monitoring, or have the authority to sanction non-compliant members. The database does not consider whether these accountability mechanisms are rigorous or utilized diligently. For example, MSIs may only require one or infrequent compliance evaluations, and many initiatives may claim sanctioning authority but choose not to use this power in certain cases of non-compliance.

#### **Data:**

##### ***Accountability Mechanisms: Are Members Compliant with Initiative Standards?***

- Nearly all of the MSIs surveyed (91%, 41/45) conduct evaluations of member compliance with initiative standards. Of the MSIs that conduct compliance evaluations, the vast majority (93%, 38/41) require third-party audits or assessments, while 7% (3/41) of the MSIs in the database perform their own evaluations.
- 9% (4/45) of MSIs in the database do not conduct external monitoring or auditing to determine whether members are complying with initiative standards. These initiatives include the Global Reporting Initiative, the Alliance for Water Stewardship, and the Voluntary Principles on Security and Human Rights. The UN Global Compact only requires self-evaluations by company and government participants.
- Despite high levels of compliance monitoring, only 73% (30/41) of MSIs that conduct compliance monitoring require documentation of these evaluations and an even smaller percentage (37%, 15/41) require that such documentation be made publicly available.

## ***Sanctioning Mechanisms: Are There Consequences for Non-Compliance?***

- Across all MSIs surveyed, 78% (35/45) of the MSIs surveyed have the power to impose sanctions on companies or governments that do not comply with their standards. Notably, 26% of these MSIs with sanctioning power (9/35) do not conduct compliance evaluations and 66% (23/35) do not publicly disclose the results of evaluations. This suggests that many MSIs claim the power to sanction members for noncompliance and yet fail to assess or disclose member noncompliance.

## **Analysis**

### ***1. Almost all MSIs in the database offer assurances that compliance with initiative standards is a condition of initiative membership***

Nearly all of the MSIs in the database offer some form of assurance that their members are meeting initiative standards or are taking steps to implement them. These assurances are perhaps most explicit across initiatives with certification or labeling schemes. Here, companies certified as having met MSI standards are permitted by the MSI to use special labels or markers on their products — such as the Fairtrade Labelling Organization’s “FAIRTRADE” marks, the Alliance for Responsible Mining’s “Fairmined” label, and Forest Stewardship Council’s “checkmark-and-tree” logo figure — to signal their compliance.<sup>17</sup> More broadly, MSIs communicate their intentions through their organizational processes, including compliance monitoring. The fact that 91% (41/45) of the MSIs in the database conduct some form of member evaluations to detect their compliance with MSI standards, and that 78% (35/45) have the power to impose sanctions on companies or governments that do not comply with their standards, suggests that these initiatives intend to identify members who are not in compliance with their core obligations.

### ***2. Many MSIs do not have sufficient accountability mechanisms to back up their assurances***

Although almost all MSIs in the database purport to certify, monitor, or otherwise offer an assurance that their members are implementing initiative standards, many initiatives do not have the necessary mechanisms to either provide publicly available evidence that their members are meeting their obligations or hold members to account through sanctioning processes if they violate the initiative’s standards.

#### **(a) Many MSIs lack robust and transparent mechanisms for detecting noncompliance**

Without regular, independent monitoring, MSIs have no way to know whether members have complied with or violated an initiative’s standards. Furthermore, without public documentation of member compliance, the public has no way to judge whether MSI member companies and/or governments have fulfilled their initiative promises and whether the MSI has functioned effectively as an accountability tool.

While 91% (41/45) of MSIs utilize some form of compliance monitoring or evaluation, the database reveals a general lack of transparency around the documentation and sharing of information about evaluations at many MSIs: of the MSIs with compliance monitoring systems, only 37% (15/41) publicly report on their monitoring results for specific members.

A handful of MSIs lack any independent mechanisms to ensure that their members are meeting the initiative’s standards. This is most notable in the case of the Voluntary Principles on Security and Human Rights.



Although the initiative claims its members “agree to proactively implement or assist in the implementation of the Voluntary Principles,” the initiative lacks any form of member monitoring or evaluation besides voluntary self-reporting by members, and therefore has no way of confirming which, if any, of the oil and gas companies involved in the initiative are following their obligations, which include recording all allegations of human rights abuses by private security forces at extractive sites.<sup>18</sup> This raises questions about whether the initiative is adequately addressing the human rights risks associated with hiring security providers, as it promises, or is instead enabling companies to make unverifiable claims about respecting human rights.

Even for MSIs that have evaluation mechanisms in place, the database findings are limited in that they do not assess whether those evaluations are sufficiently rigorous or well-designed to effectively detect and report violations of, or otherwise advance, initiative standards.<sup>19</sup> For example, the database does not consider the frequency of evaluations, whether evaluations are independent, or if they are conducted on-site and with protections to shield interviewees from reprisals — all of which are considered critical aspects of effective monitoring mechanisms. In this way, the database highlights the need for deeper research into the evaluation systems of MSIs, as well as the need for a more comprehensive understanding of the limitations of MSI auditing and similar external compliance monitoring processes more generally.<sup>20</sup>

In addition to evaluation reports, there are other ways through which an MSI might disclose whether its members are meeting initiative standards. Some MSIs, for example, publish lists or press releases of members who have received certification and those members that have been suspended due to their failure to meet initiative standards.<sup>21</sup> However, such statements are often insufficient in two respects. Press releases may fail to account for all instances of certification or suspension. Also, while generalized lists of certified and suspended members may provide a degree of transparency by accounting for who is or is not in “overall” compliance with an initiative, they may not describe the actual level of implementation of individual members. Initiatives should strive instead to provide full and detailed disclosures of the level of their members’ compliance in order to be transparent about the progress and effectiveness of the initiative.<sup>22</sup> Of note, some initiatives, such as the Fair Wear Foundation, conduct detailed audits and “performance checks” of participating members. These MSIs publish reports for each member detailing whether their progress is improving or declining with respect to each individual standard set by the initiative, clearly mapping whether members are in overall compliance with the initiative’s standards, and providing guidance on how members can come into full compliance.<sup>23</sup> Such compliance disclosures serve as examples of good practice.

**(b) Many MSIs lack transparent mechanisms to sanction noncompliant members**

Across all MSIs surveyed, 78% (35/45) have the power to impose sanctions on companies or governments that do not comply with their standards. While this may appear to be a relatively high number, this leaves 22% (10/45) of the MSIs surveyed without the authority to sanction noncompliant members in any way. This is concerning given the potential link between sanctioning authority and improved member compliance. Incorporating a range of defined sanctions, including suspension or expulsion, allows the MSI to act decisively to enforce standards and hold members accountable for complying with their MSI obligations.<sup>24</sup> The authority to sanction also creates important compliance incentives for members, while a lack of consequences for noncompliance sends the message that members are free to act with impunity, and in turn undermines the perceived legitimacy of an MSI and its standards.

The database does not assess whether those initiatives with sanctioning powers actually sanction members when there is evidence of noncompliance. However, it appears that some initiatives may have limited capabilities to reliably identify when to exercise those powers. For example, the database reveals that

26% (9/35) of MSIs that claim to have sanctioning authority either do not require evaluations (2/35 – the Voluntary Principles on Security and Human Rights and the Global Compact) or do not require reporting based on evaluations (7/35), raising questions around whether and how sanctions would be imposed if initiatives do not document instances of member noncompliance.

Of the remaining MSIs that have sanctioning authority and require reporting, half (13/26) do not require that reporting be made public. This means that 63% (22/35) of MSIs that have the ability to sanction members do not disclose evaluation reports through which the public could verify that they are using this sanctioning authority appropriately. This suggests that many MSIs claim the power to sanction members for noncompliance and yet fail to assess, let alone disclose, when and if participating companies and/or governments are noncompliant.

This disconnect between sanctions and transparent compliance monitoring processes by MSIs raises questions about the true function and use of sanctioning authority. Without publicly available reports documenting instances of noncompliance with an MSI's standards, there is no way to confirm whether the sanctions an MSI imposes, or fails to impose, are proportionate, consistent, or sufficient responses to corporate or government actions. The fundamental questions remain as to whether MSIs exercise their ability to sanction members when there is evidence of noncompliance, and if they do sanction members, whether this has helped members correct their actions or simply encouraged them to leave the initiative.

### **3. Broader questions about the role of MSIs as assurance or accountability mechanisms**

These findings raise more fundamental questions about the robustness of MSIs as a solution for closing governance gaps related to human rights and the environment. MSIs are envisioned as key remedial human rights mechanisms by the UN Guiding Principles on Business and Human Rights, as well as by other norms and institutions. But the database findings show that a significant percentage of MSIs lack the capacity to monitor and enforce compliance with their standards in a rigorous and transparent manner. This suggests that, despite their intentions to close governance gaps related to human rights, environmental, and good governance norms, many MSIs may not be doing so. Further research and critical reflection is needed to understand whether MSIs are actually fulfilling their promises regarding member compliance and closing governance gaps.

#### **Recommendations and Further Research:**

- **For MSIs:** MSIs that claim to be holding members accountable to standards should establish comprehensive, documented, and transparent mechanisms to monitor and enforce member compliance.
- **For researchers:** Deeper research is needed into whether, and under what circumstances, MSIs can be effective accountability tools. This could involve analysis of the effectiveness and impact of evaluation and sanctioning processes at specific MSIs, or cross-cutting research on compliance monitoring and enforcement at standard-setting MSIs in general.

## **MSI EXTERNAL COMPLAINTS MECHANISMS**

### ***Lack of Access to Remedy and Accountability to Communities***

#### **Issue: Availability of Designated MSI Processes for Addressing Stakeholder Concerns**

External complaints mechanisms provide affected individuals and communities with the ability to report harms suffered due to a company or government's failure to follow an initiative's standards. They serve an important accountability function by allowing external communities, individuals, or civil society organizations to bring issues and instances of noncompliance to the attention of the MSI. In addition, some mechanisms can also provide an avenue for communities to access remedy for harms they have experienced, which otherwise may not be available to those communities through local or national legal systems.

Our focus on *external* complaints mechanisms is to distinguish these mechanisms from more general "complaints processes" that address complaints from corporations or other MSI members about an MSI's governance, certification, or other procedures. The database identifies whether MSIs have a designated complaint process that can be used by affected stakeholders *outside* the initiative's membership to resolve allegations of member noncompliance with the MSI's standards or other legal wrongdoing, including allegations of human rights abuses.

The database uses this broad definition of "external complaints mechanism" in order to capture all efforts made by MSIs to enable external voices to raise concerns that a company or government may have failed to meet their commitments under the MSI. Note that the term "external complaints mechanism" has a wider definition than a "grievance mechanism," which is generally understood as including access to a remedy.<sup>25</sup> As discussed further below, the database catalogued external complaints mechanisms even if the provision of a remedy was not guaranteed or explicitly discussed. As with other aspects of the database, this data point does not assess the quality or effectiveness of the complaints mechanism, such as whether it is accessible, transparent, independent, or designed with the input of affected communities.

#### **Data:**

##### ***Which MSIs Have External Complaints Mechanisms?***

- 40% (18/45) of the MSIs surveyed have some form of external complaints mechanism.

#### **Analysis**

##### ***1. Fewer than half of MSIs are providing access to remedy***

One of the potential functions of MSIs is to provide access to remedy for individuals or communities who have experienced rights abuses, or otherwise experienced a harm, for which they might not otherwise be able to seek redress. The right to a remedy for gross violations of human rights abuses is a well-established legal principle, and the failure of many companies or governments to ensure access to remedy due to governance or implementation gaps is often a key driver for establishing MSIs.<sup>26</sup> The importance of this remedial function of standard-setting MSIs is highlighted in the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs' only mention of multi-stakeholder initiatives is in its pillar regarding "Access to Remedy," where

Principle 30 provides that “industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.”<sup>27</sup> In other words, if an MSI is established to protect human rights, the initiative must ensure that these stakeholders are able to access an effective remedy if they experience initiative-related harm.<sup>28</sup>

Most standard-setting MSIs are failing to provide access to remedy or explicitly acknowledge a responsibility to serve any remedial function. Only 40% (18/45) of the MSIs surveyed have any form of external complaints mechanism that would enable communities to raise concerns in the event that a company or government violates an MSI standard. Moreover, the number of MSIs with complaints mechanisms that have the power to provide an effective remedy may be lower than 40% because, as explained above, the database does not consider whether each initiative’s mechanism has a mandate to provide a meaningful remedy.<sup>29</sup>


This finding represents a powerful disconnect between external expectations of MSIs to provide a remedy and the role that the majority of MSIs are, in fact, performing. If MSIs are not providing access to remedy, then it is imperative that steps are taken by state actors or other interested parties to ensure that communities or individuals who experience rights abuses or harms as a result of company actions are provided with other avenues to seek redress.

## ***2. In general, MSIs do not have accountability mechanisms that are accessible to communities***

The fact that the majority of MSIs surveyed lack systems for hearing external complaints about whether their members are adversely affecting the workers, communities, or individuals they are supposed to benefit or protect, combined with the database findings on the exclusion of affected populations in initiative governance discussed earlier in this report, suggests that many MSIs do not see the experiences of communities on the ground as an important measure of their success — especially in comparison to the experiences of MSI members or other internal stakeholders. External complaints mechanisms and affected population inclusion in initiative governance are critical avenues for MSIs to hear directly from communities about whether they are having positive or negative impacts and to understand whether the initiative’s key stakeholders are experiencing improvements in their rights protections or other relevant quality of life indicators. While there may be other ways for MSIs to assess their impact on the ground, the database’s findings suggest that MSIs are failing to adequately consider their impact and effect on their intended beneficiaries.

## ***3. Research into the effectiveness and impact of complaints mechanisms is urgently needed***

Although the database does not evaluate or assess the external complaints mechanisms catalogued, as researchers collated data they observed that many of the mechanisms do not meet even the most basic qualities commonly understood as necessary for complaint or grievance mechanisms to be considered effective. The UN Guiding Principles prescribe a number of criteria for effective MSI grievance mechanisms. These include that mechanisms be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.<sup>30</sup> These qualities are seen by many as falling short of the minimum necessary criteria,<sup>31</sup> but several of the MSIs’ mechanisms fall short of even these. In particular, many MSIs in the database do not meet the transparency and predictability criteria by failing to explain the decision-making processes used in the complaints mechanism or disclose information about the number and status of current and historic claims.<sup>32</sup>



When appropriately designed, external complaints mechanisms have the potential to provide significant value and lasting benefits. However, all such mechanisms should be based on good practice. A mechanism that is poorly designed or implemented risks compounding grievances among affected people, overlooking noncompliance and operational deficiencies, or perhaps denying access to a deserved remedy, therefore doing more harm than good. The database findings raise flags about the design of many MSI complaints mechanisms and highlight the urgent need for research into the impacts and outcomes of MSI complaints processes to ensure that they are operating beneficially and effectively from the perspective of communities on the ground.

### **Recommendations and Future Research:**

- **For MSIs:** Standard-setting MSIs should implement robust external complaints mechanisms to remediate potential human rights violations by member companies and states and ensure that they are accessible to affected populations.
- **For researchers:** Additional research is needed on the impact of existing complaints mechanisms, with an emphasis on their effectiveness at providing protections for affected populations.

## CONCLUSION

How have standard-setting MSIs functioned in the de facto role they seem to be playing as “new regulators” in the global economy? The preliminary findings in this report show that many MSIs lack one or more of the basic institutional elements necessary to effectively set and enforce standards for their member companies or governments and thus raise questions about whether MSIs are collectively up to the task of addressing the daunting challenges they face. These initiatives have been created to address some of the most intractable problems linked to the global economic system, ranging from child labor to deforestation and online privacy. Moreover, the human and environmental stakes for some MSIs can be very high, especially when these initiatives set and enforce standards in countries where government regulations are absent or poorly enforced. But while MSIs have shown no lack of ambition in taking on difficult challenges, their actual effectiveness and impacts remain uncertain.

Beyond the specific research areas noted in each section of this report, our analysis of this data on MSIs raises several cross-cutting questions that would benefit from future research. For example, how are MSIs shaped by their respective origins, contexts, and institutional design choices? The database catalogues MSIs as they currently exist, but additional comparative or MSI-specific analyses could yield insights into how and why MSIs came to have particular institutional characteristics. Also, the report’s overview of how representation is distributed across stakeholder groups in MSI governance raises questions around the significance of power dynamics within MSIs and the extent to which they shape the operations and impact of specific initiatives. A set of related questions concerns the relationships between MSIs and communities (as well as workers and farmers) who are affected by the operations of MSI member companies and governments. What impacts are MSIs having on the ground for these populations? And what are the desired levels and modes of participation in MSIs for these community members, workers, and farmers?

More broadly, this report points toward some initial answers to this question, but its findings about MSIs, their design, and their effectiveness are necessarily preliminary and ultimately raise more questions than they answer. Our analysis of standard-setting MSIs is primarily descriptive — the MSI database provides basic information about transnational standard-setting MSIs but does not explain why or how these MSIs were created, how they interact with other actors in their respective industry and political contexts, or whether they are achieving their intended goals.

Many MSIs were founded amidst hope and optimism that cross-sector collaboration could transcend the shortcomings of existing regulatory approaches and would result in breakthrough progress toward environmental sustainability and corporate respect for human rights. But it is clear that when it comes to solving problems in a complex global economy, there are no shortcuts, and like most organizations, MSIs can be sites of political contestation, have greater or lesser degrees of transparency, and be more or less inclusive of a range of stakeholder views. Nor is there a universal consensus on who an MSI should be “for” and what their core functions should be — with some centering the perspectives of workers, farmers, or affected communities, and others excluding them altogether. Similarly, some MSIs rigorously verify and enforce compliance with their standards, while others lack any enforcement processes. Additional research and assessment are needed to understand how, and under what circumstances, MSIs can effectively address these challenges or otherwise close governance gaps. Assessing the overall effectiveness and impact of specific MSIs or the MSI field as a whole could help to deepen understanding of both the potential and limits of standard-setting MSIs and inform whether they can function as reliable governance or accountability tools in the future.

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## ENDNOTES

<sup>1</sup> The UN Global Compact alone includes over 12,000 signatories in 170 countries. See: UN Global Compact “Participation” <<https://www.unglobalcompact.org/participation>> (accessed April 29, 2017). Other initiatives have also developed an extensive global reach, including the Extractive Industries Transparency Initiative, which operates in over 50 countries. See: Extractive Industries Transparency Initiative “Countries” <<https://eiti.org/countries>> (accessed April 29, 2017); and the Fair Labor Association, which oversees companies like Nike, Inc. which works with factories in 42 countries, see: Nike “Nike Manufacturing Map” <<http://manufacturingmap.nikeinc.com/>> (accessed April 30, 2017).

<sup>2</sup> The Extractive Industries Transparency Initiative alone has over 50 government participants. See: Extractive Industries Transparency Initiative “Countries” <<https://eiti.org/countries>> (accessed April 29, 2017).

<sup>3</sup> The UN Global Compact reports that it has over 9,000 company signatories. See: UN Global Compact “Our Participants” <<https://www.unglobalcompact.org/what-is-gc/participants>> (accessed April 30, 2017). For information about the number of company participants and their annual revenues, see the supplementary data table researched by Miller & Chevalier as well as the Fortune Global 500: “Global 500” Fortune (2015) <<http://beta.fortune.com/global500/>> (accessed April 30, 2017).

<sup>4</sup> The database and this report refer to individuals and groups who are affected by the operations of MSI member companies and governments as “affected populations” or “affected communities.” For the purposes of stakeholder classification, intergovernmental organizations such as the United Nations and World Bank are considered “government” stakeholders.

<sup>5</sup> Over time, we may expand the database to include initiatives who have a multi-stakeholder advisory group or who have otherwise delegated limited authority to a multi-stakeholder body. However, there is a far greater number of such initiatives, and they are not always seen as “multi-stakeholder initiatives” or may serve very different functions. For example, the United Nations itself could arguably be seen as an MSI under this wider definition.

<sup>6</sup> This data point is different from the overall membership in the MSI, which is usually composed of the companies or governments implementing the initiative’s standards. For more information on these categories see the Classification Guide in the project methodology document.

<sup>7</sup> The report and database use the terms “affected communities” and “communities” interchangeably to refer to communities impacted by the operations of MSI member companies and governments. See note 4 for additional clarifications about terminology.

<sup>8</sup> One initiative, Better Biomass, did not publicly disclose any information about the stakeholder composition of its primary decision-making body. Another initiative, Fair Flowers Fair Plants, discloses that it includes industry, civil society, and affected community representatives in its primary decision-making body, but does not specify the number of stakeholders for each category. As such, the statistics in this section use a denominator of 43 or 44, as appropriate.

<sup>9</sup> Examples of affected community involvement outside of decision-making include: community participation in creation of standards, public feedback mechanisms, or interviews with community members during compliance monitoring or initiative review processes (but not services or resources provided to affected communities by MSIs).

<sup>10</sup> MSI Integrity MSI Evaluation Tool (forthcoming). For analysis on the significance of involving affected populations in MSIs and in other corporate accountability mechanisms, see, for example: Klaus Dingwerth and Margot Eichinger “Tamed Transparency: How Information Disclosure under the Global Reporting Initiative Fails to Empower” *Global Environmental Politics* (2010), 10 at 74–96; Emma Wilson and James van Alstein *Localising Transparency: Exploring EITI’s contribution to sustainable development* (International Institute for Environment and Development, 2014) <<http://pubs.iied.org/pdfs/16555IIED.pdf>>. Kaitlin Y. Cordes et al. *A Collaborative Approach to Human Rights Impact Assessments* (Columbia Center on Sustainable Investment, Danish Institute for Human Rights, and Sciences Po Law School Clinic, 2017) <[http://ccsi.columbia.edu/files/2014/05/A-Collaborative-Approach-to-HRIAs\\_Web.pdf](http://ccsi.columbia.edu/files/2014/05/A-Collaborative-Approach-to-HRIAs_Web.pdf)>.



<sup>11</sup> For example, the Fair Labor Association's mission statement commits the initiative "...to promote and protect workers' rights and to improve working conditions globally..." And yet, FLA fails to include workers directly in its decision-making processes and in all other aspects of initiative design and implementation. See: Fair Labor Association "Mission and Charter" <[www.fairlabor.org/our-work/mission-charter](http://www.fairlabor.org/our-work/mission-charter)> (accessed April 30, 2017). Similar disconnects between MSI mission and involvement of affected community members may be found with the Fair Stone initiative, Food Alliance, Global Coffee Platform, GoodWeave, and the ICTI Care Process.

<sup>12</sup> We note that the reverse can also be true. Bonsucro, for example, operates an industry-dominated Members' Council which has veto power over board member selection. See: Bonsucro "Members' Council" <<https://www.bonsucro.com/en/team/#council>> (accessed April 30, 2017).

<sup>13</sup> Relevant documents explaining MSI decision-making structures are included in individual data collection sheets. MSI researchers, practitioners or civil society members interested in reviewing project data should contact MSI Integrity ([info@msi-integrity.org](mailto:info@msi-integrity.org)).

<sup>14</sup> See MSI Integrity Protecting the Cornerstone (2015) <<http://www.msi-integrity.org/wp-content/uploads/2015/02/MSI-Integrity-Protecting-The-Cornerstone-Report.pdf>>.

<sup>15</sup> The project uses a wide definition of "government representative," which includes public officials operating in both a personal and official capacity.

<sup>16</sup> The Global Reporting Initiative, for example, is a multi-stakeholder initiative that provides a standardized framework for sustainability reporting but does not obligate a group of participating companies or governments to follow this standard. In this way, the initiative does not attempt to uphold a standard, but rather to disseminate a standard.

<sup>17</sup> For example, Fairtrade International assures consumers that "the international FAIRTRADE Marks are only used on products that meet the international Fairtrade Standards, and benefit Fairtrade certified farmers and workers." The Fairtrade certification process "audits producers, traders and companies to ensure compliance with the internationally-agreed Fairtrade Standards," implying that companies not in compliance will be held accountable. See Fairtrade International "Certifying Fairtrade" <<https://www.fairtrade.net/about-fairtrade/certifying-fairtrade.html>> (accessed April 30, 2017).

<sup>18</sup> Voluntary Principles on Security and Human Rights "The Voluntary Principles" <<http://www.voluntaryprinciples.org/>> (accessed April 30, 2017).

<sup>19</sup> See MSI Integrity MSI Evaluation Tool (forthcoming).

<sup>20</sup> See, for example, AFL-CIO Responsibility Outsourced: Social Audits, Workplace Certification and Twenty Years of Failure to Protect Worker Rights (April, 2013) <<http://www.aflcio.org/content/download/77061/1902391/CSReport.pdf>>; and Richard Locke, Fei Qin, and Alberto Brause Does Monitoring Improve Labor Standards? Lessons from Nike (Harvard Kennedy School of Government Corporate Social Responsibility Initiative, July, 2006) <[https://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_24\\_locke.pdf](https://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_24_locke.pdf)>.

<sup>21</sup> For example, the Fair Wear Foundation publishes a list of suspended members. See: Fair Wear Foundation "Suspended Members" <<https://www.fairwear.org/suspended-members/>> (accessed May 1, 2017). Other initiatives, such as the Rainforest Alliance and Fair Labor Association also publish ad-hoc press releases about instances of member noncompliance or termination. See, for example: Rainforest Alliance "The Rainforest Alliance Extends Suspension On Resolute Forest Products FSC Certificate" <<http://www.rainforest-alliance.org/press-releases/resolute-extension-july-2015>> (accessed May 1, 2017); see also Fair Labor Association "FLA Board Terminates Affiliation of Participating Supplier Hey Tekstil" <<http://www.fairlabor.org/press-release/hey-tekstil-affiliation-terminated>> (accessed May 1, 2017).

<sup>22</sup> There may be legal or other reasons for withholding some information about individual member compliance with standards. In such instances, MSIs should inform the public of the reason for the confidentiality and develop policies to ensure that this occurs only when necessary and in the narrowest set of circumstances possible.

<sup>23</sup> For the Fair Wear Foundation, see, for example: Fair Wear Foundation “De Berkel Performance Check 2016” <<https://www.fairwear.org/resource/de-berkel-performance-check-2016/>> (accessed May 1, 2017).

<sup>24</sup> Examples of sanctions include the suspension of membership, imposition of fines, withdrawal of certification, or prohibition of the use of an MSI’s seal or logo.

<sup>25</sup> Although grievance mechanisms do not have a formal definition, we note that the United Nations Guiding Principles on Business and Human Rights provides that “[t]he term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.” (Principle 25) In the case of MSIs, mechanisms that may provide a remedy are called non-judicial grievance mechanisms. See: UN Office of the High Commissioner on Human Rights Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework HR/PUB/11/04 (2011) at 27 <[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)>.

<sup>26</sup> See, for example: UN General Assembly Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147 (2005) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>>.

<sup>27</sup> UN Office of the High Commissioner on Human Rights Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework HR/PUB/11/04 (2011) at 32–33 <[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)>.

<sup>28</sup> Even in cases where an MSI does not explicitly protect human rights, if it implicitly implicates human rights or human rights risks, it should establish mechanisms to facilitate access to remedy if human rights abused as a result of activity related to the MSI.

<sup>29</sup> See, for example, the ICTI CARE Hotline, which notes in some cases it will work with factory management to address serious labor violations, but which does not appear to have the power to mandate remedies even if labor violations are apparent: ICTI CARE “ICP Helpline: Successfully Addressing Factory Worker Concerns” <[http://www.icti-care.org/uploadfileMgnt/01\\_201411714537.pdf](http://www.icti-care.org/uploadfileMgnt/01_201411714537.pdf)> (accessed May 1, 2017).

<sup>30</sup> See: UN Office of the High Commissioner on Human Rights Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework HR/PUB/11/04 (2011) at 33–34 <[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)>.

<sup>31</sup> See, for example: Sarah Knuckey and Elanor Jenkin, “Company-created remedy mechanisms for serious human rights abuses: a promising frontier for the right to remedy?” *International Journal of Human Rights* (August 2015), 19 at 801–827.

<sup>32</sup> For example, Fair Stone has an external complaints process but provides very little information about its procedures and criteria for handling complaints and does not disclose information about the number or status of current or former complaints: Fair Stone Complaints and Appeals Procedures and responsibilities (June 2016) <[http://fairstone.org/wp-content/uploads/sites/2/2016/06/160603\\_Complaints\\_Appeals.pdf](http://fairstone.org/wp-content/uploads/sites/2/2016/06/160603_Complaints_Appeals.pdf)>.



