

GLOBAL CONSULTATION COMMENTS AND RESOLUTIONS FOR SPECIFIC INDICATORS IN THE MSI EVALUATION TOOL

BACKGROUND

In 2013, the Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) held a public global consultation seeking feedback on its proposed methodology and criteria for evaluating multi-stakeholder initiatives (MSIs). Over 100 individuals and organizations provided written comments or participated in regional meetings in Africa, Asia, Europe, Oceania, North America, and South America.

In this document, MSI Integrity summarizes all the comments received that suggest any changes to the individual criteria or questions contained in MSI Integrity's draft MSI Evaluation Tool, and records MSI Integrity's response and any resulting changes to the final MSI Evaluation Tool. It does not include the comments received during the global consultation that affirmed the accuracy or importance of any individual evaluation criteria.

Please note that this document is confined to the specific comments received about the individual questions and criteria in the MSI Evaluation Tool. The broader or more general comments received about the MSI Evaluation Tool, such as the relative importance of different evaluative categories or the overall value and importance of the Tool, and/or MSI Integrity's role in the business and human rights field, were addressed in the *Advisory Group Recommendations and Considerations Report* (October 16, 2013).

SUMMARY

In total, MSI Integrity received 35 suggestions regarding the MSI Evaluation Tool's specific criteria. These suggestions came from corporate social responsibility consultants, business, trade and labor unions, civil society organizations, non-governmental organizations, governments, national human rights institutions, international human rights organizations, MSIs, and academic researchers in fields such as law, business, and human rights. In many cases, a single commenter had several comments. Revisions were made where comments met threshold criteria for indicators in the MSI Evaluation Tool, such as being objective, supported by evidence, and satisfying classification as an Essential Element, Good Practice or Innovative Practice (see the MSI Evaluation Tool for more details).

In summary, the comments and responses include:

- Eighteen comments proposing new criteria for the Evaluation Tool. New Evaluation Tool questions were adopted in six instances. The remaining proposals either required further research, consultation, and input, or else pointed to criteria that already existed in another part of the MSI Evaluation Tool.
- Eight comments suggesting substantive changes to existing criteria. Four modifications were made in response to those comments.
- Nine comments related to technical changes to Evaluation Tool criteria, such as clarifications or definitions of terms. MSI Integrity modified specific evaluation criteria in response to six of those comments and will release a glossary defining terms used in the Evaluation Tool.

Some of the comments raised complex topics and issues that require further research or consultation. Fostering research into such topics will be a key part of MSI Integrity’s future activities, and we encourage other actors to collaborate in better understanding these issues. Some of these deeper topics and issues raised include:

- Whether proactive recruitment of companies or governments with strong human rights records and/or exclusion of those with poor human rights records affects MSI effectiveness.
- Whether MSI structure and/or standards that incentivize continuous improvement or progressive realization are key aspects of ensuring positive human rights outcomes.
- Whether MSIs should use pre-existing international or domestic grievance mechanisms, rather than create their own.
- How the balance of power between Global North and Global South MSI participants can be measured.
- How potential economic impacts or externalities, such as the administrative burden from the participation of member stakeholders, affect the effectiveness of MSIs.
- How to define “community” and whether the current indicators sufficiently address the issues regarding the selection of community representatives in an MSI.
- How conflicts and divergences between standards in MSIs, other voluntary initiatives, and international human rights law should be resolved.
- How enforcement and sanctions for non-compliance with MSI standards might incorporate pathways to enforcement in national courts.
- Whether or how external monitoring (e.g., inspections of members’ factories or sites) methodologies and processes may be improved to enhance the human rights effectiveness of MSIs.
- How the balance of power and decision-making processes in MSIs can be more effectively managed, including an analysis of the effectiveness common approaches such as qualified majority voting and consensus decision-making.
- Whether the current indicators sufficiently address the contextual considerations of the scope and mandate of an MSI.
- Whether the current indicators capture the most important aspects of accessibility to information.

Finally, in the future, MSI Integrity plans to release a comprehensive list of rationales for each Essential Element.¹ This will provide greater clarity and understanding of the criteria and transparently record their origins, support, and importance.

I. SCOPE AND MANDATE

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p>3. The MSI seeks to evaluate members on compliance with human rights.</p> <p>5. The MSI fully utilizes a rights-based approach.</p> | <p><i>Modification to questions 3 and 5:</i></p> <p>3. Does the MSI seek to evaluate compliance with human rights? (Yes / No)</p> <p>5. Does the MSI utilize a rights-based approach? (Yes / No)</p> |

COMMENTS RECEIVED ON SCOPE AND MANDATE CRITERIA 3 AND 5

MSI Integrity Advisory Group: "... recommends the following minor adjustments:

- (a) The bullet point identifying that MSIs evaluate members on compliance with human rights should be clarified so that it expresses that MSIs generally evaluate compliance with human rights – not that they evaluate members for compliance.
- (b) That the final bullet point that MSIs “fully” utilize a rights-based approach, drops the term “fully” as “utilizes” adequately expresses the point.” (*Advisory Group Recommendations and Considerations Report*, October 16, 2013, page 11)

DECISION AND RATIONALE: **Criteria modified.**

- (a) This adjustment clarifies the intended meaning, that the MSI seeks to evaluate compliance with human rights by targeted actors.
- (b) This revision clarifies the meaning by deleting the redundant word “fully.”

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <i>All Scope and Mandate Criteria</i> | (a) <i>No modification</i> : however, it will be emphasized that a contextual analysis should be conducted when undertaking evaluations. (b) <i>Further research and consultation required.</i> |

COMMENTS RECEIVED PROPOSING NEW SCOPE AND MANDATE CRITERIA

Meetal Jain and Megan Geldenhuys, Center for Applied Legal Studies (CALs), Wits University:

- (a) “The categories relating to scope and mandate could have a more contextualized analysis. For example, focusing on a specific region or industry should be tailored to keep within the particular issues prevalent in that region/country...”
- (b) Scope & Mandate can also be used to assess the regulation of the power balance between the Global North and Global South participants in the MSI, as there is concern that MSIs are used to pressure South participants into accepting methodologies and philosophies of the North, and can be linked to aid resourcing. (Paraphrased comment.²)

DECISION AND RATIONALE: **Further research and consultation needed.**

- (a) MSI Integrity agrees that contextual analysis of scope and mandate is necessary to assess the adequacy of an MSI’s objectives. MSI Integrity’s pilot reports include a qualitative analysis in the Scope and Mandate section, which specifically looks at whether the particular

issues relevant to the regional or industrial context are addressed. MSI Integrity will encourage others to also consider and analyze these contextual issues when conducting evaluations. In future consultations, we will explicitly seek feedback on whether the current methodology sufficiently addresses these concerns.

(b) Addressing global North-South power balance within MSIs is an important concern that MSI Integrity assesses in the *Diversity* and *Decision-Making Functions and Balance of Power* sub-section questions 21, 22, 29–32, and 39 in **Internal Governance**. MSI Integrity recognizes that these questions do not address all the concerns relating to the balance of power between Global North and Global South MSI participants, and will focus future consultation and research resources into better understanding this issue.

II. STANDARDS

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>The following was listed as a Good Practice (not Essential Element) in the proposed MSI Evaluation Tool (2013):</i></p> <p><i>Accessibility and Sufficiency</i></p> <p>6. [...]</p> <p>D. Basis in international law: Does the standard claim some basis in recognized sources of international law? [See FN 15 for 4(B)(ii)]</p> | <p><i>Modification to question 6(D). This is now an Essential Element rather than a Good Practice:</i></p> <p>6. [...]</p> <p>D, Does the standard claim that it is based on or consistent with recognized sources of international human rights law? (Yes, hard international law / Yes, soft international law / No) [Essential Element]</p> |

COMMENTS RECEIVED ON STANDARDS CRITERIA 4(B)(II), 5(B), AND 6(D)

Tim Lyons, Australian Council of Trade Unions (ACTU): Suggests inclusion of another minimum standard indicator:

- *Does the MSI claim that its standards are consistent with/ reflect/ incorporate recognized sources of international law? (Yes, hard international law / Yes, soft international law/ No)*

As compared to the indicator that asks if standards have “some basis in recognized sources of international law,” which ACTU notes is unclear as a standard. (Paraphrased comment.³)

Soledad Mills, Equitable Origin: “The [Essential Elements] on Standards do not address the content of the MSI’s standards with regard to their alignment with international human rights standards or the need to meet or exceed existing regulatory requirements. Standards that do not at the very least require conformance with internationally recognized human rights should not meet the [Essential Element].” (Edits by MSI Integrity to reflect new terminology in the MSI Evaluation Tool.)

Institute for Human Rights and Business: "...we would suggest a change of wording from 'makes references to international human rights law' to 'is based on international human rights law and standards.' IHRB notes from past experiences that some initiatives have developed their own wording and interpretation around specific rights to avoid difficult questions that some members did not wish to address, such as relating to the issue of freedom of association. There is probably less risk today of such 'reinterpretations' in MSIs, but we believe it is important to send a clear signal with respect to the importance of referring to international human rights standards."

DECISION AND RATIONALE: Criteria modified.

Based on the number of comments received and the prevalence of supporting research and international authorities, MSI Integrity is classifying question 6(D) as an Essential Element, and agrees that it, and related standards criteria (4(B)(II) AND 5(B)), should be more robustly worded to avoid ambiguity. Reference to international human rights law in MSI standards ensures that members understand that their obligations extend beyond national laws, which may not adequately protect rights. In addition, explicit linkage of MSI standards to international human rights law provides externally verifiable benchmarks for targeted actors' impacts on human rights. See UN *Guiding Principles on Business and Human Rights*, Principle 12, and the OECD *Guidelines for Multinational Enterprises*, Commentary ¶ 39. MSI Integrity will also encourage users of the Tool to research and assess whether standards are consistent with international law.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><u><i>Accessibility and Sufficiency</i></u></p> <p><i>Commenter proposed new criteria relating to the supply chains and the scope of an MSI's standards.</i></p> | <p><i>New criterion adopted.</i></p> <p>8. Does the MSI require that standards apply to targeted actors in their own activities and in those linked to them through their operations, products, or services by their business relationships (including all actors related through supply chains)? (Yes / No / Not applicable, because the MSI does not involve supply chains) [<i>Essential Element</i>]</p> |

COMMENT RECEIVED PROPOSING NEW STANDARDS CRITERION

Tim Lyons, ACTU: Suggests the inclusion of the following indicators for Standards:

Is it a requirement that the standards adopted by the MSI apply down the supply chain and to all operations, products and services of the MSI members? (Paraphrased comment; see also comment on page 16.⁴)

DECISION AND RATIONALE: New criterion added.

MSI Integrity is adding an indicator question to the *Accessibility and Sufficiency* sub-section in **Standards**. Applying standards throughout supply chains and other business relationships

related to operations, products, or services, is supported by numerous international business and human rights frameworks and good practice notes: see Principles 13, 15, and 17–19 of the UN *Guiding Principles for Business and Human Rights* and the OECD *Guidelines for Multinational Enterprises*, Chapter IV ¶ 3–4. For MSIs that focus on supply-chain-related industries, this will be an Essential Element.

III. INTERNAL GOVERNANCE

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><u>Funding and Resources</u></p> <p><i>Commenter proposed a new criterion.</i></p> | <p><i>No modification.</i></p> <p>Proposal covered in Internal Governance, question 10:</p> <p>10. What sources of income does the MSI have? (Select all that apply.)</p> <p>A. Membership fees; (Yes / No)</p> <p>B. Fees for services that the MSI performs; (Yes / No)</p> <p>C. Grants; (Yes / No)</p> <p>D. Government donations; (Yes / No)</p> <p>E. Other (Yes, specify / No)</p> |

COMMENT RECEIVED PROPOSING NEW INTERNAL GOVERNANCE CRITERION

Soledad Mills, *Equitable Origin*: “The [Essential Elements] on funding and resources do not consider the ability of the MSI to draw funding from certification activities.” (Terminology updated.)

DECISION AND RATIONALE: **No change necessary.**

This issue is already addressed. See question 10 in **Internal Governance**, which examines all revenue sources available to an MSI, including “B. Fees for services that the MSI performs; (Yes/No)” or “E. Other (Yes, specify / No).” While generating income through certification activities may be a good practice in certain contexts, existing standards and practice do not indicate it is an Essential Element necessary to protect and promote human rights in every context. Other sources of income may be used to generate sufficient funds and in some contexts a fee-for-service certification scheme may not be appropriate.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><u>Funding and Resources</u></p> <p><i>MSI Resource Allocation</i></p> <p>17. Is the proportion of expenditure on implementation greater than 33% of total expenditure?</p> | <p><i>No modification to existing criteria.</i></p> <p><i>However:</i></p> <p><i>(a) A footnote has been added to Internal Governance question 17 that defines</i></p> |

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| | <p><i>“Expenditure on Implementation” as follows:</i></p> <p>“Expenditure on implementation” includes all costs related to programs and services other than fundraising that further the MSI’s purpose. This may include expenses relating to staff involved in direct oversight of programs, monitoring and evaluation systems, outreach and education campaigns, and other programs or services used to ensure that targeted actors and other stakeholders implement the MSI standards and processes.</p> <p><i>(b) A list of rationales for each Essential Element will be released.</i></p> |
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COMMENTS RECEIVED ON INTERNAL GOVERNANCE CRITERION 17

Veronica Perez Sueiro, 4C: “This [Essential Element] is too constraining. It doesn’t take into account [the] distinctive nature of different MSIs — many of which are not “implementing NGOs.” For instance, hiring local staff to support affected communities will be considered an administration/personnel cost according to the Evaluation Tool. However, staff members are a key resource to provide information and support communities to implement the standard and take advantage of its benefits. As such, the suggestion will be not to include this requirement as a [Essential Element] in the Evaluation Tool.” (Terminology updated.)

James Ensor, People & Planet Group: “...this feels too prescriptive and lacking clear definition in places. For example, I’m not sure how ‘implementation’ is defined in an MSI (in terms of one third budget spend, (and why has this been set at one third?)).”

DECISION AND RATIONALE: **No change necessary.**

It is widely accepted that non-profit organizations should not have lavish administrative costs. While it is acknowledged that flexibility in allocating resources is necessary, and at different stages of development initiatives will have different cost needs that may require a greater expense on administrative activities for a period of time, it is unlikely that administration cost should ever exceed two-thirds of a budget. This is consistent with other indicators or benchmarks. Charity Navigator, a not-for-profit that evaluates US-based charities on financial health, accountability, and transparency, has a benchmark that at minimum 33% of an organization’s total expenditures should be spent on implementation activities to fulfill their purpose. They consider spending less than 33% on program expenses as “gross inefficiency.”⁵ Similarly, BBB Wise Giving Alliance, another US-based non-profit organization that seeks to help donors by evaluating charities, uses the accreditation standard that non-profits should spend at least 65% of total expenses on program activities.⁶ As MSIs operate with characteristics similar to non-profit entities, this benchmark has been adopted. MSI Integrity will ensure that future reviews of the Essential Elements closely consider data captured by this question.

A clear definition of “expenditure on implementation” will be published to clarify potential ambiguity in the term. “Expenditure on implementation” includes all costs related to programs and services other than fundraising that further the MSI’s purpose. This may include expenses relating to staff involved in direct oversight of programs, monitoring and evaluation systems, outreach and education campaigns, and other programs or services used to ensure that targeted actors and other stakeholders implement the MSI standards and processes. This definition should satisfy concerns regarding misinterpretation of budget allocations. The definition of “expenditure on implementation” accords with many non-profit reporting frameworks, as well as the Internal Revenue Service’s definition of “program services.” To be clear, under this definition, hiring local staff to support affected communities would be considered implementation expenditure.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>Stakeholder Involvement</i> <i>Membership: Inclusion and Quality</i></p> <p>19. Does the MSI allow for different classes of membership that result in differing levels of participation or decision-making rights? (Yes / No) If yes, detail the levels of membership and the different rights attached to each tier of membership, and continue below.</p> <p>A. Does decision-making power vary, based on whether the member is a targeted actor, NGO or civil society organization, affected population representative, or government? (Yes / No) If yes:</p> <p>i. Do any groups have a reduced ability to participate in any of the functions of the MSI? (Yes / No) [...] [Essential Element]</p> <p>ii. Do any groups have reduced decision-making power? [FN] (Yes / No) If no, identify which group(s) have less power to make decisions: [...] [Good Practice]</p> <p>[FN: Equal decision-making power occurs where all groups are authorized to make the same decisions as other groups.]</p> | <p><i>Modification to 19(A)(i):</i></p> <p>19. [...]</p> <p>A. Is each member equally authorized to participate in the MSI and participate in decision-making, regardless of whether the member is a targeted actor, NGO or civil society organization, affected population representative, or government? (Yes / No) If no:</p> <p>i. Do all stakeholder groups have equal authority to participate in the MSI, including initiating, framing, reviewing, and implementing actions in all functions and governing bodies? (Yes / No) If no, identify which group(s) are authorized to participate in all functions and governing bodies: ... [Essential Element]</p> <p>ii. Do all groups have equal decision-making power? [FN] (Yes / No) If no, identify which group(s) have full power to make decisions: [...] [Good Practice]</p> <p>[FN: Equal authority to participate means that all groups are allowed to participate and engage directly and fully in the same substantive functions as other groups. It does not include where certain functions have been delegated into subgroups or representatives from <i>each stakeholder</i></p> |

group.]

COMMENT RECEIVED ON INTERNAL GOVERNANCE CRITERION 19(A)(II)

Veronica Perez Sueiro (4C): “This [Essential Element] is worded too vaguely, it is not precise. As such, it leaves considerable room for subjective interpretation. What is exactly understood by “reduced ability”? The suggestion is that the [Essential Element] could be instead:

19.A.ii. Do any groups have reduced decision-making power?

This standard is objective and can be easily monitored and checked.” (Terminology updated.)

DECISION AND RATIONALE: **Criteria modified.**

This comment highlighted the need for greater clarity and specificity in the wording of question 19(A)(i). The question has been revised to more precisely address the underlying concern: that stakeholders are equally empowered in governance of the MSI. However, meaningful engagement in the processes of governing the MSI requires more than decision-making power alone. For instance, if one stakeholder has the right to vote on decisions but no right to propose items for the agenda, then they could be said to have “decision-making power.” Yet, that power is severely limited in comparison to the other stakeholder groups involved in setting the agenda. As a result, the revised question retains its focus on the broader processes of stakeholder engagement in the MSI beyond decision-making.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>Commenter proposed a new criterion:</i></p> <p>“Whether the MSI requires targeted actors to demonstrate performance against the MSI’s standard as a criterion for membership?”</p> <p><i>This would be a sub-question of the following question:</i></p> <p><i>Stakeholder Involvement</i> <i>Membership: Inclusion and Quality</i></p> <p>20. Are the following stakeholders represented in the MSI membership? [...] A. Targeted actors; B. NGOs and civil society institutions; C. Affected populations (i.e., rights-holders).</p> | <p><i>No modification.</i></p> <p>Proposed criterion covered by existing question Standards, 6(E):</p> <p>6. [...]</p> <p>E. Does the MSI require targeted actors to adhere to the standards immediately upon joining the MSI? (Yes / No) If no: i. Does the MSI provide a mandatory timeline for complying with the standards? [FN] (Yes / No) [Essential Element]</p> |

COMMENT RECEIVED PROPOSING NEW INTERNAL GOVERNANCE CRITERION

Soledad Mills, *Equitable Origin*: “The [Essential Elements] on stakeholder involvement for targeted actors should include under [Internal Governance] question 20: whether the MSI

requires targeted actors to demonstrate performance against the MSI's standard as a criterion for membership." (Terminology updated.)

DECISION AND RATIONALE: **No change necessary.**

The requirements for targeted actor membership are very important to the protection and promotion of human rights through MSIs. The MSI Evaluation Tool assesses the criteria for targeted actor's membership in regard to timeframes for adherence to MSI standards in **Standards**, question 7.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><u>Stakeholder Involvement</u></p> <p><i>Commenter proposed new criteria related to Internal Governance.</i></p> | <p>(a) Diversity of stakeholders: <i>No modification:</i> covered by existing questions Internal Governance, 20–22.</p> <p>20. Are the following stakeholders represented in the MSI membership? [...] A. Targeted actors. (Yes / No) <i>[Essential Element]</i>[...] B. NGOs and civil society institutions. (Yes / No) <i>[Essential Element]</i>[...] C. Affected populations (i.e., rights-holders). (Yes / No) <i>[Essential Element]</i>[...] D. Governments. (Yes / No) [...]</p> <p>21. Does each stakeholder group represented in the MSI (as identified in Internal Governance, 20) have at least one member from each geographic area in which the MSI's standards apply? (Answer regarding geographic representation for each stakeholder group below.) <i>[Essential Element]</i>[...]</p> <p>22. Does each stakeholder group represented in the MSI have at least one member from each of the geographic areas in which the MSI's standards apply that only operates on a local or national level? <i>[FN]</i> (Yes / No) (Identify geographic representation for specific stakeholder groups below.) <i>[Essential Element]</i>[...]</p> <p>(b) Recruitment of material stakeholders: <i>Further research and consultation needed.</i></p> <p>(c) Exclusion of potential stakeholders with poor human rights records: <i>Further research and consultation needed.</i></p> |

COMMENT RECEIVED PROPOSING NEW INTERNAL GOVERNANCE CRITERIA

Meetal Jain and Megan Geldenhuys, CALS, Wits University: "In relation to Internal Governance, it might be important for MSIs to be circumspect regarding their stakeholder selection. Is there any criteria for which stakeholders should be included in the MSI and why?"

This should reflect back to the mandate, scope and outcomes of the MSI. Often MSIs [sic] become very broad in their members and risk losing targeted initiatives that become cumbersome to ensure that all stakeholders meet the MSI requirements.”

DECISION AND RATIONALE: **Further research and/or consultation needed.**

This comment raises an important issue that requires further research and/or consultation: whether there is an optimal balance or strategy to managing stakeholder membership in an MSI, and does this require establishing underlying eligibility criteria (or a baseline standard) to join an MSI. It also links an issue previously identified by MSI Integrity: should MSIs be designed with rigorous standards so that targeted actors must already fulfill robust human rights standards to join the MSI, or should MSIs attempt to bring targeted actors, even those with poor human rights records, into the process by initially setting more limited standards and subsequently pursuing progressive enhancement of standards and targeted actor performance over time? MSI Integrity will add these concerns to its long-term research agenda.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <i>Section title: Stakeholder Involvement</i> | <i>Modification to section title: Stakeholder Representation</i> |

COMMENT RECEIVED ON STAKEHOLDER INVOLVEMENT SECTION OF INTERNAL GOVERNANCE Institute for Human Rights and Business: “With respect to the issues covered in ‘**Internal Governance, Stakeholder Involvement,**’ and ‘**Internal Governance, Decision-Making Functions and the Balance of Power,**’ it would be useful to clarify that although ‘representation’ of civil society and affected communities may be a baseline [Essential Element] for ‘Stakeholder Involvement,’ to be meaningful such involvement would require as well the possibility for full civil society membership in the MSI, voting rights, other forms of participation in internal governance, etc., which are helpfully discussed in the section on decision-making functions.” (Terminology updated.)

DECISION AND RATIONALE: **Section title modified.**

This is an important clarification to enable users to identify both issues: the ability to join and be represented in an MSI, as well as to meaningfully participate in the MSI. The section title *Stakeholder Involvement* will be revised to *Stakeholder Representation*. This should clarify that the section, *Stakeholder Representation*, is primarily concerned with which stakeholders are included in MSI membership, whereas the quality of their participation is measured in the *Decision-Making Functions and the Balance of Power* section.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <i>Commenter proposed new criteria:</i> Does the governance structure of the body (or bodies) entail measures to prevent a draw between the represented stakeholders on important issues which | <i>No modification:</i> partly covered by existing questions Internal Governance, 37(A). 37. Are decisions made by vote? (Yes/No) If yes: A. Do the procedures specify the |

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| impairs the decision making process (Yes/No, if yes, which measures?) | percentage or number of votes required to make a decision? (Yes/No) B. Do votes have equal weight? (Yes/No) <i>[All "If yes" options are Essential Elements]</i> <i>Further research and consultation needed to specify good practice approaches.</i> |
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COMMENT RECEIVED PROPOSING NEW INTERNAL GOVERNANCE CRITERION

Martijn Scheltema, Erasmus University Rotterdam: "The effectiveness of a MSI in my opinion does not only depend on the representation of targeted stakeholders in a body which makes overall decisions for the MSI, but also on the effectiveness of the decision making process. If all relevant stakeholders are represented and have equal voting rights but are unable to agree on all important issues, the effectiveness of the MSI is lessened.

Therefore, an indicator (for example after 38) might be added:

- Does the governance structure of the body (or bodies) entail measures to prevent a draw between the represented stakeholders on important issues which impairs the decision making process (Yes/No, if yes, which measures?)"

DECISION AND RATIONALE: **Further research and/or consultation needed.**

MSI Integrity agrees that it is important that decision-making processes are effective and that decisions can be reached in an MSI. However, a review of available records of decisions in MSIs, as well as discussions with those involved in various MSIs, do not indicate that perfect ties or draws in decision-making are either common or problematic. The indicator proposed by the commenter about preventing tied decisions therefore does not address this concern. While some stakeholders in MSIs informally comment it can be difficult to move MSIs beyond the status quo, this problem appears to relate to qualitative factors such as whether there is sufficient willingness for change or to support new decisions, rather than decision-making processes resulting in ties. Additional research is needed to understand the balance of power and decision-making processes in MSIs and whether they can be more effectively managed, including an analysis of the effectiveness of common approaches such as qualified majority voting and consensus decision-making.

IV. IMPLEMENTATION

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <i>Incentive Regime</i> <i>Commenter proposed new criterion.</i> | <i>Further research and consultation needed. The current good practice goes some way towards addressing this issue:</i> 8. Are different levels of incentives offered based on different levels of compliance with the |

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| | standards? (Yes, explain operation of regime / No) |
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COMMENT RECEIVED PROPOSING NEW IMPLEMENTATION CRITERION
 Soledad Mills, Equitable Origin: “The [Essential Elements] on Standards should also consider whether the structure of the MSI’s standards incentivize continuous improvement.”
 (Terminology updated.)

DECISION AND RATIONALE: **Further research and/or consultation needed.**
 In certain contexts, it may be very helpful to incentivize human rights protection by establishing standards that encourage continuous improvement or progressive realization. However, practice and research has not determined that this structure is a necessary mechanism to ensure the protection and promotion of human rights. For example, instead, an MSI may choose to set rigorous standards that must be fully met. MSI Integrity will encourage further research and consultation regarding the importance of incentivizing continuous improvement through progressive-level standards systems.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p>Evaluation: refers to the monitoring procedures established to assess, audit, verify or otherwise determine the adherence of targeted actors and other members engaged in implementing and meeting the standards set by the MSI. “Evaluation” is synonymous with “assessments,” “audits,” and “verification processes” when used to describe such a monitoring process or methodology.</p> | <p><i>No modification to existing criteria:</i></p> <p><i>A glossary defining key terms will be included in the introduction to the Tool that defines “evaluations” and other terms used in the MSI Evaluation Tool.</i></p> |

COMMENT RECEIVED ON MONITORING SECTION OF IMPLEMENTATION
 Soledad Mills, Equitable Origin: “The [Essential Elements] on monitoring should define whether the term ‘evaluations’ is synonymous with ‘assessments,’ ‘verification’ or ‘audits’ as well as ‘evaluators,’ ‘auditors,’ and ‘assessors.’”

DECISION AND RATIONALE: **No change necessary.**
 Many of these terms were defined in footnotes in the MSI Evaluation Tool. To maximize clarity, a glossary of the definitions of terms used in the MSI Integrity Evaluation Tool will be published, including the definitions raised by the commenter.

| <i>Initial Criteria</i> | <i>Outcome</i> |
|---|---|
| <p><i>Monitoring: Evaluations Evaluator</i></p> <p>14. Who conducts the evaluation? [...] A. Targeted actor;</p> | <p><i>Modification to 14, 15, and addition of a new criterion:</i></p> <p>14. Does the MSI prohibit the targeted actor from solely conducting the evaluation?</p> |

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| <p>B. MSI members; C. Industry auditor; D. Other (specify); E. Not specified.</p> <p>15. Do teams of evaluators conduct evaluations? A. Do the teams include individuals from local organizations? [<i>Good practice</i>]</p> | <p>(Yes / No) If yes, who conducts the evaluation (Select all that apply) A. MSI members; (Yes / No) B. Industry auditor; (Yes / No) C. Multi-stakeholder team; (Yes / No) D. Other; (Yes, specify / No) E. Not specified.</p> <p>15. Do teams of evaluators conduct evaluations? (Yes / No) If yes: A. Do the teams include individuals from local communities? (Yes / No)</p> <p><i>New Criterion:</i> 20. Does the MSI require evaluators to include [<i>Good Practice</i>]: A. Local community representatives in planning the evaluation? (Yes / No) B. Local community representatives in conducting the evaluation? (Yes / No) C. Civil society representatives in planning the evaluation? (Yes / No) D. Civil society representatives in conducting the evaluation? (Yes / No)</p> |
|---|--|

COMMENT RECEIVED ON IMPLEMENTATION CRITERIA 12–15

Eelco de Groot: “In Implementation-Monitoring: Evaluation it is said that ‘Regular and standardized evaluations are conducted by an independent external evaluator.’ For the governance of the FTF’s in the oil, gas and mining sector it is best practice to establish a multi-stakeholder monitoring expert panel, that includes members of civil society. It is important that the qualifications of these members are both on content (deep expertise) as well as their political relevance in their network (trusted position). This is called participatory monitoring, something else than [sic] giving input on evaluations.

Although perhaps not appropriate for all cases, the advantage of participatory monitoring is to foster transparency, openness and involvement in the process by all actors, preventing time consuming debates, grievances with too little ground and expensive fact finding missions. The participant from civil society should not only be an expert but also regularly communicate, brief and debrief with affected communities.”

DECISION AND RATIONALE: **Criteria modified.**

Question 14 previously allowed for multi-stakeholder monitoring through the availability of “MSI members” and “Other” as answers, as well as by asking in question 15 if teams were involved. However, for clarity the list of options has been expanded to explicitly include multi-stakeholder teams.

In addition, question 20 has been modified to reflect the principles of participatory monitoring by encouraging MSIs to engage local community and civil society representatives

in the design and implementation of the evaluation processes.⁷

| <i>Initial Criteria</i> | <i>Outcome</i> |
|---|---|
| <p><i>Monitoring: Evaluations Evaluator</i></p> <p>19. Does the MSI require evaluators to have experience in or undergo training in a variety of disciplines? [FN] (Yes / No).</p> <p><i>FN. For example, in human resources management, operations management, health and safety, or human rights.</i></p> | <p><i>Modification to Implementation, 19:</i></p> <p>19. Does the MSI require evaluators to have experience in or undergo training in:</p> <p>A. The human rights implicated by the MSI standards? (Yes / No) [Essential Element]</p> <p>B. The local context for the evaluation location, including local culture? (Yes / No) [Essential Element]</p> <p>C. Any other disciplines relevant to the MSI standards that they are evaluating? [FN] (Yes / No/ Not Applicable as MSI standards only relate to human rights) [Good Practice]</p> <p><i>FN. For example, in human resources management, operations management, labor standards, health and safety, or human rights.</i></p> |

COMMENT RECEIVED ON IMPLEMENTATION CRITERION 19

Tim Lyons, ACTU: “We hold some reservations...over the adequacy of indicator [19]: ‘Does the MSI require evaluators to have experience in or undergo training in a variety of disciplines?’ With regard to MSIs that purport to address labour rights, a lack of adequate understanding and expertise of labour rights issues is a common and serious limitation inherent in the audit process...While we recognize that the Indicator goes some way to addressing these concerns, we do not think it goes far enough or is detailed enough to provide any meaningful data upon which to make an assessment of the competency of the auditor and so the quality of the inspection process.” (Numerical reference updated.)

DECISION AND RATIONALE: **Criteria modified.**

MSI Integrity recognizes that evaluators should be competent to assess the implementation of MSI standards. One objective measure of competence is prior experience or training in disciplines relevant to the MSI standards the evaluators are assessing. Competence related to human rights aspects of MSI standards is particularly relevant to the MSI Evaluation Tool. To address these concerns, the criteria have been modified to clarify that evaluators should be competent in the relevant disciplines to the MSI standards they are evaluating, as well as having a strong understanding of local context. *For example, see*, UNFPA, Division for Oversight Services, “Programme Manager’s Planning Monitoring & Evaluation Toolkit: Tool Number 4: Stakeholder Participation in Monitoring and Evaluation” (August 2004); and, Estrella, Marisol and Gaventa, John, “Who Counts Reality? Participatory Monitoring and Evaluation: a Literature Review,” Institute of Development Studies (IDS) Working Paper 70

(1997).

MSI Integrity will continue to encourage research to be conducted relating to the effectiveness of different approaches to monitoring and evaluation.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>Monitoring: Evaluations Procedure for the Evaluation</i></p> <p>24. Does the MSI provide any procedures or methodologies for the evaluations? [...] If yes: D. Does the evaluation methodology indicate an approximate or exact duration of the evaluation?</p> | <p><i>Modification to 24(D), now 25(C):</i></p> <p>25. Does the MSI provide any procedures or methodologies for the evaluations? (Yes / No) If yes: C. Does the evaluation methodology establish guidelines for the duration of evaluations? If yes, list.</p> |

COMMENT RECEIVED ON IMPLEMENTATION CRITERION 23(D)

Soledad Mills, *Equitable Origin*: “The [Essential Element] on monitoring related to procedures for the evaluation ([24]. D) should consider whether the evaluation methodology mandates guidelines for the duration of evaluations, not whether they stipulate an exact duration since the duration will vary depending upon the scope and complexity of the targeted actor.” (Terminology and numerical references updated.)

DECISION AND RATIONALE: **Criteria modified.**

This comment provides beneficial clarification to Essential Element assessed by **Implementation** question 25(C).

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>Monitoring: Evaluations Procedure for the Evaluation</i></p> <p>25. Does the MSI provide any procedures or methodologies for the evaluations? (Yes / No) If yes: [...] E. Does the evaluation methodology permit or require stakeholders to provide input directly to the evaluator? (Yes, methodology requires evaluator to solicit such input / Yes, methodology permits evaluator to consider / No, the methodology prohibits such input / Not specified in the methodology) If yes, which stakeholders can provide input? i. Employees of targeted actor; (Yes / No)</p> | <p><i>Modification to 25(E), now 25(D):</i></p> <p>25. Does the MSI provide any procedures or methodologies for the evaluations? (Yes / No) If yes: [...] D. Does the evaluation methodology permit or require stakeholders to provide input directly to the evaluator? (Yes, methodology requires evaluator to solicit such input / Yes, methodology permits evaluator to consider / No, the methodology prohibits such input / Not specified in the methodology). <i>[Essential Element]</i> If yes: i. Which stakeholders can provide input?</p> |

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| <ul style="list-style-type: none"> ii. Affected populations; (Yes / No) If yes, what groups is information solicited from? <ul style="list-style-type: none"> a. Organized groups whose rights are affected by the targeted activities; (Yes, specify groups / No) b. Local communities affected by the targeted activities; (Yes, specify groups / No) c. Organized groups who have an interest in the targeted activities; (Yes, specify groups / No) d. Other. (Yes, specify / No) iii. NGOs and/or civil society; (Yes / No) iv. Governments; (Yes / No) v. Other. (Yes, specify / No) | <ul style="list-style-type: none"> a. Employees of targeted actor; (Yes / No) b. Affected populations; (Yes / No) If yes, from which of the following groups is information solicited? <ul style="list-style-type: none"> I. Organized groups whose rights are affected by the targeted activities; (Yes, specify groups / No) II. Local communities affected by the targeted activities; (Yes, specify groups / No) III. Organized groups who have an interest in the targeted activities; (Yes, specify groups / No) IV. Other. (Yes, specify / No) c. NGOs and/or civil society; (Yes / No) d. Governments; (Yes / No) e. Other. (Yes, specify / No) ii. At what stages may stakeholders provide input to evaluators? (Select all that apply.) <ul style="list-style-type: none"> a. Before the evaluation has begun; (Yes / No) b. During the evaluation process; (Yes / No) c. After the evaluation is concluded (Yes / No) |
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COMMENT RECEIVED ON IMPLEMENTATION CRITERION 25(E)

Soledad Mills, Equitable Origin: “The [Essential Elements] should also consider at what stages of the evaluation stakeholder input is solicited – only during the on-site activities, or are stakeholders notified in advance of the evaluation or provided with opportunities to submit comments following the evaluation ([25]-E).” (Terminology and numerical references updated.)

DECISION AND RATIONALE: **Criteria modified.**

Indicator question 25(D) has been revised to measure whether the MSI evaluation methodology permits stakeholders to provide input before, during, and/or after the evaluation process. This will be assessed as a Good Practice criterion. Encouraging stakeholders to provide input at different stages of the evaluation process allows different types of information to be obtained. For example, detailed and prepared comments from stakeholders through to additional responses or reflections from stakeholders not present for the evaluation. However, until further consultation and research is conducted, the Essential Element remains limited to input from all stakeholders being at least permitted at some stage by the evaluation methodology.

| <i>Initial Criteria</i> | <i>Outcome</i> |
|--|---|
| <p><i>Monitoring: Evaluations</i> <i>Procedure for the Evaluation</i></p> <p>25. Does the MSI provide any procedures or methodologies for the evaluations? <i>[Essential Element]</i>[...] F. Does the evaluation methodology require on-site visits? <i>[Essential Element]</i> [...] iv. Do evaluations consist of announced evaluations, unannounced spot-checks, or both? (Announced / Unannounced / Both). <i>[Good Practice]</i></p> | <p><i>Modification to 25(F)(iv), now 25(E)(iv):</i> 25(E)(iv) will be changed from a Good Practice to an Essential Element:</p> <p>25. Does the MSI provide any procedures or methodologies for the evaluations? <i>[Essential Element]</i>[...] E. Does the evaluation methodology require on-site visits? <i>[Essential Element]</i> [...] iv. Do evaluations involve unannounced visits? (Yes / No) <i>[Essential Element]</i> v. Do evaluations involve announced visits? (Yes / No) <i>[Good Practice]</i></p> |

COMMENT RECEIVED ON IMPLEMENTATION CRITERION 25(F)(IV)

Tim Lyons, ACTU: “We also wish to underscore the importance of MSIs requiring that audits of targeted actors (and indeed their suppliers if relevant) be conducted without notice and in person.”

DECISION AND RATIONALE: **Criteria modified.**

While it was already an essential element for evaluations to be conducted in person, the Tool has been modified to include unannounced visits as an essential element. To meet the new Essential Element, MSIs should either conduct unannounced visits or a mixture of both unannounced and announced visits. This is supported by research and practice. For example, ILO guidance on labor inspections notes that that unannounced visits are critical to verifying conditions, but can be helpfully supplemented by announced visits that allow evaluators to arrange meetings with employees and management and provide time to management to gather relevant information.⁸

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>Commenter proposed new criteria relating to Implementation:</i></p> <ul style="list-style-type: none"> “Does the MSI require targeted actors have a written policy on supply chains that is publicly available and translated into the language of the communities in which it operates?” “Does the MSI require targeted actors to communicate its standards policies to all suppliers, business relations and other parties to its operations?” | <p><i>New criteria adopted:</i> <i>The following questions will be added to <u>Systems Development and Operationalization</u> to be answered where applicable to the MSI and/or industry [Good Practices]:</i></p> <p>54. What systems must be instituted or revised [by the targeted actor]? A. Mandatory policies or procedures; (Yes / No) If yes, for which areas: [...]</p> |

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| <ul style="list-style-type: none"> • “Does the MSI require targeted actors to map and/or have knowledge of suppliers throughout their supply chain?” • “Does the MSI require targeted actors to demonstrate they have a policy and implementation process for auditing standards throughout their supply chains?” | <p>x. Human rights due diligence assessments; (Yes / No / Not applicable to the MSI and/or industry) If yes:</p> <ul style="list-style-type: none"> a. Does the MSI require targeted actors conducting human rights due diligence to map and/or identify all sources in their supply chains? (Yes / No / Not applicable to the MSI and/or industry) <p>B. Guidelines or other voluntary policies or procedures; (Yes / No) If yes, for which areas: [...]</p> <p>x. Human rights due diligence assessments of their supply chains? (Yes / No / Not applicable to the MSI and/or industry) If yes:</p> <ul style="list-style-type: none"> a. Does the MSI require targeted actors conducting human rights due diligence to map and/or identify all sources in their supply chains? (Yes / No / Not applicable to the MSI and/or Industry) <p>55. Are targeted actors required to communicate publicly their policies or procedures for instituting or revising systems throughout their supply chain or business relationships in order to comply with MSI standards?</p> <p>56. Are targeted actors required to communicate policies or procedures for instituting or revising systems to comply with MSI standards to all suppliers, business relations and other parties to their operations?</p> |
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COMMENT RECEIVED PROPOSING NEW IMPLEMENTATION CRITERIA

Tim Lyons, ACTU: “The following indicators may be included in the appropriate sections:

- Does the MSI require targeted actors have a written policy on supply chains that is publicly available and translated into the language of the communities in which it operates?
- Does the MSI require targeted actors to communicate its standards policies to all suppliers, business relations and other parties to its operations?
- Does the MSI require targeted actors to map and/or have knowledge of suppliers throughout their supply chain?
- Does the MSI require targeted actors to demonstrate they have a policy and implementation process for auditing standards throughout their supply chains?”

DECISION AND RATIONALE: New criteria added.

The increasing utilization of MSIs to enforce standards throughout supply chains and business relationships reflects the critical role of supply chain policy commitments and human rights due diligence processes to fulfilling businesses responsibility to respect human rights under the *UN Guiding Principles*. As a result, additional Good Practice indicators have been added to demonstrate the importance of communicating of policies and procedures about conducting human rights due diligence and applying MSI standards throughout supply chains and business relationships. However, as some of the proposed indicators are already measured directly or indirectly by existing questions in the **Implementation, *Systems Development and Operationalization*** sub-section, not all the suggested questions needed to be included.

| <i>Initial Criteria</i> | <i>Outcome</i> |
|--|---|
| <p><u>Grievances</u></p> <p><i>Targeted Actors' Grievance Mechanism</i> (Questions 68 to 72)</p> <p><i>MSI Grievance Mechanism</i> (Questions 73 to 85)</p> <p><i>Evaluation of Complaints</i> (Questions 86 to 98)</p> <p><u>Accountability</u></p> <p><i>MSI Recommendations to Targeted Actors</i> (Question 99)</p> <p><i>Sanctions</i> (Questions 100 to 102)</p> | <p><i>MSI Integrity will publish a list of sources and rationales for the Essential Elements.</i></p> |

COMMENT RECEIVED ON GRIEVANCES SUB-COMPONENT OF OF IMPLEMENTATION

Martijn Scheltema, Erasmus University Rotterdam: "'Targeted Actors' Grievance Mechanisms [Implementation questions 68-72]: The question arises whether the indicators are consistent with Guiding Principle 31 of the Ruggie Framework, which sets forward the following requirements for (non-judicial) dispute resolution mechanisms.

'(a) Legitimate...; (b) Accessible...; (c) Predictable...; (d) Equitable...; (e) Transparent...; (f) Rights-compatible...; (g) A source of continuous learning...; [and] Operational-level mechanisms should also be: (h) Based on engagement and dialogue...' (Cited Commentary to UN Guiding Principle 31 truncated.)

Especially requirements (a), (b) in part, (d), (e) in part, (f) and (g) in part, seem not to be reflected completely in the indicators. The indicators of the MSI grievance mechanism [IMP. 80-91] entail more of these requirements.

MSI Grievance Mechanism [Implementation questions 73-85]: The indicators seem not completely consistent with the abovementioned indicators of the Ruggie framework, especially requirements (a) and (f).” (Question numbers updated. Note: Both targeted actor and MSI grievance mechanisms should be evaluated using Implementation questions 85-98 if the MSI sets process requirements for how complaints are evaluated.)

Institute for Human Rights in Business: “The section on “Implementation, Grievance Mechanisms” would benefit from specific references to Principles 30 and 31 of the UN Guiding Principles on Business and Human Rights concerning MSIs and effectiveness criteria respectively, in particular given the latter are mentioned but not sourced in the current version of the [Essential Elements].” (Terminology updated.)

Liesbeth Unger, Human Rights @Work: “Accessibility also means that all potential stakeholders know and understand the system. I don’t see a reference to equitability in the standards? The grievance mechanism should be a source of continuous learning.”

DECISION AND RATIONALE: No change necessary.

Some of the comments seem to result from the nature of the Tool as an assessment of objective and quantifiable characteristics, as opposed to qualitative issues. As a result, issues such as whether the grievance mechanism is “equitable” or “legitimate” can be difficult to assess because they are dependent on subjective and qualitative considerations that are beyond the scope of the MSI Evaluation Tool.

When developing the MSI Evaluation Tool, MSI Integrity and IHRC closely analyzed the criteria and commentary in Principles 30 and 31 of the *UN Guiding Principles on Business and Human Rights*, as well as other expert analysis of effective non-judicial grievance mechanisms. A number of the questions in the MSI Evaluation Tool therefore draw on Guiding Principles 30 and 31(a) to (h). This includes:

Principle 30: *Implementation* questions 68, 69, 71, 72, 73, 74, 75.

Principle 31:

(a) **Legitimate:** *Implementation* questions 69(A), 83, 84, 85, 90, 90(A)-(E), 91, 91(A), 92, 93, 93(A), 94, 95.

(b) **Accessible:** *Implementation* questions 70, 76, 76(A), 77, 78, 78(A), 79, 79(A)-(D), 80, 85, 86, 96, 97, 98, 98(A)-(D).

(c) **Predictable:** *Implementation* questions 70, 72, 81, 82, 83, 88, 89, 90, 90(A), 93, 93(A), 94, 95, 95(A)-(C), 98, 98(A)-(D).

(d) **Equitable:** *Implementation* questions 78, 78(A), 79, 79(A)-(D), 85, 86, 90, 90(B)-(C).

(e) **Transparent:** *Implementation* questions 64(D), 78(A), 79(A)-(D), 85, 90(D)-(E), 91, 91(A), 92, 93, 93(A), 95(C), 98, 98(A)-(D).

(f) **Rights-compatible:** *Implementation* questions 78(A), 79(A)-(D), 86, 87, 88, 96, 97.

(g) **Source of continuous learning:** *Implementation* questions 64(D), 91, 92, 93, 93(A), 98(A); *Development of the MSI* questions 11 and 12.

(h) **Based on engagement and dialogue (operational-level mechanisms):** *Implementation* questions 69(A), 69(C), 89, 95, 95(A)-(C).
[New post-consultation questions italicized]

To avoid future confusion about the consistency of the indicators with sources of good practice, such as the UN Guiding Principles, MSI Integrity will consolidate a comprehensive list of the sources/rationales for the Essential Elements. Wherever possible, references to existing international legal standards will be included, such as the *UN Guiding Principles on Business and Human Rights* referred to by these comments.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p data-bbox="204 632 669 737"><i>Commenter proposed new criteria relating to Implementation, Grievances</i></p> <ul style="list-style-type: none"> <li data-bbox="204 779 669 911">• “Are complaints by local communities against a member of the MSI handled at a local level? (Yes / No)” <li data-bbox="204 919 669 1367">• “Does the MSI provide for a consultation requirement regarding the relevant stakeholders/parties after the conclusion of the process on (the effectiveness of) its outcomes? (Yes / No) If yes: <ul style="list-style-type: none"> <li data-bbox="250 1163 626 1262">○ Are the results of these consultations compiled? (Yes / No) <li data-bbox="250 1270 669 1367">○ Are the results of these consultations made public? (Yes / No)” | <p data-bbox="717 632 1336 701"><i>Criteria added to Implementation, Grievances, Evaluation of Complaints, 83 and 95:</i></p> <p data-bbox="717 737 1097 806">Implementation, Grievances <u>Evaluation of Complaints</u></p> <p data-bbox="717 842 1401 1052">83. Does the mechanism ensure complaints made by affected populations relating to breaches of standards at a local level are heard or investigated in a location accessible to the affected population? (Yes / No) <i>[New criterion – Good practice]</i></p> <p data-bbox="717 1087 1417 1890">95. Do the procedures require the MSI to communicate with complainants? (Yes / No) <i>[Essential Element]</i> If yes: A. When is the communication required and do the procedures include mandatory timeframes? iv. When an outcome has been reached (Yes, with timeframe / Yes, without timeframe / No) <i>[Essential Element]</i> a. Is it required that this communication must consult about the effectiveness of the grievance process outcome from the complainants’ perspective? (Yes / No) <i>[New criterion – Innovative Practice]</i> v. When the remedy has been fulfilled? (Yes, with timeframe / Yes, without timeframe / No) <i>[Essential Element]</i> a. Is it required that this communication must consult about the effectiveness of the grievance process outcome from the complainants’ perspective? (Yes / No) <i>[New criterion – Innovative Practice]</i> B. Are the results of these communications recorded? (Yes / No) <i>[New criterion – Good</i></p> |

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| | <p><i>Practice]</i> C. Are the results of these communications made public? (Yes / No) [<i>New criterion – Good Practice]</i></p> |
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COMMENT RECEIVED PROPOSING NEW IMPLEMENTATION CRITERION
Martijn Scheltema, Erasmus University Rotterdam: [Referring to both Targeted Actor Grievance Mechanisms and MSI Grievance Mechanisms...]

“... it is important to assess the effectiveness of the outcomes of the dispute resolution process, for example by stakeholder (especially the parties engaged in the process) consultation. Therefore, an indicator might be added:

- Does the MSI provide for a consultation requirement regarding the relevant stakeholders/parties after the conclusion of the process on (the effectiveness of) its outcomes? (Yes / No). If yes:
 - Are the results of these consultations compiled? (Yes / No)
 - Are the results of these consultations made public? (Yes / No)”

“... the grievance mechanism... might be more effective if it functions on a local level, especially if complaints are made by local communities against a member of the MSI. Therefore, an indicator might be added:

- Are complaints by local communities against a member of the MSI handled at a local level? (Yes / No)” (Comment re-configured to put similar points together.)

DECISION AND RATIONALE: **Criteria added.**

The proposed indicators reflect good and innovative practices for both targeted actors’ and MSI grievance mechanisms to incorporate to improve the accessibility, legitimacy, and transparency of their processes, and to ensure they are sources of continuous learning. These attributes are accepted international good practice for grievance mechanisms (see discussion on UN Guiding Principles, above).

| <i>Initial Criteria</i> | <i>Outcome</i> |
|---|---|
| <p><i>Commenter proposed new criteria relating to Implementation.</i></p> | <p><i>The following indicator questions will be added to Implementation, Grievances, Targeted Actors’ Grievance Mechanisms and MSI Grievance Mechanism, respectively, to generate data on this point:</i></p> <p>71. Does the MSI require targeted actors to utilize pre-existing, external procedures to process grievances? (Yes, specify pre-existing procedures utilized / No).</p> <p>75. Does the MSI channel grievances into pre-existing, external procedures to process grievances? (Yes, specify pre-existing procedures utilized / No).</p> |

COMMENT RECEIVED PROPOSING NEW IMPLEMENTATION CRITERIA
Meetal Jain and Megan Geldenhuys, CALS, Wits University: “MSI Integrity may want to examine the extent to which an MSI’s grievance procedure feeds into pre-existing grievance mechanisms, for example with the IFC or IMF in project finance issues. Alternatively, whether

MSIs provide assistance in referring complaints to external grievance mechanisms, and connecting MSIs to external regulatory mechanisms.”

DECISION AND RATIONALE: **Criteria added.**

The MSI Evaluation Tool is primarily concerned with whether an MSI has a mechanism whereby affected communities may obtain redress for violations of MSI standards, and the sufficiency of that mechanism, rather than the question of who operates the grievance mechanism. In **Development**, question 11, the MSI Evaluation Tool asks whether the MSI review process considers how to harmonize, or minimize redundancy between grievance mechanisms that apply to the targeted industry or activity. This goes some way to address the question of duplicity of efforts. However, MSI Integrity recognizes that utilizing pre-existing procedures may be more effective. To aid research on this issue, an informational question has been added under *Grievances, Targeted Actors’ Grievance Mechanisms* and *MSI Grievance Mechanism* to collect data points to support further research. This will help collect data on the issue for future study by MSI Integrity and others.

| <i>Initial Criteria</i> | <i>Outcome</i> |
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| <p><i>Commenter proposed new criteria relating to Implementation.</i></p> | <p>(a) Incentives <i>No modification:</i> covered by existing questions Implementation, 7 and 10: 7. Does entitlement to the incentive require that MSI standards are met? (Yes / No) [<i>Essential Element</i>][...] 10. Is compliance with the incentive regime based on the results of an evaluation? (Yes / No) [<i>Essential Element</i>][...]</p> <p>(b) Membership <i>No modification as yet:</i> covered by existing questions Implementation, 33–34 and 102(A): 33. Does the MSI issue public reports regarding implementation efforts of targeted actors? (Yes / No) [<i>Essential Element</i>][...] 34. What does the MSI report include? (Select all that apply.) A. Targeted actors’ level of compliance with MSI standards; (Yes / No) [<i>Essential Element</i>][...] B. Targeted actors’ efforts to implement MSI standards; [<i>FN</i>] [<i>Essential Element</i>][...] C. Targeted actors’ specific incidents implicating breach of MSI standards; (Yes / No) [<i>Essential Element</i>][...] 102. What is the basis for the sanctions? (Select all that apply.) A. An evaluation showing noncompliance with MSI standards; (Yes / No / Not Applicable, as MSI does not have evaluations) [<i>Essential Element</i>] If yes: i. What type of sanction may be imposed? a. Fines; (Yes / No) b. Removal of entitlement to the incentive regime; (Yes / No / Not Applicable, as MSI does not have an incentive regime) [<i>Essential Element</i>] c. Probation, by way of suspension of the targeted actor’s MSI</p> |

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| | <p>membership until compliance is achieved; (Yes / No) [Essential Element]</p> <p>d. Suspension of the targeted actor's MSI membership for a specified period of time; (Yes / No) [Essential Element]</p> <p>e. Expulsion of the targeted actor from the MSI; (Yes / No) [Essential Element]</p> <p>f. Other. (Yes, specify / No)</p> |
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COMMENT RECEIVED PROPOSING NEW IMPLEMENTATION CRITERIA

Soledad Mills, Equitable Origin: "The [Essential Elements] on accountability should consider whether the MSI allows membership/certification in instances where non-compliance with the minimum requirements has been identified during the evaluation." (Terminology updated.)

DECISION AND RATIONALE: **No change necessary.**

The Evaluation Tool already addresses this issue in two areas:

(a) *Incentives*: Where an MSI has adopted an incentive regime, such as certification, it is an Essential Element in **Implementation**, questions 7 and 10, that entitlement to the incentives require full, verifiable compliance with the MSI standards based on evaluation results. Instances where a member is non-compliant but retains certification status would constitute a failure of the Essential Element.

(b) *Membership*: Whether a member is required to meet the standards immediately upon joining is an Essential Element of the MSI: **Standards**, question 7. The ability to sanction non-compliant members is an Essential Element in **Implementation**, question 102(A). However, it is not necessary that an instance of non-compliance with minimum requirements should immediately result in suspension or expulsion from membership. A range of sanctions may be available to the MSI, so that targeted actors that have voluntarily attempted to join the MSI can be encouraged to comply with MSI standards over time.

| <i>Initial Criteria</i> | <i>Outcome</i> |
|--|--|
| <i>Commenter proposed new criterion.</i> | <p><i>Criterion added:</i></p> <p>100. Does the MSI enable or encourage public enforcement of its standards in national and/or international processes? (Yes / No) [Innovative Practice]</p> |

COMMENT PROPOSING NEW CRITERION

Martijn Scheltema, Erasmus University Rotterdam: "The indicators focus on the sanctions which might be imposed by the MSI itself. However, in some instances enforcement by public entities based on (inter)national law might be even more effective. For example, some MSI's use trademarks. This enables them to litigate (in national courts) against those (even non-members) which infringe their trademark. Therefore, an indicator might be added:

- Does the structure of the MSI open a road to public enforcement (Yes/No)?”

DECISION AND RATIONALE: **Criterion added.**

An innovative approach to accountability for MSI standards could be to encourage the use of national and/or international processes. MSI Integrity has added this criteria as an innovative practice in order to gather data about MSIs that may include this practice. We have also added this issue to our research agenda: how enforcement and sanctions for non-compliance with MSI standards might incorporate pathways to enforcement in national courts.

V. Development of the MSI

| <i>Initial Criteria</i> | <i>No Modification to Criteria</i> |
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| <i>Commenter proposed new criterion.</i> | <i>No modification of existing criteria.</i> |

COMMENT RECEIVED PROPOSING NEW DEVELOPMENT CRITERION

Soledad Mills, *Equitable Origin*: “The [Essential Elements] on accountability or development should also consider whether the MSI itself is a member of an oversight body that establishes standards for and conducts oversight of MSI activities (e.g. ISEAL Alliance).” (Terminology updated.)

DECISION AND RATIONALE: **No change necessary.**

MSI Integrity commends MSIs that are working to improve the quality and effectiveness of standard-setting voluntary initiatives by collaborating and engaging to share best practices and develop strategies for improved outcomes. However, there is insufficient evidence to suggest that membership in an oversight body is necessary for the protection and promotion of human rights. We encourage those oversight bodies to commission independent research into whether participation in their scheme results in the protection and promotion of human rights and share any published findings with MSI Integrity in the future.

| <i>Initial Criteria</i> | <i>Outcome</i> |
|--|--|
| <p><i>Commenter proposed new criterion relating to Development of the MSI:</i></p> <ul style="list-style-type: none"> • Does the MSI entail provisions for conflicts with standards of other mechanisms (Yes/No)?” | <p><i>No modification: covered by existing question Development, 1(B).</i></p> <p>1. Does the MSI reference other MSIs that also apply to the regulated industry? (Yes / No): If yes: [...] B. Does the MSI describe an attempt to harmonize, or minimize overlap, with those MSIs? [...]</p> |

COMMENT RECEIVED PROPOSING NEW DEVELOPMENT CRITERION

Martijn Scheltema, Erasmus University Rotterdam: “It might be of importance not only to assess the additional value of a new MSI in terms of Standards, but also to provide for ‘conflict of law’ rules in case standards are conflicting with standards of other mechanisms. An indicator might be added to 1:

- Does the MSI entail provisions for conflicts with standards of other mechanisms (Yes/No)?”

DECISION AND RATIONALE: **Further research and/or consultation needed.**

This comment highlights that it is good practice for MSIs to take efforts to avoid redundantly creating standards to apply to the same industry or sector — a criteria that is captured in **Development**, 1(B). It raises a question that has been added to MSI Integrity’s research and shared learning agenda: how is it most effective for MSIs to resolve conflicts between voluntary standards?

| <i>Initial Criteria</i> | <i>Outcome</i> |
|--|--|
| <i>Commenter proposed new criterion relating to Development of the MSI.</i> | <i>No modification: covered by existing question Development, 10.</i> <i>10. Does the MSI have a process for reviewing existing standards and/or developing new standards? [FN](Yes / No) [Essential Element][...]</i> |

COMMENT RECEIVED PROPOSING NEW DEVELOPMENT CRITERION

Soledad Mills, Equitable Origin: “Rather than or in addition to challenging standards, the [Essential Elements] on the Standards may consider the extent to which the Standards undergo a process of evolutionary development through regular revision, etc.” (Terminology updated.)

DECISION AND RATIONALE: **No change necessary.**

MSI Integrity agrees that the evolutionary development of MSI standards, as well as other components of an MSI’s institutional design and processes, is critical to the success of MSIs for protecting and promoting human rights. This is measured in the Evaluation Tool as an Essential Element in question 10 in **Development**, which asks whether there is a process for the MSI to review existing standards and/or develop new standards.

VI. AFFECTED COMMUNITIES

| <i>Initial Criteria</i> | <i>Outcome</i> |
|-------------------------|--|
| Standards | <i>New informational question added to the</i> |

| | |
|---|--|
| <p>2. Are the standards publicly available? (Yes / No) If yes: A. If the MSI impacts regions that speak more than one language, does the MSI make the standards available in multiple languages? (Yes, list languages / No / Not applicable as the MSI only impacts regions that speak one language)</p> <p>Internal Governance</p> <p>4. If the MSI impacts regions that speak more than one language, are the documents about the governance of the MSI referred to above, or governance-related reports, produced in multiple languages? [...]</p> <p>39. Are meetings conducted in multiple languages? [...]</p> <p>51. Are the procedures and decisions available in multiple languages? [...]</p> <p>Implementation</p> <p>2. Is information about the incentive regime available in multiple languages? [...]</p> <p>37. Are the reports available in multiple languages? [...]</p> <p>50. Are meetings conducted in multiple languages? [...]</p> <p>63. Is information distributed in the local language?</p> <p>98(D). If the MSI impacts regions that speak more than one language, does the MSI require information about the system to be available in multiple languages? [...]</p> | <p>Context section:</p> <p>6. Identify the languages most widely spoken by rights-holders in each region in which the MSI standards apply. (List languages.)</p> <p><i>Modification to Standards, 2(A); Internal Governance, 4 and 52; and Implementation, 2, 37 and 98(D):</i></p> <p>Does the MSI identify the languages most widely spoken by rights-holders affected by the MSI and require that the _____ (<i>standards/governance documents/procedures and decisions/information about the incentive regime/reports/outreach information/information about the system</i>) are available in the identified languages? (Yes, list languages / No)</p> <p><i>Modification to Implementation, 63:</i></p> <p>63. Does the MSI identify the languages most widely spoken by the group in each region targeted by the program and make information available in the identified languages? (Yes, list languages / No) [<i>Essential Element</i>]</p> <p><i>Modification to Internal Governance, 39, and Implementation, 50:</i></p> <p>Are meetings able to be conducted in multiple languages when speakers of multiple languages are present? (Yes, list languages / No / Not applicable as the MSI only impacts regions that speak one language)</p> |
|---|--|

COMMENT RECEIVED ON LANGUAGE OF ACCESSIBILITY CRITERIA
 Veronica Perez Sueiro, 4C: "Though these are very rigorous [Essential Elements] that seek to ensure involvement and understanding of all local communities, there are practical limitations to their full realization. In some regions, like for example in some African countries, there are dozens of languages spoken by different communities in one area. Also, illiteracy is still a severe problem in many regions. We would suggest changing to something along the lines:

- *MSIs make information available in at least the most widely spoken language in the region where it operates.*

In the case of meetings, it could read:

- *Are meetings conducted in at least one language that all participants have basic working knowledge of?"* (Terminology updated.)

DECISION AND RATIONALE: **Criteria modified.**

MSI Integrity recognizes that the practical challenges of illiteracy and linguistic plurality may be difficult, however the MSI must ensure local populations understand the operation of the MSI and opportunities for rights protection and promotion it may offer. This is why it is an Essential Element that MSIs identify the languages most widely spoken by *rights-holders* in each region that the MSI impacts and distribute informational material in those identified languages. To give meaningful effect to this, the indicator questions have been revised to more clearly reflect that the necessary element is accessibility of information for impacted communities, and to better balance the practical challenges raised by the commenter.

In the case of meetings held in affected communities, it is fundamental that efforts are made to accommodate participants who cannot understand the primary languages offered. However, the indicator question has been revised to clearly indicate that, where all participants speak the same language, it is not necessary to conduct meetings in multiple languages.

| <i>Initial Criteria</i> | <i>Outcome</i> |
|---|---|
| <p>(a) "Affected Community" as used throughout Evaluation Tool.</p> <p>(b) Stakeholder Involvement <i>Membership: Inclusion and Quality</i></p> <p>20. Are the following stakeholders represented in the MSI membership? [...] C. Affected populations (<i>i.e.</i>, rights-holders). (Yes/No) If yes: [...] iii. Does the MSI have a set of rules regarding the process for determining local community representatives? (Yes/No/Not Applicable as local communities are not represented) If yes: a. Do the rules require that the local community select its own representative? (Yes/No) b. Do the rules require that the representatives be chosen in line with human rights principles? (Yes/No) c. Is there a provision for periodic community re-evaluation of the</p> | <p><i>Further research and consultation needed.</i></p> |

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| representative? (Yes/No) | |
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COMMENT RECEIVED ON “COMMUNITY” DEFINITION AND INTERNAL GOVERNANCE CRITERIA 20(C)
Meetali Jain and Megan Geldenhuys, CALS, Wits University:

“... The evaluation criteria may wish to investigate how [the MSI] defines a ‘community.’ This may include looking at disaggregated data on communities and the different levels of involvement of each group within a community and the MSI. For example, often the needs and problems facing women and children in a community will differ from the priorities of men. How an MSI engages with the different dimensions of a community is an important evaluation of its effectiveness.

In addition, it is important to consider how community representatives are selected and evaluated. What is the criteria [sic] used to select a representative for the community? Does the selection come from the community itself, or is the process facilitated by the MSI? Are there periodic re-evaluations or selections of community representatives?”

DECISION AND RATIONALE: **Further research and/or consultation needed.**

This comment presents two issues that have been added to MSI Integrity’s research agenda:

(a) In 2015, MSI Integrity began developing a project to research community involvement in MSIs that will touch on these issues. Findings from this research will be incorporated in future consultations and revisions to the MSI Evaluation Tool indicators. Currently the issues raised by the commenter cannot be fit into the scope of the MSI Evaluation Tool (which looks only at objective information).

(b) While the Evaluation Tool attempts to address community involvement and, in particular, the selection of community representatives through questions 20(C)(i)–(iii) under **Internal Governance**, these are not currently Essential Elements as they require further research and consultation. MSI Integrity plans to engage in further research and consultation to determine whether these questions should be Essential Elements, based on established good practices and international standards for community participation in development initiatives, and whether other factors are needed. The research project proposed by MSI Integrity should help inform understanding of good practice in this area. Special attention will be paid to question 20(C)(iii) on the process of selecting a community representative.

VII. TRANSPARENCY AND ACCESSIBILITY

| <i>Initial Criteria</i> | <i>Outcome</i> |
|---|--|
| <i>Commenter proposed new criteria relating to Transparency and Accessibility, evaluated throughout the MSI</i> | <p><i>No modification:</i> Proposal addressed by existing questions Internal Governance, 2–4 and Implementation, 59(A) and 61–66:</p> <p>Internal Governance 2. Does the MSI provide identifiable contact points [FN] in each of the geographic regions to which the MSI standards apply? (Yes,</p> |

| | |
|--------------------------------|--|
| <p><i>Evaluation Tool.</i></p> | <p>all / Yes, some (list regions) / No] <i>[Essential Element]</i></p> <p>3. Are the following publicly available? <i>[Essential Elements]</i></p> <p>A. A list of members; (Yes / No)</p> <p>B. A list of members of decision-making bodies such as: boards, caucuses, working groups, or other bodies, where applicable; (Yes, all bodies / Yes, some bodies (list) / No)</p> <p>C. A copy of the previous year's accounts; (Yes / No) If yes:</p> <p>i. Are the financial accounts audited? (Yes / No)</p> <p>D. A copy of the constitution or equivalent document, which sets out the governing structure and decision-making processes of the MSI; (Yes / No)</p> <p>E. A copy of the disciplinary procedures that apply where there has been a breach of the rules of internal governance; (Yes / No)</p> <p>F. Annual reporting of the MSI's key activities and developments over the previous year. (Yes / No)</p> <p>4. Does the MSI identify the languages most widely spoken by rights-holders affected by the MSI and require that the documents about the governance of the MSI referred to above, or governance-related reports, are available in the identified languages? (Yes, list languages / No) <i>[Essential Element]</i></p> <p>Implementation</p> <p>59. Does the MSI offer relevant information so that the general public can learn about opportunities to patronize targeted actors' businesses, products, or services that are in compliance with the MSI standards? (Yes / No) <i>[Essential Element]</i> If yes:</p> <p>A. What information is provided? <i>[Evaluator chooses all that apply from a list of options]</i></p> <p>61. Does the MSI sponsor local programs in each geographic area in which the MSI operates? <i>[FN]</i> <i>[Essential Element]</i> (Select all that apply.) [...]</p> <p>62. Do the program(s) include targeted information about the MSI? (Yes / No) <i>[Essential Element]</i> If yes, to which groups is the information targeted?</p> <p>A. Local groups; (Yes / No) <i>[Essential Element]</i> If yes, to which groups? [...]</p> <p>B. National and international groups; (Yes / No) If yes, to which groups? [...]</p> <p>C. Regulated industry; (Yes / No) If yes, to which components of industry? [...]</p> <p>For each group identified as being targeted by a program in Q62 answer the following:</p> <p>63. Does the MSI identify the languages most widely spoken by the group in each region targeted by the program and make information available in the identified languages? (Yes, list languages / No) <i>[Essential Element]</i></p> <p>64. Does the information explain the following:</p> <p>A. The human rights issues that the MSI seeks to address; (Yes</p> |
|--------------------------------|--|

| | |
|--|--|
| | <p>/ No) B. The MSI's standards; (Yes / No) C. The MSI's monitoring and evaluation process; (Yes / No / Not Applicable, as MSI does not conduct monitoring or evaluations) D. The MSI's grievance process; (Yes / No / Not Applicable, as MSI does not have a grievance process) E. Opportunities for public input/participation in the MSI; (Yes / No) F. Contact information; (Yes / No) G. Other. (Yes, specify / No) 65. How is the information distributed? [<i>Select all that apply from a list of options</i>][...] 66. Is the MSI's programming offered free of charge? (Yes, all / Yes, some / No)</p> <p><i>Further research and consultation needed.</i></p> |
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COMMENT RECEIVED ON RELEVANCE AND ACCESSIBILITY OF INFORMATION

Meetal Jain and Megan Geldenhuys, CALS, Wits University: "It is important that MSIs are evaluated not only on their ability to provide information, but on the relevance of the information that is provided and whether or not the information is accessible and digestible in an easily understood manner. Transparency involves more than providing access to a MSI's information, but also doing so in a method that allows an interested party to readily interpret relevant information simply."

DECISION AND RATIONALE: **Further research and/or consultation needed.**

This is an important issue, however it is most likely to be an issue that requires qualitative examination, which is beyond the scope of the MSI Evaluation Tool. The MSI Evaluation Tool addresses relevance and accessibility of information provided by the MSI through questions in both **Internal Governance**, *Transparency and Accessibility*, 2-4 and **Implementation, Programs and Outreach**, 62(A) and 63-67.

MSI Integrity will further research whether additional aspects of information accessibility and relevance should be included, whether any or all of its Good Practice assessments should be considered Essential Elements, and whether further additions or refinements should be made to the Tool.

GENERAL COMMENTS ON THE MSI EVALUATION TOOL

COMMENT RECEIVED PROPOSING ALTERNATE FRAMEWORK

Liesbeth Unger, Human Rights @Work: "To start with, the categories of evaluation would be more recognizable if the Ruggie framework would be used, e.g. standards are about the commitments the MSI members are making (policy commitment, UNGP 16), the other categories are part of the due diligence (assessing impact, integration in procedures, tracking effectiveness and communication and transparency)."

DECISION AND RATIONALE: **No change necessary.**

MSI Integrity developed the Evaluation Tool, and each of its section headings, to provide a methodology for assessing the institutional design of MSIs and their capacity to protect and promote human rights. As a result, the section headings reflect systematic concepts that fit the institutional form and operations of MSIs, rather than fitting the diction of international legal norms. However, many of the MSI Evaluation Tool questions incorporate the requirements under the *UN Guiding Principles*, and references will be provided in a comprehensive list of Essential Elements rationales in the future, including citations to the *UN Guiding Principles*.

A list of rationales for each Essential Element will be published in future (see page 20 above).

COMMENT RECEIVED PROPOSING NEW STANDARDS CRITERION

MSI Integrity Advisory Group Discussion: Considering consultation comments regarding the need to assess whether MSI standards are adequate for the context- and sector-specific considerations of the MSI, there should be an indicator question in **Standards** that identifies whether the standards applied by the MSI are contextualized to targeted actors' activities, products or services. This could be done in a universal way by asking, "Do standards address the specific context of targeted actors' operations?" or a similar question to measure whether they are tailored to be context-specific. (Paraphrased from Advisory Group discussions during meeting in Washington, DC, on September 16, 2013)

DECISION AND RATIONALE: **New criteria added.**

Feedback from consultation sessions and submitted comments included some concern that separate assessments should be developed to evaluate MSIs operating in specific sectors. To achieve this an additional Essential Element will be added to **Standards**:

6. List all of the MSI's promulgated standards. ... Then answer whether the standard exhibits each of the following characteristics: [...]

F. Context-Specific: Does the standard account for the specific context of targeted actors' activities, products or services? (Yes / No / Not applicable, as the MSI does not seek to set standards that are specifically targeted to a particular operating context or sector.)

COMMENT RECEIVED PROPOSING ADDITIONAL IMPACT ASSESSMENT

Martijn Scheltema, Erasmus University: "The seven (high-level) categories identified are well elaborated and cover many issues which are of importance for assessing the effectiveness of MSI's [sic] in terms of the protection of human rights. Furthermore, a human rights impact assessment is envisioned. However, beside these, economic effects might be relevant. For example, if an MSI imposes high administrative burden on its members/stakeholders while a comparable MSI (which has a comparable score if the current MSI Evaluation Tool is used) does not, the first seems more effective (this burden amongst others depends on the way the MSI is structured – for example certification or not and the use of trademarks – and the number of contributing members). Furthermore, the effectiveness of a MSI might be lessened by unnecessary consumer detriment, hamper of trade (WTO disputes) and disruption of markets (competition issues). Beside this, MSIs should not contribute to, for

example, additional environmental damage. Therefore, to assess effectiveness of MSI's in the human rights arena it might be helpful to make the MSI Evaluation tool even more interdisciplinary than it already is, especially by adding (next to the envisioned human rights impact assessment) an economic impact assessment. If this is too complicated at this moment at least any form of impact assessment should be added."

DECISION AND RATIONALE: Further research and/or consultation needed.

MSI Integrity envisions adopting a multi-disciplinary approach to assessing the impact of MSIs and this comment will be taken into account regarding the development of such assessment methodologies.

COMMENT RECEIVED PROPOSING CLARIFICATION OF SCOPE OF THE TOOL

Martijn Scheltema, Erasmus University: "Many MSIs exist in the human rights arena with different objectives, different constituencies and a great variation in number of members. The MSI Evaluation Tool seems to suggest that, for example, the governance structure could be evaluated in the same manner for all these MSIs. However, it is only intended for larger (global) initiatives. Local initiatives might use the minimum standards too, but seem less effective considering the MSI Evaluation Tool indicators. In my opinion this might not be necessarily so, because although the resources of local initiatives to establish a sophisticated (governance) structure as advertised by the indicators are limited, their advantageous human right impact on a local level might be quite good even without meeting all the requirements put forward by the indicators. Therefore, it should (at least) be made clear for which MSIs the indicators are intended. However, the question arises whether and how larger MSIs should be compared to smaller ones in terms of effectiveness."

DECISION AND RATIONALE: Clarification provided in background materials.

The Tool was primarily designed to evaluate global, standard-setting MSIs that arise from human rights concerns. However, the general principles of the criteria in each section may be relevant and applicable to other MSI, including local MSIs, provided they take into account their unique context and circumstances. The introduction to the Tool will clarify this issue.

The scope and application of the Tool will be clarified in the introduction to the final Tool.

¹ The Essential Elements were previously known as Minimum Standards. This change in terminology was made following comments received during the Global Consultation in 2013.

² Full comment: "MSIs often become ways for the Global North to pressure the Global South into accepting a certain philosophy or methodology in relation to an issue. There is also often a link between participation in a MSI with the provision of aid. MSI Integrity might want to consider examining the regulation of the power balance between North and South participants. For example, in the Kimberly Process, there is an imbalance between diamond producing countries and diamond purchasers. This affects the agenda of the Kimberly Process as it is shifted between states. Issues of sovereignty are also hurdles in MSI initiatives – particularly when MSI's attempt to dictate measures onto states in a manner that is seen as imposing on the state's sovereignty."

³ Full comment: "The ACTU has concerns that none of the relevant STANDARDS indicators measure whether the MSI claims that its standards are consistent with/ incorporate relevant international law.

The only relevant STANDARDS indicators that we can identify purport to evaluate whether the MSI has standards that have 'some basis in recognised sources of international law.' We are unclear what 'some basis in' means. This could mean that a standard must refer to or incorporate specific international instruments or it could mean that

an MSI must merely have a standard that purports to address this issue. Obviously the former standard is much more significant in its scope and content than the latter.

This is important as one of the key deficiencies of MSIs in the labour rights area has been the selective or insufficient incorporation of international standards on workers' rights. This has particularly been the case with respect to the right to freedom of association and collective bargaining. This standard is more commonly misunderstood and misapplied than other labour standards such as forced or child labour. It is also the standard that tends to attract greatest corporate opposition. In practice, this has meant that a number of MSIs – even when they purport to include freedom of association as one of their standards – often do so inadequately or incompletely. For example, an MSI may make reference to 'freedom of association' but not include any reference to the rights of workers to collectively bargain.

We believe it is important that the Evaluation Tool attach greater prominence to international law in assessing the scope and sufficiency of the MSI standards. We suggest the inclusion of a further Indicator: Does the MSI claim that its standards are consistent with/ reflect/ incorporate recognised sources of international law? (Yes, hard international law/ Yes, soft international law/ No).

We would also suggest that, in assessing the extent to which the standards in an MSI are consistent with relevant international standards (an assessment that we recognise is not done in in the process of applying the MSI Evaluation Tool Indicators but appears to be done to some extent in the draft Long-form Evaluation Reports) that adequate weight and attention is provided to the OECD Guidelines for Multinational Enterprises. These Guidelines, updated in 2011 to incorporate and reflect the UN Guiding Principles on Business and Human Rights are of significant value as not only are they the only set of recommendations on responsible business conduct endorsed by governments, but they articulate basic international human rights standards in a manner that is specifically addressed to businesses (in contrast to ILO conventions which are directed at nation-states)."

⁴ Full Comment: "The global economy is increasingly interconnected and characterised by a complex network of supply chains. The Guiding Principles make clear that businesses are responsible for addressing the impacts of human rights that occur through their own activities and as a result of their business relationships with other parties, including throughout their supply chains.

As we understand the Evaluation Tool, while it assesses the extent to which the MSI sets standards for a targeted actor to respect, it does not assess the scope of application of the standard imposed by the MSI: that is, the extent to which it requires the targeted actor to respect the standard not only in the 'first tier' of its supply chain but throughout its business operations.

By way of example, an MSI may impose a standard 'freedom of association and collective bargaining', and require the targeted actor to have policies and procedures to demonstrate that the targeted actor respects this standard in its own operations. However, another MSI may have a similar standard but be far more demanding and rigorous in its scope: that is, require the targeted actor to demonstrate not only that it respects this standard in its own workplace and with its direct employees but that it requires respect for this standard by its suppliers (and their suppliers and sub-contractors down the supply chain) and those with which it engages in business relationships so as to ensure that all those workers who, even though they may not be in a direct employment relationship with the company, perform work for its benefit (whether directly or throughout the supply chain) have these basic rights. The latter MSI is, in our view, far superior in the standard it imposes.

We recommend that the Evaluation Tool include indicators that assess the scope of the standard required of targeted actors by the MSI. For example, the following indicators may be included in the appropriate sections of the Tool:

Is it a requirement that the standards adopted by the MSI apply down the supply chain and to all operations, products and services of the MSI members?

- Does the MSI require targeted actors have a written policy on supply chains that is publicly available and translated into the language of the communities in which it operates?
- Does the MSI require targeted actors to communicate its standards policies to all suppliers, business relations and other parties linked to its operations?
- Does the MSI require targeted actors to map and/or have knowledge of suppliers throughout their supply chain?
- Does the MSI require targeted actors to demonstrate they have a policy and implementation process for auditing standards throughout their supply chains?"

⁵ Charity Navigator, *Financial Ratings Tables*, available at <http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=48#.Ve3cM2RVhBc> (last viewed 7 Sept. 2015). Another charity watchdog organization, CharityWatch (American Institute of Philanthropy, Inc.), rates charities using a scale that gives a failing grade (F) to a charity that spends less than 35% of its total expenses on program activities. See CharityWatch, "Criteria & Methodology: How Grades are Calculated", <https://www.charitywatch.org/charitywatch-criteria-methodology> (last viewed 8 Sept. 2015).

⁶ BBB Wise Giving Alliance, <http://www.give.org/for-charities/How-We-Accredit-Charities/>, "How we accredit charities: Finances #8" (last viewed 8 Sept. 2015).

⁷ See IFC, "International Lessons of Experience and Best Practice in Participatory Monitoring in Extractive Industry Projects: Guidance Note on Designing Participatory Monitoring Programs, MC/ 31/01/10 (2010); ESMAP, The World Bank, and International Council on Mining & Metals (ICMM), "Community Development Toolkit: Monitoring and Evaluation Tools", ESMAP Formal Report Series, Report No. 310/05 (October 2005).

⁸ Robert Heron, Henrick Vistisen, and Kazuo Yamazaki, *ILO*, "Conducting Labour Inspection Visits: A practical guide" (1998), pages 10-11.