Influence:

MSIs have been influential as human rights tools, but that influence, along with their credibility, is waning

MSINTEGRITY

INSTITUTE FOR MULTI-STAKEHOLDER INITIATIVE INTEGRITY

The Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) aims to reduce the harms and human rights abuses caused or exacerbated by the private sector. For the past decade, MSI Integrity has investigated whether, when and how multi-stakeholder initiatives protect and promote human rights. The culmination of this research is now available in our report, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance.*

The full report contains six insights from experience with, and research into, international standard-setting multi-stakeholder initiatives. It also contains key conclusions from these insights, and perspectives on a way forward for improving the protection of human rights against corporate-related abuses.

This is an excerpt of the full report, focusing on Insight 1. The six insights are:

> **Insight 1: Influence** — MSIs have been influential as human rights tools, but that influence, along with their credibility, is waning.
> **Insight 2: Stakeholder Participation** — MSIs entrench corporate power by failing to include rights holders and by preventing civil society from acting as an agent of change.
> **Insight 3: Standards & Scope** — Many MSIs adopt narrow or weak standards that overlook the root causes of abuses or risk creating a misperception that they are being effectively addressed.
> **Insight 4: Monitoring & Compliance** — MSIs employ inadequate methods to detect human rights abuses and uphold standards.
> **Insight 5: Remedy** — MSIs are not designed to provide rights holders with access to effective remedy.
> **Insight 6: Impact** — There is little evidence that MSIs are meaningfully protecting rights holders or closing governance gaps.

Read the full report to find out more about the other insights, our key conclusions, and the background and knowledge base that informs this Insight and our wider analysis. The full report is available at www.msi-integrity.org/not-fit-for-purpose/.

MSI Integrity is now embarking on a new direction: applying lessons learned from the grand experiment in multi-stakeholderism to promote business models that center workers and communities in their governance and ownership. See our new work: Beyond Corporations.

Find out about our new direction at www.msi-integrity.org/beyond-corporations/

Look out for our upcoming blog series, "Rethinking MSIs."

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MSIs have been influential as human rights tools, but that influence, along with their credibility, is waning

In this chapter: This chapter documents the emergence of MSIs as one of the most widespread voluntary tools for addressing business-related human rights abuses. We trace their evolution over time and their growth in power and influence within business and human rights. While MSIs have never been without controversy, this chapter also provides evidence of growing criticism of standard-setting MSIs and outlines why their influence appears to have peaked in the mid-2010s.

Summary of our insights: Our analysis of the growth, establishment, and impact of the MSI field has led us to the conclusion that the influence of MSIs has peaked. The stamp of legitimacy conferred upon MSIs by powerful international institutions, governments, and civil society organizations (CSOs), epitomized by their inclusion in the United Nations Guiding Principles on Business and Human Rights (UNGPs), gave MSIs significant influence in the field of business and human rights as prominent responses to major governance gaps. Over the past decade, however, growing skepticism among some civil society actors about the effectiveness of MSIs has resulted in their retreat from initiatives, allowing corporate interests to increasingly dominate the field. Instead of being a response to advocacy campaigns, MSIs are now often the targets of civil society advocacy for their specific failings and concerning practices. This suggests that the influence of MSIs is eroding. In its place is a resurgence in advocacy for public regulation and more accountable private mechanisms, such as the Worker-driven Social Responsibility model, that are displacing MSIs as the "gold standard," and which may better bridge the governance gaps that MSIs had promised to fill.

Key findings and observations:

- **MSIs emerged as a default response in the Global North to many of the major global business-related human rights crises in the 1990s and 2000s.** They were often developed with support from Global North governments or large international non-governmental organizations (INGOs) and were often seen as a compromise between no regulation and mandatory public regulation.

- **MSIs have enjoyed broad influence in the business and human rights landscape.** The support of powerful governments, multinational corporations, and CSOs legitimized MSIs as good practice. Prominent CSOs called for the creation of MSIs and helped found them in many industries. Subsequently, the inclusion of MSIs in the remedial pillar of the UNGPs crystalized them as a "field" that became increasingly institutionalized and well-resourced.
  - **MSIs have influenced government action and policy.** MSIs are positively mentioned in at least 16 of the 23 National Action Plans (NAPs) that countries have published as part of their efforts to implement the UNGPs.
  - **MSIs have become part of corporate engagement with human rights.** For example, of the top 20 largest companies in the world by revenue, 13 are direct participants in MSIs themselves or have major subsidiaries that are participants.
  - **MSIs are part of international frameworks and governance.** For example, MSIs have been endorsed by international finance institutions and are key reference points for company human rights rating agencies.

- **MSIs can play an influential role in the advocacy strategies of CSOs seeking to change corporate behavior or push for domestic reforms.**
- **MSIs influence public behavior and perceptions about the ethical practices of corporate actors.** For example, many consumers rely on the certifications or labels bestowed by MSIs to make ethical consumption decisions.

- **Over the last few years, growing questions and concerns by those who have closely monitored or participated in MSIs, have bolstered long-standing civil society criticisms of MSIs.** In particular:
  - A number of CSOs have withdrawn from individual MSIs over concerns about inaction, ineffectiveness, and the amount of time and resources that they were consuming relative to their benefits.
  - There are now well-documented instances in which MSIs have failed to detect or remedy human rights abuses.
  - MSIs are the subject of at least two complaints to National Contact Points for the Organization for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises (OECD Guidelines).
  - The term "MSIs," which did not have a negative connotation when it was used in the UNGPs, has become increasingly connotative of a corporate-oriented model or a model that is not focused on accountability. Other models of private governance, which use terms such as "worker-driven," have emerged and specifically contrast themselves with MSIs. Such models are growing and may displace MSIs in the medium to long term.

- **There is growing recognition of the need for government regulation in a "smart mix" of tools to promote business respect for human rights, rather than an overreliance on voluntary measures.** There has been a resurgence in advocacy for public regulation both domestically and internationally, on the premise that voluntary initiatives are not sufficient.

Background: Context and Approach

The insights of this chapter track MSIs' influence on the business and human rights field since they first emerged in the early 1990s and rose to global prominence by the early 2010s with their inclusion in the UNGPs. We examine how MSIs' standards and approaches have been endorsed or operationalized by Global North governments, large multinational corporations, and international organizations, as well as many CSOs, and how they have influenced consumer behavior. Later chapters will delve more specifically into how MSIs have positively and negatively affected specific policies and corporate behaviors, while this chapter assesses the overall trajectory of MSIs' influence on the field of business and human rights.

Despite the fact that MSIs have long sparked debate and controversy and have been far from universally accepted–particularly in the Global South[1] –their trajectory shows a stunning growth in their influence over a 20-plus year period of proliferation. Critically, however, we see a trajectory that indicates their influence has peaked over the past few years. We have identified recent changes that demonstrate their credibility and influence have been diminishing among many, if not most, stakeholders, and particularly among those who are most concerned with accountability and compliance mechanisms that center the protection of rights holders.

1   **In the face of major governance gaps caused by the absence of public regulation, MSIs emerged as a central response in the Global North to business-related human rights crises**

MSIs have typically been born in the wake of corporate misconduct that highlighted the governance gap between public regulation and adequate human rights protections. The influence MSIs garnered largely stemmed from the promise they presented: to respond to corporate abuses of human rights by bridging that gap.

We have observed that the establishment of many industry-specific or issue-specific MSIs followed a similar historical pattern: they were formed in response to a major human rights issue, with the support of influential actors—Global North governments, INGOs, and/or major multinational corporations—and often following intensive advocacy and awareness-raising by CSOs about the adverse impacts of an industry's business practices.[2] Examples of this are outlined in Table 1.1. In many instances, MSIs remained the primary response in the Global North to the underlying human rights crisis (typically taking place in the Global South) that prompted its creation. Not all MSIs share this pattern, but its prevalence is striking.[3]

Although MSIs themselves may not always claim to fill the governance gaps that prompted their formation, they have often been perceived or treated as such by a range of stakeholders. Indeed, some commentators have gone as far as to describe MSIs as the "default response" to governance gaps in the business and human rights landscape.[4] We explore the histories of a few prominent MSIs to demonstrate their remarkable rise in influence.

> *". . . some commentators have gone as far as to describe MSIs as the 'default response' to governance gaps . . ."*

A. Early beginnings: MSIs formed after governments failed to act

Corporate self-regulation, industry codes of conduct, and other forms of private governance have a long history.[5] However, the origins of international standard-setting MSIs are often traced to two initiatives that were formed in the early 1990s in response to a failed effort by governments to address business-related rights abuses. The Forest Stewardship Council (FSC) and the Sustainable Forestry Initiative (SFI) formed after a UN deforestation summit in 1992 failed to produce a treaty or other binding international standards.[6] At the time, deforestation was recognized globally as one of the world's "pressing environmental issues" and was a focal point of several non-governmental organizations' (NGOs) campaigns.[7] Recognizing the lack of binding international standards, the next year, several large CSOs, including the World Wide Fund for Nature, launched the FSC, which created a set of voluntary international standards to certify wood and forest products as consistent with a specified set of principles.[8] The creation of SFI, sharing a similar goal, shortly followed.[9] As there have still not been any binding international agreements that comprehensively address deforestation, these MSIs have remained a central Global North response to deforestation alongside other voluntary initiatives—despite growing evidence that voluntary efforts are insufficient to fully and adequately address the problem.[10]

B. MSIs evolved into a default response to business-related human rights crises as a compromise between non-regulation and mandatory regulation

In the late 1990s and early 2000s, MSIs started to develop in the human rights space. Unlike the initial environmental initiatives, their development was not spurred by an immediate and clear failure or inability of governments to close governance gaps. Rather, MSIs began to emerge as something that their proponents saw as a pragmatic alternative or "third way' between industry self-regulation and binding government regulation. Importantly, despite the lack of data about MSIs' impacts—as well as baseline information against which to measure their effectiveness—the MSI model evolved to become a widespread and even default response to serious business-related human rights violations.

In 1996, for example, after the presence of child labor and sweatshop conditions were exposed in the supply chains for major US clothing brands such as Nike and Gap,[11] President Bill Clinton established the Apparel Industry Partnership, a presidential task force to focus on the issue. The taskforce, which had a multi-stakeholder composition of businesses, unions, and NGOs, produced a draft voluntary workplace code of conduct and principles for monitoring.[12] At the same time the taskforce was deliberating, legislation was introduced in the US Congress that would make manufacturers and retailers civilly liable for their contractors' violations of labor rights.[13] The taskforce ultimately led to the creation of an MSI, the Fair Labor Association (FLA), to implement the code and monitoring system (albeit without the support of the unions who had originally been involved in the process).[14]

The Global Network Initiative (GNI) offers another example. That initiative was formed after reports began to surface in 2005 that Google, Microsoft, and Cisco had complied with Chinese requests for censorship or surveillance and that Yahoo! had disclosed emails and personal information that were later used to convict four Chinese dissidents.[15] At a US congressional hearing that condemned these actions and detailed the subsequent human rights abuses that arose—torture, political imprisonment, religious persecution, and blacklisting of dissidents—the chair of the House Subcommittee on Africa, Global Human Rights, and International Organizations urged the companies "to develop a code of conduct which would spell out how they could operate in China and other repressive countries like Vietnam while not harming citizens and respecting human rights." He also noted that he would introduce legislation to address the issue.[16] Three of the four companies at the center of the allegations heeded the call and collaborated with NGOs and launched GNI in 2008.[17] After the MSI was

established, the proposed legislation—which included creating a private right of action for information and communications technology users and criminal punishment for violators, including fines up to US$2 million and five years imprisonment[18]—was revised to include a safe-harbor provision that GNI members would be exempt from meeting the reporting requirements set by the Act.[19]

Ultimately, the proposed legislation that accompanied the development of both FLA and GNI never passed. While it is difficult to conclude definitively whether these initiatives emerged because that legislation was politically infeasible, or if these efforts forestalled it—and much ink has been spilled arguing about the relationship between MSIs and voluntary initiatives, and whether they foster or forestall regulatory efforts—the critical point for our purposes is that MSIs became an increasingly common, and eventually, a staple approach to governing human rights issues over leaving them completely unregulated or putting binding governmental legislation in place. In the case of FLA, at least one commentator has argued that the Clinton administration "chose to emphasize the setting of voluntary standards in the apparel industry, rather than actively to pursue the passage [of legislation]."[20] FLA, alongside other private governance initiatives, has remained a prominent Global North tool for addressing labor issues in the apparel sector, in the absence of any US legislation or multilateral agreements.[21] The same is true for GNI.

In other instances, MSIs were explicitly formed because of the threat of legislation. For example, in the early 2000s when a major investigation revealed the presence of child labor in the cocoa trade in the Ivory Coast, the threat of proposed legislation in the United States prompted the chocolate industry to declare that "we don't need legislation to deal with the problem."[22] Lawmakers opted to negotiate directly with companies rather than pass legislation, which ultimately spurred the creation of several MSIs.[23]

Other MSIs were the governmental response to an industry issue in the Global North and included governments as members. For example, in the early 2000s, the UK Department for International Development convened meetings between the activist groups who had exposed the government's use of extractive industry revenue to fuel human rights abuses, as well as other mismanagement and corruption, and the companies implicated in the scandals.[24] This led to the piloting of the Extractive Industries Transparency Initiative (EITI), with the UK government acting as the secretariat until an independent organization was created in Norway. The standards of EITI were, and continue to be, jointly developed by governments, civil society, and business; however, governments are expected to implement the initiative's standards. Similarly, following a number of instances that came to light in the 1990s in which private or state security forces linked to oil and mining companies committed human rights abuses—particularly following the allegations of Shell Oil's complicity in the death of Ken Saro-Wiwa in Nigeria—the UK Foreign Office and US Department of State brought together extractive companies and NGOs for a series of meetings in 2000.[25] This ultimately resulted in the two governments announcing the creation of the Voluntary Principles on Security and Human Rights (VPs), of which they are participants.[26]

As MSIs proliferated and more stakeholders participated in them, they were sometimes seen as compromised positions in the polarized debates underpinning the 1990s and 2000s between proponents of no regulation for corporations with respect to human rights (or at most self-regulation by individual companies or industries) and those seeking mandatory and binding rules.[27] Supporters of MSIs saw them as a pragmatic step forward in a context where domestic or international regulatory interventions may be unlikely to pass or succeed, and thus many felt MSIs should be given a chance. Indeed, MSIs were sometimes presented as opportunities to bridge the voluntary-mandatory divide by offering a practical accountability component, represented by the inclusion of CSOs and monitoring mechanisms, that did not rely on government regulation. In this way, MSIs gained attention as ". . . a possible 'Third Way,' which overcomes the perceived limitations of both government regulation and corporate self-regulation."[28]

This is not to suggest that MSIs emerged without resistance. As the following part of this chapter outlines, while MSIs were embraced as promising by prominent actors in the Global North, they have continued to be actively rejected by many in the Global South. In addition, as discussed further in this part of this chapter, the mid-2010s would see renewed attention on and increasingly concerted efforts to push for mandatory measures at the national level, as well as to establish a legally binding international treaty on business and human rights; some commentators have for years questioned whether MSIs have undermined these efforts and diverted resources away from the push for public regulation. However, notwithstanding the longstanding debate, the proliferation of MSIs across industries and sectors—with almost 40 standard-setting MSIs formed by 2010—coupled with the challenge of achieving public regulation, pushed a number of actors to endorse MSIs as legitimate and practical responses to at least some of the business and human rights challenges.

TABLE 1.1. Examples of MSIs Emerging as Proposed Solutions to Business-Related Human Rights Crises

Industry and Crisis	MSI Created and Mission*
Oil, Gas, and Mineral Resources	
1990s: Oil and mining companies were the subject of media coverage and CSO reports on their complicity with host governments in committing human rights abuses in the countries where they operated, as well as in respect of violations committed directly by the private security forces employed at drilling and mining sites.[29]	**2000: VPs** are designed "to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights."
Late 1990s–early 2000s: NGOs conducted high-profile campaigns about the link between extractive industry revenue and corruption, human rights abuses, and a lack of development.[30] The crises in Angola, where oil revenues were being used to fund a three-decade-long conflict and siphoned for personal gain by officials, and Nigeria, where oil extraction was directly fueling violence in the Niger Delta, received particular attention. This coincided with a proliferation of research about the "resource curse": a phenomenon describing countries that are rich in natural resources but tend to be materially poorer and worse off in terms of human rights development and quality of life indicators than countries with fewer natural resources.[31]	**2003: EITI** aims to become the "internationally accepted standard for transparency in the oil, gas and mining sectors" in order to "reduce corruption . . . poverty, and raise the living standards of entire populations in resource-rich countries."

Garment Industry

1994–1999+: Civil society campaigns and investigative reporting highlighted sweatshop conditions in the production of clothing for major brands, such as Nike and Gap.[32] In 1996, President Clinton convened a meeting of United States apparel and footwear manufacturers, as well as labor unions and civil society, to attempt to resolve these problems that led to the FLA.[33] In 1998, the UK Secretary of State for International Development, Clare Short, did the same with UK companies, unions, and NGOs, which led to the creation of the Ethical Trading Initiative.[34] Various other MSIs emerged in this time too.

A number of MSIs are formed in response, including:

1997: Social Accountability International established to "advance human rights at workplaces."

1998: Ethical Trading Initiative seeks to "improve working conditions in global supply chains by developing effective approaches to implementing the ETI Base Code of labour practice."

1999: FLA seeks to "combine the efforts of business, civil society organizations, and colleges and universities to promote and protect workers' rights and to improve working conditions globally through adherence to international standards."

2000: Worldwide Responsible Accredited Production is dedicated to "promoting safe, lawful, humane and ethical manufacturing around the world through certification and education."

Internet and Telecommunications

2005–2006: There was widespread criticism of and media attention on the role of internet and communication technology companies, such as Google, Yahoo!, and Microsoft, allegedly aiding and abetting the Chinese government in human rights abuses.[35] These included disclosing the email accounts of dissidents, [36] providing surveillance and censorship equipment to the government, [37] and censoring search results. [38]

2008: GNI works to "protect and advance freedom of expression and privacy in the ICT industry."

Industry and Crisis	MSI Created and Mission*

Private Military and Security Industry

Late 1990s–early 2000s: The use of private military contractors ballooned.[39] There were concerns that they were operating in a legal vacuum, with disastrous human rights consequences.[40] By the mid-2000s, there were calls for regulation[41] along with greater attention to the human rights and destabilizing consequences of regulation gaps in the industry.[42] In response, the Swiss government and the International Committee of the Red Cross convened 19 States, which developed the Montreux Document on international humanitarian law obligations of private military providers.[43]

2009: International Code of Conduct for Private Security Service Providers Association was launched to oversee the implementation of the International Code of Conduct for Private Security Providers (ICoC) (developed as a complement to the Montreux Document) and to "promote the responsible provision of security services and respect for human rights and national and international law in accordance with the Code."

Coffee

2001–2002: The price of coffee collapsed, reaching the lowest real price in 100 years.[44] For those working on plantations and estates in large-scale coffee production, this led to increased rights abuses, including difficulty unionizing, discriminatory practices against women, and the use of child labor.[45] For those working on small-scale farms in developing countries (where the majority of the world's coffee is grown), many were unable to continue their livelihood, which led to extreme poverty.

2002: UTZ launched to "create a world where sustainable farming is the norm. Sustainable farming helps farmers, workers and their families to fulfill their ambitions and contributes to safeguarding the world's resources, now and in the future." (It has now merged with the Rainforest Alliance)

2003: Common Code for the Coffee Community (now known as the **Global Coffee Platform**) was launched with a broad mission of improving the economic, social, and environmental conditions of coffee production and processing.

These MSIs joined existing MSIs already in the coffee sector, such as FairTrade and the Rainforest Alliance.

Forestry

1980s–early 1990s: Deforestation was recognized as one of the world's "most intractable environmental problems" and a "chief contributor to the greenhouse effect."[46] In 1992, international efforts at the Rio Earth Summit failed to yield any binding agreement to stop deforestation and fell well short of meeting the expectations of actors seeking to address problems associated with deforestation.

1993: **FSC** was created in order to "promote environmentally sound, socially beneficial and economically prosperous management of the world's forests."

1994: SFI envisions "a world that values the benefits of sustainably managed forests."

Palm Oil (Agriculture, Forestry, and Fishing)

1990s: Global production of palm oil skyrocketed, nearly doubling between 1990– 2001.[47] This rapid expansion led to detrimental environmental impacts, such as severe loss of natural forest cover, and to the displacement of communities for the creation of large-scale plantations, both of which began to receive attention from global civil society by the late 1990s and early 2000s.[48] Wildfires resulting from deforestation and labor abuses within the palm oil industry also began to attract attention.[49]

2003: The Roundtable on Sustainable Palm Oil (RSPO) convenes with the goal to "make sustainable palm oil the norm."

2 **The support of many powerful actors, including the UN, legitimized MSIs as one of the central responses to business-related human rights abuses in the Global North**

Over time, MSIs garnered broad support from prominent global actors. Many of the world's most powerful governments, finance institutions, and intergovernmental organizations support, fund, or participate in MSIs, as do some of the largest corporations and CSOs. The engagement of these key actors provides MSIs with significant legitimacy and a corresponding influence over how corporations address human rights issues.

A. Prominent CSOs and companies participate in or were part of the call for MSIs

One of the distinguishing features of MSIs is their inclusion of civil society in their multi-stakeholder approach. Prominent global civil society actors have invested significant resources creating and participating in MSIs. Their support and engagement are often perceived—whether accurately or not—as central to the legitimacy of MSIs.[50]

"Many of the world's most powerful governments, finance institutions, and intergovernmental organizations support, fund, or participate in MSIs, as do some of the largest corporations and CSOs."

Many of the large international CSOs that helped expose and raise the profile of violations that prompted companies or governments to form MSIs ultimately became founding participants. For example, Global Witness's work investigating abuses in Angola contributed to the creation of EITI, of which Global Witness has long been a participant.[51] Similarly, Human Rights Watch documented the violence in the Niger Delta in the 1990s, which helped spur the creation of VPs.[52]

Several notable CSOs listed on *Forbes*'s "100 Largest U.S. Charities"[53] are participants in or recognized supporters of MSIs, including CARE USA,[54] The Nature Conservancy,[55] the International Rescue Committee,[56] and others. Some NGOs participate in multiple MSIs, such as World Wide Fund for Nature (13 different MSIs) and Solidaridad (seven MSIs).[57] Of the "Top 20" NGOs identified in NGO Advisor's 2019 Top NGOs list, at least nine are members of at least one MSI.[58]

However, critics have consistently noted the lack of inclusiveness in MSIs in terms of the geographic diversity of their civil society participants, as well as participating CSOs' lack of connection to rights holders. (See this issue explored further in **Insight 2: Stakeholder Participation**.) Empirical work on prominent MSIs has noted with concern that smaller, less-established, or lesser-known groups representing interests from the developing world are "systematically under-represented," and that MSIs often exclude rights holders.[59]

By 2010, many of the largest global brands and multinational corporations had actively supported the creation of key MSIs, thereby committing in their practices and policies to follow the standards and approaches set by MSIs. Major oil companies such as Shell, BP, and Chevron were all early members of MSIs; Google, Yahoo!, and Microsoft were founders; major companies like Nike and Unilever were also founding members of different initiatives. This trend has persisted. In addition to these companies, Apple, the Coca-Cola Company, the Walt Disney Company, LEGO, Walmart, CVS Health, Kellogg's, AT&T, and numerous others on the *Forbes* "World's Most Valuable Brands" list in 2019 are members of various initiatives.[60] Indeed, of the top 20 largest companies by revenue, 13 either are direct participants in MSIs themselves or have major subsidiaries that are participants.[61]

B. The UN and other powerful international institutions legitimized MSIs as good practice, completing the crystallization of MSIs as a field within business and human rights and an accepted tool of global governance

International institutions have generally embraced the commitments, policies, and processes that MSIs establish. In particular, the reference to and inclusion of MSIs in the UNGPs, the global standard for preventing and addressing the risk of business-related human rights abuses that were adopted in 2011, crystallized the acceptance of MSIs as a field.[62]

The UN Special Representative for business and human rights, Professor John Ruggie, who spearheaded the development of the UNGPs—and the more than five years of extensive consultations with business, civil society, and governments that proceeded their creation—paid particular attention to MSIs during his mandate. Early on in MSIs' history, he commissioned specific consultations on their role as human rights tools,[63] and made reference to MSIs in his 2007 report to the United Nations General Assembly, noting that they "seek to close regulatory gaps that contribute to human rights abuses."[64] He promoted the idea that business and human rights problems were issues that were sometimes best addressed collectively and, in this light, that MSIs had merit: ". . . recognizing that some business and human rights challenges require multi-stakeholder responses, [MSIs] allocate shared responsibilities and establish mutual accountability mechanisms within complex collaborative networks."[65] In this way, MSIs were presented as part of a "constellation" of helpful tools for addressing business and human rights concerns, further reinforcing the idea that they embodied some other option outside the dichotomy of binding public regulation and corporate self-regulation.[66]

The UNGPs, which were endorsed unanimously by the United Nations Human Rights Council, affirmed and crystallized MSIs as tools in two ways. First, they recognized MSIs as sources of "credible, independent" expertise with which businesses would be "well-advised" to consider consulting when responding to complex contexts.[67] Second, and more concretely, they recognized MSIs as key sources of access to remedy for those who experience rights abuses. In particular, the UNGPs noted that "multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available."[68] We explore how MSIs have provided access to remedy—or rather, how they have failed to do so—in **Insight 5: Remedy**.

Since then, MSIs have continued to be included in key international guidance and discussions on business and human rights. They are included in the OECD's *Due Diligence Guidance for Responsible Business Conduct,*[69] and both the UN and OECD have programmed numerous meetings and discussions focused on standard-setting MSIs.[70] Examples of their inclusion in other initiatives and institutions are also addressed in the next part of this chapter.

Indeed, the UN itself has created a standard-setting MSI, the UN Global Compact, and has also strongly encouraged the use of multi-stakeholder approaches in order to achieve the United Nations Sustainable Development Goals by 2030.[71] The goals, which range from "zero hunger" to "affordable and clean energy,"[72] also encourage "multi-stakeholder partnerships as important vehicles" to achieving the desired outcomes.[73] The UN has established a registry for multi-stakeholder partnerships toward that end.[74] All this signifies just how mainstream and accepted MSIs have become as governance institutions.

International financial institutions have provided considerable funding and technical assistance to MSIs, allowing them to wield significant power in the human rights space. The World Bank, for example, has provided over US$60 million in grants and technical assistance for the implementation of EITI since 2004.[75] The World Bank has also contributed part of its portfolio of more than US$2 billion that is dedicated to development of climate resilient water resources to implementation of the Hydropower Sustainability Assessment Protocol in the Zambezi River Basin.[76] And it provided support for the implementation of the Infrastructure Transparency Initiative (formerly CoST Initiative) in Guatemala.[77]

Beyond supporting or joining the call for MSI creation, as explored earlier in this chapter, several Global North governments, including Switzerland, the United Kingdom, and the United States, have also provided financial and technical support to establish MSIs and to provide for their ongoing operations.[78] They have also explicitly adopted or approved MSI policies in their own legislative or regulatory frameworks, as explored further in this chapter.

Thus, aside from rights holders and smaller and less established/known groups from the Global South, MSIs had become a mainstay in the business and human rights landscape by the 2010s.

3 **As MSIs grew in prominence and power, they became institutional actors in their own right, and in turn, influenced policy frameworks and the implementation of human rights protection—though not always in positive ways**

The legitimacy conferred upon MSIs, along with their institutionalization and significant resourcing, has allowed them to wield influence over a range of business and human rights policies and frameworks across an array of sectors. We see evidence of this influence in the role MSIs play in shaping the policies and practices of corporate and non-corporate actors, from informing government procurement practices and influencing the content of regulation, to shaping the advocacy strategies of CSOs and informing examples of good practice supported by major international institutions. We note that while MSIs' funding and decision-making processes are largely dominated by Global North actors, as discussed in this chapter, their influence plays out across the North-South divide, albeit in different ways.

"The legitimacy conferred upon MSIs, along with their institutionalization and significant resourcing, has allowed them to wield influence over a range of business and human rights policies and frameworks across an array of sectors."

Governments have looked to MSI standards as guidance for legislation or as bases for other public policy. Sweden, for example, requires state-owned companies to report according to the standards set by the Global Reporting Initiative (GRI), an MSI that governs how businesses communicate their impact on issues such as climate change and human rights, while Brazil, Denmark, France, and South Africa have worked with GRI to shape their sustainability reporting policies.[79] Mexico and Mozambique have used the Roundtable on Sustainable Biomaterials standard to ensure sustainable biofuel production at the national level, and legislation in Bolivia requires private forest owners to obtain MSI certification in certain situations.[80]

Denmark, Japan, New Zealand, the United Kingdom, the Netherlands, France, and Germany all require that publicly purchased wood-based products must bear a sustainability label.[81] Similarly, the standards set by EITI are attributed to have had a normative influence on the passage of transparency regulations in both the European Union and United States,[82] and many member countries in the Global South have also implemented aspects of EITI's standards through national legislation.

In addition, many governments have embraced MSIs in their NAPs to help implement the UNGPs. NAPs are the policy frameworks developed by governments to protect against adverse human rights impacts by business enterprises.[83] Of the 23 plans published as of December 2019, at least 16 referred to MSIs either as examples of good practice or as policy instruments for governments to use in their plans and activities to implement the UNGPs.[84] The NAPs of the United States and the United Kingdom are particularly illuminating in terms of the influence of MSIs:

  • The United States' plan has five "categories of action," one of which is "collaborating with stakeholders," where it refers to MSIs as "pragmatic and effective responses" to business and human rights issues, and lists the specific MSIs it has helped to launch and continues to support, such as EITI and FLA.[85] In addition, one of the ten intended outcomes of the NAP is to "Enhance the Value of Multi-Stakeholder Initiatives."[86]

  • The United Kingdom lists eight commitments for how it will implement the state duty to protect human rights, and two of these commitments are about promoting specific MSIs: ICoC and VPs.[87]

Governments are also members of MSIs and have sought MSI certification for their own operations. EITI, for example, has over 50 countries as members and requires that they publish financial information and disclosures relating to natural resource revenue in the extractive sector (mainly oil and gas).[88] At the time of writing, the Infrastructure Transparency Initiative had 19 participating countries and promotes the disclosure, validation, and interpretation of data from public infrastructure projects.[89] In seven countries, the main applicants for FSC certification are national or regional authorities responsible for public forest management.[90] Governments have also called on Social Accountability International to carry out labor inspections.[91] These are but a few examples of the policy influence of MSIs across the numerous sectors in which they operate.

In addition, international financial institutions and major development banks have supported EITI, and have endorsed it by incentivizing companies and governments to comply with its principles.[92] For example, the International Monetary Fund (IMF) recently made Equatorial Guinea's request for a major loan conditional on it applying for membership in EITI.[93] Similarly, the world's largest multilateral lending institution,[94] the European Investment Bank, issued a statement of commitment to promote EITI with governments and encourage them to adopt its principles for reporting extractive industry revenues.[95] Other financial institutions have issued similar endorsements, including the World Bank, the IMF, the European Bank for Reconstruction and Development, and the African Development Bank.[96]

As a general trend, therefore, we see widespread evidence of the influence of MSIs in government policy arenas. However, it should be noted that this influence plays out differently across the Global North-South divide. While many Global South governments participate in MSIs, they generally participate as actors obligated to implement the standards of those MSIs, whereas Global North governments often have some sort of decision-making power within the MSIs without any concomitant obligations (see **Insight 3: Standards & Scope**). It has also been Global North governments who have supported and funded the creation of these initiatives, even though the

activities they intend to address occur in the Global South. This has also led some developing countries to perceive MSIs as "a neo-colonial bid by western nations to tell poor countries how to behave."[97] In addition, the governments of Brazil, Russia, India, China, and South Africa, collectively known as BRICS, are not members of any of the four MSIs featured in this study that include national governments as full members responsible for implementing standards.

MSIs can also play an influential role in the advocacy strategies of CSOs seeking to push for reform or change corporate behavior. A case in point is RSPO, which helped to shape the normative framework of advocacy around land rights in Liberia.[98] Interviews with representatives from Green Advocates International, a Liberia-based NGO, shed light on how local Liberian CSOs, international organizations, local communities, and indigenous forest peoples campaigning around the enforcement of the *RSPO Principles and Criteria* forced the government to clarify property rights in the country, culminating in the passage of the Land Rights Act in 2018.[99]

The significant reach of MSIs is also exemplified in how they shape some consumer preferences. Some MSIs, like other label and certification initiatives, produce consumer-facing labels intended to communicate that certified products have been, in some way, more ethically produced, and therefore they are attempting to influence consumer behavior. Studies show that consumers are increasingly concerned about the environmental and social impacts of the products they purchase. A 2018 Nielsen report, for example, confirms that more consumers are seeking out products with sustainability claims.[100]   Similarly, a report from Mintel, a global market research firm, shows that "buying green" has gone mainstream.[101] In fact, research shows that the absence of environmental impact information has a negative effect on product sales.[102]

In line with this trend, many consumers rely on the certifications or labels bestowed by some MSIs to make ethical consumption decisions.[103] For example, Fairtrade International claims that "when you buy products with any of the FAIRTRADE Marks, you support farmers and workers as they improve their lives and their communities."[104] Survey data, in turn, show that global consumers have trust in the Fairtrade Mark and closely associate it with providing fair prices and a living income to farmers to escape from poverty.[105] Another study showed that 74% of people who have seen the Marine Stewardship Council label have high trust in the initiative's claims.[106] Similarly, a global research study indicates that the majority of global consumers (60%) believe that choosing a sustainability-labeled product can make a positive difference in the world's forests.[107] Another study found that consumers in China, France, and Germany rely on certification marks to help them decide whether a product is environmentally friendly.[108]

Finally, and critically, we also see evidence of MSI influence in the accountability frameworks of corporate actors. It is now common for companies that release annual human rights or sustainability reports to highlight how their activities are consistent with an MSI's standards or mission, or otherwise how it has influenced their human rights policies.[109] With over 10,000 companies signed up to the principles set out in the UN Global Compact alone,[110] and more than 65 Fortune Global 500 businesses as members of other MSIs,[111] this reach is significant.

However, the acceptance and adoption of MSI standards as "good practice" for businesses, and thus as an influence on businesses' human rights policies, is not limited to companies who formally join an MSI. Some companies adopt or mimic MSI practices even if they are not members. A striking example of this is the Canadian mining company, Hudbay Minerals, which publicly endorsed VPs and noted that its security personnel "apply" the principles as a "framework for maintaining safety and security within an operating context that ensures respect for human rights and fundamental freedoms," even though it is not a member of the initiative.[112] When a lawsuit alleging the

company had committed human rights abuses against community members in Guatemala was filed, the Ontario Superior Court of Justice even referenced Hudbay's public statements about its compliance with international human rights standards, including its support of the VPs, to help establish the necessary proximity between the company and plaintiffs, who alleged that Hudbay had failed to uphold its "duty to act with reasonable care."[113]

In addition, MSI standards have been more broadly accepted as good practices for industries and companies, such that non-members are also encouraged to comply with them by external actors. For example, many of the indicators in the Corporate Human Rights Benchmark (CHRB), one of the most prominent human rights rankings of companies, are tied to MSIs. For example, CHRB ranks extractive companies based in part on their participation in the MSIs relevant to their sector. Specifically, it looks to whether they are members of, or have policy statements committing them to practices established by, certain MSIs, such as VPs, ICoC, and EITI.[114] Similarly, CHRB aligns its indicators for agricultural and apparel companies with some of the standards established by a number of MSIs, including the Ethical Trading Initiative, GRI, and Fair Wear Foundation.[115] It is thus perhaps unsurprising that at least 8 of the top 10 scoring companies in the CHRB participate in or support at least one MSI: Adidas, Anglo American, BHP, ENI, Freeport McMoRan, the Marks & Spencer Group, Rio Tinto, and Unilever. [116] Similarly, at least 7 of the top 10 companies listed on *Forbes*'s current "World's Most Reputable Companies" index are members of MSIs, or have a major subsidiary that is a member.[117] These illustrations underscore the wide-ranging influence of MSIs on the policy frameworks that guide corporate behavior, regardless of MSI membership.

This discussion of MSI influence over actors and policy frameworks has important caveats. First, as the Hudbay litigation makes clear, simply because companies or governments claim to follow or comply with MSI standards does not mean that they do so. This is true also for MSI members, as explored further in **Insight 4: Monitoring & Compliance**. Second, the way in which MSIs have influenced the policies and practices of actors is not always positive—an issue we explore further in **Insight 3: Standards & Scope**.

Third, it should be noted that while the reach of MSIs is vast, it is far from total. Within a given industry, most MSIs do not have anywhere near full participation of an industry or the complete market share of products. In particular, MSIs often struggle to attract large Global South-based brands or retailers (although many producer companies from the Global South participate in MSIs), such as those in China, Russia, and India, as well as smaller and medium-sized consumer-facing companies (see **Insight 3: Standards & Scope**).

However, while MSIs do not have complete coverage of industries, they are institutional policy actors in their own right with their own bureaucracies and interests. Many have dozens of staff and multimillion-dollar budgets.[118] The implications of this are that they not only assert influential policy positions, but they also sometimes compete for limited resources and are resistant to change for institutional reasons, such as to preserve their own funding and their established bureaucracies.

Finally, while the role of rights holders in MSIs is explored further in **Insight 2: Stakeholder Participation**, it is worth noting that rights holders were largely, if not completely, excluded from the process of creating MSIs and there is little research on whether they have influenced MSIs or been influenced by them. Our interviews with rights holders suggest that they are largely unaware of MSIs and often depend on CSOs to leverage MSIs' influence to achieve positive human rights outcomes.

4 **MSIs' influence has peaked over the last few years, and their effectiveness as human rights tools has been increasingly questioned by a range of stakeholders**

Critical signs indicate that the influence of MSIs has peaked and that faith in their effectiveness to protect human rights is diminishing. While MSIs have matured over the past three decades, we believe they are not likely to be the default or staple governance framework in the years to come as they were previously. Indeed, experience and information have changed the tenor of the debate about MSIs, particularly over the last few years.

Since their inception, MSIs have not been without controversy, but there was a "honeymoon period" in which they were given an opportunity by some donors, CSOs, governments, and others to prove their worth by waiting to see the results of the grand experiment. That honeymoon period appears to be ending, and the controversies about MSIs and their effectiveness has returned to the forefront, with a significant division between those who support them as pragmatic solutions to pressing challenges and those who see them as a distraction or diversion from promoting mandatory measures. On the one hand, proponents of MSIs have tended to underscore the importance of harnessing the resources and skills of different stakeholders to address complex issues that no single actor could solve alone,[119] the democratizing potential of MSIs,[120] and that they perform an important role in filling governance gaps in a context where progress has been slow in developing legally binding human rights standards.[121] On the other hand, some critics have highlighted the inherent limitations of MSIs as a form of voluntary private regulation, emphasizing that they are only as rigorous as companies will let them be and that enforceable rules or government regulation are the only effective ways to protect human rights.[122] Some critics have gone further and contended that MSIs are a kind of "window dressing" for corporations, arguing that MSIs ultimately have reinforced the expansion of corporate influence and the private capture of regulatory spaces.[123] In some circles, the debates around MSIs have been so polarized that some individuals who participate in multi-stakeholder processes have reported that they believe they are seen by non-participants as "traitor[s]" who are sitting "with the enemy."[124]

"The growing evidence of corporate influence and limited protection of human rights has undermined the credibility of MSIs over the past few years, and led a growing and wide range of stakeholders to be concerned about the effectiveness of the model and to retreat from the field or focus on mandatory efforts."

These divisions are now front and center in the field of MSIs. Increasingly, however, skeptics of the MSI model have been bolstered by evidence of MSIs' failures to fulfill the promise to bridge governance gaps by protecting human rights and increasing accountability, and by studies into the limits of MSIs. The growing evidence of corporate influence and limited protection of human rights has undermined the credibility of MSIs over the past few years, and led a growing and wide range of stakeholders to be concerned about the effectiveness of the model and to retreat from the field or focus on mandatory efforts.

A. Stakeholders are retreating from the MSI model in favor of increased public regulation and more accountable models of private regulation

The critiques of MSIs have evolved from being largely based on predictions about the limitations or consequences of embracing private governance as a solution to human rights issues, to becoming rooted in specific allegations and evidence about the shortcomings of MSIs. While echoes of those

original debates have persisted, we do not intend to repeat them in full here. Instead, we want to highlight how the critiques of MSIs have changed, particularly in terms of who is criticizing MSIs and on what bases. There are multiple indicators that the civil society actors who are so important to MSI legitimacy are losing faith in their ability to get results for rights-holders. Importantly, however, other stakeholders, including government actors, funders, and some corporations have raised questions about MSIs, viewing them, at a minimum, as insufficient on their own to fill governance gaps.

First, in recent years some CSOs who were longstanding participants in or involved with the creation of MSIs have left those initiatives, citing an overall lack of faith after multiple years of engaging within them. For example, the NYU Stern Center for Business and Human Rights departed GNI in 2016 noting three key concerns: (1) that the initiative lacked a shared vision, including what is "reasonable to expect of companies"; (2) the lack of a "credible and transparent system for evaluating company compliance with human rights standards"; and (3) the need to build the initiative's organizational capacity.[125] Oxfam departed from VPs in 2013, citing "frustration at the lack of meaningful progress in independent assurance [monitoring], despite more than ten years of deliberation and discussion."[126] The Maquila Solidarity Network departed from FLA in 2013 because they felt like a "voice crying in the wilderness" about the need for structural reforms to monitoring and remedial mechanisms and for more labor representation in the initiative.[127] PanEco decided to leave RSPO in 2016, citing "the sheer level of inaction."[128] FERN and Greenpeace departed from FSC in 2011 and 2018, respectively, each noting fundamental concerns about the approach taken by the initiative.[129]

Second, MSIs are increasingly the targets of advocacy campaigns, rather than the solutions to those campaigns, or are the subject of external investigation. For example, the failure of grievance mechanisms at two MSIs—RSPO and Bonsucro—to satisfactorily resolve complaints from the perspective of aggrieved community members led CSOs to file complaints with the relevant National Contact Points, under the *OECD Guidelines*. Those complaints, which were both accepted for review, are discussed further in **Insight 4: Monitoring & Compliance**. In that chapter, we also include examples of many reports and campaigns by CSOs highlighting the failure of MSIs to detect abuses in specific instances, which we need not repeat here. However, to illustrate how extreme this advocacy has become, the creation of FSC Watch, which describes itself as "a group of people, FSC supporters and members among them, who are very concerned about the constant and serious erosion of the FSC's reliability and thus credibility," is illustrative.[130] The group was specifically launched as a counter-point to FSC, to monitor concerns such as misuse of the FSC label, issues with its complaint process, and "structural problems within the FSC system." The group believes that internal reform of FSC is very unlikely "as power within the FSC is increasingly captured by vested commercial interest."[131] More generally, the evidence of MSIs failures has energized some CSOs and academics to include MSIs as examples "green-washing" or "white-washing": the idea that MSIs claim to be promoting sustainable practices while, in reality, they are protecting corporate interests and providing cover for unsustainable practices.[132]

The mounting criticisms of MSIs are permeating beyond civil society. For example, cocoa industry regulators in Ivory Coast and Ghana recently threatened to suspend all voluntary sustainability programs in a bid to get more chocolate makers to pay a living income differential for cocoa purchases, noting that voluntary programs only serve selected farmers while the living income differential will benefit all growers.[133] In the US, the evidence over the past few years that child labor continues to be present in the cocoa supply chains of Nestle, Mars, and Hershey—all of which have a proportion of their supply chains certified by MSIs as part of their efforts to address child labor—spurred some senators to call for regulatory action last year.[134] Privately, some major long-term donors to MSIs and civil society participants in them have noted to us that they will be no longer funding the initiatives due to concerns about their effectiveness. These reservations by donors have been linked to the failure of MSIs to demonstrate that they are having positive impacts on rights holders (see **Insight 6: Impact**).

The corporate retreat has manifested itself in a different way. While corporations have rarely publicly critiqued the MSI model, their actions indicate a retreat as they return to creating industry-only or industry-dominated groups, briefly discussed later in this chapter.

Third, other forms of private governance are spreading and may be displacing the role of MSIs.[135] One important development is the emergence of the Worker-driven Social Responsibility (WSR) model through the WSR Network, which presents itself as both a counterpoint and response to the failings of MSIs and other voluntary corporate codes of conduct by creating legally enforceable obligations for companies that join.[136] This model has been widely celebrated and acclaimed. For example, the UN Special Rapporteur on human trafficking called the Fair Food Program (FFP), one of the earliest examples of a WSR initiative, an "international benchmark"; a representative from the United Nations Working Group on Business and Human Rights noted that it was a "groundbreaking model" that they hoped "serves as a model elsewhere"; and an article in the *New York Times* described it as the "best workplace-monitoring program" in the United States.[137] Since FFP was launched in 2011, other WSR initiatives have emerged—the Accord on Fire and Building Safety in Bangladesh (2013); the Milk With Dignity Agreement (2017); and the Gender Justice in Lesotho Apparel agreement (2019)—and have garnered wide support among CSOs and unions.[138] This level of acclaim and growth indicates that MSIs appear to no longer be the "gold standard" of private governance.

An overview of the main differences between the MSI and WSR models is presented in Spotlight 1.1; however, two fundamental distinctions are that the WSR model: (1) is structurally designed to center rights holders in the monitoring and implementation of standards; and (2) creates legally binding standards that workers can enforce outside of the initiatives. The importance of these two qualities was emphasized in a statement by 15 CSOs supporting WSR, including the American Civil Liberties Union, Human Rights Watch, and the Columbia Law School Human Rights Clinic. The statement underscored the importance of enforceability and noted that the level of worker participation envisaged by WSR "is not only required by human rights standards . . . but is essential for the efficacy of any initiative to improve workers' rights in the supply chain."[139] The statement concluded that "WSR models overcome the shortcomings of alternative approaches in protecting workers' basic dignity and human rights to fair working conditions, health, and safety."[140]

The rise of the WSR model as a more rigorous private governance alternative not only threatens to displace MSIs' perceived legitimacy as the "gold standard," but it also has reignited the debate about whether MSIs are human rights maximizing and seriously dulled the aura of legitimacy surrounding MSIs as a governance miracle. Indeed, it is worth noting that the workers and organizations behind the WSR model actively reject any suggestion that they are an "MSI 2.0" or an evolution of the MSI model. Rather, they have positioned themselves as an *alternative* to MSIs, a significant indicator of the lack of faith in MSIs by those constituents. In the words of the WSR Network:

"The rise of the WSR model as a more rigorous private governance alternative not only threatens to displace MSIs' perceived legitimacy as the "gold standard," but it also has reignited the debate about whether MSIs are human rights maximizing and seriously dulled the aura of legitimacy surrounding MSIs as a governance miracle."

Given the demonstrable failure of corporate social responsibility schemes and multi-stakeholder initiatives, Worker-driven Social Responsibility (WSR) is the only existing model with the proven potential to afford protection for the most vulnerable and lowest-wage workers in global supply chains.[141]

This distancing from MSIs is broadly resonant with our engagement with those in grassroots or movement-based organizations, who often see the term "multi-stakeholder" as a co-opted or tainted idea representing a push for corporate power in spaces traditionally reserved for governments, rather than a model for delivering protections or benefits to communities.[142]

SPOTLIGHT 1.1. Differences between the WSR and MSI models

The WSR model is premised on a Statement of Principles that identify six qualities central to the model, many of which are framed as distinct from the practices of "traditional corporate social responsibility." While the WSR model presents these key differentials in the context of protecting workers in contracted supply chains, we have attempted to distill these into more generalized principles to demonstrate its differences from MSIs.

- **Initiatives are driven by rights holders.** As the one stakeholder group with a direct interest in effective protections, rights holders have the lead in identifying priorities, designing the system, setting standards, and in monitoring, enforcement, and remediation of harms. This is different from MSIs, which have generally failed to include rights holders in their designs, governance, and key implementation activities (see **Insight 2: Stakeholder Participation**).

- **Rights holders can enforce binding obligations.** Whereas MSIs are based on voluntary commitments (see **Insight 4: Monitoring & Compliance**), WSR requires that rights holders have the power to enforce corporate commitments.

- **Comprehensive, rights holder-centered and independent verification of compliance is required.** Compliance monitoring requirements under WSR specifically recognize the shortcomings of top-down audits, which are discussed further in **Insight 4: Monitoring & Compliance**. They instead require: "inspectors who have deep knowledge of the relevant industry and labor issues and who operate independently of financial control and influence by buyers; in-depth worker interviews, carried out under conditions where workers can speak freely, as a central component of the process; effective worker education that enables workers to function as partners with outside inspectors; and a complaint resolution mechanism that operates independently of buyers and suppliers and in which workers organizations play a central role."[143]

- **Time-bound measurement of progress is required.** WSR initiatives include objectively measurable outcomes within set deadlines. This is not a general feature of MSIs, and without such requirements, they can create the appearance of progress while failing to deliver positive impacts for rights holders (see **Insight 6: Impact**).

- **There are mandatory economic consequences for failures to comply.** In the MSI context, non-compliance can, at best, lead to some internal sanction or engagement to encourage non-compliance. As explored in **Insight 4: Monitoring & Compliance**, in practice this has proved to be a major Achilles heel, with compliance ultimately dependent on the goodwill of members. By comparison, to incentivize compliance WSR requires that there be swift, certain, and meaningful economic consequences that result from non-compliance. In the WSR model, this means that the large corporate buyers must use their leverage with suppliers to force them to remediate violations. If, after those efforts are exhausted, suppliers have not complied, then corporate members must end their relationship with that supplier, providing a strong economic incentive for suppliers to comply and remediate harms.

- **Powerful actors must provide incentives and the capacity for compliance.** In the WSR model, corporations at the top of the supply chain (such as retailers or brands) pay a price premium or offer other financial inducements that enable suppliers to meet the costs of compliance with the program's standards. This is in recognition of the power differential between buyers and suppliers. In the MSI model, powerful actors have generally been spared any obligations, with some rare exceptions, as discussed in **Insight 3: Standards & Scope**.

Fourth, occurring parallel to these developments has been a resurgence in advocacy for public regulation as a necessary tool in ensuring compliance and accountability for business-related human rights issues.[144] Internationally, a global network of over 250 grassroots organizations, trade unions, CSOs, and social movements created the Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity in 2014 to call for a binding treaty that centers communities and ends corporate impunity.[145] The same year, the UN Human Rights Council, lobbied by a coalition of CSOs and governments, created an intergovernmental working group to begin a business and human rights treaty drafting process. Across Europe, a coalition of CSOs has called for mandatory human rights due diligence and remedy laws,[146] resulting in due diligence legislation passing in France in 2017, and multiple initiatives and movements for similar legislation continuing in Belgium, the UK, Switzerland, Denmark, and others.[147] These demands are not just being driven by civil society; many businesses now support mandatory due diligence.[148] The movement against forced and child labor has been particularly successful in instituting mandatory regulation. The Netherlands adopted a child labor due diligence law in 2017, the UK instituted a transparency clause into its Modern Slavery Act in 2015, the United States strengthened laws prohibiting imports produced with forced labor in 2016, and similar anti-slavery legislation was introduced in Canada in 2018.[149]

"These calls for public regulation implicitly, and sometimes explicitly, acknowledge that the reliance on a voluntary approach to addressing business-related human rights abuse, including the promised 'third-way' of MSIs, has proven insufficient and does not prevent violations of human rights."

These calls for public regulation implicitly, and sometimes explicitly, acknowledge that the reliance on a voluntary approach to addressing business-related human rights abuse, including the promised "third-way" of MSIs, has proven insufficient and does not prevent violations of human rights. Accompanying this resurgence of hard law advocacy has been a renewed attention on the reference in the UNGPs to a "smart mix of measures — national and international, mandatory and voluntary — to foster business respect for human rights."[150] For a long period of time, we primarily heard the phrase "smart mix" used to justify the adequacy of voluntary measures, a notion that experts on business and human rights have called "a misreading of what the UNGPs say."[151] Now, the usage of the term has changed, and is primarily being used to support the need to go "beyond voluntary" and create mandatory laws to supplement voluntary measures, by recognizing that "a smart mix of measures necessarily involves legislative and regulatory measures".[152] As one attendee at the 2019 UN Forum on Business and Human Rights, which included the "smart mix" as a key theme,[153] noted:

> The primary focus of the UN Annual Forum this year was the 'smart mix' of measures needed under the UNGPs to meet the state duty to protect human rights in practice.

> We are witnessing a clear shift in this discussion. This was the first time that stakeholders from a wide range of backgrounds (including the private sector) made clear that more mandatory state measures are needed, alongside voluntary measures, and that both national and international state measures need to work together.[154]

Embedded within these calls for public regulation, and the "beyond voluntary" and "smart mix" framings, is an understanding that the scales had become too heavily weighted in favor of voluntary initiatives, rather than mandatory measures. This was made explicit in recent comments by the United Nations Working Group on Business and Human Rights that there has been a "lack of government leadership in addressing governance gaps" and that there is now an urgent need for

governments to establish effective legislation.[155] At the same time, the Working Group recognized the "limits to what law alone can achieve in the short term," and therefore, that "other approaches" should simultaneously be pursued.[156] In other words, a constellation or smart mix should continue to be pursued, but this means improving mandatory measures.

The cumulative effect of evident failures by MSIs to prevent human rights abuses, the emergence of alternative models, the push for public regulation, the growing perception of MSIs as tainted entities, and the questioning or retreat of a wide range of actors from MSIs all point to the end of their honeymoon period and a peak in their influence. As the critiques and calls for public regulation grow louder, it is likely that MSIs will no longer be considered sufficient responses to governance gaps in place of mandatory measures.

B. Corporate actors are increasingly designing their own voluntary standards, which have less oversight, further undermining the credibility of voluntary approaches to human rights regulation

As some civil society actors retreat from the MSI model, corporate actors take up increasingly larger shares of the space, reinforcing the concerns that led those civil society actors to retreat.

While corporations have rarely publicly critiqued the MSI model, their actions indicate a retreat as they return to creating industry-only or industry-dominated groups, as well as more elaborate modes of self-regulation. For example, some food and drink manufacturers have moved away from MSI certification or labels to establish their own standards for ethical sourcing of raw materials. This happened in 2017 when the UK supermarket chain Sainsbury's pulled out of Fairtrade International and created their own "Fairly Traded" label.[157] This was not a one-off occurrence:

> Soon after Sainsbury's [created its own label], the global confectionary giant Mondeléz – whose vast holdings include Cadbury and Toblerone – pulled several of its chocolate bars, including Dairy Milk, away from Fairtrade and into an in-house certification scheme called "Cocoa Life". Nestlé had launched a similar programme, "Cocoa Plan", back in 2013; between them, Nestlé and Mondelez control roughly 40% of the British chocolate market. Starbucks has "CAFE Practices"; Barry Callebaut, the Swiss cocoa producer, has "Cocoa Horizons"; US giant Cargill has "Cocoa Promise"; McDonald's has its own "McCafé Sustainability Improvement Platform".[158]

The firms referenced in the passage all have some products that are certified by MSIs, such as Fairtrade International or Rainforest Alliance, but the ratio of MSI to self-regulated products is diminishing.[159] While there has not been any recent research that quantifies the growth of different types of private governance initiatives—from corporate-only initiatives to other types of standard-setting initiatives with different governance arrangements—they appear to be proliferating at a faster rate than when MSIs were first being formed in the late 1990s and early 2000s.[160] One standard's database tracks over 460 "ecolabels," [161] another tracks over 230 sustainability standards,[162] and so forth.

While it is too early to predict the consequence of the rise and proliferation of corporate-only voluntary initiatives, when combined with the more general mood shift around MSIs by other actors, it may threaten MSIs' ability to recruit or sustain corporate participants over the long term.

Our Insights

Our analysis of the growth, establishment, and impact of the field of MSIs has led us to the conclusion that their influence has peaked. The stamp of legitimacy conferred upon MSIs by powerful international institutions, governments, and CSOs, epitomized by the inclusion of MSIs in the UNGPs, gave them significant influence in the field of business and human rights as prominent responses to major governance gaps. Over the past decade, however, growing skepticism among some civil society actors about the effectiveness of MSIs has resulted in their retreat from initiatives, allowing corporate interests to increasingly dominate the field. Instead of being a response to advocacy campaigns, the specific failings and concerning practices of MSIs have now often made them the target of civil society advocacy. This suggests that the influence of MSIs is eroding. In its place is a resurgence in advocacy for public regulation and more accountable private mechanisms, such as the Worker-Driven Social Responsibility model, that are displacing MSIs as the "gold standard", and which may better bridge the governance gaps that MSIs had promised to fill.

Without any solid understanding or rigorous study on their effectiveness as corporate accountability tools, MSIs became a default response to major business and human rights crises in the 1990s and 2000s. The acceptance of MSIs as legitimate governance mechanisms by powerful Global North actors, and their ultimate inclusion in the UNGPs, lent them considerable influence to shape the agenda for responding to abuses in an industry, particularly in terms of establishing norms and "good practices" for how companies or governments should address business and human rights issues. (We explore these issues further in **Insight 3: Standards & Scope**.) In earlier work, this rise has driven us to refer to MSIs as "the new regulators."[163]

When MSIs emerged, they were viewed as promising opportunities to bridge the divide between voluntary measures (which included efforts such as industry codes of conduct) and involuntary initiatives (which broadly speaking fell under such rubrics as corporate accountability and hard regulatory or court-centric enforcement). However, the promised bridge of the 2010s did not materialize in most cases, as the key features underlying this distinction—that MSIs would offer member accountability, meaningfully include CSOs as "watchdogs," or check corporate power (see **Insights 2-5**)—were weakly or inadequately implemented. Put differently, at each turn, MSIs have prominently leaned toward the voluntary side of the spectrum of voluntary and involuntary mechanisms.

"Now, as there is a resurgence towards advocacy for hard law . . . the influence and reach of MSIs appear to have peaked."

Now, as there is a resurgence towards advocacy for hard law and to go "beyond voluntary," by adding more mandatory or involuntary measures to the "smart mix," the influence and reach of MSIs appear to have peaked. There are a growing number of specific allegations, with evidence, that MSIs have failed to ensure that their members respect human rights. The chorus of governments, donors, and CSOs, who initially were open to seeing what this grand experiment in governance might bring, now seems to be quietening. If MSIs' support from civil society continues to diminish, and key CSOs terminate their participation, MSIs will increasingly be spaces dominated by corporate interests. The emergence of the alternative WSR model, which seeks to respond to the failings of MSIs and other voluntary corporate codes of conduct by creating legally enforceable obligations for members and centering rights holders in the design and implementation of its systems, indicates that MSIs will no longer be seen as "best-in-class" with respect to private governance.

While MSIs can also perform other functions beyond closing governance gaps—such as developing or diffusing norms, or sharing lessons and building trust between stakeholders—their credibility as tools to ensure that their members follow their standards and respect human rights, thereby closing the governance gaps that led to their creation, has peaked and is seriously doubted by many. As the remainder of this report makes clear, we believe this doubt is justified, and we anticipate that it will continue to grow. We anticipate that future government NAPs on business and human rights will be heavily critiqued if they continue simply to point to their support of MSIs as evidence that the issues underlying those MSIs are being addressed. Furthermore, we anticipate that there will be calls for governments to demonstrate what mandatory measures they are implementing to supplement the efforts of MSIs.

However, as the current influence of MSIs remains significant, and because they themselves and their advocates wield significant power and resources, we anticipate that the future of MSIs will be a contested space for some time as evidence of their shortcomings grows.

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Endnotes

1   While parts of this chapter briefly note that debate, we do not set out to comprehensively document the resistance to multi-stakeholderism, but rather to focus on the power and influence of the actors who have engaged with the "field of MSIs." For background on debates around MSIs and multi-stakeholderism, see, e.g., Jem Bendell, "In Whose Name? The Accountability of Corporate Social Responsibility," *Development in Practice* 15, nos. 3 & 4 (June 2005): 362–74; Sandra Moog, André Spicer, and Steffen Böhm, "The Politics of Multi-Stakeholder Initiatives: The Crisis of the Forest Stewardship Council," *Journal of Business Ethics* 128 (May 2014): 469–93; Peter Utting, "Regulating business via multi-stakeholder initiatives: a preliminary Assessment" in UNRISD, *Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide* (Geneva: NGLS, 2002).

2   Initiatives that are not industry- or issue-specific, such as the Global Reporting Initiative or UN Global Compact, might be better seen as a general response to the rise of globalization, governance gaps, and the impact of corporations on people and the planet.

3   For example, UTZ was originally formed as a "corporate initiative" and then later included other stakeholders; "UTZ: What's in a Name?" UTZ, accessed January 20, 2020.

4   D. Baumann-Pauly, J. Nolan, A. van Heerden, and Michael Samway, "Industry-Specific Multi-Stakeholder Initiatives That Govern Corporate Human Rights Standards: Legitimacy assessments of the Fair Labor Association and the Global Network Initiative." *J Bus Ethics* 143, (2017): 772.

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8   "Our History," Forest Stewardship Council, accessed January 29, 2020.

9   Chris Barneycastle, *The Sustainable Forestry Initiative of the American Forest & Paper Association* (Asheville: US Department of Agriculture, 2001), 110–112.

10   See, e.g., "Are Corporate Voluntary Commitments to Halt Deforestation Working?" Fern, June 4, 2019, ; Brian Schatz and Michael B. Jenkins, "Deforestation Can't Be Stopped by Voluntary Action Alone," World Economic Forum, January 15, 2020.

11   See, e.g., Bob Herbert, "In America, a Sweatshop Victory," *The New York Times*, December 22, 1995, , regarding Gap's decision to allow independent monitors in its supply factories in Central America; Richard Locke, Fei Qin, and Alberto Brause, *Does Monitoring Improve Labour Standards? Lessons from Nike*, Working Paper No. 24 (Cambridge: Harvard University John F. Kennedy School of Government, Corporate Social Responsibility Initiative, 2006), 7–13, describing Nike's early responses to abuses in its supply chain; Uli Schmetzer, "Children Modern-Day Serfs in Asia's Merciless Sweatshops," *Chicago Tribune*, November 18, 1991.

12   Rebecca Johns and Leyla Vural, "Class, Geography and the Consumerist Turn," *Environment and Planning A: Economy and Space* 32, no. 7 (2000): 1203–04.

13   Johns and Vural, "Class," 1203.

14   Johns and Vural, "Class," 1204; see also Miriam Bodenheimer, *Transition towards Socially Sustainable Behavior? An Analysis of the Garment Sector*, Working Paper Sustainability and Innovation, No. S07/2018, (Karlsruhe: Fraunhofer Institute for Systems and Innovation Research, 2018), 26–27, explaining that some of the companies and a few non-governmental organizations (NGOs) from the Apparel Industry Partnership created the Fair Labor Association (FLA) while other NGOs along with trade unions founded the Worker Rights Consortium.

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16   US House of Representatives, Subcommittee on Africa, Global Human Rights, and International Organizations and the Subcommittee on Asia and the Pacific, *The Internet in China: A Tool for Freedom or Suppression?*, 109th Cong., 2nd sess., 2006, 4.

17   Baumann-Pauly et al., "Industry-Specific Multi-Stakeholder Initiatives," 781.

18   US Congress, House, *Global Online Freedom Act of 2006*, HR 4780, 109th Cong., 1st sess., introduced in House February 16, 2006.

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21   Note that some other legislative efforts have been successful, such as California's Assembly Bill 633 (AB 633), but there have not been any comprehensive national or international efforts that would cover US brands or retailers.

22   Peter Whoriskey and Rachel Siegel, "Cocoa's Child Laborers," *Washington Post*, June 5, 2019.

23   This ultimately spurred the creation of the International Cocoa Initiative, an international multi-stakeholder initiative designed not to set standards but to facilitate dialogue and learning. It also coincided with the launch of the standard-setting MSI, UTZ, which addresses child labor in cocoa and other commodities. See Whoriskey and Siegel, "Cocoa's Child Laborers"; Sumana Chatterjee, "Chocolate Industry Mount Campaign Over 'Slave Free' Labeling," *McClatchy Newspapers*, August 1, 2001, UTZ has since joined the Rainforest Alliance. Ria Stout, "The Rainforest Alliance — UTZ Merger, a Sustainability Homecoming," Rainforest Alliance, January 8, 2018.

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32   See, e.g., Bob Herbert, "In America, a Sweatshop Victory," *The New York Times*, December 22, 1995.

33   See earlier discussion about the formation of the FLA.

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36   See, e.g., "Yahoo! Lawsuit (re China)," Business & Human Rights Resource Centre, February 18, 2014.

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112   "Ethics and Human Rights," Hudbay Minerals, accessed May 19, 2020. See the list of company members of VPs: "Who we are," Voluntary Principles on Security and Human Rights," accessed May 19, 2020.

113   Choc v. Hudbaay Minerals Inc., ONSC 1414, file no. CV-10-4111159, CV-11-423077, and CV-11-435841, (2013), para. 69.

114   Corporate Human Rights Benchmark, *Corporate Human Rights Benchmark Methodology 2019: For the Agricultural Products, Apparel and Extractives Industries* (London: CHRB, 2019), 47, 95, 97.

115   See the sources for the indicators for apparel and agricultural companies: Corporate Human Rights Benchmark, *Benchmark Methodology*, 80–94, 113.

116   At the time of writing, Adidas was an affiliate of the Fair Labor Association. "Affiliates," Fair Labor Association, accessed January 30, 2020; Anglo American, BHP, ENI, Freeport McMoRan Repsol, and Rio Tinto were supporting companies of EITI; Extractive Industries Transparency Initiative, "Companies," accessed January 30, 2020; Marks and Spencer and Unilever were members of RSPO. "Search Members," Roundtable on Sustainable Palm Oil.

117   Vicky Valet, "The World's Most Reputable Companies," *Forbes*, May 7, 2019; LEGO and the Walt Disney Company are members of ICTI Ethical Toys. "Brands and Retailors," ICTI Ethical Toy Program, accessed January 30, 2020. Adidas is an affiliate of FLA. "Participating Companies," Fair Labor Association, accessed January 30, 2020. Microsoft is a member of GNI. "Our Members," Global Network Initiative, accessed January 30, 2020, Bosch and Michelin are subsidiaries of Canon (i.e., Canon Europe Ltd) and are participants in the UN Global Compact: "Our Participants," UN Global Compact.

118   MSIs with a public listing of their full staff and their annual expenditure include Bonsucro (16 staff; £1.5m (approx US$1.9 million) FY16. FY17 and FY18 accounts did not list expenditure); Infrastructure Transparency Initiative (20 staff; £1.8 million (approx US$2.3 million) FY18); EITI (31 staff; US$7.1 million FY19); FLA (35 staff; US$7.7 million FY16); RSPO (16 staff; US$4.9 million FY17). Information available from the MSIs' websites, as of April 20, 2020.

119   Bendell, "In Whose Name?"

120   See, e.g., A. G. Scherer, and G. Palazzo, "The New Political Role of Business in a Globalized World: A Review of a New Perspective on CSR and Its Implications for the Firm, Governance, and Democracy," *Journal of Management Studies* 48, no. 4 (April 2011): 899–931, celebrating MSIs as deliberative spaces that allow different stakeholders to participate in dialogue, learning, and decision-making around issues of mutual concern.

121   See, e.g., Baumann-Pauly et al., "Industry-Specific Multi-Stakeholder Initiatives."

122   See, e.g., Chris Albin-Lackey, "Without Rules: A Failed Approach to Corporate Accountability," Human Rights Watch, 2013, saying, "Voluntary initiatives all face the same crucial limitations: they are only as strong as their corporate members choose to make them, and they don't apply to companies that don't want to join. They often do a good job of helping to define good company human rights practice, but enforceable rules are the only way of ensuring real, systematic change."

123   See e.g., discussion in Moog et al., "Politics," 128, noting that "critics have argued these initiatives are often used as a kind of "ethical window-dressing" for corporations, or as information-gathering opportunities by managers hoping to anticipate sources of social resistance to corporate plans."

124   Hilary Coulby, *A Guide to Multistakeholder Work: Lessons from The Water Dialogues* (The Water Dialogues, 2009), 35.

125   Sarah Labowitz and Michael Posner, "Why We're Leaving the Global Network Initiative," NYU Stern Center for Business and Human Rights, February 1, 2016; Sarah Labowitz and Michael Posner, "NYU Center for Business and Human Rights Resigns Its Membership in the Global Network Initiative," NYU Stern Center for Business and Human Rights, February 1, 2016.

126   "Oxfam Leaves Voluntary Principles for Security and Human Rights Multi-Stakeholder Initiative," Oxfam America, April 16, 2013.

127   "With Apple the FLA Is Not Convincing as a Multi-Stakeholder Initiative," Good Electronics, August 5, 2013.

128   "PANECO Resigns from RSPO over 'Sheer Level of Inaction,'" PanEcho, June 7, 2016.

129   "FERN Statement to the Forest Stewardship Council on Withdrawing [FERN'S] Membership," FERN, June 8, 2011; "Greenpeace International to Not Renew FSC Membership," Greenpeace International, March 26, 2018.

130   "About," FSC-Watch, accessed February 1, 2020.

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132   See, e.g., "Greenwashed Timber How Sustainable Forest Certification Has Failed," Yale Environment 360, February 20, 2018; S. Prakash Sethi and Donald H. Schepers, "United Nations Global Compact: The Promise-Performance Gap," *Journal of Business Ethics* 122, no. 2 (June 2014): 193–208.

133   Leanne de Bassompierre and Baudelaire Mieu, "Cocoa Growers Review Chocolate Brands' Sustainability Plans," *Bloomberg*, October 10, 2019.

134   See Peter Whoriskey, "Senators Call for Crackdown on Cocoa Imports Made with forced Child Labor," *Washington Post*, July 16, 2019.

135   Schleifer, "Varieties of Multi-Stakeholder Governance," 50, 52.

136   "CSR and MSIs," Worker-driven Social Responsibility Network, accessed February 1, 2020.

137   "Recognition," Fair Food Program, accessed February 1, 2020; UN General Assembly, Human Rights Council, *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, Addendum, UN A/HRC/26/25/Add.4, (New York: UN, 2014), para. 55–57.

138   "Organizational Endorsers," Worker-driven Social Responsibility Network, accessed February 1, 2020. For more information on these programs, see "About," Accord on Fire and Building Safety in Bangladesh, accessed February 1, 2020; Homepage, Fair Food Program, accessed February 1, 2020; "Milk with Dignity Campaign," Migrant Justice, accessed February 1, 2020; "Leading Apparel Brands, Trade Unions, and Women's Rights Organizations Assign Binding Agreements to Combat Gender-Based Violence and Harassment at Key Supplier's Factories in Lesotho," Worker Rights Consortium, August 15, 2019.

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140   "Coalition Letter," Human Rights Watch.

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