

Principles that make for effective governance of multi-stakeholder initiatives: *updated, final version*

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1. Aim of this paper

This paper was written for participants at the *Expert Workshop on Improving Human Rights Performance of Business through Multi-stakeholder Initiatives*. It aimed to provide them with a practical, accessible overview of key aspects of MSI governance in advance of the workshop in order to guide and inform discussion during it. The document is not an exhaustive exploration of all aspects of MSI governance. A summary presentation of this paper was made at the workshop.

2. How this paper has been written

This paper was written by an independent consultant with contributions from the Clean Clothes Campaign and the Ethical Trading Initiative. A draft paper was written for discussion at the workshop, and this final version takes into account discussion at the meeting and comments from participants.

This paper used research, summaries and analyses of multi-stakeholder initiatives from a variety of sources. The paper looked exclusively at MSIs which address the impact and responsibilities of business, though there are others with different mandates. It has drawn heavily but not exclusively on the experience of Northern-based labour standards MSIs who deal with the responsibilities of companies in retail supply chains, especially those in the Joint Initiative for Corporate Accountability and Workers Rights (JOIN)². From that group of MSIs, the paper included information and learning drawn from agriculture as much as textiles. This document and the workshop were planned on the assumption that other MSIs face similar challenges. The workshop itself gave greater discussion space to other MSIs. Lastly, the paper also compares some industry-based initiatives with MSIs.

2.1 Definitions used

- Definition of governance

Conceptually, governance covers accountability, transparency, legitimacy, disclosure, participation, decision-making, grievance management and performance reporting.³ In day-to-day practice, “governance encompasses the mechanisms by which an entity is controlled and by which it is accountable to its stakeholders, including which decisions are made, how and by whom. It defines the relationships between different stakeholders and between different parts of the system.”⁴

- Definition of stakeholder

“Stakeholders are individuals or groups with an interest in an initiative’s success in achieving its objectives or delivering on its intended results.”⁵

² The Joint Initiative is the first effort to bring together key organisations’ different aspects of code implementation and/or enforcement in a programme of collaborative work. These organisations are: Clean Clothes Campaign, Ethical Trading Initiative, Fair Labor Association, Fair Wear Foundation, Social Accountability International and Workers Rights Consortium. See www.jo-in.org for further information.

³ Report by the World Economic Forum and the UN Financing for Development Initiative, 2005, cited in *Governing collaborative governance: enhancing development outcomes by improving partnership governance and accountability* (see Bibliography)

⁴ ISEAL *Emerging Initiatives – Module 2: Governance* (see Bibliography)

⁵ ISEAL *Emerging Initiatives – Module 1: Overview* (see Bibliography)

- Definition of a multi-stakeholder initiative

Strictly speaking, an MSI is an organisation which brings together any set of different stakeholders to jointly address specific issues. Frequently it is used and understood to mean initiatives whose stakeholders combine at least the private sector and civil society representation. This paper uses the latter definition.

3. Understanding MSI governance

Introduction: horses for courses

Even if a mapping of MSIs limits itself to those addressing business responsibilities, a plethora of MSIs exist in the international arena today. They cover a range of issues including environment, labour and other human rights (land, security, health), fair and alternative trade, sustainability, reporting and transparency. Overall there appears to be as much difference as similarity: each organisation is constituted and governed differently. As a key to understanding these different governance mechanisms in use, we will consider what factors account for the existing differences and similarities.

3.1 Activities

Existing organisations have a range of governance procedures which grew organically from the demands and experiences of those MSIs and their stakeholders. Often there may be apparently similar organisations operating in the same arena. However, a closer look will reveal marked differences in precise aims, and therefore activities. Different aims and activities require different governance structures.

3.2 Size, scope and change

Size is also a factor. Smaller organisations are able to meet more often and have higher involvement from participants, with narrower structures to reflect that. Conversely, some organisations need to include large numbers of stakeholders - such as where there is a range of stakeholders across both the production and consumption sides, potentially with strongly differing views. Organisations also grow, and governance structures change and become more sophisticated to handle that growth.

Geographical reach is also a factor here. Depending on the issues an organisation addresses and which industry, its defined scope may need to include stakeholders in very many geographically dispersed countries. Apart from being far apart, stakeholders may also be difficult to reach or represent, or have barriers to their participation. For instance, stakeholders can include groups in highly rural or remote areas; in post-conflict zones; with poor literacy; who suffer discrimination in participation (women, untouchables) or all four. An MSI seriously trying to include representation from all stakeholders impacted by a particular industry's activity will face such challenges and may try to develop governance procedures to allow dispersed, disparate groups to participate directly.

Furthermore, new or different stakeholders may suddenly be relevant as industry purchasing and production grows or changes and a supply chain moves from Bangladesh to China, or Kenya to India. Some organisations try to meet these challenges. Their governance structures may be complex and appear cumbersome, but they may be simply trying to ensure fair, genuine representation of all parties.

3.3 History

History also matters: the context in which stakeholders are operating affects how they tackle an issue. That in turn has an impact on the shape of the MSIs in which they participate. For example, if corporate credibility is low, companies may be willing to join MSIs where civil society organisations have an equal voice in order to increase their credibility. Finally, some international organisations have origins in national initiatives, and these roots are also evident in their current structures. For example, the Fairtrade Labelling Organisation (FLO) had its roots in 17 independent, national-level marketing bodies.

3.4 Evolution of structures as activities change

It is important to note that the structures of all MSIs may change as the organisations themselves evolve and their activities change. Typical MSI activities can include standard-setting, capacity-building, training, managing brand (logos and trademarks), certification, accreditation and verification. Initially an organisation may manage all these activities within one governance structure. However, over time, the structure changes significantly as an organisation decides to manage these activities differently or not at all. This may be owing to cost concerns, questions of conflict of interest or requirements to keep up with emerging good practice.

For example, good practice nowadays recommends that accreditation of certifying bodies and/or certification is usually carried out by a legally separate entity. This can be seen in the cases of the International Federation of Organic Agriculture Movements (IFOAM), the Forest Stewardship Council (FSC, see more below) both of whom moved to separate out that function, and the Fairtrade Labelling Organisation's now separate inspection and certification body FLO – Cert GmbH.

4. Governance models currently in use

The wide range of MSIs makes it difficult to describe models across the spectrum of organisations. As many MSIs are relatively recent, there is limited comparative research available. Organisations which have similarities on one aspect of governance – such as membership structure – may then have major differences in other aspects such as decision-making or complaints procedures.

This section will draw heavily on the labour standards MSIs in the JO-IN project. We will make comparisons across the different aspects of governance of those different organisations. The paper will then contrast those MSIs with industry-based initiatives in the same field. This section will also include pertinent examples from the wider MSI field.

4.1 Governance mechanisms of MSIs in the JO-IN project

Five labour standards MSIs have collaborated in the JO-IN project since 2003. The sixth member organisation of JO-IN, the Clean Clothes Campaign, is not an MSI as defined in this context since it has no industry representation (only NGOs and trade unions). All are legal entities registered in their countries of origin (and elsewhere in some cases). As their governance structures are well-documented, we shall examine them here. While all work in the same area, no two are the same. All were created between 1991-2000 in broadly the same context: pressure from civil society and consumers on retailers and their suppliers to take responsibility for the working conditions of workers in their supply

chains. All (including CCC) have the shared stated aim of improving conditions for workers around the world.

4.1.1 JO-IN MSIs: basic structure and decision-making

Each organisation has a membership structure with a code of conduct which members adopt. Some are based in Europe, others in the USA. Some have European/international partners and/or overseas staff and offices. In each case, membership is open to those organisations/businesses that share the aims of each MSI, according to formalised membership procedures. This contrasts for example with the open network of the Multi-Fibre Agreement Forum (MFAF). The MFAF has a looser structure and light governance. This aims to encourage general participation at a self-defined level, albeit with a minimum standard of expected commitment to the MFAF principles as outlined in its ‘Collaborative Framework’.⁶

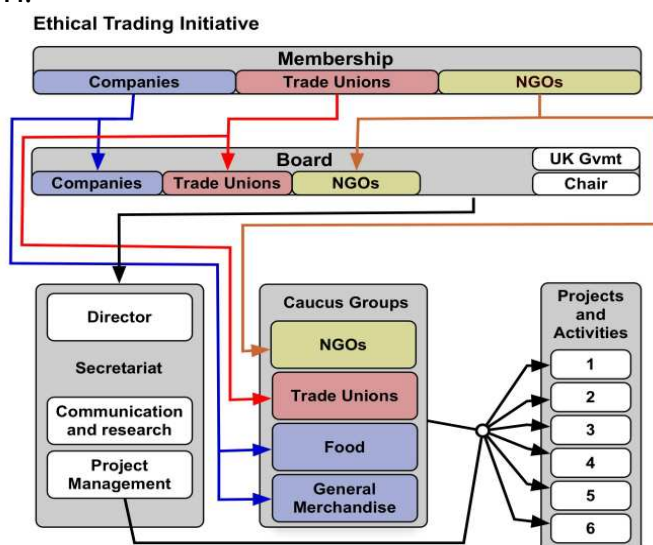
The JO-IN MSI participants’ differences in terms of membership, decision-making structures and income are listed below.

Basic structure and decision-making in JO-IN members ⁷			
Organization	Members	Decision-makers	Income/Funding
Ethical Trading Initiative (ETI)	Companies, trade unions, NGOs	10-person Board: 3 NGOs; 3 trade unions; 3 companies; 1 chair.	Company membership fees; government grants
Fair Labor Association (FLA)	Companies, universities, NGOs	16-person Board: 6 companies; 6 NGOs; 3 universities; 1 chair.	Company membership fees; university membership fees; foundation grants
Fair Wear Foundation (FWF)	Companies, trade unions, NGOs	10-person Board: 4 business associations; 2 trade unions; 2 NGOs; 1 chair.	Company membership fees; trade union fees; grants from non-profits.
Social Accountability International (SAI)	Companies, trade unions, NGOs, government	7-person Board, advised by Advisory Board. Both have equal representation between business and non-business representatives.	Company membership fees; training; auditor accreditation fees; foundation grants
Workers Rights Consortium (WRC)	Universities, trade unions, NGOs	15-person Board: 5 universities; 5 NGOs; 5 labour rights experts.	University membership fees; foundation and government grants

⁶ <http://www.mfa-forum.net/framework.html>

⁷ JO-IN Seminar resource pack, (see Bibliography)

The table below shows in more detail the structure of one of those MSIs, the UK-based ETI.



Reproduced with permission from *Governance and multi-stakeholder processes*; authors Nancy Vallejo and Pierre Hauselmann; International Institute for Sustainable Development; Pi Environmental Consulting May 2004

4.1.2 JO-IN MSIs: different models for stakeholder participation/representation

The structures of the JO-IN organisations indicate how stakeholders participate differently. These differences are manifested in whether:

- both organisations and/or individuals have a place in governance structures
- which type of organisations have a place in governance structures
- participants are elected, nominated or a combination of the two
- there are different groups with different decision-making power within one organisation.

In some, the balance between stakeholder groups is even (WRC and ETI). In others, Board composition gives greater representation to some stakeholders. In some organisations, Board members represent their organisation and are elected by their own constituent members (for example at ETI). At SAI, the Board of Directors nominates other directors, who are elected by majority vote of current directors. A separate Advisory Board is formed of members nominated by a nominating committee and then elected by current Advisory Board members. These may be individuals. All except the FLA have trade union representation at Board level.

INCLUDING OR EXCLUDING COMPANIES?

Some stakeholders believe that it is important for decision-making within MSIs to be independent from any company members. There are different mechanisms to handle this. On some boards, directors are elected from membership – ie companies, trade unions and NGOs and therefore mandated to represent them. This raises the issue of conflict of interest and in particular of companies directly representing themselves. The ETI attempts to deal with this in governance terms by requiring of its Board directors that they must represent their entire constituency rather than their individual company or organisation. Their constituents can hold them accountable to this through the election process. These Directors are also required to commit to putting the interests of ETI first.

FWF has industry associations on its board. Those associations represent the interest of their members, but at the same time not all FWF company members are member of the industry associations. This system means that no member companies are directly represented on the board, thus in some measure avoiding 'self-governance'. In the WRC, university licensors participate on the Board alongside labour rights experts and NGOs. The WRC belief is that the universities may perform a corporate function, but are not controlled by corporate interests. This view informs their choice of membership and governance structure.

JO-IN MSIs: IMPACT OF SIZE, SCOPE AND CHANGE ON PARTICIPATION/REPRESENTATION

In section 3 on understanding governance, we touched on size, scope and change that MSIs and others need to take into account and the challenges this presents. International trade unions and NGOs have overlapping but different constituencies. All of the JO-IN MSIs have governance mechanisms which include either international unions who represent their affiliates or some internationally operating NGOs who speak on behalf of their partners. Some have both, and models with both allow representation from a wider range of stakeholders and an improved chance of meeting the challenges of effective, genuine participation and representation.

Nevertheless, these affiliations and partnerships have limits, leaving some stakeholders missing from the table. They may be small producers, unorganised workers, workers in new sectors of the economy, or any other section of society impacted by business behaviour but without easy access to either national or international free trade unions or NGOs. Stakeholders in countries which share language, trading history and/or ex-colonial links have far greater access to Northern-based MSIs. Southern-based MSIs exist, but still benefit from access to Northern-based MSIs and stakeholders and it is in those same circumstances that they flourish.

PARTICIPATION/REPRESENTATION BEYOND JO-IN AND THE LABOUR STANDARDS SPHERE

Outside the JO-IN organisations, but still focussed on labour, the International Cocoa Initiative has members from cocoa producers and trade associations, as well as international trade unions and NGOs.⁸ There all members are represented on its Board, which has sole decision-making power. Such a structure is only viable while membership remains limited.

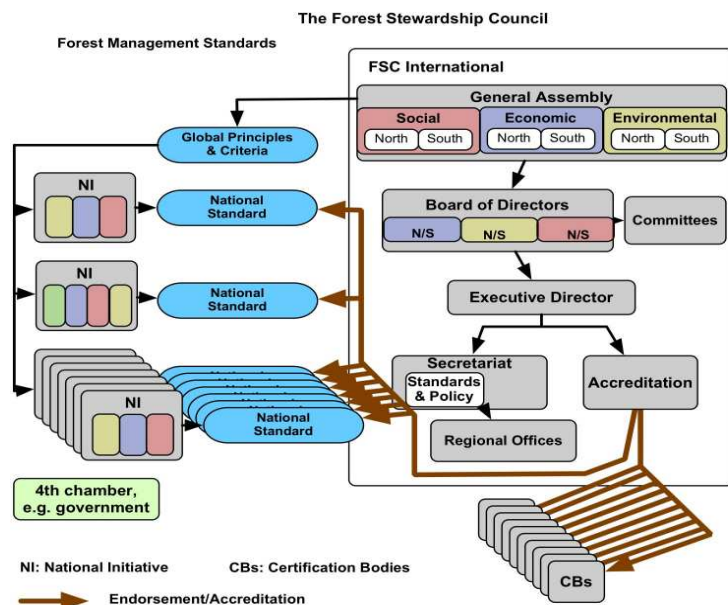
Other organisations outside the labour standards sphere reflect the same differences in participation/representation. For example, the Marine Stewardship Council (MSC) has a Board of Directors with supreme decision-making power, but also a Technical Advisory Board and a Stakeholder Council whose members are represented on the Board of Directors.⁹ Group members may appoint new members, and membership of one body can mean automatic representation on another. The Forest Stewardship Council (FSC) is a membership organisation, open to all who demonstrate support for the organisation and its mission.¹⁰ Its supreme decision-making body is its General Assembly, which meets every three years and governs its statutes, standard and can vote on policy motions. There is also

⁸ An MSI aiming to end child and forced and exploitative labour in the cocoa industry. See www.cocoainitiative.org

⁹ A non-profit organisation promoting responsible fishing practices. See www.msc.org

¹⁰ The FSC aims to promote environmentally appropriate, socially beneficial and economically viable management of the world's forests. See www.fsc.org

a Board of Directors, elected by members, that takes decisions on matters not reserved for members. The image below indicates the FSC's governance structure.



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4.1.3 JO-IN MSIs: Performance reporting, disclosure and grievance management

Performance reporting, disclosure and grievance management are key elements of MSI governance. Here again, the JO-IN MSIs each have different mechanisms, outlined in the tables below.

JO-IN MSIs: Disclosure and performance reporting¹¹

	Factory names disclosed	Factory conditions disclosed	Brand performance disclosed
ETI	N/A	Companies send summarized reports on conditions in their supply chains to ETI secretariat.	Company reports shared internally among ETI members. Through confidential process, members are rated and share “good practice”.
FLA	FLA monitoring reports do not use factory names. University licensees’ factory names accessed on web.	Factory conditions in independently monitored facilities are publicly disclosed on FLA website, listing only the relevant brands.	Online annual report details brand activities to improve workplace conditions. Brands are publicly evaluated when they are “accredited” after 3 years.
FWF	Are only shared with workers and workplace trade union representatives.	Brief summaries of findings from FWF verification visits are covered in FWF’s annual report.	Annual report (available online) briefly reviews member brands’ compliance activities.

¹¹ *JO-IN Seminar resource pack*, (see Bibliography)

JO-IN MSIs: Disclosure and performance reporting¹¹			
	Factory names disclosed	Factory conditions disclosed	Brand performance disclosed
SAI	All certified factories and their addresses accessed on SAI website.	Audit reports can be accessed by SAI staff.	Brands' programs evaluated internally. Brands opt to publicly report summary of this evaluation <u>or</u> percentage of supply chain SA8000-certified.
WRC	All reports contain factory names. All factories that fall within WRC scope accessible on website database.	All findings are made public and shared with workers and their representatives.	N/A

The fact that these MSIs have fairly well-developed systems for all three elements of governance indicates that these are seen as essential for credibility, legitimacy and transparency. Reporting on progress and disclosure of results should make it possible for all stakeholders (and the public) to exercise some measure of control over the ethical claims that are made.

Grievance procedures are intrinsic to good governance. They allow intended beneficiaries (workers in the case of the JO-IN MSIs) to voice directly any violations of the rights which the MSI standard offers them. A grievance procedure enables intended beneficiaries to access or invoke the protection that the system is supposed to offer them. In this way disclosure of factory or farm names becomes important in order to know which worksites are covered by which standard and complaints mechanism. Often this information has not been passed down the supply chain, with workers having no knowledge of how their rights are in fact covered by a code of conduct. The ETI Impact Assessment study found that multiple channels for reporting labour rights violations ('non-compliances') helped to drive positive change for workers.¹²

The table below indicates how the JO-IN MSIs handle grievance management. Each organisation also provides guidance on information to include and a variety of media for submitting complaints and accompanying evidence, which are not detailed here.

JO-IN MSIs: grievance procedures¹³			
	Scope	Who can file a complaint/issue an appeal?	Where to file complaints
ETI	Facilities producing for ETI member companies, including 2 nd /3 rd tier sub-contractors	Any ETI member (company, NGO or trade union) Workers or local trade unions/NGOs can file through ETI members	Should be sent by ETI member to member company, with a copy to ETI Secretariat
FLA	Facilities producing for FLA member companies or those producing university licensed goods	Any party	FLA headquarters or staff based in regions

¹² *The ETI Code of Labour practice: do workers really benefit? Summary* (see Bibliography)

¹³ *JO-IN Seminar resource pack*, (see Bibliography)

JO-IN MSIs: grievance procedures¹³			
	Scope	Who can file a complaint/issue an appeal?	Where to file complaints
FWF	Facilities producing for FWF member companies	Any party Facilities may also complain about FWF auditors	FWF headquarters or contact person (present in each country where FWF brands produce)
SAI	SA 8000 certified facilities	Any party Facilities may also appeal SAI certification decisions or other actions	SAI headquarters, or via member brand or SA 8000 auditor
WRC	Facilities producing university licensed goods	Any party	WRC headquarters, or by way of partner organisation

4.2 Governance mechanisms in industry-based initiatives

The last few years have seen the emergence of new Northern-based labour standards code monitoring, implementation and social audit sharing initiatives. Some of the major ones are:

- Worldwide Responsible Accredited Production, (WRAP), 2000
- Business Social Compliance Initiative (BSCI), 2003
- Supplier Ethical Data Exchange (Sedex), 2004
- Fair Factory Clearinghouse (FFC), 2004
- Global Social Compliance Programme (GSCP), 2007

WRAP is an industry initiative of what is now the American Apparel and Footwear Association and aims to ensure consistent standards and avoid duplication of monitoring. It is a factory certification process for manufacturing associations and companies, using its own WRAP standard. In August 2007 it changed its name and expanded its certification programme to cover all manufacturing industries, not just apparel. It has a board of directors drawn predominantly from industry and academia with some civil society participants. However, these are not drawn from trade unions or labour standards NGOs. Information on decision-making and governance is not publicly available on the WRAP website. WRAP-certified factories are listed on the WRAP website on a voluntary basis. There is no information regarding specific audit reports or for complaints procedures available for workers. WRAP produces no public reporting other than audited financial accounts.

BSCI and GSCP, who, though relatively new, given their large-scale membership are also important to consider. Sedex and FFC can be described simply as shared databases, concerned with the mutual exchange of audit information. While Sedex does promote an audit methodology, neither Sedex nor FFC is concerned with setting a standard or grading, passing or failing worksites. Nor do they accredit or certify any retailer or supplier or conduct verification. Audit information remains the property of participating suppliers.

Both BSCI and GSCP aim for companies to collaborate to promote common monitoring and social auditing systems, harmonising approaches and creating a level playing field. Both originated in Europe, with BSCI initially targeting textiles, clothing, shoes and toys, now encompassing all sectors. It presently has 91 member companies. The GSCP is an initiative started by Walmart, Tesco, Carrefour and Migros and it also covers the entire retail

domain. Both organisations' codes include key ILO standards, though with weaknesses and lack of clarity in some key areas. The GSCP code is still a draft.¹⁴

Both initiatives anticipate stakeholder involvement at the governance level through advisory councils (see section 4.2.2). However, neither organisation can be defined as an MSI in the common understanding used in this paper (ie with a clear role for trade unions and/or labour NGOs in the governance structure of the initiative). Both are business-led and business-controlled initiatives. While some stakeholders were kept informed of the development of both initiatives, they were not included in defining the set-up or agreeing how the initiatives should operate or to what standard, in contrast to the JO-IN MSIs. Limited public information is currently available regarding GSCP governance, and this paper reflects that.

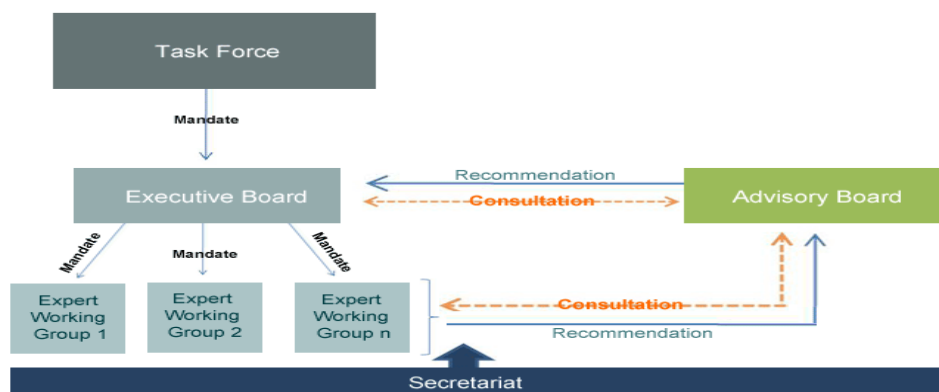
4.2.1 BSCI and GSCP: basic structure and decision making

BSCI and GSCP have been described as multi-lateralist, in that their membership covers a wide range of corporate bodies – retailers, suppliers, manufacturers and trade associations.

The basic decision-making system of the BSCI is that the member board takes the decisions (simple majority, or two-thirds majority in the case of important decisions). The key decision-making body of the GSCP appears to be the task force, which is made up of retailers and brands, and which mandates an executive board from among its members.

BSCI has rules to ensure fair national and geographical representation from within the membership. BSCI expects certain commitments from its members in terms of percentage of supply chain audited, and can exclude members from the organisation. The commitments of GSCP member companies in this regard are not yet clear - it is still in the setting-up phase. Much is yet unknown, for example on how the board is composed, elected, appointed and/or nominated. The image explains the structure of the GSCP.

Structure of the GSCP



4.2.2 BSCI and GSCP: Stakeholder participation and representation

Both initiatives have invited participants to join their advisory structures (Council for BSCI, Board for GSCP). The GSCP Advisory Board has reportedly met once, though at present it is unclear who is involved. The BSCI states that its Advisory Council includes representative from the ILO and the European Commission.

¹⁴ The draft code is open for consultation, see http://gscp.myciesnet.com/GSCP_Code-Draft_for_consultation.pdf

BSCI organizes local stakeholder roundtables and has repeatedly stated its intention that its Advisory Council would contain two representatives each from trade unions, NGOs, suppliers, import and export business associations, government, international organisations and BSCI members. However, we understand that to date it has not been formed. SAI has agreed to take on the role of supporting the nomination process and encouraging participation in the Advisory Council. BSCI holds round tables in supplier countries (10 to date), involving government authorities, business organisations, trade unions and NGOs at the local level. BSCI's stated goal for these roundtables is to promote an environment where these organisations fulfil their tasks and responsibilities.

4.2.3 BSCI and GSCP: performance reporting, disclosure and grievance management

BSCI provides interested parties with information about who is involved in its systems, the criteria it uses and how the BSCI is implemented, though not the results of that information. The BSCI "System Description" is publicly available on the BSCI website.

The BSCI CSR report contains some aggregate results from auditing activities, giving types of violations uncovered per country, and the total percentages of violations against the total number of audited facilities. Public information on the factory locations is not available, nor on who performs the audits to BSCI systems. In theory, the Advisory Council, which convenes at least twice a year, deals with complaints arising from the BSCI auditing. No further details are available addressing the process or how it could resolve disputes in a timely manner. No information is yet available regarding any disclosure, reporting or grievance mechanisms for the GSCP.

4.3 MSI stakeholders

4.3.1 Defining stakeholders

The basis for defining who an organisation's stakeholders are comes from the organisation's stated aims and the results it anticipates achieving. Often, stakeholders define themselves by expressing an interest in an MSI whose aims are clear. Many MSIs are open to those who share their aim, be that from industry (producers, processors, traders, distributors, retailers, trade associations); civil society (trade unions, NGOs); academics; independent individuals, experts and consultants; government; international institutions and donors.

The vast majority of MSIs keep to industry and civil society representation, though some include individual experts in their fields whose credibility is accepted by all parties. Few include representatives from the whole range listed above, with the notable exception of the FSC. The FSC also divides members into three chambers: social, environmental and economic. These are divided into northern and southern sub-chambers (defined by per capita GDP for the members' country).

In MSIs with formal structures, a governance body is usually involved in defining if an application to participate as a member is acceptable. Often one constituency has the power to nominate or accept other members from the same constituency. For example, see table below for ETI's NGO membership criteria.

Criteria for NGO membership of the Ethical Trading Initiative
<ul style="list-style-type: none"> ▪ Organisation has experience of promoting fair working conditions. ▪ Organisation is a bona fide voluntary organisation. ▪ Organisation is UK based or has an office in the UK. ▪ Organisation is committed to active participation in the network and the ETI, and will attend at least half of the meetings of the caucus. Active participation involves participation in at least two areas of ETI. ▪ Organisation's membership of the caucus is fully supported by its Chief Executive.

4.3.2 Do current models take into account stakeholder diversity, power and voice?

Many MSIs have a very diverse membership where it can be a challenge to ensure all stakeholders' views are heard and taken into account. Each constituency also has to accommodate different views in its own caucus and reach agreement before it can take those views forward in discussion with others. There must be recognition by those involved of the different degrees of power, voice levels and resources at play. Usually trade union and NGO participants do not have the same capacity as company participants. There may be fewer of them, each with a large remit of which MSI work is only one element and not necessarily a priority.

As a result, governance mechanisms need to provide adequate space for each caucus to discuss and agree issues before discussions with other stakeholders. Structures can also be put in place to mitigate against power, voice and capacity imbalances undermining good governance. Groups with fewer resources (in other words all non-commercial stakeholders) will need support to participate with an equal voice. For example, this might mean that the MSI covers the costs of trade union and NGO participation in overseas travel, or support for training of trade union and NGO staff on engaging in supply chain work. SAI has done work in this area with the International Textile, Garment and Leather Workers' Federation (ITGLWF), and JO-IN organisations jointly developed a training pack for all local stakeholders. FWF and WRC collaborate closely with trade unions and NGOs in training of expert audit teams. The table below indicates how the ETI has addressed this.

ETI mechanisms for ensuring improved trade union and NGO participation
<ul style="list-style-type: none"> ▪ Employment of separate Trade Union and NGO Co-ordinators to boost co-ordination, resources and participation of trade union and NGO members ▪ Larger NGO members provide funding for the participation of smaller NGO members, to ensure their expertise is shared ▪ Trade union and NGO costs covered if travelling overseas on ETI work

4.3.3 Membership category models

The table on page 5 above already outlined the JO-IN MSI stakeholders and how their decision-making structures account for their stakeholders. In some cases, that membership is further categorised and accompanied by concomitant structures. SAI is in the process of introducing three tiered levels of company participation, the upper two of which require membership approval from the Advisory Board. ETI company members divide into General Merchandise and Food/ Horticulture caucuses when discussing their interests and for the purposes of electing board representatives.

SAI, ETI, FWF and FLA all define retailer and supplier members as companies for the purposes of their corporate membership categories. This may not accurately reflect power

relations between retailers and suppliers, and therefore may have an impact on how those different constituents are able to voice their views or have them taken into account.

None of the JO-IN MSIs categorises their trade union or NGO constituents, with one exception. The ETI separates NGO members into small and large in terms of their membership fee and their access to funds to aid participation. In practice, trade union constituents come from two categories. The first is from the sectoral unions (for example ITGLWF), the second from federations of national trade union organisations (for example the British Trades Union Congress (TUC) is member of ETI and the Dutch Confederation of Trade Unions (FNV) is member of FWF. NGO constituents also come from a range of NGOs. Some support specific interest groups (such as women workers) and may be directly in touch with intended beneficiaries. Others focus on particular issues (such as forced labour). Others' prime focus is to lobby and engage with companies. MSI NGO members tend to contain members from each of these, though this is self-selected, not set by the MSI.

The FSC divides members into three chambers: social, environmental and economic. These are divided into northern and southern sub-chambers (defined by per capita GDP for the members' country). The Marine Stewardship Council (MSC) provides an interesting example of well-developed stakeholder categories, as the table below illustrates.

MSC Stakeholder Council categories
Public interest category stakeholders
<ul style="list-style-type: none"> ▪ Scientific, academic and resource management interests ▪ General conservation NGO interests ▪ Marine conservation NGO and specialist interests ▪ General interests and organisations (eg UN bodies, donors)
Commercial and socio-economic category stakeholders
<ul style="list-style-type: none"> ▪ Catch sector interests ▪ Supply chain and processing interests ▪ Retail, catering and distribution interests ▪ Developing nation and fishing community interests

4.3.4 Different models for involving stakeholders at production level

The huge range of MSIs again means a range of methods to involve stakeholders at production level. The most common include:

- Advisory boards and caucuses
- Training and capacity building
- Projects in different countries
- Informal and formal consultations
- Third party complaints mechanisms
- Dialogue with staff members/country representatives in producing countries
- Working groups.

Many MSIs will have all of these methods of involving production-level stakeholders in their repertoire, and deploy them as appropriate.

In some cases, stakeholders at production level are involved in national initiatives that mirror the international structure (again, FSC). In one case, engagement with local stakeholders through an MSI project ultimately led to the development of a local MSI - the ETI South Africa Wine Project led to the permanent establishment of the Wine and

Agriculture Industry Ethical Trade Association (WIETA) in South Africa. In others, such as the Fairtrade Labelling Organisation, stakeholders from production level are directly represented on prime decision-making structures.

The success of the methods listed above depends on *how* stakeholder involvement is managed. Stakeholders are able to vote with their feet and refuse to engage or continue to engage if they feel their involvement has not been meaningful. It is not *whether* an organisation consults stakeholders but *how*, and there is a substantial body of good practice, guidance and learning developed by international organisations and MSIs regarding how to conduct successful stakeholder engagement.

5. Government involvement

How are governments involved, at MSI-host level and production level?

Governments are involved differently in MSIs, both at host level and at production level in a range of ways, reflecting yet again the range of MSIs. There was much discussion at the Workshop on what constituted a healthy, productive and balanced level of government involvement for MSIs.

Some MSI members include industries owned or controlled by government. Some MSIs have direct government support, particularly through funding. However, there are several issues associated with public funding. While it can create credibility externally, it may also lead to poor credibility and unpopularity of the MSIs with some other actors. Donor funding from governments can prevent ownership by others involved. Furthermore, where 'seed' funding has been provided by the state, MSIs can become dependent on it and be slow to move to or include alternative funding arrangements.

Within the JO-IN MSIs, the FLA was initiated by the Clinton administration and the FLA continues to receive US government funding, as do SAI and WRC. In Europe, ETI and FWF also receive funding from their respective governments. The UK government's historic support of the ETI is reflected in their observer status on the ETI board. WIETA (see above) has direct government participation in decision-making as a member of the WIETA Executive Committee.

While governments can participate in political entities, they may find it harder to take up roles in legal entities. Nevertheless, they can undertake a range of activities to support and strengthen MSIs, whether or not they are directly involved in them. Governments have the prime responsibility to use their regulatory power, to apply and enforce local law. Their role is crucial to ensure that MSIs function coherently with relevant state activities. Where appropriate, governments should ensure that national authorities are used (such as the police, legal system, public enquiries) and remediation provided so that MSIs do not bypass existing national systems. This is especially true where there are systemic violations in one sector and where the victims of human rights abuses are actively seeking justice through national justice systems.

Mandating, endorsing, facilitating and partnering

Some research has defined four main roles for governments in MSIs: mandating; endorsing; facilitating and partnering.¹⁵ For example, the Extractive Industries Transparency Initiative (EITI) has become mandatory in Nigeria, so future Nigerian governments are now tied into its process. The British government played a significant facilitating role in EITI, as the US government has done for the Voluntary Principles on Security and Human Rights (VPs – which promote corporate human rights risk assessments and training of security providers in the extractive sector).

A facilitating role for government can be especially important where there is little experience of MSI working and little trust between stakeholders. Governments can help build bridges between stakeholders. They can also help create and maintain political momentum, for example by referring to MSI activities at multi-lateral and bilateral fora. In this way they can significantly influence the political space in which any given MSI operates.

Often it can be difficult for MSI staff to ensure sustained, joined-up government involvement. For example, a government may be part of the EITI but the foreign or diplomatic service of that country may not be aware of or do not refer to their EITI participation. Government staff in different departments who work with or within MSIs can educate their colleagues and counterparts in other departments about this area of work and the appropriate role for government staff. This helps to ensure joined up government thinking and action across ministries as well as in the civil service. It can also help to transfer and mainstream learning from one sector to another. However, all stakeholders need to be aware that consensus within government may come at the cost of watered-down commitment.

Governments also have a duty to ensure that their support for MSIs is backed up by their own behaviour. For example, this could mean ensuring that government support for international labour standards MSIs is reflected in how the government respect labour standards in public procurement; supporting a national minimum wage and ensuring that prison labour meets ILO standards; ensuring export licences and credit are only granted to companies who can demonstrate ethical behaviour. Governments can also promote incentives for good company behaviour such as enhanced market access and market share. Some governments have encouraged the development of MSIs in sectors where none exist. Some have funded training for national small and medium sized enterprises (SMEs) on how they can get involved. (Both the Belgian and US governments have funded CSR capacity-building for SMEs).

Host country level

Some international MSIs have direct government involvement to varying degrees in their structures and day-to-day operations. Examples include the VPs; the Kimberley Process Certification Scheme to stem the flow of conflict diamonds; and the EITI. The implications of these arrangements are already discussed in the SRSG's report *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*.¹⁶

¹⁵ *Public Sector Roles in Strengthening Corporate Social Responsibility: Taking Stock*, The World Bank October 2002, Tom Fox, Halina Ward, Bruce Howard.

¹⁶ *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises; A/HRC/4/035; February 2007.

Other MSIs without direct government involvement beyond a funding relationship will nevertheless engage with governments as a matter of course. This could be both to represent the interests of their members and to lobby governments to take up their own responsibilities, be that on security, bribery/corruption, trading standards, competition, law enforcement, labour inspection or providing for adequate legal protection of fundamental human rights. This can mean engaging with all the relevant government departments (development and overseas aid; home affairs; foreign affairs/diplomatic service; environment; agriculture; trade and industry; women, children and families, and in some instances with government offices for public procurement) through lobbying and consultation.

Some MSIs will also use members' connections with government. For example, trade unions in some countries have excellent links with government and MSIs with trade union involvement can use these channels to work with governments. This engagement can happen at two levels: with the host-country government in the host country, and with the host-country government representatives present in production level countries where the MSI and/or its members may be operating.

Many MSIs also engage with host-country governments about production in their own country where relevant, including working closely with specialised agencies in some cases. For example, the ETI has worked closely with the UK's Minimum Wage Commission, Health and Safety Executive and Gangmaster Licensing Authority regarding improving conditions and legislative protection for workers in UK production.

Production country level

Government involvement in MSI work at production country level can mirror that at host-country level: engaging with a range of government departments for lobbying, consultation or involvement. MSIs can also engage with production country government representatives in their own (host) country. Both forms of engagement can be sensitive and international MSIs need to be well-informed and understanding of relationships between host and production level countries and the international context in which they are working. MSIs can also seek advice and/or involvement from relevant UN agencies on engaging with the relevant sections of the production country government.

Examples of engagement include the JO-IN MSIs' joint work in Turkey, which has tried to involve the Turkish government as much as possible through separate consultations with the labour ministries, as well as jointly with other stakeholders in the local JO-IN working group. It is standard practice for the labour focussed JO-IN MSIs, together with their member companies, to work with governments to improve implementation of local labour law and/or discuss where local labour law contradicts international standards. The ETI has been working since 2003 regarding improving conditions for homeworkers in India. This work has included relevant members and partners lobbying the Indian government about extension of social security to informal workers (with some progress), and working with District Commissioners at state and sub-state level on a range of relevant issues where the project is focussed. The MFAF has systematically engaged with governments in countries in which MFAF members have focussed their efforts: Bangladesh, Lesotho and Morocco.

6. What key aspects of effective governance can be distinguished?

So far this document has looked at governance mechanisms currently in use by a range of MSIs and some business-led initiatives. What key aspects of effective governance can be distinguished from that survey and available research and experience? Our definition of governance included accountability, transparency, legitimacy, disclosure, participation, decision-making, grievance management and performance reporting. Our survey above has shown how these are all inter-related. This section of the document will look at how those elements can be handled to help ensure that human rights performance of business is improved through MSIs, rather than no performance improvement with participation seen as whitewash and the MSI itself a mere talking shop.

What does effective MSI governance look like in practice?

Those who work with MSIs with effective governance will recognise them straightaway. They have certain characteristics in common – though of course not all will have all of them all of the time. Their aims, standards, governance mechanisms, structures and systems will be clear, with clear expectations of members, including scope and timescale of intended improvements. They have evident political leadership from all sections of their membership/stakeholders. They have high-quality, experienced, well-functioning independent secretariats. They share information, are transparent and prioritise clear, accessible internal and external communication. They make every effort to involve all relevant stakeholders in their decision-making and beyond it to their activities. They understand the context they are working in, and they evolve as their context evolves. Their participants are confident in the organisation and its credibility. They feel a sense of ownership for it. They feel able to raise issues of concern through defined channels and believe their concerns or formal complaints will be addressed and the results shared.

6.1 Effective accountability

MSIs need to be accountable to their intended beneficiaries, not just their members. However, they exist for their members and are run by their members. As a result, that membership and any stakeholder engagement must come as close as possible to including intended beneficiaries. They need to be involved in decision-making: not just making and implementing decisions, but deciding what is on the agenda to begin with.

MSIs need to be aware of who their intended beneficiaries are, and have clear strategies to facilitate their active voice and participation in meaningful ways. MSIs must identify the most vulnerable, invisible or most risk of exclusion, and develop and structures to support their involvement and mechanisms to ensure accountability to those groups.

6.2 Effective decision-making

6.2.1 Decision-making structures

MSIs face the challenge of balancing a legitimate governance structure with effective decision-making. Where governance structures have different elements, each element's powers and responsibilities must be explicitly stated. Its relationship to other elements of the structure and the hierarchy of decision-making must also be clear. Each structure must also indicate how it reaches decisions. For groups with voting systems, are decisions reached by consensus or majority? If majority, what form of majority? Who is eligible to vote? All this information should be clear and available.

Many MSIs do aim for high standards of democracy and participation, like the FSC model. Yet they are also required to be fairly light on administration if they are to resist the accusation of unnecessary bureaucracy. At the same time these governance structures must not be too costly to operate. Some more recently established MSIs have tried to learn from the problems faced by the governance structure of others in their arena (for example the MSC learning from experience of FSC). This can involve appointing rather than electing members of some bodies. However, these efforts have been reported to effect little change in practice, since responsive decision-making still requires time for consultation and consensus-building. The one benefit may be cost-saving.

MSIs must ensure that their governance structures are carefully designed, either jointly with all stakeholders or with effective consultation. Processes for change to governance structures should be clearly defined from the beginning. They must allow for some flexibility, and should reflect best practice guidance and learning from the experience of others.

6.2.2 Ensuring recognition of imbalances of power

Different participants will always have different degrees of power. If unchecked, that can determine which issues are on the agenda, whose interests are considered more legitimate and how they are dealt with. Effective decision-making structures openly recognise and can help mitigate against those power imbalances inherent in multi-stakeholder work. This recognition becomes particularly important if and when some stakeholders propose work which tackles core business practices of others. Without protection mechanisms (see section 4.3.3 above), such issues can be kept off the agenda, threatening the credibility of the MSI concerned.

6.2.3 Deciding the decision-makers

Electing the decision-makers is the preferred option for many MSIs. A decision-making body which is either partly or wholly appointed must ensure that it does, and is seen to, take all stakeholders views into account. Transparency of decision-making and open records of meetings will be important in that regard. Whichever way the body is composed, it needs to be balanced between different stakeholders and include representation from those who are hard to represent where possible. This may mean taking action to encourage and support some stakeholders' representation.

6.3 Effective participation

Participation is at the heart of effective MSI governance. MSIs bring together very different stakeholders in recognition of the fact that all may hold a stake in improved human rights performance of business. Such MSIs are power-sharing arrangements, and the ensuing tussles are not always where an external observer might expect them. They involve negotiation and compromise within and between constituencies usually seen by outsiders as on the same side.

For MSIs to involve and then manage participation by such differing stakeholders takes commitment, patience and the right processes: formal but also informal on occasion. MSIs have handled these challenges by developing specific mechanisms for their contexts.

Nevertheless, certain principles remain:

- a wide range of stakeholders, often open to all who share the aims of the initiative
- care to ensure that intended beneficiaries are represented by people of their own choosing where possible

- genuine, equal access to decision-making structures and shared control of agenda-setting
- strategies in place to support participation by groups whose participation may be disadvantaged in some way
- training and capacity-building to ensure effective participation
- where there is direct company involvement in decision-making, putting in place methods to prevent business self-regulation
- open, transparent access to information to ensure meaningful participation.

Over time, MSIs must ensure that involvement is always institutional and does not rest on relationships with individuals. Consistent participation is also important. Where representation is inconsistent, decision-making is inconsistent. Stakeholders should have opportunities to participate at multiple levels: in decision-making; in project activities; in performance assessments and verification and at production country as well as host country level. ETI's Impact Assessment study found clear evidence that shifting focus to production countries and supporting development of local MSIs would raise awareness and be more cost effective in achieving improvements for workers supplying ETI members.¹⁷

What would effective participation mean to an MSI's intended beneficiary?

Imagine one example of the results of effective participation. Workers on a farm are informed by their union of some form of forthcoming assessment of their farm. They know the standard against which the assessment is being conducted. During the assessment, the shop steward talks to the assessor about the union perspective on working conditions at that site. The shop steward has had training about international codes-of-conduct and MSIs, and once took part in a stakeholder consultation about how to improve working conditions in this particular industry. Later, workers may have their own opportunity to talk to assessors off-site.

Later still, the shop steward receives details of the site assessment and corrective action plans, and is involved in some discussions with management regarding ideas for improvements. If that site later receives certification to any standard, the shop steward and the workers are informed about the certification, and told that they have the opportunity to complain about the assessor and/or the certification if they wish. If their union has international affiliation, they can raise any issues through that union or simply directly with the MSI whose standard their workplace was being assessed against via that MSI complaints mechanism.

For those who work in the MSI field, this example is real, as is its opposite, which is much more common. This is a lack of participation and information before, during and after the assessment, with the subsequent lack of involvement or empowerment. No awareness of rights raised, no opportunity to express your own views about your situation and how to improve it. Both realities provide evidence that effective governance which improves participation makes all the difference to those whose rights are affected by business behaviour.

6.4 Effective performance reporting, disclosure and grievance management

Without effective performance reporting and disclosure, no MSI can demonstrate that it is achieving its aims. If a business has committed to improving its performance in whatever

¹⁷ *The ETI Code of Labour practice: do workers really benefit? Summary (see Bibliography)*

field of MSI it is involved in, it must report on its activities and results in that field. No reporting, no evidence of any change. No disclosure, no evidence of any change.

6.4.1 Separating functions and keeping pace with change

Performance assessment can sometimes suffer from poor mechanisms. This may be that companies do not understand the criteria or standards. It may be that those doing the assessing do not understand or are ill-equipped to carry out assessments.¹⁸ The whole area of responsibility may be newly defined and changing rapidly. As a result, assessment frameworks will need to keep pace with developments and quickly update to reflect emerging good practice. For example, as we saw in section 3.4 above, for MSI frameworks that include assessment, certification and verification, good practice now recommends that these functions are separated.

6.4.2 Positive benefits of disclosure and grievance procedures for intended beneficiaries

Public reporting is controversial. Companies often state that they are concerned with commercial confidentiality and breaking competition laws. Some also fear that if they must publicly disclose the situation at some worksites, their market would be threatened as their customers may have a different perception of acceptable company behaviour from the guidance issued by the MSI of which they are members – for example on how businesses should handle child labour in supply chains.

Nevertheless, as we have seen with some of the MSIs participating in JO-IN, this has been tackled head on with public disclosure of facilities covered. This enables those stakeholders whose lives are affected by the businesses in question to receive information on and access their rights as well as the protection offered by the MSI involvement of their ultimate purchaser. High levels of disclosure are often taken as an indication of seriousness by civil society stakeholders in production countries. However, business stakeholders in countries with no recent history or culture of businesses collaborating in MSIs may be reluctant to participate depending on the level of disclosure expected.

6.4.3 Grievance management: a litmus test

Grievance management is rightly seen as a litmus test for MSI credibility. Handling complaints is often time-consuming and politically demanding – a definite test of commitment. MSIs cannot always resolve problems in their participants' domain. However, their willingness to try is a good indication of their/their members' actual power, leverage with stakeholders and commitment to the aims of their initiative. Good grievance mechanisms are open, accessible, with guidance on suggested format and clear contact points for submitting complaints. Furthermore, disclosure of any results also demonstrates efforts to be accountable and transparent. MSIs can also oversee or provide guidance for their members on how to establish effective grievance mechanisms. Some complaints procedures are guided by the complainant: the complainant decides levels of disclosure. Some procedures ensure transparency by disclosing the process but not the content of the complaint, and ensuring regular public updates on progress. This in itself can create a catalyst for change.

¹⁸ See for example the substantial body of work on poor assessment of labour rights standards or 'social auditing'.

A good grievance procedure can directly help create change for workers. One example can be found in the Kenya flower industry, following a complaint to the ETI by Women Working Worldwide (a small, UK-based NGO) and their partner the Kenya Women Workers Organisation (KEWWO). Substantial action was taken by relevant ETI members as a result of the full use of the procedure, with improvements for workers including: shift from casual to permanent contracts; clearer and own-language provision of contract information and pay-slips; introduction of an opt-out system for overtime and increased trade union membership. Some changes were also made to retailers' purchasing practices.

7. Conclusion

It is all of the effective governance factors above which together account for much of the legitimacy and credibility of MSIs - that is whether others trust and have faith in their ability to achieve their stated aims. Is this trust in some organisations but not others based on actual evidence? It is difficult to compare the results of organisations with poor governance against those with good governance. This is partly a lack of research, and partly the fact that it is difficult to access the results of poorly-governed initiatives precisely because they are not transparent and do not make information accessible to others.

However, the general consensus of research in this area seems to be that effective governance has a definite impact on an MSI's capacity to improve the human rights performance of business, especially in the more formal, resource-intensive MSIs. "Governance and accountability are significant drivers of partnership performance ... partnerships governed by clear accountability structures, processes and norms aligned to its mission will have enhanced performance outcomes."¹⁹

A presentation at the workshop by Simon Zadek²⁰ highlighted *how* well-governed MSIs have contributed to improving human rights performance of business, in other words their impact. These included:

- validating specific issues (many of which were not considered valid by business only 10 years ago)
- creating a normative compass by setting credible standards based on international law
- creating and encouraging leaders in socially responsible business
- convening and mobilising large numbers of companies from large to small, in some cases reaching critical mass in a particular sector
- resolving specific situations at specific worksites, often through complaints procedures
- driving pathways to 'smart regulation'.

MSIs without good accountability, transparency, legitimacy, disclosure, participation, decision-making, grievance management and performance reporting have simply not been able to achieve and demonstrate the same impact.

¹⁹ *Governing Collaborative Governance Enhancing development outcomes by improving partnership governance and accountability* p. 15 (see Bibliography).

²⁰ Chief Executive of AccountAbility, amongst other roles, who has written widely on and has extensive experience of governance and MSIs.

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