



# Not Fit-for-Purpose

**The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance**

SUMMARY REPORT

**REPORT EXCERPTS: Summary + Worker-driven Social Responsibility**

MSI Integrity

JULY 2020



# About MSI 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 available in this report: *Not Fit-for-Purpose*.

We are now embarking on a new direction: applying lessons learned from the grand experiment in multi-stakeholderism to promote business models that center worker and communities in their governance and ownership.

See our new work: [Beyond Corporations](#).

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This report was supported in part through grants from the Open Society Foundations and the William and Flora Hewlett Foundation.

## GET IN TOUCH

For more information, please email us at [info@msi-integrity.org](mailto:info@msi-integrity.org).

## FIND OUT MORE

Download the full report at [www.msi-integrity.org/not-fit-for-purpose/](http://www.msi-integrity.org/not-fit-for-purpose/)

Find out about our new direction at [www.msi-integrity.org/beyond-corporations/](http://www.msi-integrity.org/beyond-corporations/)

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

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Published July 2020

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## CITATION

Citation information: MSI Integrity, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance (Summary Report)*, July 2020.

# WHAT IS A STANDARD-SETTING MULTISTAKEHOLDER INITIATIVE?



STAKEHOLDERS GATHER TO ADDRESS HUMAN RIGHTS OR ENVIRONMENTAL HARMS LINKED TO BUSINESS ACTIVITY



## WHICH IMPACT RIGHTS HOLDERS

Sometimes rights holders can **raise complaints or report violations** of an MSI's standards.



SETS STANDARDS

NON-COMPLIANCE = AUDITOR OR BOARD MAY SANCTION



USUALLY AUDITORS MONITOR THE COMPANY (OR SOMETIMES GOVERNMENT) FOR COMPLIANCE WITH STANDARDS



COMPLIANCE = CERTIFICATION OR MEMBERSHIP

## 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.”<sup>143</sup>
- **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**.

# MSIs At A Glance

This report looks at 40 international standard-setting MSIs

## **AGRICULTURE, FORESTRY + FISHING**

Better Cotton Initiative  
Bonsucro  
Equitable Food Initiative  
Fairtrade International\*  
Florverde Sustainable Flowers  
Food Alliance  
Forest Stewardship Council  
Global Coffee Platform  
Marine Stewardship Council  
Program for Endorsement of Forest Certification  
Rainforest Alliance  
Roundtable on Responsible Soy  
Roundtable on Sustainable Palm Oil  
Sustainable Forestry Initiative  
UTZ Certified

## **CONSUMER GOODS**

Ethical Trading Initiative\*\*\*  
Fair Labor Association\*\*\*  
Fair Wear Foundation  
GoodWeave International  
ICTI Ethical Toy Program  
Social Accountability International  
Worldwide Responsible Accredited Production

## **CONSUMER SERVICES**

Global Sustainable Tourism Council

## **INDUSTRIALS**

Infrastructure Transparency Initiative  
International Code of Conduct for Private Security Providers

## **MINING + ENERGY**

Alliance for Responsible Mining  
Better Biomass  
Diamond Development Initiative  
Equitable Origin  
Extractive Industries Transparency Initiative (EITI)  
Fair Stone  
Hydropower Sustainability Assessment Protocol  
International Sustainability and Carbon Certification\*\*  
Initiative for Responsible Mining Assurance  
Roundtable on Sustainable Biomaterials  
Voluntary Principles on Security and Human Rights

## **TECHNOLOGY**

Global Network Initiative

## **ALL INDUSTRY / OTHER**

Alliance for Water Stewardship  
Global Reporting Initiative  
UN Global Compact

\* Also operates in the Consumer Goods industry.

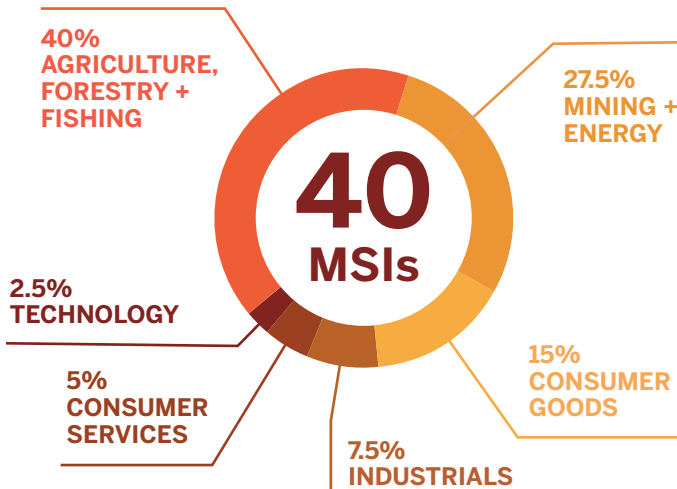
\*\* Also operates in the Industrials and the Agriculture, Forestry and Fishing industries.

\*\*\* Also operates in the Agriculture, Forestry and Fishing industries.

## These Initiatives...

OPERATE IN OVER **170** countries on 6 continents & ENGAGE OVER **50** national governments & 10,000+ companies

## What Industries Do MSIs Operate In?



## What Do MSIs Address?

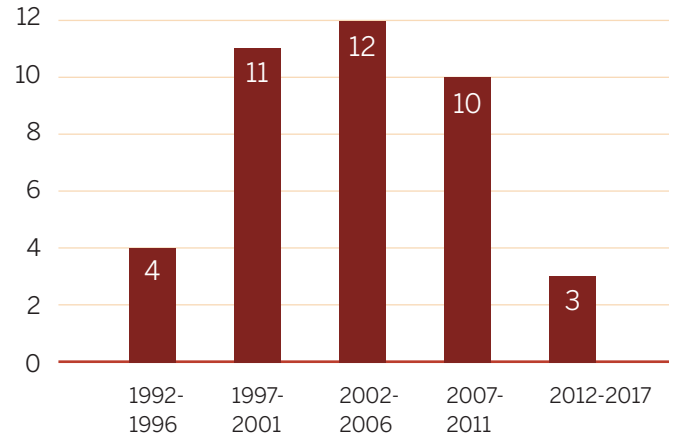
80% of surveyed MSIs set standards for just one industry and 20% set standards for two or more industries. Almost all of the industry-specific MSIs are clustered in three sectors:

- Agriculture, Forestry and Fishing;
- Mining and Energy
- Consumer Goods

There are no industry-specific MSIs for:

- Health Care
- Financial Services

## Timeline of MSI Formation



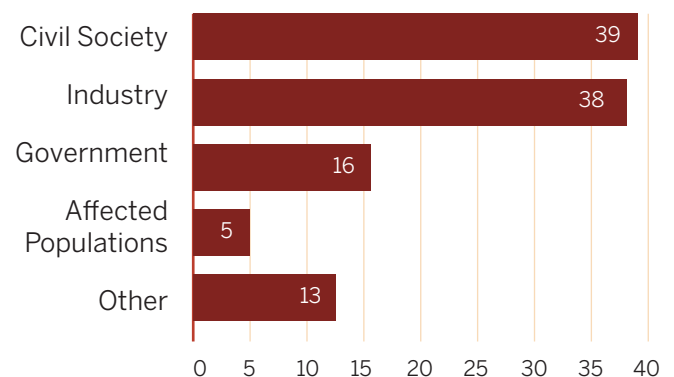
## Who Has The Power To Make Decisions In MSIs?

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

- 98% include both industry and civil society representatives;
- 40% include government representatives;
- 13% include affected populations; and
- 33% include other\* representatives.

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

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



# Executive Summary

When MSIs first emerged in the 1990s, they appeared to offer a transformative and exciting proposition. For years human rights and advocacy organizations had been investigating and naming-and-shaming companies for their connections to sweatshop labor, deforestation, corruption, and other abusive behavior. As this advocacy grew louder—and as government regulation of corporations remained elusive—a new experiment began. Rather than being barred from boardrooms, some large civil society organizations began working alongside businesses to draft codes of conduct, create industry oversight mechanisms, and design novel systems of multi-stakeholder governance that aimed to protect rights holders and benefit communities.

These international standard-setting MSIs rapidly proliferated. By the 2000s, they had become a “gold standard” of voluntary business and human rights initiatives, encompassing everything from freedom of expression on the internet to the certification of palm oil as “sustainable.” Within two decades—and with minimal critical examination into its effectiveness or wider impacts—multi-stakeholderism had evolved from a new and untested experiment in global governance into a widely accepted solution to international human rights abuses.

*But have MSIs delivered on their promise to protect human rights?*

After reflecting on a decade of research and analysis, our assessment is that this grand experiment has failed. **MSIs are not effective tools for holding corporations accountable for abuses, protecting rights holders against human rights violations, or providing survivors and victims with access to remedy.** While MSIs can be important and necessary venues for learning, dialogue, and trust-building between corporations and other stakeholders—which can sometimes lead to positive rights outcomes—they should not be relied upon for the protection of human rights. They are simply not fit for this purpose.

**It is time to rethink the role of MSIs.** The presence of an MSI should not be a substitute for public regulation. MSIs do not eliminate the need to protect rights holders from corporate abuses through effective regulation and enforcement. To the contrary, the existence of an MSI should put governments—as well as MSIs and their supporters—on notice that a governance gap exists, and that they need to supplement the voluntary efforts of that MSI with mandatory measures at local, national, and international levels.

Arriving at these conclusions did not come suddenly. They are the culmination of research and analysis that began in 2010 at Harvard Law School’s International Human Rights Clinic. Our engagement began with an observation: as MSIs became a default response to governance gaps, the question of their effectiveness was not only going unanswered, it was often going unasked. This led to a process of systematically exploring questions about the effectiveness of standard-setting MSIs from a human rights perspective, ultimately resulting in the incubation of MSI Integrity. Since independently launching our organization, we have sought to understand the human rights impact and value of MSIs, developing evaluative tools and resources to foster debate and learning about MSIs, and conducting research into underexamined issues. In the course of our work, we have interviewed hundreds of stakeholders, from MSI staff and members, to individual rights holders; conducted and collated research into pressing issues, including analyzing more than 1,500 pages of MSI procedures and policies; observed the meetings and assessed the practices of individual MSIs; and hosted or participated in almost 50 learning events, from panels on the effectiveness of MSIs at the United Nations Forum on Business and Human Rights to small hands-on workshops to design robust accountability mechanisms in MSIs.

This report is a collection of the key insights into MSIs we have gained over the past decade. Central to our approach is the understanding of standard-setting MSIs as a field. While each MSI is unique in its history and context, the MSIs that we have examined—and that are in our MSI Database—are a set of institutions that share a common architecture: (1) governance by a multi-stakeholder body; (2) the creation of transnational standards that include or affect human rights; and (3) the establishment of mechanisms designed to offer assurances that their members are complying with their standards (e.g., monitoring, reporting, or grievance mechanisms).

The report identifies six cross-cutting insights, as summarized on page 9. While they are broad conclusions and may not apply equally to every MSI, in combination they paint a clear picture: MSIs have not been operating or designed to ensure that corporations respect human rights, companies (or governments) are held accountable for abuses, or rights holders have adequate access to remedy for abuses. The results have left the aspiration of rights protection unfulfilled, as seen in the continuation of major human rights abuses—including, for example, child labor and forced labor—in industries and by companies covered by MSIs. MSIs have not closed the governance gaps that provide companies with a permissive environment for abusive conduct.

This is not to say that MSIs cannot play a role in the promotion of human rights, or that they have not had successes. Many participants in MSIs have reported the positive opportunities that MSIs present for learning, relationship-building, and experimentation, all of which represent functions that MSIs are well-suited to serve. But as robust rights protection or accountability institutions, MSIs have failed. Instead, MSIs have increasingly evolved to replicate traditional power structures, which has meant that they better serve corporate interests than those of rights holders. Ultimately, the hopes and expectation of governments, MSIs, consumers, businesses, civil society organizations, or others that this grand experiment in voluntarism would actually close governance gaps, have proved unfounded.

Two features have intrinsically limited the capacities of MSIs to protect rights. **First, MSIs are not rights holder-centric.** In general, MSIs employ a top-down approach to addressing human rights concerns, which fails to center the needs, desires, or voices of rights holders: the people whose living and working conditions are the ultimate focus of MSIs, whether they are farm workers, communities living near resource extraction sites, or internet users. Our research and experiences have shown that there is little meaningful emphasis in MSIs on empowering rights holders to know and exercise their rights, or to directly engage in the governance or implementation of initiatives. Centering rights holders is essential, however, for the efficacy of any initiative that purports to address human rights. Rights holders hold critical information for ensuring that standard-setting and implementation processes respond to their lived experiences. For example, what rights issues and remedies are of greatest importance to be addressed? What sort of whistleblower protections or oversight systems are needed for people to feel safe reporting alleged abuse? Are interventions actually working? Top-down approaches risk failing to harness the knowledge or trust of those whose lives or rights are at stake.

**Second, MSIs have not fundamentally restricted corporate power or addressed the power imbalances that drive abuse.** Companies have preserved their autonomy and safeguarded their interests throughout the design, governance, and implementation of MSIs. The mechanisms most central to rights protection, such as systems for detecting or remediating abuses, have been structurally weak. This has meant that MSIs are capable of achieving positive outcomes where there is genuine commitment on the part of corporate members to change; however, when that goodwill breaks down—as it often has—MSIs have been able to do little to protect human rights.

To us, these insights underscore the need for two major steps to be taken in order to provide meaningful rights protection and address corporate-related abuses.



# 1 Rethink the role of MSIs

## A. Recognize that MSIs are tools for corporate-engagement rather than instruments of human rights protection.

The appropriate role for, and limitations of, MSIs need to be more accurately articulated and understood. MSIs should be recognized for what they have been equipped to do well: to be forums for building trust, experimentation, and learning. To the extent that MSIs set standards and adopt practices that are human rights-maximizing (which is not always the case; see **Insight 3: Standards & Scope**), they can also potentially have a positive role in norm creation and policy reform. However, MSIs should no longer be viewed as institutions that robustly ensure that their corporate members respect rights, provide access to remedy, or hold corporations accountable for abuses. They are simply not sufficiently resourced or structured to carry out these difficult functions. Regulation is needed for these purposes.

To the extent that any form of private governance can be effective in these protection or accountability realms (which is an issue that requires more exploration) such mechanisms need to overcome the current failings of MSIs. This means they need to be rights holder-centric and address corporate power such that the regulated entity is not controlling the institution, neither formally nor informally. We note that this is possible, as these are the bedrock principles of [Worker-driven Social Responsibility](#) (WSR) initiatives that have emerged as counterpoints to MSIs. WSR initiatives are designed by and for workers and include legally enforceable standards.

## *What are appropriate roles for MSIs?*



- Protecting human rights
- Providing access to effective remedy
- Closing governance gaps
- Holding corporations accountable for abuse
- Norm creation and diffusion \*
- Policy reform \*
- Building trust and relationships
- Learning and knowledge exchange
- Experimentation
- Engaging corporations

\* Care needs to be taken to ensure that the standards MSIs adopt and/or advocate for appropriately reflect the views and needs of rights holders and are rights-maximizing. Otherwise, there is a risk that MSIs will only promote positions that are profit-aligned, or that reflect the views and interests of corporations and the other stakeholders who are sufficiently resourced and empowered to participate in MSIs.

## **B. Recognize that MSIs must be supplemented with public regulation.**

The presence of an MSI, or any form of private governance, should not be a substitute for public regulation. To the contrary, the existence of MSIs should signal to stakeholders that there are governance gaps that need to be filled.

The presence of an MSI within an industry or an issue field does not, by itself, satisfy the state duty to protect rights holders from corporate abuses. Rather, the existence of an MSI should put governments on notice—particularly governments whose companies participate in MSIs, or governments in whose jurisdictions MSIs are operating—that a governance gap exists and that they need to act alongside the voluntary efforts of that MSI with mandatory measures at local, national, and international levels. Such measures should establish the legal liability of companies for human rights violations, ensure rights holders have access to an effective remedy, and provide incentives and robust frameworks to prevent abuses. Importantly, given their structural weaknesses, neither participating in MSIs nor following their monitoring, reporting, or related processes should necessarily be appropriate evidence of sufficient due diligence.

This is what it means in the United Nations Guiding Principles on Business and Human Rights to have a “smart mix” of measures: not that voluntary efforts, such as MSIs, can replace mandatory efforts, or vice-versa, but rather that the two must work alongside each other.<sup>1</sup> This is not to say that hard law should always be viewed as a panacea or the singular approach. An evolving web of human rights protections, built from a strong foundation of public regulation and supplemented by voluntary efforts that aim to raise the floor of regulation, will offer greater protections for rights holders.

## **2 Challenge the Corporate Form**

### **Center workers and affected communities in corporate governance and ownership.**

We believe that the failure of MSIs is inextricably linked to the corporate form itself. Major corporations avoid sharing power with other stakeholders—such as rights holders and affected communities—because to do so threatens their obligations to shareholders and their accumulation and management of profit. As long as corporations are primarily beholden to investors, not only will companies fail to adequately center vulnerable workers or communities in their business decisions, but they will also resist human rights initiatives that threaten their profits or power, and continue to run the unacceptable risk of making decisions that harm people and the planet.

Companies are run and controlled by a board of directors, executive management, and shareholders, who do not directly experience the on-the-ground consequences of the company’s decisions. They are not the people who live near or work in the mine sites, farmland, or factories where the repercussions of business practices reverberate. Those with power in companies are normally not the rights holders, about whom human rights initiatives are most concerned. This, combined with the fact that boards are legally prohibited from making decisions that prioritize community

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1. Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Principle 3, commentary (Geneva: United Nations, 2011), 5, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

or societal interests above the financial interests of shareholders, means that decision makers in a corporation are neither structurally situated nor primarily motivated to consider human rights impacts. Instead, companies are incentivized—and often obligated—to make whatever decisions will maximize shareholder profits, without sharing those returns with workers or affected communities. This has caused extreme economic inequality between those who own or run companies and those who do not.

Therefore, perhaps the most significant and transformative human rights project is one that has received little attention within the human rights domain: challenging the corporation itself and reimagining our economic enterprises. To us, this means developing and promoting business models and policy transformations whereby:

**(1) Workers and/or affected communities are at the center of decision-making.**

What if businesses were legally and operationally accountable not to shareholders, but to the workers and/or the communities affected by their decisions? What if workplace democracy was a universally recognized human right? What if affected communities and workers determined who governed an organization or how that organization was run?

**(2) Benefits and ownership accrue to the workers who generate value for a business and/or to the communities and rights holders who are impacted by its behavior.** What if the primary economic beneficiaries of enterprises were the workers or wider communities impacted by those businesses? What if businesses who contribute a net harm to society lose their legal license to operate?

These are important human rights questions that need urgent attention. There is much to learn from the workers, movements, and individuals who have long been creating and promoting resilient alternatives to the corporation and those fighting for a just, sustainable, and [new economy](#). The lessons learned from the grand experiment of MSIs can also provide important insights: from understanding the conditions under which co-governance between multiple types of stakeholders can—or cannot—function effectively, to ensuring that workers, rights holders, and communities have meaningful decision-making power and do not face barriers to participation within governance structures.

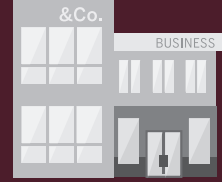
We invite the readers of this report to think critically about the limitations of voluntary regulation and what these insights mean for the future protection of human rights. To us, the failure of the grand experiment in multi-stakeholderism not only underscores that it is time to rethink MSIs and to demand more effective regulation of corporations, but that even the most well-intentioned and carefully-designed interventions will have limitations. The wider human rights movement must now tackle the root cause of business-related human rights abuse: the corporate form.

What do the lessons from this grand experiment mean for you?

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 weak or narrow standards which risk creating a misperception that abuses are being effectively addressed or that overlook the root causes of abuse.



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.



## INSIGHT 01: Influence

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



Our analysis of the growth, establishment, and impact of the field of MSIs 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 the inclusion of MSIs in the UN Guiding Principles on Business and Human Rights (UNGPs), gave MSIs significant influence in the field of business and human rights as a prominent response to major governance gaps. Over the past decade, however, growing skepticism among some civil society actors has resulted in a retreat from MSIs, allowing corporate interests to increasingly dominate the field. Instead of being a response to civil society campaigns, the specific failings and concerning practices of MSIs now often make them an advocacy target. 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 initiatives, that may better bridge the governance gaps that MSIs had promised to fill.

### SUMMARY OF 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 NGOs. They were often perceived 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 UNGPs crystalized them as a “field” that became increasingly institutionalized and well-resourced.

- **MSIs have influenced government action and policy.** For example, at least 16 of the 23 National Action Plans that countries have published as part of their efforts to implement the UNGPs include reference to MSIs.
- **MSIs have become part of corporate engagement with human rights.** Over 10,000 companies participate in MSIs, including 13 of the world’s 20 largest companies by revenue.
- **MSIs are part of international frameworks and governance.** Individual MSIs have been endorsed by international finance institutions and the UN. They are key reference points for company human rights rating agencies.

- MSIs influence public behavior and perceptions. Many consumers rely on the 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:**

- A number of CSOs have withdrawn from individual MSIs over concerns about inaction, ineffectiveness, and the resources they consume.
- There are now well-documented instances in which MSIs have failed to detect or remedy human rights abuses. Complaints have been brought against multiple MSIs in OECD National Contact Points.
- 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. “Worker-driven” models 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 on the premise that voluntary initiatives are not sufficient.**

LEARN MORE ABOUT THIS INSIGHT ON OUR WEBSITE »

## INSIGHT 02: Stakeholder Participation

### MSIs entrench corporate power by failing to include rights holders and by preventing civil society from acting as an agent of change.

The perceived legitimacy of MSIs stems from the fact that they include stakeholders—civil society or rights holders—who might act as watchdogs over corporations and drive pro-human rights reforms. However, in practice, MSIs generally exclude rights holders from governance and implementation processes, relying instead on CSOs to counterbalance corporate power. Yet, CSOs are ill-equipped to challenge corporate power within MSI governance due, in part, to their resource constraints, broad diversity, and the fact that they generally need to win the support of corporations to make key decisions. This is exacerbated by the process-oriented nature of MSIs, which favors the status quo and absorbs CSOs' limited resources. Despite the rhetoric of multi-stakeholderism, in reality, MSIs entrench power in favor of corporations—the entities they seek to regulate. MSIs are thus poorly situated to fulfill “regulatory” functions, such as determining whether to expel non-complying members or fix weaknesses in accountability mechanisms.



#### SUMMARY OF KEY FINDINGS AND OBSERVATIONS:

**MSIs have largely excluded rights holders from their governing bodies and implementation.** In particular:

- Only 13% of MSIs include affected populations in their governing bodies, and none have a majority of rights holders on their boards.
- The monitoring, compliance, and remedial mechanisms established by MSIs are not centered on rights holders, and the few MSIs that measure their impacts on rights holders do so through top-down studies that do not empower rights holders in their design or implementation.
- CSOs participating in MSIs are not equipped or resourced to act as proxies for rights holders, and their presence does not necessarily mean that those most affected by the relevant issue are represented.

**MSIs are premised on CSOs' ability to perform oversight of their operations. However, MSI decision-making rules and practices, along with differences in resources and capacity between CSOs and other stakeholders, can compromise CSOs' engagement as equal and effective partners.**

In particular:

- Multi-stakeholder decision-making rules can favor the status quo by requiring CSOs and their pro-reform allies to garner majority or consensus support for major pro-human rights reforms.

- “Civil society” is a broad constituency often without any clearly defined boundaries. The different backgrounds, agendas, and interests of CSOs can require them to expend considerable effort to arrive at a common strategy and approach within the constituency.
- MSIs are highly technocratic, and effective participation in their governance requires significant financial and technical resources, as well as investments of time. Yet CSOs—particularly those from the Global South—are often poorly resourced compared to their corporate or government constituents. MSIs thus risk reproducing pre-existing Global North/South and corporate/community power imbalances.
- The process-oriented nature of MSIs also opens them up to delays by those resisting change, which further depletes limited CSO resources and may stymie efforts for reform.

**Decision-making on pro-human rights reform issues in MSIs is often slow, incremental and resource-intensive.**

## INSIGHT 03: Standards & Scope

**Many MSIs adopt weak or narrow standards which risk creating a misperception that abuses are being effectively addressed or that overlook the root causes of abuse.**



Although MSIs influence industry practices, when closely analyzed from a human rights perspective, certain standards that MSIs adopt are often far from what is considered to be “best practice.” An MSI’s standards may be too weak to lead to change, may fail to address key human rights issues, or may impose burdens primarily on Global South companies or governments without considering the leverage and responsibilities of Global North actors. Thus, even if a company or government complies with all of an MSI’s standards, critical human rights abuses may continue. Yet few external actors—whether policymakers or consumers—have the time or expertise necessary to analyze an MSI’s scope or limitations. Rather than transforming the underlying conditions or practices that lead to abuse, MSIs thus risk embedding certain business-as-usual practices and creating a misperception that they are effectively addressing human rights concerns when they are not.

### SUMMARY OF KEY FINDINGS AND OBSERVATIONS:

**MSIs can draw attention away from the full extent of human rights abuses in an industry or create a misperception that they are being adequately addressed:**

- Some MSI names, mission statements, or communication strategies may suggest that they address a broader range of issues than their standards actually do. Over three-quarters of MSIs in our MSI Database use “sustainable,” “fair,” “equitable,” or “responsible” in their name or mission. However, uncovering their true scope requires expertise and close reading of technical documents that many individuals are unlikely to undertake. For example:
  - Although many supply-chain MSIs claim to address the economic well-being of workers, an analysis of eight prominent supply-chain MSIs reveals that—while more than half of the initiatives loosely encourage or mention providing workers with a living or fair wage—only one initiative actually requires that workers are paid a living wage within a fixed timeframe.
  - An analysis of seven prominent certification MSIs reveals that “certified” products like coffee, wood, or palm oil might be tainted with serious human rights violations that occur beyond the initial point of production, such as when goods are washed, packaged or shipped.
- Other MSIs have an explicitly narrow focus, but do little to acknowledge the wider human rights problems in an industry beyond those covered by their standards.

**MSIs sometimes create standards that are too weak to ensure that the underlying issue is actually being addressed.** This tends to happen through: (1) setting standards that are weaker than international human rights norms or are otherwise regressive; (2) using ambiguous language; (3) relying on processes that lack sufficient detail or rigor to ensure they lead to the protection of

rights; (4) making key standards “optional”; and (5) only applying to selective aspects of a business operation or supply chain.

**Many MSIs have set standards that assign responsibility to less-resourced actors—mainly producers and entities in the Global South—while ignoring more powerful actors in the Global North.** These MSIs risk failing to address the underlying drivers of abuse. For example:

- MSIs that include governments as members have not placed obligations on “home states” (the countries where multinational companies are headquartered) despite the relative power that Global North governments have over those companies. Instead, they focus on placing obligations on “host state” governments, who tend to have less economic or political power over foreign corporations.
- Supply-chain MSIs do not tend to address the purchasing practices of powerful brands that drive human rights abuses along the supply chain, such as setting below-cost prices or demanding short lead times. For example, only two of the eight prominent supply-chain MSIs we analyzed explicitly recognize the need for responsible purchasing practices. Nor do MSIs adequately disclose the extent of abuses found in brands’ supply chains.
- Placing certification costs and burdens exclusively on producers might lead employers to cut costs by creating unsafe working conditions or engaging in harmful labor practices. It also risks excluding the world’s poorest farmers and factories from participating in MSIs, thereby exacerbating economic inequality.

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## INSIGHT 04: **Monitoring & Compliance**

### **MSIs employ inadequate methods to detect human rights abuses and uphold standards.**



MSIs put considerable emphasis on the standards that they set, but have not developed effective mechanisms for detecting abuses, enforcing compliance with those standards, or transparently disclosing levels of compliance. Despite the emergence of models that enable rights holders to legally enforce MSIs' standards or to be actively engaged in monitoring companies for abuses, MSIs have not adopted them. By focusing on setting standards without adequately ensuring if members are following those standards, MSIs risk providing companies and governments with powerful reputational benefits despite the persistence of rights abuses.

#### **SUMMARY OF KEY FINDINGS AND OBSERVATIONS:**

**MSIs employ inadequate methods to detect human rights abuses.** MSIs that monitor their members' compliance with MSI standards do so through top-down professionalized audits. These approaches do not take into account the power imbalances between rights holders and MSI members that may inhibit rights holders from reporting abuse or prevent auditors from detecting abuse. For example:

- In reviewing the monitoring procedures of the 10 newest and 10 oldest MSIs, we found that no single MSI had procedural requirements that address the spectrum of issues rights holders may face when attempting to speak out about abuses, such as offering protection against reprisals or ensuring evaluators speak local languages/use an independent interpreter.
- The majority of MSIs do not require any unannounced audits or spot checks.
- There are now many well-documented failures to detect violations that have resulted in harm or abuse, such as audited factories collapsing or catching fire, or the documentation of severe labor abuses in farms or factories that have been certified by MSIs. Yet, despite the increasing evidence about the inherent limitations of MSI approaches to monitoring, most MSIs have not evolved to adopt rights holder-centric models.

**MSIs have weak measures for upholding or enforcing compliance.**

- MSIs respond to issues of serious non-compliance through their boards or certification bodies. If a member disputes a report or allegation of non-compliance, the processes become vulnerable to delay and indecision. There are many examples of this. In worst-case scenarios, members withdraw if they do not want to remediate or address abuses.

- Models have emerged that enable rights holders to enforce compliance, for example by requiring members to put legally-binding terms reflecting an initiative's standards in their contracts. However, MSIs have not adopted them and thus compliance remains dependent on the willingness of members to meet MSI standards.

**Many MSIs are not transparent about the extent of member compliance with standards.** Basic information is often unavailable or incomplete. For example:

- Only half of the MSIs we reviewed that monitor compliance publish monitoring reports online, and the quality of these reports varies considerably.
- Only 11 out of the 18 MSIs with the power to discipline members provide a list of members who have been suspended or expelled.



## INSIGHT 05: Remedy

### MSIs are not designed to provide rights holders with access to effective remedy.



MSIs do not provide access to effective remedies for victims of human rights violations. Many MSIs either do not have a grievance mechanism or, if one exists, they have not developed procedures that meet internationally accepted minimum practices or engender trust among rights holders. By failing to provide rights holders with a route to an effective grievance mechanism, MSIs are not only allowing governance gaps to persist, but are also failing to serve the needs of rights holders and to recognize that harmed rights holders ought to be a privileged stakeholder in human rights interventions.

#### SUMMARY OF KEY FINDINGS AND OBSERVATIONS:

**Almost a third of MSIs do not have a grievance mechanism, and therefore, do not provide individuals or communities with the ability to seek remedy for rights violations.** Most of those MSIs instead require that their members have a grievance mechanism where rights holders can file complaints, but do not set sufficient standards to ensure that those mechanisms are designed or functioning effectively to enable rights holders to seek remedies.

**Of those MSIs with grievance mechanisms, nearly all of their complaints procedures fail to meet internationally recognized criteria for effective access to remedy.**

- **Not accessible:** Nearly all MSIs lack adequate procedures to ensure rights holders know about and can use the complaint process. For example, only 10 MSIs provide complaint information online in a language other than English, and even fewer MSIs offer translation or require that their members publicize the existence of the MSI's grievance mechanism to rights holders.
- **Not predictable:** Most mechanisms either do not set out a clear procedure and time frame for each stage of the complaints process, or do not clarify and provide transparency about possible outcomes.
- **Not equitable:** Many grievance procedures are complex and confusing to understand, yet most MSIs place little emphasis on equitable access to information, advice and expertise. Only 6 MSIs formally offer any form of assistance to complainants, such as making an advocate available or assisting with complaint preparation.

- **Not transparent:** Only 7 out of the 27 MSIs with a grievance mechanism disclose specific outcomes of complaints received, and only 4 MSIs publish the overall number of complaints filed or resolved.
- **Not rights-compatible:** Few MSIs appear to have the power or practice of providing meaningful remedies directly to rights holders. Only 3 MSIs have procedures that specifically require input from harmed rights holders when determining the appropriate remedy.
- **Not a source of continuous learning:** Complaints from rights holders contain important information about an MSI's weaknesses, impacts, and areas of improvement. However, only 8 MSIs have procedures requiring an analysis of complaints, and only 4 have published any form of analysis.

**MSI grievance mechanisms are not rights holder-centric:** MSI grievance procedures indicate most MSIs do not view harmed rights holders as a privileged stakeholder, or see their role as championing access to effective remedy.

## INSIGHT 06: **Impact**

### **There is little evidence that MSIs are meaningfully protecting rights holders or closing governance gaps**

If MSIs are going to be relied upon by policymakers, businesses, donors, and civil society organizations as tools for closing governance gaps or achieving rights protection, then there ought to be evidence that they are fit for that purpose. Nearly three decades since the first MSIs emerged, such evidence remains scant. While MSIs often promote themselves as successful, without an understanding of their actual impacts on rights holders, they risk creating the perception that the issues and abuses associated with an industry, country, or company have been addressed—when in fact they may still be occurring.



#### **SUMMARY OF KEY FINDINGS AND OBSERVATIONS:**

**Unsubstantiated claims or no evidence:** The majority of the 20 oldest MSIs in our MSI Database either claim to have broad positive impacts on rights holders without sharing any evidence to back their assertions or else do not have public information about their impacts.

**Little focus on measuring their impacts on rights holders:** Only 5 of the 20 oldest MSIs have conducted any direct measurement of their impacts on rights holders in the last five years.

**Conflating scale with impact:** MSIs often promote their growth or the scale of their operations—such as the number of factories that have been audited or countries that they cover—as evidence of their success or “impact,” rather than reflect on whether they are achieving their desired impact on people or the planet.

**Weak methodologies:** Even among the MSIs that do measure impact, their studies are of variable quality and do not allow general conclusions to be drawn about their impact on rights holders. These MSIs often fail to approach impact measurement in a systematic or overarching manner, to examine if they are having any unintended consequences, or to recognize rights holders as partners in impact measurement.

**Limited evidence of impact on rights holders:** Overall, the systematic reviews of the evidence of MSIs’ impacts by academics and other researchers point to sparse, limited, and often context-specific benefits for rights holders—if any. In particular:

- A growing body of research questions the effectiveness of voluntary standards and auditing in improving labor conditions.
- Evidence of the impact of government transparency MSIs is sparse.
- The majority of external research into MSIs is focused on agricultural or forestry MSIs and these studies point to mixed and inconclusive results.

#### **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,<sup>119</sup> the democratizing potential of MSIs,<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup> 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.”<sup>124</sup>

*“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.<sup>125</sup> 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.”<sup>126</sup> 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.<sup>127</sup> PanEco decided to leave RSPO in 2016, citing “the sheer level of inaction.”<sup>128</sup> FERN and Greenpeace departed from FSC in 2011 and 2018, respectively, each noting fundamental concerns about the approach taken by the initiative.<sup>129</sup>

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.<sup>130</sup> The group was specifically launched as a counterpoint 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.”<sup>131</sup> 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.<sup>132</sup>

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.<sup>133</sup> 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.<sup>134</sup> 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.<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup> 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.<sup>138</sup> 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.”<sup>139</sup> 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.”<sup>140</sup>

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.<sup>141</sup>

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.<sup>142</sup>



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July 2020