THE ESSENTIAL ELEMENTS OF MSI DESIGN

MSINTEGRITY

INSTITUTE FOR MULTI-STAKEHOLDER INITIATIVE INTEGRITY

About MSI Integrity

The Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) is a nonprofit organization dedicated to understanding the human rights impact and value of voluntary initiatives that address business and human rights. MSI Integrity researches key questions surrounding the effectiveness of these initiatives, facilitates learning in the field, and develops tools to evaluate initiatives from a human rights perspective. MSI Integrity takes a particular interest in how initiatives include, empower, and impact affected communities.

www.msi-integrity.org

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THE ESSENTIAL ELEMENTS OF MSI DESIGN: A SUMMARY

This document is a collated summary of the essential attributes for global or transnational standard-setting multi-stakeholder initiatives (MSIs). It has been released by the Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) to enable a quick, desk-based analysis of an initiative's broad strengths and weaknesses. It focuses on identifying the most essential elements of design that are necessary, although not sufficient, for an MSI to be effective from a human rights perspective. While it is not a substitute for conducting a comprehensive evaluation of an MSI, it may be useful as a diagnostic tool or to identify focus areas for further exploration or detailed evaluation.

What are the "Essential Elements of MSI Design?"

The Essential Elements of MSI Design were identified by MSI Integrity and the International Human Rights Clinic at Harvard Law School through a five-year iterative process of extensive research, practical pilot-testing, and global consultation with the public and experts on MSIs into the qualities that make an MSI effective from a human rights perspective. As a part of this process, we identified a number of key qualities about the design and structure of transnational standard-setting MSIs that are necessary, but not sufficient, for an initiative to have the potential to be effective as a human rights instrument. These qualities are the "Essential Elements of MSI Design." The absence of one of these elements undermines an MSI's potential to be effective.

The Essential Elements cover **seven core areas** (see page 4). These are: Scope and Mandate, Standards, Internal Governance, Implementation, Development and Review, Affected Community Involvement, and Transparency.

A full explanation of the research process used to identify the Essential Elements of MSI Design is available on MSI Integrity's website.[1]

How do the Essential Elements of MSI Design relate to the MSI Evaluation Tool?

The *MSI Evaluation Tool* is a comprehensive framework for evaluating MSIs and the effectiveness of their institutional design, structure, and operational procedures. The *MSI Evaluation Tool* draws together current research and practical understandings about MSI structures and processes, recognizing that MSI design features — such as good governance and robust accountability mechanisms — influence an initiative's effectiveness and potential to achieve positive impacts. However, conducting a rigorous and comprehensive evaluation of an initiative is resource-intensive. For those without the resources to conduct a comprehensive evaluation, or those who are looking to understand the basic strengths and weaknesses of a given MSI, this document may serve as a useful starting point to discuss or consider the indicators of effective design.

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[1] MSI Integrity, *Development of the MSI Evaluation Tool and Evaluation Methodology*, July 25, 2017. http://www.msi-integrity.org/dev/wp-content/uploads/2017/02/Tool-Development-History.pdf

This document contains the most critical indicators of MSI effectiveness identified in the *MSI Evaluation Tool*, known as the *"Essential Elements."* Although it does not consider any Good or Innovative Practices of MSI Design (which are included in the MSI Evaluation Tool), or what the effects or impacts of the MSI might be, this collated summary can help guide a future evaluation of an MSI's design and can inform the development of new MSIs or revisions to existing ones.

What considerations should be taken into account before using the Essential Elements of MSI Design?

The MSI Evaluation Tool was developed primarily to evaluate MSIs that were formed in response to human rights concerns and which have reacted to these problems by setting or enforcing standards for member companies and/or governments. However, with some common sense adaptation and modification, the Essential Elements of MSI Design can be used for a variety of different purposes and applied beyond standard-setting MSIs with a focus on human rights. For example, the Essential Elements could be used to evaluate MSIs that address environmental or governance issues, or initiatives that serve as collective action networks or learning forums rather than as standard-setting institutions. The MSI Evaluation Tool and Essential Elements of MSI Design can also be applied to other accountability or private governance approaches, such as industry codes of conduct or private certification schemes. We encourage such actors to contact MSI Integrity to discuss whether these tools are suitable for a given initiative and, if so, what modifications should be made.

In addition, the Essential Elements of MSI Design are not intended to provide a comprehensive assessment of an initiative. The Essential Elements of MSI Design focus solely on the most basic and essential qualities that are critical to all transnational standard-setting MSIs, without considering additional qualities that may be warranted by the geographic, industry, or issue context in which the MSI operates. It does not directly evaluate qualitative impact, including whether an initiative's processes or structures are followed or implemented in practice, or what the outcomes or impacts of the MSI may be. Evaluations of the impacts, practices, outputs, or outcomes of MSIs are much-needed, but require additional methodologies, as well as considerably greater resources and access to information. In future years, MSI Integrity plans to contribute to the development of methodologies for these types of impact evaluations. In the interim, the *MSI Evaluation Tool* has been devised as a proxy for impact studies, and will also assist those attempting to measure impact by first providing an understanding of how an MSI is structured and intends to operate.

Are there instructions for using the Essential Elements of MSI Design?

Because this document is not intended as a formal evaluative tool, we encourage users to simply look through the indicators here and consider if they apply to the MSI in question. This could be confined to considering the elements of just one part of the initiative, such as its grievance mechanism or governance process, or could be used to examine the entire initiative.

In keeping with MSI Integrity's commitment to strive for engagement and reflexive consultation with all stakeholders, we welcome feedback on the Essential Elements of MSI Design. We hold public global consultations on major strands of our work every two to five years, including on the MSI Evaluation Tool and Essential Elements of MSI Design. Please feel free to contact us if you have any questions about the rationale for, or development of the Essential Elements of MSI Design, or if you have any other questions or requests for assistance: info@msi-integrity.org.

LEGEND

Indicates which Essential Elements concern **affected community involvement**

Indicates which Essential Elements concern **transparency**

Overview
of the SEVEN CORE AREAS
of the
MSI EVALUATION TOOL

The MSI Evaluation Tool was developed to assess the capacity of a multi-stakeholder initiative (MSI) to protect and promote human rights. The Tool asks objective questions about an MSI's design, processes, and policies. The questions are categorized according to the following seven core areas:

1. Appropriate Human Rights Scope & Mandate

2. Sufficient Standards

3. Inclusive & Comprehensive Internal Governance

4. Effective Implementation Mechanisms

5. Ongoing Development & Review of the MSI

Throughout each of the areas 2 – 5 the MSI Evaluation Tool also assesses:

6. The Level of Involvement of Affected Community

7. The Level of Transparency & Accessibility of the MSI

1. SCOPE AND MANDATE

The scope and mandate of an MSI refers to the breadth of the issues or problems that MSI addresses and its proposed approach for addressing those issues or problems. There is no "one-size-fits-all" scope or mandate for MSIs. Some initiatives may focus on a specific issue, such as eliminating child labor in the production of cocoa, while others may cover a range of environmental, human rights, and social concerns relevant to a particular industry. Whatever set of issues an MSI chooses to focus on, that selection must be rational and justified. An MSI must demonstrate that those issues are relevant and significant to the industry or issues concerned, and must also be designed in such a way that the issues it is focused on are addressed in a rights-consistent manner. If an MSI is formed in direct response to a human rights crisis or scandal, and offers an assurance that its members now respect the human rights issues in question, it is critical that the MSI respond fully to those initial issues or provide a public justification for adopting a more narrow focus.

At a minimum, it is essential that a standard-setting MSI:

- Comprehensively address the human rights issues that prompted its formation **OR** justify the decision to address only a selection of the human rights issues that prompted its formation.

- Include an explicit human rights mandate **OR** a statement to acknowledge that it has an indirect impact on human rights.

- Ensure that full compliance with its standards will ensure the protection and promotion of the human rights the MSI addresses.

- Evaluate member companies/governments on compliance with human rights.

- Fully utilize a rights-based approach e.g. include participation of rights-holders, conduct human rights impact assessments, use rights-based analysis in review processes.

2. STANDARDS

An MSI's standards are the requirements placed on the initiative's members (ordinarily, governments or companies). Standards should be verifiable, mandatory, and consistent with international law (where available). If standards are voluntary and vague — for example, if standards ask members to "attempt to" adopt a certain practice or to implement "effective management systems" — it is difficult to assess if members are changing their behavior and meeting the goals of the MSI. To ensure the protection of human rights, an MSI's

standards should be consistent with any relevant and pre-existing international law, ideally by citing that law within the initiative's standards, to avoid developing inconsistent or duplicative standards or permitting members to follow domestic laws that may fail to give effect to international norms.

At a minimum, it is essential that a standard-setting MSI:

- Make standards publicly available, in languages accessible to the rights-holders affected by the MSI.

- Make standards mandatory with a clear timeline for compliance.

- Ensure that standards are verifiable, meaning they are specific, measurable, and clearly stated.

- Ensure that standards are consistent with and/or aligned with international law and norms.

- Require that standards apply to member companies/governments 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 for relevant industries).

3. INTERNAL GOVERNANCE

The cornerstone of MSIs is that they bring together stakeholders with different interests, experiences, and access to resources to address an issue of mutual concern. This convening of diverse actors presents a unique opportunity for knowledge sharing and collaboration. However, to harness this potential, the initiative must take steps to: (a) address any power imbalances or adversarial relationships that may disadvantage stakeholders with fewer resources, such as global south or local representatives, or civil society or affected community participants; (b) ensure it has sufficient resources to operate effectively; and, (c) establish decision-making processes that are efficient, inclusive, and capable of overcoming internal disputes. Finally, to the extent that transnational standard-setting MSIs operate as governance tools, they must also be transparent and accountable.

Transparency and Accountability: Transparency of governance structures and processes is essential to an MSI's credibility, legitimacy, and accountability. This reflects not only good governance practices, but also the fact that standard-setting MSIs are governance tools and are therefore subject to greater public scrutiny.

At a minimum, it is essential that a standard-setting MSI:

- Ensure that the following are publicly available: (a) a list of members; (b) a list of members of decision-making bodies; (c) a copy of the previous financial year's audited accounts; (d) a copy of the constitution or equivalent document that sets out the governance and decision-making processes of the MSI; (e) a copy of disciplinary procedures that apply in the event of a breach of the internal governance rules; and (f) an annual report of the key activities and developments of the MSI in the previous year.

- Identify the languages most widely spoken by rights-holders affected by the MSI and require that all public documents related to MSI governance be produced in the identified languages.

- Provide identifiable contact points in each geographic region where the MSI's standards apply.

Stakeholder Representation: MSIs are established to bring together stakeholders with different interests, experiences, and perspectives to address an issue of mutual concern. However, the diversity and inclusion of stakeholders ought to extend beyond simply allowing different stakeholder "types" to participate (e.g. companies, governments, civil society, or affected communities). Rather, MSIs must consider whether there is sufficient representation to appropriately diagnose and respond to the issues specific to the regions where the MSI operates and the populations the MSI is intended to protect or benefit. This requires an analysis of the individual actors involved in an initiative to ensure that at least some of the participants have direct links to locally-affected populations — such as local or national civil society organizations (who bring different expertise, interests, and experiences to an MSI than international civil society organizations) — and that some participants are members of affected populations themselves (see Affected Community Involvement on page 16). Participation of these actors is key to an MSI's effectiveness and perceived legitimacy because these stakeholders possess knowledge of the local context and first-hand experience of the issues the initiative is trying to address.

At a minimum, it is essential that a standard-setting MSI:

- Ensure that companies and/or governments, NGOs and/or civil society, and affected populations are represented in the initiative.

- Involve at least one actor from each stakeholder group — including at least one national or local NGO and one affected population representative — from each geographic region where the MSI's standards apply.

- Allow NGOs and affected populations to have equal authority to participate, including the ability to participate in all governing bodies and full power to participate in decision-making functions of the MSI.

- Where relevant, establish conflict of interest rules regarding financial relationships between NGOs and civil society institutions and companies and/or governments involved in the MSI.

Decision-Making Functions and the Balance of Power: Since MSIs must undertake various governance functions, they need to have comprehensive and effective decision-making bodies with dedicated staff to implement their decisions. While the specific bodies required by an MSI will vary depending on the context and issue, there are some core decision-making bodies that all MSIs need to establish. In addition, as MSIs require collaboration between stakeholders with varying levels of perceived or actual power, and with potentially adversarial interests or points of view, it is critical that MSIs establish decision-making processes that set out an equitable balance of power among members, and are accountable to all stakeholders to ensure all parties have ownership over each initiative's outcomes.

At a minimum, it is essential that a standard-setting MSI:

- Create designated bodies to cover all major governance areas including, at a minimum, bodies to: (a) make initiative-wide decisions; and (b) review implementation of MSI standards and policies.

- Ensure that governing bodies have: (a) transparent appointment or election processes; (b) a policy to record the decision-making process and publish records of decisions; (c) no veto power for any member; (d) clear procedures for decision-making; (e) equally weighted votes; and (f) power to make binding decisions.

- Ensure that: (a) any MSI member is eligible to be involved in decision-making bodies; (b) each decision-making body is explicitly required to have at least one representative from NGOs/civil society institutions; and (c) affected populations (i.e., rights-holders) are included in each governing body.

- Ensure that meetings of governing bodies are conducted in multiple languages when speakers of multiple languages are present.

- Have staff to administer and implement decisions by multi-stakeholder governing bodies.

Funding and Resources: An MSI needs to be well-resourced in order to have the stability and certainty necessary to plan and implement programming over multiple years. However, MSIs need to raise funds in a careful manner that takes into account the resource imbalances that exist between stakeholder groups. Funding should be separate from the control of power, both in form and in practice, in order to avoid giving certain members undue influence over MSI governance or creating conflicts of interest.

At a minimum, it is essential that a standard-setting MSI:

- Ensure that membership fees, if collected, are scaled appropriately to reflect the financial resources of different stakeholder types or scales of operation.

- Publicize any voluntary financial contributions or payments, whether made by members or non-members.

- Publish financial reports that list categories of expenditures, including proportion spent on administrative (i.e., governance) costs and implementation expenses.

- Spend at least one-third of its budget on implementation and programming (as opposed to administration costs or fundraising).

Dispute Resolution: Given their member diversity and complex subject matter, MSIs are likely to experience periodic tension or disagreement in their internal governance. To prevent such disputes from paralyzing or destabilizing an initiative, MSIs ought to develop effective processes for resolving disputes about internal governance.

<u>At a minimum, it is essential that a standard-setting MSI:</u>

- Have a dispute resolution system for internal governance issues that is accessible to all members.

- Establish an appointment process for the decision-maker in the MSI's internal dispute mechanism that is transparent and safeguarded by a conflict of interest policy.

- Publish the number of complaints filed and resolved.

- Publish official decisions.

- Set time frames for determining the resolution of complaints.

4. IMPLEMENTATION

Implementation mechanisms are the processes through which an MSI aims to operationalize, monitor, and achieve its stated aims. Robust and well-designed implementation mechanisms are essential for an MSI to build capacity around the standards it has developed and for the MSI to fulfill its mission.

Incentive Regime: MSIs may wish to establish incentives, such as certification labels or status marks, to encourage members to join an MSI or to comply with an MSI's standards. While having an incentive regime is not essential to an MSI's design, it can be a powerful way to differentiate actors that are complying with rigorous human rights or governance standards from those who are not. If an MSI chooses to offer incentives, it needs to ensure that those incentives are transparent and based on a given member's level of compliance with the MSI's standards. Otherwise, members of the MSI may be able to receive the reputational benefits of the incentive regime without meeting the standards set by the initiative.

At a minimum, it is essential that a standard-setting MSI with an incentive regime:

- Differentiate the requirements for joining the MSI from the requirements to receive the benefit of the incentive regime.

- Require that members be in compliance with the MSI's standards to be eligible to receive the incentive.

- Ensure that eligibility for and compliance with the incentive regime is based on the results of an independent evaluation or another method of external verification.

- Periodically monitor the members' continuing compliance with the incentive regime standards after actors have first been deemed eligible for the incentive.

Monitoring: Central to the effectiveness of standard-setting MSIs is whether they can reliably detect if their members comply with their standards. Regular monitoring of member companies/governments to ensure they are meeting MSI standards enhances the credibility and legitimacy of the MSI and helps demonstrate whether members are changing their behaviors and implementing the MSI's standards.

(a) Evaluations

To determine whether MSI members are changing their behaviors to implement MSI standards, MSIs can utilize external monitoring to assess member compliance. It is critical that such evaluations follow a rigorous, comprehensive, and standardized methodology that reflects good practice regarding audits and evaluations, such as including some unannounced visits and securely interviewing affected or at-risk populations. Other universal qualities for effective evaluations are listed below.

At a minimum, it is essential that a standard-setting MSI:

- Require evaluations for all standard-implementing stakeholders that are members of the MSI.

- Require evaluators to have experience in, or undergo training in: (a) the human rights issues implicated by the MSI's standards; and (b) the local context for the evaluation location, including local culture.

- Require evaluations to be conducted externally from the evaluated entity, and have a policy prohibiting conflicts of interest between evaluators and member companies/governments, including prohibiting evaluators that have a previous or existing financial relationship with member companies/governments.

- Require evaluations to be conducted regularly, at least every 24 months.

- Prescribe mandatory and standardized evaluation procedures that: (a) permit or require direct stakeholder input into the planning, implementation, or review of the evaluation; (b) require on-site visits where applicable, including at least some unannounced visits; (c) require interviews of affected populations; and (d) include measures to prevent reprisals against interviewees.

- Require the preparation of reports on evaluations, which itemize the member company/government's compliance with each MSI standard and discuss specific incidences of noncompliance.

- Allow member companies/governments the opportunity to comment on the evaluator's report.

- Require the evaluator, or member company/government, to give a copy of the evaluation results to the MSI, or else require the member company/government to provide a report of the results of the evaluation to the MSI that examines compliance with each MSI standard and discusses specific incidences of noncompliance.

(b) Public Reporting

Publicly reporting on the degree of compliance of members is a means of recognizing those members who are successfully implementing standards, and provides further incentives and accountability for those that are lagging behind and failing to comply. Public reporting also offers external credibility and legitimacy by encouraging public engagement with the MSI about implementation. This public reporting can also be supplemented by even more extensive and open internal reporting to foster dialogue and trust within the initiative.

At a minimum, it is essential that a standard-setting MSI:

- Require regular public reporting — at least every 24 months — that itemizes individual members': (a) levels of compliance with MSI standards; (b) efforts taken to implement standards; and (c) specific incidents implicating a breach of MSI standards.

- Have policies prohibiting members from claiming they are in compliance with MSI standards if the MSI has not reviewed the members' levels of compliance independently.

Accountability Mechanisms: If MSI members are found to be breaching the initiative's standards or obligations, it is critical that there be mechanisms to swiftly hold those actors to account. Without such oversight and accountability, MSIs may fail to ensure that the governance or human rights issues that prompted their development are addressed or — worse — may create an environment where abuses or harms occur without consequence. To encourage compliance and accountability, MSIs may wish to provide tailored recommendations for members that are not in compliance with standards or that otherwise wish to improve their behavior.

<u>At a minimum, it is essential that a standard-setting MSI:</u>

- Have the power to sanction a member company/government based on, at a minimum: (a) an evaluation showing non-compliance with MSI standards; (b) a member's failure to report to the MSI (if required); (c) a grievance brought against the member; and (d) a member's unauthorized statement of compliance with MSI standards.

- Have the authority to impose the following types of sanctions: (a) removal of entitlement to the incentive regime (where applicable); (b) probation, by way of suspension of the member company/government's MSI membership until compliance is achieved and verified; (c) suspension of the member company/government's MSI membership for a specified period of time; and (d) expulsion of the member company/government from the MSI.

- Set out time frames for imposing sanctions following a finding of noncompliance or wrongdoing by the member company/government.

- Require that sanctions are made public.

<u>If an MSI provides recommendations regarding implementation for each member company/government, it is essential that the MSI:</u>

- Provide a time frame for complying with recommendations.

- Establish a follow-up process to evaluate compliance with recommendations.

Grievance Mechanisms: In broad terms, a grievance mechanism is any routinized procedural framework where concerns that a company or government may have failed to meet their commitments under an MSI — or otherwise committed a human rights abuse — can be raised and a remedy sought. Grievance mechanisms are a well-established component of standard-setting MSIs and have dual functions: they serve both as accountability tools, providing a means to report harms suffered as the result of a company or government failing to follow an initiative's standards, as well as remedial tools, enabling communities to access remedies for those harms. However, these benefits will only result from an appropriately designed and implemented mechanism. An ineffective mechanism may compound initial grievances and may cause more harm than good.

At a minimum, it is essential that a standard-setting MSI:

- Have a system for reporting and resolving grievances that is accessible by multiple forms of filing (e.g. online complaints form, hotline, mailing address).

- Permit MSI members, affected populations (i.e., rights-holders), NGOs and/or civil society organizations, and employees of companies in the relevant industry to file complaints/grievances to the MSI.

- Allow a complainant to remain anonymous to the actor against whom their complaint is filed.

- Ensure that the appointment process for independent decision-makers is transparent and contains a conflict of interest policy such that the actor implicated in the complaint is prohibited from being part of the decision-making process adjudicating the complaint.

- Publish the number of complaints filed and resolved along with official decisions of the grievance resolution system.

- Establish a time frame for resolving complaints through the grievance process.

- Ensure that there is communication with complainants at each step of the grievance process.

- Allow complainants to designate an advocate or representative, or provide complainants with access to an advocate. Where complainants are provided with an advocate, each MSI must implement measures to avoid conflicts of interest.

- Ensure that complaints are evaluated against the MSI's standards.

- Require member companies/governments to make information about the MSI's grievance mechanism available to the public, in languages widely spoken by affected rights-holders, including: (a) contact points for filing complaints; (b) an explanation of the filing procedures; (c) the grievance process; (d) the required time frames for resolving grievances; and (e) the MSI's standards.

- While it is not necessary for MSIs to require that their members have operational-level grievance mechanisms to resolve breaches of MSI standards, if they do, it is essential that the MSI requires that these mechanisms: (a) involve at least one decision-maker that is independent from the member, and from others in the supply chain if relevant, in adjudicating any grievances; and (b) resolve complaints within a specified time, after which the MSI should have the power to intervene or be referred complaints.

Programs and Outreach: Many stakeholders outside of the MSI may not be aware of the MSI or what compliance means. MSIs that reach out to affected communities, the public, and other non-members to inform them about the MSI may experience improved participation levels in the MSI, improved community acceptance, and greater public understanding of their operations. In particular, MSIs should ensure that those whose rights are being protected — such as workers, farmers, or local communities — are aware of the protections being offered by the initiative as well as possible avenues for reporting concerns of noncompliance to the MSI.

At a minimum, it is essential that a standard-setting MSI:

- Provide information about the MSI to non-member stakeholders and affected populations, including through local programs in each geographic area in which the MSI operates. Local programs should include information about the MSI tailored to the needs of local groups and should be offered in languages spoken most widely by local populations.

- Offer relevant information to the general public about the MSI, including clearly identifying which members (or their products or services) are in compliance with the initiative's standards.

Stakeholder Learning and Engagement: A critical benefit of MSIs is that they offer a space for stakeholders to interact and share knowledge, best practices, and experiences. If designed effectively, stakeholder learning and engagement programs may benefit all stakeholders and yield circular processes of feedback and engagement that improve human rights impacts for rights-holders over time. While these programs may not be essential for every MSI, if they are implemented, they must be inclusive and rights-compatible, and should appropriately balance the need for confidential and safe discussion spaces with the need for basic transparency of MSI activities.

At a minimum, it is essential that a standard-setting MSI:

- Permit all MSI members to participate in learning program(s) or, at a minimum, permit affected populations (i.e., rights-holders) to participate.

- Have a policy regarding confidentiality in its learning programs.

Systems Development and Operationalization: Companies and governments may need to modify their practices significantly in order to better protect and promote human rights. This can often be a major hurdle, requiring significant change to existing policies or processes. To assist with this transition, MSIs should facilitate the development of internal systems that will lead to institutional change. Such systems may range from model policies or good practice notes, through to requiring members to include MSI standards in external contracts.

At a minimum, it is essential that a standard-setting MSI:

- Require standard-implementing actors to give effect to standards by instituting or revising internal systems related to: (a) mandatory policies or procedures; and (b) contracts.

5. DEVELOPMENT AND REVIEW OF THE MSI

Formation and Development of the MSI: In order to address the most important issues and be most effectively designed, an MSI should ensure it involves key stakeholders during its development and formation, and that it has a sound understanding of the specific issues relevant to the industry and context of the initiative.

At a minimum, it is essential that a standard-setting MSI:

- Conduct an industry impact assessment during its process of formation or during major moments of review.

- Ensure that information is publicly available detailing the decision-making process that led to the establishment of the MSI and, if relevant, its component parts.

- Invite representatives from affected populations (i.e., rights-holders) to participate in the MSI formation or development process, and — to make that invitation meaningful — offer to bear the cost of the affected population's participation.

Review of the MSI: MSIs are relatively new governance instruments and operate in dynamic and constantly evolving political, social, and economic landscapes. As a result, MSIs need to conduct comprehensive reviews into their effectiveness and operations. This will enable them to identify and adapt to new external conditions, absorb lessons learned, and reflect on whether they have been effective or impactful. To avoid delays or the risk of bias, such reviews should be mandatory, periodic, and seek funding that does not create an undue conflict of interest.

At a minimum, it is essential that a standard-setting MSI:

- Have internal review processes to evaluate, in particular: (a) existing standards and/or the need for developing new standards; (b) the internal governance structures of the MSI; (c) the implementation of the MSI; and (d) the overall effectiveness of the MSI.

- Assess the degree to which affected populations (i.e., rights-holders) are aware of the MSI.

- Establish a review process that requires or permits input from stakeholders including affected populations (i.e., rights-holders) and civil society.

- Conduct an internal review at least every five years.

- Fund the review process with the MSI's general budget or in a manner that will not create an undue conflict of interest.

- Disclose the results of the internal review in public reports.

- Establish a follow-up process to evaluate whether recommendations provided in previous internal reviews have been implemented.

6. AFFECTED COMMUNITY INVOLVEMENT

MSIs are most often established to benefit an identifiable stakeholder group. Members of this group, which MSI Integrity refers to as the "affected population" (or, on a more local level, "affected communities"), are most deeply affected by the activities of the initiative, as it is their human rights or living conditions that the initiative seeks to protect or improve. MSIs have different affected populations, depending on the initiative's history and goals. The affected population of an MSI is not homogenous. Rather than seeing it as one group, the affected population can be better understood as being made up of several different sub-populations, groups, or individuals. Some of these groups may face greater discrimination, marginalization, or adverse socio-economic circumstances in the industry or activities covered by the MSI. These groups may therefore be especially vulnerable to, or affected by, an MSI's operation, and therefore might be of particular importance to an MSI. For example, an MSI's affected population might be workers, but then it may have especially affected sub-populations, such as migrant laborers, women, ethnic minorities, home workers, and so forth — each of which, in turn, has its own heterogeneous characteristics.

Affected Community Involvement is critical at every stage of the MSI's design, implementation, and review for many reasons. Affected populations hold critical information relevant to whether the initiative is designed well, such as first-hand experience of the human rights issues or industry problems that prompted the formation of the MSI to begin with. Affected populations also bring local perspectives that can help put the issues at hand in cultural and geographic context, therefore ensuring that the MSI's mandate and goals are realizable and meaningful. Without community involvement in MSI implementation and review, it is also difficult to discern whether the initiative has become embedded in its local environment and is having an impact on the ground. Finally, affected populations deserve the opportunity to be involved in decisions and structures that affect their lives, and therefore ought to be central to any multi-stakeholder process.

There are 17 Essential Elements that concern Affected Community Involvement across the different core areas of the MSI Evaluation Tool. Each Essential Element relating to Affected Community Involvement is marked with a 🧍 throughout this document. These are:

- Make standards publicly available, in languages accessible to the rights-holders affected by the MSI.

- Identify the languages most widely spoken by rights-holders affected by the MSI and require that all public documents related to MSI governance be produced in the identified languages.

- Involve at least one actor from each stakeholder group — including at least one national or local NGO and one affected population representative — from each geographic region where the MSI's standards apply.

- Allow NGOs and affected populations to have equal authority to participate in the MSI, including all governing bodies, and full power to participate in decision-making functions of the MSI.

- Ensure that: (a) any MSI member is eligible to be involved in decision-making bodies; (b) each decision-making body is explicitly required to have at least one representative from NGOs/civil society institutions; and (c) affected populations (i.e., rights-holders) are included in each of the MSI's governing bodies.

- Ensure that meetings of governing bodies are conducted in multiple languages when speakers of multiple languages are present.

- Prescribe mandatory and standardized evaluation procedures that: (a) permit or require direct stakeholder input into the planning, implementation or review of the evaluation; (b) require on-site visits where applicable, including at least some unannounced visits; (c) require interviews of affected populations; and (d) include measures to prevent reprisals against interviewees.

- Permit MSI members, affected populations (i.e., rights-holders), NGOs and/or civil society organizations, and employees of companies in the relevant industry to file complaints/grievances to the MSI.

- Allow the complainant to remain anonymous to the actor against whom the complaint is filed.

- Ensure that there is communication with complainants at each step of the grievance process.

- Allow complainants to designate an advocate or representative, or provide complainants with access to an advocate. Where complainants are provided with an advocate, the MSI must implement measures to avoid conflicts of interest.

- Require members to make information about the grievance mechanism available to the public, in languages widely spoken by affected rights-holders, including: (a) contact points for filing complaints; (b) an explanation of the filing procedures; (c) the grievance process; (d) the required time frames for resolving grievances; and (e) the MSI's standards.

- Provide information about the MSI to non-member stakeholders and affected populations, including local programs in each geographic area in which the MSI operates. Local programs should include information about the MSI tailored to the needs of local groups and should be offered in languages spoken most widely by local populations.

- Permit all MSI members to participate in the program(s), or at a minimum, permit affected populations (e.g., rights-holders) to participate.

- Invite representatives from affected populations (i.e., rights-holders) to participate in the MSI formation or development process, and — to make that invitation meaningful — offer to bear the cost of the affected population's participation.

- Assess the degree to which affected populations (i.e., rights-holders) are aware of the MSI.

- Establish a review process that requires or permits input from stakeholders including affected populations (i.e., rights-holders) and civil society.

7. TRANSPARENCY AND ACCESSIBILITY

Transparency is an important means of achieving MSI credibility, legitimacy, and integrity. It allows external actors to independently understand the MSI's operations at every stage and create a feedback loop to hold the initiative accountable to its stated goals. Transparency empowers affected populations to enforce compliance with MSI standards, and encourages standard-implementing members to comply with and uphold MSI standards. Ultimately, MSI transparency — relating to both the performance and operation of an MSI as a whole, as well as the actions of individual members — drives members to follow through on their commitments to the initiative in a rigorous and rights-compatible way.

There are 19 Essential Elements that concern Transparency and Accessibility across the different core areas of the MSI Evaluation Tool. Each Essential Element relating to Transparency and Accessibility is marked with a 🔍 throughout this document. These are:

- Make standards publicly available, in languages accessible to the rights-holders affected by the MSI.

- Ensure that the following are publicly available: (a) a list of members; (b) a list of members of decision-making bodies; (c) a copy of the previous financial year's audited accounts; (d) a copy of the constitution or equivalent document that sets out the governance and decision-making processes of the MSI; (e) a copy of disciplinary procedures that apply in the event of a breach of the internal governance rules; and (f) an annual report of the key activities and developments of the MSI in the previous year.

- Identify the languages most widely spoken by rights-holders affected by the MSI and require that all public documents related to MSI governance be produced in the identified languages.

- Provide identifiable contact points in each geographic region where MSI standards apply.

- Ensure that governing bodies have: (a) transparent appointment or election processes; (b) a policy to record the decision-making process and publish records of decisions; (c) no veto power for any member; (d) clear procedures for decision-making; (e) equally weighted votes; and (f) power to make binding decisions.

- Publicize any voluntary financial contributions or payments to the MSI, whether made by members or non-members.

- Publish financial reports that list categories of expenditures, including proportion spent on administrative (i.e., governance) costs, and implementation expenses.

- Establish an appointment process for the decision-maker in the internal dispute mechanism that is transparent and safeguarded by a conflict of interest policy.

- Publish the number of complaints filed and resolved.

- Publish official decisions.

- Require regular public reporting — at least every 24 months — that itemizes individual members' (a) levels of compliance with MSI standards; (b) efforts taken to implement standards; and (c) specific incidents implicating a breach of MSI standards.

- Require that sanctions are made public.

- Have a system for resolving grievances that is accessible by multiple forms of filing (e.g. online complaints form, hotline, mailing address).

- Ensure that the appointment process for independent decision-makers is transparent and contains a conflict of interest policy such that the actor implicated in the complaint is prohibited from being part of the decision-making process adjudicating the complaint.

- Publish the number of complaints filed and resolved along with official decisions of the grievance resolution system.

- Require members to make information about the grievance mechanism available to the public, in languages widely spoken by affected rights-holders, including: (a) contact points for filing complaints; (b) an explanation of the filing procedures; (c) the grievance process; (d) the required time frames for resolving grievances; and (e) the MSI's standards.

- Offer relevant information to the general public about the MSI, including clearly identifying which members (or their products or services) are in compliance with the initiative's standards.

- Ensure that information is publicly available detailing the decision-making process that led to the establishment of the MSI and, if relevant, its component parts.

- Disclose the results of the internal review in public reports.