

GUIDANCE

for Multi-stakeholder initiatives on trafficking in persons



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Photo: Lotte Lohr

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Preface

In 2016, in collaboration with Verité, an international non-governmental organization, the UN Special Rapporteur on trafficking in persons, especially women and children, launched a new project on addressing the risks of trafficking in persons in global supply chains. The goal of the project was to reduce the vulnerability that workers face in supply chains and tackle the risks of trafficking in persons by strengthening multi-stakeholder and industry-based initiatives. The project aimed to promote the catalysing effect of these organizations to enhance efforts made by businesses to improve their policies and measures to address trafficking in persons and other types of labour violations.

In 2016, the mandate conducted a mapping of multi-stakeholder and industry-based initiatives active in different industries, including fishing, aluminium, electronics, coffee and tea. The mapping was a first step towards engagement with these initiatives through bilateral dialogue and two consultations. The objective was to identify and understand challenges, lessons learned and good practices in detecting and addressing trafficking in persons and labour exploitation.

The first of the two consultations, held in July 2016, targeted participants in multi-stakeholder initiatives and industry coalitions; the second, in November 2016, was aimed at representatives from companies that perform social audits and other types of supply chain

assessments. Based on concerns and shortcomings identified during these two consultations, an additional consultation took place in March 2018 aimed at identifying innovative approaches to guarantee workers representation and participation in multi stakeholder initiatives.

This guidance is the result of these consultations and an ongoing dialogue with stakeholders, including trade unions, civil society, MSIs and industry coalitions. The guidance is addressed primarily to professionals in the multi-stakeholder initiatives sector and it is divided into three chapters:

Chapter 1

Trafficking in persons in supply chains

Chapter 2

Supporting MSIs to enhance their structure and mechanisms to better address trafficking through stronger worker participation

Chapter 3

Access to remedy for workers

Each chapter contains a set of recommendations, a self-assessment questionnaire and further reading for those who would like to enhance their knowledge.



Photo: Nazarizal Mohammad



Foreword

A just society is one premised on equality and human rights, and is a society that ensures just and fair conditions of work for all workers. Trafficking in persons for forced labour is a serious human rights violation, one that treats human beings as commodities to be bought and sold. Despite the progressive development of laws on trafficking and forced labour, exploitation of workers persists and flourishes. It is critical now that we use the legal tools that we have developed, to eliminate such exploitation. We have the knowledge, skills and capacity, and international legal norms that require states and businesses to take action. The UN Guiding Principles on Business and Human Rights, implementing the United Nations “Protect, Respect and Remedy” Framework, have given a new impetus to ensure more effective prevention of human rights violations by businesses, and to strengthen protection and accountability mechanisms.

However, today, more than ten years after the adoption of the Guiding Principles, human rights violations persist. Voluntary self-regulation has not worked, and has yielded only limited success in the face of continuing exploitation. Sanctions employed to address abuses in supply chains often impact most negatively on workers, leading to loss of livelihoods.

A critical question then is whether voluntary social compliance initiatives have managed to change business behaviour, and what changes are now required. This Multi-Stakeholder guidance seeks to address current gaps in models of prevention and protection. Worker-led initiatives have proved more successful in establishing standards for fair recruitment, increased

wages, safety, social protection and the elimination of gender-based violence, including trafficking in persons. They have succeeded in forging powerful consumer-worker alliances that have led to binding legal agreements, and rights enforcement.

This guidance aims to assist multi-stakeholder initiatives in transforming or enhancing their governance, standards, monitoring mechanisms or grievance mechanisms, into robust systems that, led by workers, bring about meaningful and lasting changes to strengthen workers’ rights and eliminate trafficking for labour exploitation.

The primary responsibility to protect the rights of workers and affected communities lies with the State. States are required to take effective action to eliminate trafficking in persons, forced labour and to ensure protection of the rights of all workers. These includes rights of collective bargaining, freedom of association, and the right to form and join trade unions. It also includes the right to a world of work free from violence and harassment.

Increased efforts are needed to ensure implementation in practice of international human rights and labour law, and of the UN Guiding Principles of Business and Human Rights. Multi-stakeholder initiatives can and must play a role, to strengthen the rights of workers, and to end labour exploitation.

Siobhán Mullally,
UN Special Rapporteur on trafficking in
persons, especially women and children
December 2021



Photo: Rawpixel



Trafficking in persons in supply chains

What is trafficking and how it manifests in supply chains?

Trafficking is first and foremost a violation of human rights. Victims of trafficking are victims of human rights violations. The international definition of trafficking can be found in an international legal instrument called the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). The protocol defines trafficking in persons as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

To determine the existence of trafficking in persons one must identify three elements: 1) acts, 2) means and 3) exploitative purpose.

“Trafficking is first and foremost a violation of human rights”.

The act is the recruitment, transportation, transfer, harbouring or receipt of persons. The means constitute both the more coercive measures established in the definition as well as the more subtle forms, such as deception, fraud or the abuse of a position of vulnerability. Finally, the list of types of exploitation is non exhaustive and it can be anything from those explicitly included in the definition, which includes forced labour, to generally labour exploitation.

The definition further adds that the consent of the victim to the exploitation, if the means described have been used, will be irrelevant. In case of children the means are always irrelevant and only the act and purpose must be present to determine trafficking.

178 countries have ratified the Palermo Protocol. The definition is widely accepted and it is now part of most national legal regimes, trafficking constituting a criminal offence.

Several international human rights treaties recognized trafficking or practices similar to trafficking as such, for example the International Covenant on Civil and Political Rights. Also regional human rights treaties, such as

the European Convention on Human Rights or the Council of Europe Convention on Action against Trafficking in Human Beings.

Another set of international instruments which are relevant to trafficking, forced labour and slavery is found under the auspices of the International Labour Organization. Forced labour is defined under the ILO Forced Labour Convention, 1930 (No. 29) as “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily”. The Forced Labour Convention was supplemented by a new Protocol in 2014. A Recommendation (n° 203) was equally adopted offering States a wide range of actions to effectively implement a legal and policy regime to address trafficking and forced labour.

Awareness about international legislation and policies on trafficking in persons and labour exploitation will allow MSIs to better assess their own standards, as well as their programmes on trafficking and labour exploitation. It will help them assess how their standards align with international definitions and international efforts to eradicate trafficking.

The form of exploitation most commonly seen in businesses operations and supply chains are those related to the abuse and violation of labour rights. Trafficking in persons, as an expression of the most egregious violations at the workplace, is one extreme in a continuum of exploitation. Trafficking is rarely found in a void. Exploitation, and therefore trafficking, begins with the enabling of a breeding

“Trafficking in persons, as an expression of the most egregious violations at the workplace, is one extreme in a continuum of exploitation.”



ground for the disregard of fundamental labour rights, such as by placing limitations on the rights to join or form a trade union and to collective bargaining and disregarding basic workers' rights, such as the right to safety. Minor labour abuses are recognizable everywhere in everyday business practices, such as delayed payment of wages, excessive overtime, non-paid holidays or payment of recruitment fees to recruitment intermediaries. They are so common that often workers do not recognize their abusive nature. The normalization of labour abuse at that level has a direct impact on the odds of recognizing more severe forms of exploitation. Workers, finding themselves in a spiral of a continuum of exploitation in which each practice and step have been normalized, are reluctant to come forward to State authorities or other types of

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grievance mechanisms. Because the first stages of the continuum of exploitation have only contributed even more to enhancing their position of vulnerability, by the time the situation has worsened and turned into a severe form of labour exploitation or trafficking, workers are even less likely to speak out.

Exploitation and trafficking flourish in legal and social environments in which the law is weak, weakly implemented and society shows a high tolerance towards exploitative labour practices. Awareness and understanding of these elements are key for MSIs to adapt their standards and programmes and increase their effectiveness to address trafficking and exploitation. To assess the risk level of clients and determine issues such as the intensity and frequency of audits, MSIs should take into account elements such as State ratification and enforcement of relevant international conventions on human rights and labour standards; the existence of regulatory regimes that regulate recruitment activities in accordance with

international standards and guidelines; the level of informality within the economic sector in which their clients operate; the percentage of vulnerable groups in the client's workforce, including the number of migrant, temporary, seasonal, contractual or home-based workers; the level of complexity of the client's labour supply chains; and client's previous record on these issues.

MSIs approach to trafficking: How is trafficking in persons codified in voluntary standards?

Corporate codes of conduct and the voluntary standards set by multi-stakeholder initiatives and industry coalitions typically include a reference to trafficking in persons or forced labour. The trafficking in persons or forced labour standard is normally based on international human rights instruments and labour standards. However, the reference is often limited to a mere prohibition of the use of forced labour or trafficking in persons and is

RECOMMENDATION 2

MSIs must gain awareness on systemic labour abuses identified in the region and sector they operate, understanding of national and local regulations, and how effectively these are implemented in a manner to understand and evaluate the risk to trafficking in the environment and adapt their standards and assurance programmes accordingly.

not further developed into specific indicators to help identify risk practices and define what forced labour or trafficking in persons may look like in practice.

Unethical recruitment practices and how they represent a risk of forced labour and trafficking in persons are not widely acknowledged within the private sector or among the stakeholders that participate in the standard-setting process. While some initiatives, such as the Ethical Trading Initiative or Social Accountability International, were created

to uphold a strong labour rights component, others were established primarily with an environmental focus. As a result, the level of sophistication in developing indicators that can effectively account for companies' risk practices in this area varies from one initiative to another. These differences among initiatives have also an impact in the standard-setting and revision process and affect a multi-stakeholder initiative's success in establishing an assurance programme that effectively monitors businesses compliance with a trafficking standard. These issues and how MSIs can overcome these challenges is the objective of chapter 2 entitled: Supporting MSIs to enhance their structure and mechanisms to better address trafficking through stronger worker participation.

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The evaluation of the competence of the auditors is also a key concern. The level of understanding of the complexities of detecting trafficking in persons, forced labour and other types of labour exploitation varies among those in the industry. The skills required to,

among other things, interview workers, and an auditor's comprehensive understanding of the specific vulnerabilities of categories of workers, such as migrant or contract workers, are indispensable to ensuring adequate evaluations of a company's performance on indicators related to trafficking in persons.

Unfortunately, one single team of auditors is often charged with the evaluation of the complete set of indicators, including those on other issues, such as deforestation or corruption. It is unlikely that auditors with expertise in environmental concerns would have also the same level of experience in evaluating corporate practices that represent risk indicators of trafficking in persons or forced labour, especially considering the subtle ways in which such practices may be concealed and the fact that workers themselves may be unaware of the wrongfulness of corporate practices that are perceived as common businesses practices, such as compulsory overtime or the payment of recruitment fees.

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RECOMMENDATION 3

Criteria and indicators should be strengthened and should include at a minimum the following benchmarks:

1. All workers have the freedom to terminate employment at any time, without penalty, by means of reasonable notice, in accordance with national law or collective agreement;
2. Workers are not held in debt bondage or forced to work to pay off a debt of any kind, including non-monetary debt;
3. No fees or costs for recruitment are charged, directly or indirectly, in whole or in part, to the worker, including costs associated with the processing of official documents and work visas;
4. Employers that engage private employment and/or recruitment agencies use only agencies that are licensed or certified by the competent public authority;
5. Workers are provided with a written employment contract that is straightforward and understandable by the workers. Contracts for migrant workers are shared with the workers sufficiently in advance of their deployment;
6. Contract substitution and changes that diminish originally agreed wages, benefits or other conditions of work are prohibited;
7. Workers are paid in legal tender and provided written, itemized pay slips or receipts in a language they understand, indicating wage rates, hours worked, total pay and any legally authorized deductions made by the employer;

8. Workers that earn wages calculated on a performance-related basis do not earn less than the legally mandated minimum wage;
9. Wage payments are made at regular intervals directly to the worker and/or their bank account, and not delayed, deferred or withheld;
10. Deductions made from workers' wages are lawful;
11. Wage advances or loans provided to workers, including interest rates and repayment terms, are compliant with the law, explained to workers in their own language and agreed in advance by both parties;
12. Workers retain full and complete control over their earnings and are free to spend such earnings at their discretion;
13. Workers are not compelled to make use of stores or services operated in connection with an undertaking. Where access to other stores or services is not possible, employers ensure that goods and services are sold or provided at fair and reasonable prices, without the aim of indebting or otherwise coercing the workers concerned;
14. Mandatory residence in employer-operated residences is not a condition of employment;
15. Withholding or confiscating passports, other identity documents or work permits is prohibited; in cases where such documents are withheld by employers or labour recruiters as per legal requirement, simple procedures are in place to allow the workers direct and immediate access to the documents at any time;
16. Workers are not physically confined to the workplace and do not face restrictions, including psychological intimidation and/or verbal threats, on their freedom of movement outside working hours and in related premises, such as dormitories or residences;
17. Workers, irrespective of their nationality and residence status, have the right to join trade unions and bargain collectively;
18. Non-conformity with human trafficking and forced labour standards should entail suspension of certification or any other envisioned sanction of a similar nature and level of severity. A stepwise plan should be established together with the companies to ensure that issues of non-conformity are corrected and workers are not negatively affected by the sanction applied.

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RECOMMENDATION 4

MSIs ensure that assurance providers and auditors have demonstrated knowledge and experience in assessing compliance with labour-related standards and in interviewing workers on an ongoing basis. They should also ensure including forced labour and human trafficking experts in oversight bodies.

Multi-stakeholder initiatives provide specific training to auditors and assurance providers on trafficking in persons to improve their skills in risk detection and evaluation of risk indicators. The training should also cover how to interview workers and should raise awareness of worker vulnerabilities, including those related to gender or migration status.

Transparency legislation: current examples and emerging trends

States are primarily responsible to prevent trafficking, protect victims of trafficking and prosecute traffickers, but companies have obligations too to respect and exercise due diligence. Under the UN Guiding Principles on Business and Human Rights, States are requested to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction will respect human rights throughout their operations (principle 2). In addition, businesses should carry out due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Pursuant to that

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same principle, due diligence should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. It should cover not only impacts related to an enterprise’s own activities, but also those to which it may be linked through its business relationships.

In the field of trafficking and in searching transparency and accountability of businesses operations, States have enacted different examples of legislation based on reporting obligations (Legislation on transparency). California Transparency in Supply Chains Act in 2010 in the United States and the Modern Slavery Act 2015 in the United Kingdom are some of the first examples. Australia passed the Mod-



Photo: Dang Cong

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ern Slavery Act 2018; and other countries are considering similar legislation to request companies to report on their efforts to tackle trafficking in their operations and supply chains. Other examples are not limited to trafficking, such as the French “loi de vigilance” but they are also relevant as labour abuse and trafficking are part of a larger human rights impact. California Transparency in Supply Chains Act and the Modern Slavery Act are both based on an obligation to report. Technically, companies comply by merely reporting, even if they report a lack of action in the matter. In addition, most examples of reporting are weak, information on their performance is quite limited and more needs to be done in improving disclosure requirements to allow civil society and Governments to monitor businesses’ abuses.

The French example establishes a civil liability system for victims to submit a claim for damages caused by the company when it has failed to address the risk. The liability can be invoked by a worker if he/she can show that she or he would not have suffered damage had the company implemented an adequate due diligence plan, implying that either the company does not have a plan at all, the plan is not adequate or the plan, which may have been adequate, was not implemented. It constitutes a very high bar for a claimant to prove that, if the company had implemented an adequate plan, they would not have suffered

“Transparency legislation must demand clear obligations on businesses, it must require businesses to disclose not only policies and procedures implemented to address risks of trafficking or severe exploitation in their operations and supply chains, but also outcomes and the impact of such policies and procedures.”

the damage. Finally, it will depend on the interpretation of the French courts whether the plan, the absence of it, or the lack of its implementation had an impact on victims’ rights. With all the shortcomings and difficulties that proving this can entail, this is still a step further than a pure obligation to report only.

The Special Rapporteur has made clear that transparency legislation must demand clear obligations on businesses. Legislation must require businesses to disclose not only policies and procedures implemented to address risks of trafficking or severe exploitation in their operations and supply chains, but also outcomes and the impact of such policies and procedures. Businesses disclosures should take into account concerns regarding workers’ data protection, be anonymized and stripped of any information that would allow for the identification of individual complainants.

The areas on which companies must report on should be clearly established by law; they should include, at a minimum: recruitment practices, the methodology used in monitoring compliance with the company policy, use of alternative sources of information, such as information gathered through internal audits, grievance mechanisms and coordination with relevant stakeholders, such as trade unions and civil society representatives. With regard to information from grievance mechanisms, information could include the number

of complaints or reports submitted through each mechanism, from where along the supply chain and from which operations they were received, the steps taken towards resolution, the parties level of satisfaction with the outcome and the proportion of grievances that remain unresolved.

The Special Rapporteur has also asked States to reinforce transparency legislation through: establishing sanctions, including financial fines, for companies that fail to fulfil their obligations; equipping law enforcement agencies with the resources necessary to follow up on reports of lack of compliance; creating and regularly updating a central registry that collects the information that is published by companies each year; establishing an independent body to monitor compliance and quality of disclosure, with special consideration given to companies operating in high-risk environments where legal systems are weak, especially regarding access to remedy for victims of trafficking or labour abuse or where workers are not rep-

resented; and making publicly available the lists of companies that are subject to legislation on transparency;

The Special Rapporteur has also recommended that governments use a gradual change approach, incentivize due diligence by rewarding companies that implement policies and procedures and show evidence of their having an impact on reducing risks of trafficking and severe exploitation in a specific period of time, and encourage good behaviour and reporting through facilitated access to government procurement for compliant bidders.



RECOMMENDATION 5

MSIs must be aware of international guidelines and national legislative and policy framework regarding accountability of companies' human rights due diligence efforts and provide tools to support accountability in line with Special Rapporteur's recommendations.

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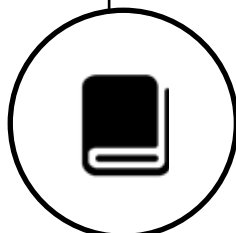


SELF-ASSESSMENT QUESTIONS

for MSIs on Capacity Building:

The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current awareness on international regimes and emerging trends on trafficking in persons:

- Are we fully aware of international legal instruments and guidelines addressing trafficking in persons, as well as instruments and guidelines regulating labour standards? Are our standards aligned with them and kept updated with new international developments?
- Are we knowledgeable of the legal environments and level of enforcement in the national and local context in which we operate? How do we identify systemic labour abuse?
- Is our standard, indicators and criteria for compliance adapted to the national and local context? Do they include the recommended indicators by the Special Rapporteur on trafficking?
- Do we ensure that auditors and assurance providers have an expertise in labour rights and experience in worker interviews as well as on evaluating recruitment intermediaries?



Further reading for MSIs:



-  Special Rapporteur on trafficking in persons, especially women and children report to the Human Rights Council, 2017 (A/HRC/35/37) on "Strengthening voluntary standards for businesses on preventing and combating trafficking in persons and labour exploitation, especially in supply chains"
-  Special Rapporteur on trafficking in persons, especially women and children report to the General Assembly, 2019 (A/74/189) on "Access to remedy for victims of trafficking for abuses committed by businesses and their suppliers"



Photo: Jorhat

| CHAPTER 2 |



Supporting MSIs to enhance their structure and mechanisms to better address trafficking through stronger worker participation

Worker participation in MSIs governance structures

Diverse groups of stakeholders should be equally represented and hold equal power when deciding, shaping or voting on practices or procedures of an MSI. Equal footing is important as it provides for balanced, independent and legitimate outcomes in decision making process. Such balanced decision making process is also important as it is key to address complex issues that no single group of stakeholders could solve alone, such as labour abuses or trafficking in persons. In the context of addressing labour abuses, workers must get the same level of attention as the concerns brought forward by other groups.

“Diverse groups of stakeholders should be equally represented and hold equal power when deciding, shaping or voting on practices or procedures of an MSI.”

Understanding of the governance structure of an MSI is necessary to understand which stakeholders control or share power within an MSI and what role do workers do or have played in it.

The latter applies to MSIs with multiple governance layers in which technical, advisory, stakeholder boards, bodies, committees and groups play a role but whose exact influence and power is often hard to understand. Such complex structures make it difficult to establish the actual power of groups of stakeholders, including workers.

MSIs may have industry and worker representatives in their decision making bodies

RECOMMENDATION 6

Keep MSI governance structures clear, simple and transparent.



Photo: Reisegraf

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but equal power between groups of stakeholders and balanced decision making is not facilitated through equal representation of stakeholder groups in many MSIs. Also worker representatives are often outnumbered by industry representatives. This may lead to favoring industry interests over workers' interests when making important decisions. The fact that the affected populations, workers, are not able to influence key-decisions undermine the legitimacy of MSIs and their potential to positively impact local communities and workers rights.

Reasons why affected populations are hardly represented in the governance structure of MSIs can probably be found in costs and cultural, societal and geographic distances between the affected populations and the MSIs. In some cases and to fulfil a worker representation space, MSIs have invited international civil society actors and trade unions. The role of trade unions in upholding labour rights and bring change to company and State behavior is unique and should never be undermined. Given the specific role of a governance body in an MSI and the impact that these structures seek by engaging directly with affected populations (to start with, a set of standards and criteria that effectively reflect on the challenges of that specific sector in a specific place), it is key that organizations representing workers are indeed directly involved and familiar with the challenges and particularities of the sector and region concerned and that are accountable to the workers they represent.

“The role of trade unions in upholding labour rights and bring change to company and State behavior is unique and should never be undermined.”

RECOMMENDATION 7

MSIs governance structure should facilitate equal representation and participation of stakeholder groups, including workers representatives.

Bringing in local worker representation and ensuring their participation constitutes an equal voice to that of the other stakeholder groups can come with its own challenges. Lack of resources to adequately prepare for and attend meetings, pressure or intimidation to conform to certain opinions within the decision-making body, or lack adequate industry-specific knowledge, may prevent these groups full participation in an MSI governance body. Not only a thorough mapping of stakeholders in the field but a mapping of potential challenges of participation should be drawn in advance, along with tools and strategies to address them.

The origin and balance of the financial resources of an MSI can also have an impact on the balance of stakeholder groups in a governance body. MSIs who are too dependent on income streams of industry (e.g. via member fees or accreditation or auditing fees) may tend to steer key decisions in favor of those

who pay the most. In reality this balance in financial resources might be quite difficult to accomplish, and in absence of sufficient funds provided by governments and other donors, some MSIs are over-dependent on funds provided by industry. While some MSIs are transparent regarding origin of revenues and expenditures, for others, understanding potential over-dependencies on specific groups and checking overall income streams and expenditures can be difficult. Transparency is not only needed to check on over-dependencies but can also be seen as important for being accountable to stakeholders including workers.

RECOMMENDATION 8

MSIs should provide for financial transparency and try to avoid over-dependence on revenues provided by one stakeholder group.



Photo: Jeremy Bezanger

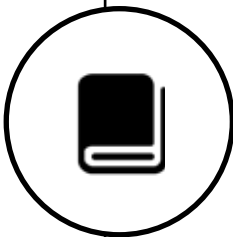
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SELF-ASSESSMENT QUESTIONS for MSIs on Governance Structure:

The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current governance structure of an MSI

- Is our governance structure clear, simple and transparent enough so outside stakeholders can easily understand power division and decision making processes?
- Is our current governance structure the result of a mapping exercise of stakeholders and how was the mapping exercised performed?
- Do we facilitate equal representation and participation of workers and/or NGOs and unions? What have we done to eliminate the barriers that hamper equal participation of workers?
- To what extent does our current financial set-up and level of transparency limit our ability to be accountable to and make decisions which benefit workers?
- To what extent do our current governance structure and financial set-up negatively impact our ability to live-up to our mission and goals?



Further reading for MSIs:


-  The New Regulators? Assessing the landscape of multi-stakeholder initiatives, MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics, June 2017 at <https://msi-database.org/report>



Photo: Greg Daines

| CHAPTER 2 |

Worker participation in standard setting processes

In the first chapter we have discussed the definition of trafficking, its impact in supply chains and indicators to identify risk. We will now explore how facilitating workers participation in standard setting can support enhance the capacity of the standard itself to identify and address risks of trafficking.

The part of standards which addresses workers' rights is in most cases based on local law of the countries where the standard is being implemented and/or international guidelines and norms. Specific references to international norms and guidelines provide a standard with a 'foundation' and legitimacy. International norms often go beyond local law and can therefore help to better protect workers. On occasion, weak standards predominantly based on local law only can undermine workers' rights. In some jurisdictions unethical recruitment practices will still be enabled by local law, such as the payment of recruitment fees or confiscation of passports.

As we have seen before, any standard that addresses trafficking and forced labour needs to be based on:

- The United Nations Declaration on Human Rights;
- The Core International Human Rights Instruments;
- The ILO Core Conventions;

- and the United Nations Guiding Principles on Business and Human Rights.

Now, just referring to international guidelines is important but not enough. It should be followed by a solid 'translation' of these references in the standards' language and/or guidance. This means that references to a norm or guideline should be matched with unambiguous and specific language which clearly indicates and defines the set threshold. References to norms and guidelines should be followed by specific indicators to help identify risk practices and define impacts in practice, as we have seen in the previous chapter. Workers are best placed to identify risk practices and assess how the set of indicators can be best defined and "translated" into a particular context. Standards should be feasible, credible and accessible to the ones involved (e.g. members, monitored facilities, certification bodies, NGOs, unions, the affected populations -like workers-, etc.). In order to allow these different types of stakeholders to contribute and adapt to new or to be revised standards, procedures and steps need to be defined to set or review standards in a structured, transparent and legitimate way.

Worker led social responsibility initiatives give workers a central place when consulting stakeholders. These initiatives are founded on the understanding that, in order to achieve improvements, protections in supply chains must be worker-driven, enforcement-focused, and based on legally binding commit-

“Specific references to international norms and guidelines provide a standard with a ‘foundation’ and legitimacy.”

ments that assign responsibility for improving working conditions to the global corporations at the top of supply chains. An example of such initiatives is the Coalition of Immokalee Workers (CIW). The CIW is composed of farmworkers. As workers and their organizations have a central position, they advocate for 'worker-authored standards'. They do so in order to put "the humans whose rights are in question central and to make sure that standards contain provisions designed to get at longstanding abuses that only workers could know, the forms of exploitation and humiliation unique to each particular industry that workers have experienced for generations, but no outside "expert" could ever divine" .

Standards play also a role as a tool for empowering workers. This applies in particular to standard elements that aim at ensuring workers' representation. As discussed, a strong standard on trafficking is intimately related to the inclusion of standards on the right to freedom of association and collective bargaining.

Workers who are employed under conditions of forced or bonded labor are for instance unlikely to raise their voice. A lack of the possibility to organize as workers or to join a trade union is also an indicator of trafficking and in itself an abuse and violation of human rights. Both rights, freedom of association and to collective bargaining are recognized by core conventions (conventions 87 and 98) of the ILO. They are also called 'enabling rights' and create the foundation and space for workers to enter into social dialogue with their partners (employers and government).

In standard setting, MSIs need to be aware as well of emerging trends and issues that will have an impact on both, risks and workers' vulnerabilities to trafficking, as well as on workers participation and representation in the MSI and in standard setting process. One example of these trends is the use of unethical recruitment practices, but other concerns can arise from, for example, restrictions on workers derived from COVID19 measures.



RECOMMENDATION 9

Standards' content refer to international norms and guidelines. MSIs abide to procedures which allow for structured, transparent and legitimate ways of setting and revising standards. In this process they actively reach out to stakeholders, including workers and their representatives in order to include their input. Indicators and further guidance in the implementation of the standard are prepared with worker representatives, to ensure they addressed identified risks in the particular context/s the standard is implemented.

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RECOMMENDATION 10

Standards' content articulates the rights to freedom of association and collective bargaining as defined in core ILO conventions 78 and 89 and actively promote these rights in their standards.

When workers are actively engaged in a MSI, through their feedback, they enable MSIs to identify emerging trends early on and support them in creating relevant criteria and indicators to address these issues in standard revision processes. In addition it allows MSIs to support members in adapting monitoring mechanisms to become aware of the impact new challenges pose on workers' rights.

RECOMMENDATION 11

MSIs continuously scan for 'emerging issues' which are likely to weaken workers' representation via stakeholder dialogue and standard consultation processes.

Standards should also include process or procedural elements that ensure and strengthen workers' participation. Such procedural or process elements should at minimum entail the mandatory and regular education or training of all workers on their rights and responsibilities. Workers should also be educated on how to use a trusted and accessible grievance mechanism. The topic of worker education will be further explored in a separate chapter on capacity building but a formal and solid adoption of the mentioned elements in the standard is crucial as it builds the basis for workers' ability to understand their rights and their ability to voice their concerns if they feel their rights are not respected. Other process or procedural elements to be captured in the standard of an MSI should relate to the integration of the standard in the internal policies and procedures of monitored facilities and can specify elements like the responsibilities and the roles of 'worker committees', worker-management dialogue and the interaction with external stakeholders.

RECOMMENDATION 12

MSIs formally and specifically include regular education of all workers, on their rights and responsibilities and on how to use grievance mechanisms when their rights are violated, in their standards.



Photo: Ramshik Raz

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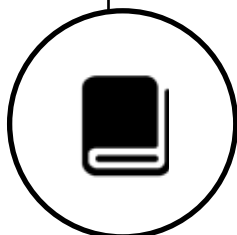


SELF-ASSESSMENT QUESTIONS



FOR MSIs ON STANDARD-SETTING:

The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current standard of an MSI

- Does our standard go beyond local law and do we explicitly refer to and translate international norms and guidelines in our standard?
- How can we more actively promote the rights to freedom of association and collective bargaining in our standard?
- Do we specifically include regular education of all workers, on their rights and responsibilities and on how to use grievance mechanisms when their rights are violated, in our standard?
- Is our process of standard-setting structured, transparent and legitimate?
- Have we considered workers as stakeholders to our system? Do our consultation processes and tools allow us to gather their input?



Further reading for MSIs:

-  Setting Social and Environmental Standards, ISEAL Code of Good Practice, Version 6.0 – December 2014 at https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Standard_Setting_Code_v6_Dec_2014.pdf
-  Asbed, G. and Hitov, S., Preventing forced labor in corporate supply chains: the Fair Food Program and Worker-Driven Social Responsibility, Wake Forest Law Review, Volume 52, Number 2, 2017 at http://ciw-online.org/wp-content/uploads/HitovAsbedArticle_AuthorCopy.pdf

Worker participation in assurance processes

Most MSIs monitor their members, the supply chain facilities used by their members, and/or (to be) certified facilities. They do so in order to check whether such parties meet the standard set by the MSI and to what extent they meet it. In order to monitor such processes, a variety of tools are used by MSIs, which are often labelled as assessments or audits.

The breadth and depth of these assessments and audits varies and can run from a 3rd party, 5-day audit of a team of five experienced and qualified auditors to a half day, one person audit or self-assessment. The aim and focus of such monitoring activities also varies. Some MSIs focus their monitoring efforts on the companies which 'head' the supply chain (brands or buyers). Most MSIs focus on the facilities (factories or farms) in the global supply chains of such brands. The aim also varies. For some MSIs, monitoring is key to drive and check upon continuous improvements. For others, monitoring is the key process to determine whether a facility meets or does not meet the standard and therefore does or does not get certified. There are also MSIs which combine these approaches.

Despite the differences noticed there are also commonalities. Monitoring is done to drive, check, or measure compliance or change. Monitoring often also serves as both the 'carrot' (e.g. being certified) and 'stick' (e.g. discontinued business relationship). Audits and assessments can also drive impact

by identifying non-compliances or lack of progress. Such non-compliances can be addressed via follow-up steps which can include so called corrective action plans or other remedial activities. Monitoring is also important to improve or maintain the credibility of the efforts of the individual facility which is being monitored and the credibility of the MSI as a whole. One could say that monitoring is the key activity used by MSIs to 'guarantee' or 'assure' stakeholders that facilities, products and/or services meet their standard, or meet certain minimum requirements.

However the effectiveness of so called social audits as described above is contested. The Special Rapporteur on trafficking has raised concerns about the capacity of social audits to understand the complexities behind labour abuses and factors enabling severe exploitation, forced labour or trafficking. The Rapporteur recommended that existing audit methodologies must be reviewed to

ensure that third-party audits are performed under optimal circumstances, that the resources necessary to collect the voices of workers are allocated and that auditors have the skills necessary to evaluate trafficking in persons risk practices. Even if social audits are performed under optimal circumstances, auditing, as a way to evaluate the com-

“Even if social audits are performed under optimal circumstances, auditing, as a way to evaluate the compliance of companies with labour standards, lacks the capacity to assess the performance of companies in the long term.”

pliance of companies with labour standards, lacks the capacity to assess the performance of companies in the long term. An audit, even the most comprehensive, i.e., when it includes worker interviews and is supplemented with

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RECOMMENDATION 13

MSIs and/or their accredited auditors/assessors consult and take into account feedback from stakeholders, including workers and their representatives, prior to an audit or assessment. Framework and content of specific facility assessment regarding labour issues, including selection of workers for interviews, interview space and interview content, should be fully agreed and designed between auditors and worker representatives based on feedback obtained from this group prior to the audit.

information from alternative sources, such as local actors, including representatives of civil society and local trade unions, is still a snapshot offering only a partial view of day-to-day working conditions.

The first important question to highlight in this context is whether MSIs or their accredited assessors or auditors hear and consult stakeholders, including workers and their representatives, prior to an audit, how stakeholders have been identified and under what circumstances their voices have been heard and taken into account. This is important as it allows stakeholders like workers, unions and NGOs to bring historic or current issues or concerns under the attention of the MSI and/or auditors. Such issues can include conflicts (internal or external (e.g. unions), criminal charges, a history of

labor violations, concerns of communities, etc. Inclusion of such issues can provide important information to auditors while preparing for or doing the audit.

Monitoring activities have been praised and criticized for their effectiveness. Among positive impact increased awareness on all levels of the supply chain on the issues addressed in standards has been identified. However, existing monitoring mechanisms have been less successful in identifying “harder to spot” issues like lack of freedom of association, discrimination and harassment. These issues are often not picked-up in audits as they do not show in the walk-arounds and document inspections auditors are required to perform. They are therefore ‘under water’ or ‘under the radar’. They could be picked up if auditors

“Even if workers do feel safe, they are often unaware of their rights and therefore do not experience clear rights violations as an issue or concern.”



Photo: Hoach Le Dinh

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would spend enough time on listening to workers who are able to bring such issues to their attention. More and more MSIs understand this issue and have, as a response, made workers' interviews a mandatory part of the auditing process. While these interviews can help auditors to pick-up hard to spot problems, the reality is more complex. Workers are often coached by management to give the 'right answers' when being interviewed. Workers might also fear retaliation as they do not know the auditors and suspect that their information might be passed on to management. Even if workers do feel safe, they are often unaware of their rights and therefore do not experience clear rights violations as an issue or concern. To increase the effectiveness of workers' interviews these are some good practices:

- Workers' interviews which are held off the working site (e.g. at workers homes) might feel safer to workers than being interviewed at work. Management must never be present during interviews.
- Being interviewed by someone speaking the same language and having the same background will also help (e.g. women will more easily speak about sexual harassment to other women than to a man). Ideally audits are performed by people that are in constant contact with workers and can react if abuses are identified. In this regard there are examples of assessment performed on ongoing basis by organizations

“Severely limits the possibilities of workers and their representatives to be informed on findings which might threaten their health, safety and overall well-being.”

RECOMMENDATION 14

MSIs make sure that worker interviews form a substantial part of the monitoring process. Worker interviews are preferably held both on-site and off-site, are a mix of individual interviews and group interviews and are facilitated by workers' peers.

who can assist workers in case of abuse.

- Workers in general will feel more comfortable when they are interviewed by peers, or someone they know and trust.
- Group interviews can also help in uncovering hard to detect issues. Trust and awareness building of the facilitator, can help bringing about the awareness and confidence needed to recognize and voice sensitive issues.

While it is important to hear workers prior to an audit and during audits, it is also important to include workers when the audit or assessment results are shared. This may seem straightforward, as the audit is aimed to improve the well-being of workers, but does certainly not always happen. Due to confidentiality agreements which exist between the auditor and audited facility



Photo: Random Institute

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RECOMMENDATION 15

MSIs make sure that auditors/assessors and audited/assessed facilities are fully transparent to workers and their representatives on the findings and suggested follow-up of the monitoring process.

audit reports are often not made public or shared with workers. Such confidentiality agreements might be sensible from the perspective of management who might fear reputational, business or legal consequences when certain non-compliances are shared. However, they severely limit the possibilities of workers and their representatives to be informed on findings which might threaten their health, safety and overall well-being. Not being transparent about the findings of an audit also puts pressure on the credibility of the audit process and the MSI involved, as it takes away the options for stakeholders to criticize or validate the audit findings and suggested follow-up. In any case, further disclosure should take into account concerns regarding workers' data protection, be ano-

“Worker representatives should be interviewed as part of the pre-audit process, in awareness creation, and during the audit. They should also be involved in feedback and remediation at every stage.”

nymized and stripped of any information that would allow for the identification of individual complainants.

Being inclusive and attributing more attention to workers fits a more overarching philosophy which can be described as a ‘participatory approach to auditing’. Worker representatives should be interviewed as part of the pre-audit process, in awareness creation, and during the audit. They should also be involved in feedback and remediation at every stage. They are able to play a vital part in ensuring compliance is maintained, and that improvements made in working conditions are sustained after an audit is completed. This approach comes closer to what could be described as ‘ongoing monitoring’. It is based on the importance of making sure that workers and management can continue to monitor the workplace once the auditor has left the facility. In order to make these philosophies work, more advanced MSIs have started to give workers a more prominent and active role in the auditing process and started to move away from treating workers as rather ‘passive’ objects during audits. Some MSIs have started to give elected worker representatives, worker committees or combined worker management teams a prominent place in their standards and the audit process. These representatives or committees and teams play an important role in overseeing parts of the standard (e.g.



RECOMMENDATION 16

MSIs make sure monitored facilities have systems in place which allow workers and management to continuously monitor their facility and demonstrates that workers' feedback is taken into consideration. To ensure an effective system, MSIs develop specific guidance to ensure that potentially vulnerable workers, such as migrants, young people and women, are not excluded in the monitoring mechanisms.

health and safety or allocation of premiums) or of the complete program. They can schedule follow-up on corrective action plans, do internal audits and play an important part in internal and external communication and dialogue processes. As a result, the monitored facility gets less dependent on the auditor (doing a 'snap-shot' audit) by gradually internalizing the standard within its own policies and procedures. It creates a setting in which workers' concerns are monitored and addressed on a continuous basis instead of annually or semi-annual during the scheduled audit. Moving away from a pure traditional audit scheme towards a worker led monitoring and assessing programme will strengthen the standard,

“Moving away from a pure traditional audit scheme towards a worker led monitoring and assessing programme will strengthen the standard, provide MSIs and companies with a clear and thorough view of the situation of labour rights at any given moment in the company and a platform where remedial action and its implementation can be directly discussed with the concerned population.”

provide MSIs and companies with a clear and thorough view of the situation of labour rights at any given moment in the company, and a platform where remedial action and its

implementation can be directly discussed with the concerned population.

In order to make sure that audits or assessments provide for neutral and balanced outcomes with sufficient space for workers' voice, it is important that assessment and audits are performed by independent organizations and/or individuals. Most MSIs accredit 3rd parties to audit or assess their standards. In practice the independence of such auditors can be under pressure. The main problem is due

to the often existing direct financial relation between the audited facility and the auditor.

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RECOMMENDATION 17

MSIs make sure that auditors/ assessors are truly independent. Direct financial relations between the audited/assessed facility and the auditor/assessor are to be avoided.

While auditors' performance is often overseen by MSIs via accreditation principles and rules, most auditors are paid directly by the audited facility. This common practice seriously constrains the independence of the auditor. These constraints on independency are enhanced, as most auditing companies are for profit organizations, by the financial interest of the auditor of being re-invited for a next audit cycle. Also, to be audited, facilities can often choose between several accredited auditors. Auditors therefore often compete. This competition between auditors leads to situations in which to be audited facilities can

“Potential lack of independence is to be taken very seriously by MSIs as it reduces the space and attention workers deserve, and seriously damages the credibility and accountability of MSIs.”

be incentivized 'to pick a cheap auditor who does not give you trouble'. The financial relation between audited facilities and auditors seriously puts pressure on the independence of audits and assessments performed, as it tends to put interests of management of audited facilities and auditors over the interests of workers. In fact, one can debate whether such audit structures should be described at all as 3rd party auditing. The potential lack of independence is to be taken very seriously by MSIs, as it reduces the space and attention workers deserve, and seriously damages the credibility and accountability of MSIs.

They also undermine the potential promising auditing practices described above (e.g. worker interviews, transparency on audit findings, elected worker representatives, etc.). If managements' interests are favored over workers' interests due to a lack of independence, such practices are being reduced to promising on paper, yet disappointing in practice. This is also one imperative reason to implement worker-led monitoring mechanisms instead of traditional auditing.



Photo: Hoach Le Dinh

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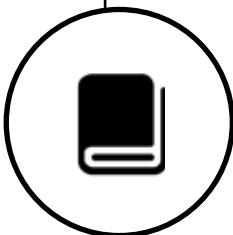


SELF-ASSESSMENT QUESTIONS


FOR MSIS ON STANDARD:

The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current monitoring practices of an MSI

- Do we consult stakeholders prior to an audit or assessment?
- Are worker interviews part of our audit or assessment processes? On-site and off-site? Individual and in groups? By workers' peers?
- Do we provide or require full transparency on the findings and suggested follow-up of our audits or assessments?
- Do we facilitate or require ongoing monitoring processes by workers and management? Are vulnerable workers part of this ongoing monitoring mechanism?
- Are our audits or assessment performed by independent organizations and/or individuals? Are they really independent?



Further reading for MSIs:

 Assuring Compliance with Social and Environmental Standards, ISEAL Code of Good Practice, Version 2.0 – January 2018 at https://www.isealalliance.org/sites/default/files/resource/2018-02/ISEAL_Assurance_Code_Version_2.0.pdf

Ensuring workers capacity building to strengthen standard performance

Based on the positive and negative experiences related to the current models used to assure and monitor compliance, an increasing number of MSIs and their stakeholders realize that capacity building is required in order to allow and stimulate monitored facilities to reach the level described in standards. This has resulted in large numbers of small and large, institutionalized and one-off programs aimed at awareness raising and the building of skills of workers, management, NGOs, unions and governments. The topics of such capacity building programs vary and can include the improvement of farming skills leading to higher quality and yields in production, trainings on the implementation of technological innovations leading to reduced water and energy consumption, and/or training on specific standard elements like occupational health and safety or living wage. Such programs can be highly effective in contributing to the overall well-being of workers.

The importance and impact of regular education of workers on their rights is paramount to the strengthening of workers' voices and their capacity to identify labour rights violations. Workers in global supply chains are hardly aware of their rights. This is not just due to lack of training or education. Lack of awareness is also rooted in social and cul-

“The importance and impact of regular education of workers on their rights is paramount to the strengthening of workers' voices and their capacity to identify labour rights violations.”

“Programs are likely to be more effective if they are delivered by workers' peers (workers' organizations) who speak the language of workers and are better trusted.”

tural norms, and the lack of self-confidence and isolation of certain groups of workers. Research and experience have described the disempowerment of workers linked to a culture and mindset of dependence. The relationship with authority is unquestioned and there is a generalized lack 'rights' consciousness" culture among workers. Such social and cultural patterns do not only explain why workers are unaware of their rights but also why workers are sometimes perceived as 'docile' and seem to accept certain rights violations as their 'faith' or as cultural normal. As the Special Rapporteur has denounced, workers and society at large have normalized a culture of impunity against labour rights violations and workers are unlikely to speak up.

The above shows why the common practice of MSIs to require posting of workers' rights on the walls of monitored facilities is good but also insufficient. Their knowledge and self-confidence needs to be build-up gradually. Successful programmes have shown a need to actively reach out to workers and to involve and organize them via activities such as language classes and pre-departure orientation programs (for migrant workers), education about labor rights, as well as creating spaces that allow workers to socialize. Such efforts will allow workers to stop accepting certain types of rights violations as "reflective of their status in life" without

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constructing them as grievances or bringing claims accordingly.

Due to the lack of self-confidence of workers and their being 'locked-up' in social and cultural patterns which makes it unlikely for workers to speak up and complain against management or those higher in the hierarchy, it probably also becomes clear that management of monitored facilities, auditors or consultants are probably not always very well positioned to deliver capacity building programs on workers' rights. Such programs are likely to be more effective if they are delivered by workers' peers (workers' organizations) who speak the language of workers and are better trusted. Such peers might be found within the monitored facility itself via active union representatives or otherwise elected worker representatives. In absence of robust partners in the facilities itself, MSIs, without local presence and without a sufficient amount of trust of workers, will need to start looking and start forging on the ground coalitions with workers' organizations who can deliver capacity building programs on their behalf.

RECOMMENDATION 18

MSIs require and/or facilitate regular education, delivered by workers' peers, on workers' rights and on how to use grievance mechanisms.

RECOMMENDATION 19

MSIs require and/or facilitate worker-management dialogue programs.

Besides education of workers on their rights and on how to use a grievance mechanism, MSIs can also be effective in providing capacity building programs to both workers and management on how to improve dialogue and on joint problem solving. Such programs are important as workers and management often operate in silos and are often unfamiliar and unaware of the benefits of worker-management dialogue. These dialogues are not meant to replace social dialogue between social partners (if existing) but can complement such efforts via bringing workers and management to one table, hear each other, obtain better understanding of both sides perspectives, resolve complaints, reduce tensions, facilitate joint decision making, improve (legal) compliance, and optimize operational efficiency. Ideally worker-management dialogue programs are part of the overall standard system of an MSI.

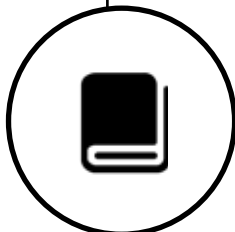


SELF-ASSESSMENT QUESTIONS


for MSIs on Capacity Building:

The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current capacity building efforts of an MSI

- Do we require and/or facilitate regular education, delivered by workers' peers, on workers' rights and on how to use grievance mechanisms? Do we have partners within the trade unions at the local level that can facilitate these educational programmes?
- Do we require and/or facilitate worker-management dialogue programs?



Further reading for MSIs:

 WSR Network Brief on Worker Education at <https://wsr-network.org/resource/worker-education/>

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Including workers in monitoring and evaluating systems of MSIs performance and impact

MSIs mean to positively affect a wide range of social, economic and environmental outcomes. In adapting their structure and mechanisms to support and ensure workers participation, they also aim to improve the wellbeing of workers in global supply chains. In order to make sure that standards' systems drive the positive impacts they aim for, MSIs need to invest in building robust monitoring and evaluations systems.

A robust monitoring and evaluation system combines performance monitoring and in-depth evaluations. Monitoring is the ongoing measurement of a set of indicators that are tracked regularly over time. The focus is generally on tracking use of inputs, activities, outputs, and short-term outcomes of an intervention. Monitoring is about the change that is happening. Evaluation is not only about the change that is happening but also about how and why it is happening. Evaluations may look at efficiency, effectiveness, medium-term outcomes, or impacts. In the context of this guidance, monitoring and evaluation brings transparency and accountability to the affected populations, including workers.

Monitoring and evaluation of impacts is more than providing general statistics on their scope and reach, as some MSIs do. In depth evaluations need to be provided in order to understand whether and why positive change

RECOMMENDATION 20

MSIs regularly and adequately monitor and evaluate the outcomes and impacts of their standards' system. Findings are used to improve the efficiency and effectiveness of the MSIs overall standards' system.

is reaching workers. While doing so, it is important to include the opinions of those stakeholders who were affected, and those who are supposed to benefit from the standard.

When evaluating systems, one must be vigilant that such evaluation is not limited to providing information an insights about workers instead of from workers themselves. Reports 'about workers' inform on the impacts for workers via for instance the inclusion of data on workers' income growth or the percent-

RECOMMENDATION 21

MSIs are transparent about the results of their monitoring and evaluation efforts. Both positive and negative outcomes are publically shared in order be credible and accountable to stakeholders, including workers.

ages of workers with health insurance. Such data can be derived from audit reports, surveys, and already available statistics. Though such insights are highly useful, they need to be completed with the direct experiences of the workers themselves. These should include questions such as the positive or negative impacts workers experience directly, the areas in which these impacts are experienced or the topics that matter to them. The above issues make clear that without including workers in research or even putting the workers central in research, a well-meant exercise can turn into an unintended paternalistic exercise which excludes the opinions and preference of the workers themselves.

RECOMMENDATION 22

MSIs are careful to include the opinion and preferences of affected populations (incl. workers) when monitoring and evaluating their outcomes and impacts.



Further reading for MSIs on use of Mobile Technology:

Mobile technology like smart phones, apps, and social media platforms can be used to directly hear and inform workers. It can help in getting direct input from workers on impacts. But use of mobile technology can also facilitate worker education, worker hotlines, and risk assessment and prevention. MSIs (like Goodweave and the FLA) have started to pilot mobile technology but mainstream use is so far scarce which seems a missed opportunity. While considering using mobile technology, issues like integrity and confidentiality of data need to be considered. For more information and guidance, see:

📄 The WEST Principles at <https://westprinciples.org/start-with-integrity-and-purpose/>

📄 Guidance of Issara Institute at https://media.wix.com/ugd/5bf36e_df5b1c84cb-0641759d3275ed034439aa.pdf

and at https://docs.wixstatic.com/ugd/5bf36e_29160d3cfe05485e835b14c4d3dc-43de.pdf

📄 OHCHR B-Tech: The B-Tech Project provides authoritative guidance and resources for implementing the United Nations Guiding Principles on Business and Human rights (UNGPs) in the technology space, see at <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>

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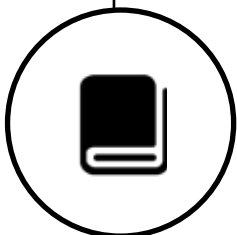


SELF-ASSESSMENT QUESTIONS

for MSIs on Monitoring and Evaluation

The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current monitoring and evaluation efforts of an MSI

- Do our current monitoring and evaluation efforts go beyond reporting statistics on our scope and reach?
- To what extent are our current efforts to monitor and evaluate our impact robust enough? Do we use findings for improvements in our overall standards' system?
- Do we provide transparency to our stakeholders on both the positive and negative outcomes of our findings on impact?
- Do we generate sufficient and regular input from workers on how they experience impact and what matters most to them?
- What are the impact and accountability consequences of not hearing workers' voice when evaluating impact?



Further reading for MSIs:


 Assessing the Impacts of Social and Environmental Standards Systems, ISEAL Code of Good Practice, Version 2.0 – December 2014 at https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Impacts_Code_v2_Dec_2014.pdf



Photo: Somenath Mukhopadhyay



ACCESS TO REMEDY FOR WORKERS

Victims of trafficking in persons can seek justice and obtain redress. Access to remedy can be delivered through State-based judicial mechanisms, in particular criminal proceedings, State-based non-judicial mechanisms and non-State based grievance mechanisms. As a crime the most adequate avenue would be through State based judicial mechanisms, but victims themselves may not be willing to resort to criminal proceedings and may seek remedy through other means. Non-criminal judicial mechanisms (civil and labour courts) and non-judicial State mechanisms (such as conciliation and mediation mechanisms) may be an additional venue for victims of trafficking and severe exploitation. Lastly, operational grievance mechanisms offered by companies can provide accessible and more expedient ways of obtain redress.

Victims of trafficking and severe exploitation often have claims for unpaid wages and/or holiday pay, which can allow them some form of restitution in cases in which criminal law and linked compensation schemes may fail them. Civil or employment tribunals may also allow the victims to provide more input than in criminal proceedings, in which victims are often considered as witnesses to be called upon, rather than parties integral to the case. Involvement in a procedure and a sense of ownership can be a way for victims to regain

their sense of self-determination. Remedies through civil and labour law are often an easier way of securing any compensation for victims of trafficking.

Trafficking in persons is not a civil claim of itself. The seriousness of the exploitation is not communicated through a successful claim in the same way as it would be communicated through a criminal charge to uphold the public good. If a situation of trafficking in persons is identified, it needs to be communicated to the relevant authorities. Assistance and support to victims must be provided. This chapter is an overview of different mechanisms available to victims, which can complement and offer victims of labour exploitation additional avenues to seek redress, which also includes grievance mechanisms operated by companies and multi-stakeholder initiatives. In line with the UN Guiding Principles on Business and Human Rights: "State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms". Operational

grievance mechanisms should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to State based judicial or other non-judicial grievance mechanisms. In practice many companies are still seeing own operational grievance mechanism as a way to avoid judicial adjudication. On the contrary, the prior use of operational grievance mechanisms should be without prejudice to access to judicial remedies, and their users should not be asked to sign waivers of their right to resort to State-based mechanisms. To avoid deficits in relation to complementarity of grievance mechanisms and judicial remedies, companies and stakeholders must be careful in the design of operational grievance mechanisms and in how these interact with State-based mechanisms.

“Mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights compatible and a source of continuous learning.”

Supporting member companies to implement effective operational level grievance mechanisms

The UN Guiding Principles provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights, including access to remedy. The right to remedy represents the third pillar of the Guiding Principles on Business and Human Rights and they contained guidance for companies on the implementation of operational grievance mechanisms. The UN Guiding Principles set the criteria a mechanism needs to fulfil to be considered

effective. Mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights compatible and a source of continuous learning.

Businesses are expected “to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted” (principle 29), and “multi-stakeholder... initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available”, (principle 30). If multi-stakeholder initiatives ensure that operational grievance mechanisms are available at the level of individual members, the expectations of the UN Guiding Principles in principle 30 are met.

In addition to the criteria above, operational level mechanisms must be based on engagement and dialogue. Labour abuses and workplace conditions are better addressed in the context of a dialogue with worker representatives or when the grievance mechanism is fully supported by a civil society partner acting as a third party in charge of the mechanism. Through trade union representation or a civil society actor third party, issues of power imbalance are more easily addressed. Workers must be fully involved in designing grievance mechanisms. Only they are aware of the problems to be addressed, and have the best sense of a process that is both fair and accessible.

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RECOMMENDATION 23

MSIs require and support their members to implement operational-level grievance mechanisms which meet the criteria set forth in the UN Guidance Principles on Business and Human Rights and which are designed in cooperation with workers and their representatives.

The effectiveness criteria for non-judicial grievance mechanisms (principle 31) are:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.



Photo: Elle Hughes

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Ensuring workers participation in designing operational grievance mechanisms

When workers are asked about the type of remediation they seek or the type of assistance they need, the answers are similar. For most workers, victims of labour abuse and victims of trafficking, their main concern is recovering unpaid wages, maintaining their working contracts and improving conditions at the workplace. However, in most cases, resorting to grievance mechanisms, whether they are State-based or not, will result in the loss of jobs for workers and uncertain results regarding recovering wages and other payments due. Workers often only resort to external aid and denounce their situation when their physical safety is in danger. The main challenge identified by the Special Rapporteur in the context of her research and interviews with workers, was the overarching fear of vulnerable workers in the supply chain, both migrant workers and non-migrant workers alike, of losing their livelihoods.

Isolation and lack of understanding by workers of both, the judicial and non-judicial system, and how it can effectively provide reparations, are key barriers. Beyond understanding the complexities of the systems in place, workers often do not trust those mechanisms, and especially their capacity to bring appropriate reparations.

Not only grievance mechanisms must be established by businesses but they must be used by workers. It is necessary that access is

facilitated. Barriers can be systemic issues that affect, not just one company in the region or industry, but companies from across different sector and present in different geographies.

Implementing an operational level grievance mechanisms that meets the UN Guiding Principles criteria is challenging in practice. Due to their proximity to workers, operational level mechanisms are well placed to deliver effective remedies, but they may suffer from legitimacy concerns due to lack of independence. An MSI that benefits from a strong worker representation and participation in their governance

“Labour abuses and workplace conditions are better addressed in the context of a dialogue with worker representatives or when the grievance mechanism is fully supported by a civil society partner acting as a third party in charge of the mechanism.”

structures can support member companies in increasing the legitimacy of the mechanisms they implement. Multi-stakeholder initiatives are well placed to provide a platform to strengthen collaboration among operational grievance mechanisms administered by different companies and operating in the same geographical area or industry sector. They can also provide a neutral platform to allow both companies and workers to discuss and agree on the design and process of a mechanism. Workers representation and participation in multi-stakeholder initiatives will be key to identify common barriers that hamper accessibility of member companies grievance mechanisms. They will also be better placed to provide solutions that effectively reduce or eliminate obstacles to workers access to the mechanisms.

The UN Guiding Principles stress this point as well. To be effective, operational grievance mechanisms must be the result of engage-

performance of the mechanism as a means to ensure stakeholders' needs are met and the mechanisms are used in practice.

RECOMMENDATION 24

MSIs establish a collaborative platform for its members to raise standards, provide solutions to common challenges and promote good practices in the resolution of grievances. Worker representation and participation is ensured to guarantee that barriers are effectively identified, and solutions address workers concerns and are implemented by member companies through a collaborative approach.

Multi-stakeholder initiatives can also explore the creation of an alternative mechanism to that offered by companies in collaboration with workers representatives. Legitimacy suffers greatly if a company becomes both the complainant and unilateral judge in a dispute. Mechanisms should focus on reaching agreed solutions and where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism. A preferred solution is the identification or creation of a worker-led independent mechanism. MSIs can support their member companies identifying, through their worker representatives, organizations with a local presence and understanding of the local context, with whom they can

develop a worker led grievance mechanism that fulfils the effectiveness criteria set. If MSIs consider the creation of their own mechanism, a similar approach should be observed and engage in formal partnership with a worker-led organization, who in practice designs and implements the mechanism.

Mechanisms provided by MSIs may not be able to address all the elements which constitute an effective remedy but can complement other available options.

One of the UN Guiding Principles effectiveness criteria particularly relevant for MSIs grievance mechanisms concerns the issue of transparency. To be transparent, grievance mechanisms are expected to: keep parties to a grievance informed about its progress in individual cases; and provide sufficient public information about the performance of the mechanism to build confidence in its effectiveness and meet any public interest at stake. Such transparency raises the credibility and accountability of an MSI's grievance mechanism and also provides insights on areas for improvement for the MSI and others.

RECOMMENDATION 25

MSIs consider establishing grievance mechanisms in collaboration with workers representatives that complement operational grievance mechanisms and which meet the UN Guiding Principles criteria.

| CHAPTER 3 |

RECOMMENDATION 26

MSIs provide information regarding their own grievance mechanism on:

- Type and content of complaints received
- Number of complaints initiated and number of complaints rejected (including grounds for rejection)
- Number of completed grievance processes as well as information on its outcomes and follow up action
- Stakeholder satisfaction with the performance of the mechanism

When implementing this recommendation MSIs exercise due regard to applicable laws and appropriate safeguards regarding the protection of workers against retaliation.

Ensuring coordination with national referral mechanisms and access to remedy through State-based mechanisms

When trafficking in persons or indicators of trafficking are detected and potential victims are identified, States have often in place a national framework to support and protect victims. This type of framework is usually re-

ferred to as a national referral mechanism. National referral mechanisms are in essence a cooperative framework or platform composed of a wide range of national authorities and services, including civil society. When trafficking in persons is identified, this information should be communicated to the relevant authorities and national referral mechanism as they are best placed to take immediate action regarding assistance and protection of victims. Operational grievance mechanisms (or MSIs grievance mechanisms) should not work in silo but should aim at establishing a collaboration with national efforts and State based as well as existing civil society support mechanisms for victims. Through a cooperative approach, the wealth of experience of civil society and State actors in identifying and providing assistance to victims of trafficking can be leveraged in companies' mechanisms.

An example of guidance to implement such type of cooperation was published by IOM, who in helping companies to structure their operational grievance mechanism and deal with cases of exploitation of workers, designed a system that was based largely on national referral mechanism good practices and national authorities and civil society case management experiences. The envisioned system allows for it to cater to the many varying needs that victims of trafficking and severe exploitation may have, through referral to and the coordination of service providers. In this system, remediation and victim assistance is led by the "remediation facilitator". Recognizing that companies may not have the required capacity or expertise, the remediation facilitator is an entity with expertise in remediation for victims of exploitation that has a presence



RECOMMENDATION 27

MSIs should provide a platform to engage constructively and effectively with relevant State agencies and civil society involved in support services for victims of trafficking and labour exploitation in the country.

Such engagement should cover:

- Outreach and awareness raising on available services for victims as well as existing operational level grievance mechanisms and processes in place to deal with complaints that contained indicators of trafficking and/or labour exploitation
- Identifying sector-specific or systemic issues which may contribute to or exacerbate workers vulnerability that should be addressed at national level
- Pooling of resources to support national assistance and support programmes for victims
- Design of a cooperation protocol to enhance timely and efficient collaboration between national referral mechanism and operational grievance mechanisms.

in the country where the incident occurred. The remediation facilitator's role is to advise and support the company in providing remediation. It constitutes the entry point to the local support system, works with local stakeholders to design the most appropriate remediation action plan for workers and oversees the implementation and monitoring of the plan. Its role also includes working in collaboration with law enforcement to remove victims of trafficking from the workplace, where appropriate. Remediation plans should be the result of a consultation with the supplier, victims and other affected populations, government and non-governmental actors and other local experts.

Multi-stakeholder initiatives can support and facilitate a discussion between member companies and national referral mechanisms and search for ways in which both the MSI and the companies can support national efforts with resources to provide long term assistance and support to victims of trafficking, as well as define common action to prevent it from happening. Member companies and MSIs can also contribute with information and knowledge on systemic issues affecting their operations and which increase the vulnerability of workers to risks of trafficking and labour exploitation and which can and should be addressed at national level as well.

| CHAPTER 3 |



SELF-ASSESSMENT QUESTIONS

for MSIs on Grievance Mechanisms:

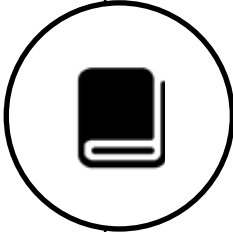
The questions below are provided to MSIs and their stakeholders to help assess or generate discussion on the current grievance mechanisms of an MSI

- Do we require operational grievance mechanisms on the level of audited or assessed facilities?
- Do we run or are we prepared to run our own grievance mechanism which can be used for unresolved grievances at the level of the facility? Is there an added value of our MSI running such mechanism?
- To what extent do these systems meet the effectiveness criteria for grievance mechanisms? Which criteria are met and why?
- How are enhancing cooperation among operational grievance mechanisms implemented by our members in the same region or sector?
- Do we know who and how are organized national support services for victims of trafficking in countries in which our members are present? How are we enhancing cooperation with such mechanisms?



Photo: Tim Mossholder

| CHAPTER 3 |

**Further reading for MSIs:**

- 📄 Guiding Principles on Business and Human Rights; Implementing the United Nations “Protect, Respect and Remedy” Framework, United Nations Human Rights Office of the High Commissioner, 2011 at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- 📄 Office of the High Commissioner for Human Rights report to the Human Rights Council A/HRC/44/32 and A/HRC/44/32. Add on Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms
- 📄 Special Rapporteur on trafficking in persons, especially women and children report to the General Assembly, 2019 (A/74/189) on “Access to remedy for victims of trafficking for abuses committed by businesses and their suppliers”



Photo: Kazuend

RECOMMENDATIONS AT A GLANCE

R1

MSIs must familiarize themselves with international instruments and policies on trafficking in persons and forms of labour exploitation, as well as national regimes in the countries they operate.

R2

MSIs must gain awareness on systemic labour abuses identified in the region and sector they operate, understanding of national and local regulations, and how effectively these are implemented in a manner to understand and evaluate the risk to trafficking in the environment and adapt their standards and assurance programmes accordingly.

R3

Criteria and indicators should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed should include at a minimum the following benchmarks:

1. All workers have the freedom to terminate employment at any time, without penalty, by means of reasonable notice, in accordance with national law or collective agreement;
2. Workers are not held in debt bondage or forced to work to pay off a debt of any kind, including non-monetary debt;
3. No fees or costs for recruitment are charged, directly or indirectly, in whole or in part, to the worker, including costs associated with the processing of official documents and work visas;
4. Employers that engage private employment and/or recruitment agencies use only agencies that are licensed or certified by the competent public authority;
5. Workers are provided with a written employment contract that is straightforward and understandable by the workers. Contracts for migrant workers are shared with the workers sufficiently in advance of their deployment;
6. Contract substitution and changes that diminish originally agreed wages, benefits or other conditions of work are prohibited;
7. Workers are paid in legal tender and provided written, itemized pay slips or receipts in a language they understand, indicating wage rates, hours worked, total pay and any legally authorized deductions made by the employer;

R4

MSIs ensure that assurance providers and auditors have demonstrated knowledge and experience in assessing compliance with labour-related standards and in interviewing workers on an ongoing basis. They should also ensure including forced labour and human trafficking experts in oversight bodies.

Multi-stakeholder initiatives provide specific training to auditors and assurance providers on trafficking in persons to improve their skills in risk detection and evaluation of risk indicators; the training should also cover how to interview workers and should raise awareness of worker vulnerabilities, including those related to gender or migration status.

R5

MSIs must be aware of international guidelines and national legislative and policy framework regarding accountability of companies' human rights due diligence efforts and provide tools to support accountability in line with Special Rapporteur recommendations

R6

Keep MSI governance structures clear, simple and transparent

R7

MSIs governance structure should facilitate equal representation and participation of stakeholder groups, including workers representatives.

R8

MSIs should provide for financial transparency and try to avoid over-dependence on revenues provided by one stakeholder group.

R9

Standards' content refer to international norms and guidelines. MSIs abide to procedures which allow for structured, transparent and legitimate ways of setting and revising standards. In this process they actively reach out to stakeholders, including workers and their representatives in order to include their input. Indicators and further guidance in the implementation of the standard are prepared with worker representatives, to ensure they addressed identified risks in the particular context/s the standard is implemented.

R10

Standards' content articulates the rights to freedom of association and collective bargaining as defined in core ILO conventions 78 and 89 and actively promote these rights in their standards.

R11

MSIs continuously scan for 'emerging issues' which are likely to weaken workers' representation via stakeholder dialogue and standard consultation processes.

R12

MSIs formally and specifically include regular education of all workers, on their rights and responsibilities and on how to use grievance mechanisms when their rights are violated, in their standards.

RECOMMENDATIONS**R13**

MSIs and/or their accredited auditors/assessors consult and take into account feedback from stakeholders, including workers and their representatives, prior to an audit or assessment. Framework and content of specific facility assessment as it refers to labour issues, including selection of workers for interviews, interview space and interview content should be fully agreed and designed between auditors and worker representatives based on feedback obtained from this group prior to the audit.

R14

MSIs make sure that worker interviews form a substantial part of the monitoring process. Worker interviews are preferably held both on-site and off-site, are a mix of individual interviews and group interviews and are facilitated by workers' peers.

R15

MSIs make sure that auditors/assessors and audited/assessed facilities are fully transparent to workers and their representatives on the findings and suggested follow-up of the monitoring process.

R16

MSIs make sure monitored facilities have systems in place which allow workers and management to continuously monitor their facility and demonstrates that workers' feedback is taken into consideration. To ensure an effective system, MSIs develop specific guidance to ensure that potentially vulnerable workers, such as migrants, young people and women, are not excluded in the monitoring mechanisms.

R17

MSIs make sure that auditors/assessors are truly independent. Direct financial relations between the audited/assessed facility and the auditor/assessor are to be avoided.

R18

MSIs require and/or facilitate regular education, delivered by workers' peers, on workers' rights and on how to use grievance mechanisms.

R19

MSIs require and/or facilitate worker-management dialogue programs.

R20

MSIs regularly and adequately monitor and evaluate the outcomes and impacts of their standards' system. Findings are used to improve the efficiency and effectiveness of the MSIs overall standards' system.

R21

MSIs are transparent about the results of their monitoring and evaluation efforts. Both positive and negative outcomes are publically shared in order to be credible and accountable to stakeholders, including workers.

R22

MSIs are careful to include the opinion and preferences of affected populations (incl. workers) when monitoring and evaluating their outcomes and impacts.

R23

MSIs require and support their members to implement operational-level grievance mechanisms which meet the criteria set forth in the UN Guidance Principles on Business and Human Rights and which are designed in cooperation with workers and their representatives.

The effectiveness criteria for non-judicial grievance mechanisms (Principle 31 UN Guiding Principles) are:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

R24

MSIs establish a collaborative platform for its members to raise standards, provide solutions to common challenges and promote good practices in the resolution of grievances. Worker representation and participation is ensured to guarantee that barriers are effectively identified, and solutions address workers concerns and are implemented by member companies through a collaborative approach.

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RECOMMENDATIONS

When implementing this recommendation MSIs exercise due regard to applicable laws and appropriate safeguards regarding the protection of workers against retaliation.

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