Walking a Tightrope – Designing Governance Structures for Multi-Stakeholder Initiatives (MSIs)

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Introduction

Regulation through private governance mechanisms, such as Multi-Stakeholder Initiatives (MSIs), is becoming the norm in various industry contexts. In Bangladesh’s garment sector, for example, MSIs have proliferated for decades, yet their success in regulating labor rights in this highly complex supply chain is debatable (Labowitz & Baumann-Pauly 2015).

The academic debate on MSIs as new forms of governance, in contrast, is still in a nascent state. Interdisciplinary researchers have yet to systematically address some fundamental questions to assess the impact of MSI governance (Desai & Katzenstein 2016). Even less explored are the governance questions within MSIs. How do MSIs ensure that governance structures within the organization are aligned with, and support the organizational purpose, namely to address governance gaps?

This think piece is based on the premise that institutional design (input legitimacy) and efficiency (output legitimacy) are closely linked and cannot be analyzed as separate dimensions (Baumann-Pauly et al. 2016a). We argue that the impact of an MSI hinges upon its institutional design that creates trust among participants and is a precondition for its legitimacy. We therefore regard MSIs governance structures as highly relevant design features that require further exploration.

The governance structure of an MSI embodies the MSI: it defines how multiple stakeholders are represented in an organization that attempts to address governance gaps in a specific industry setting. Thus, governance design is critical for
an MSI. Research to date has not yet focused on this specific organizational aspect. Instead, MSIs have largely been treated as monolithic organizations without paying attention to individual organizational elements.

MSIs have also been treated as a cluster phenomenon without differentiating what are in fact very different types of MSIs (Baumann-Pauly et al. 2016b: 109). We developed a preliminary typology of MSIs that distinguishes between best-practice sharing MSIs, certification bodies, and Human Rights governance MSIs. We only consider the latter as relevant for our analysis because they are the type of MSI that set out to address governance gaps. These Human Rights Governance MSIs are voluntary initiatives that seek to govern the human rights conduct of transnational corporations in their global operations by creating binding and enforceable rules for groups of competitor companies in the same industry (see also Bernstein & Cashore 2007).

In the following, we will outline typical operational challenges of existing Human Rights Governance MSIs linked to their governance structures and identify the research questions that should be addressed in this context. We will illustrate the challenges by referring to insights from the Fair Labor Association (FLA) and the Global Network Initiative (GNI), two MSIs that were explicitly designed to address governance gaps in their industry contexts (manufacturing and ICT).

**Operational challenges of MSIs**

MSIs today face several operational challenges that threaten to undermine their potential positive impact for human rights. We identified a range of these challenges in a recent book chapter based on case studies of the Fair Labor Association, the Global Network Initiative, the ICOCA, and initiatives in the extractives sector (Baumann-Pauly et al. 2016b). In this section, we will outline these challenges and identify their theoretical implications that require further exploration.
1. Inclusion of relevant stakeholders

While there is no agreed-upon definition of what constitutes an MSI, the composition of the initiative’s participants is considered its most distinguishing feature. To differentiate an MSI from, for example, a purely industry-driven initiative, the inclusion of all relevant stakeholders is considered the gold standard (though who is “relevant” is assessed differently by different stakeholders).

Initiatives that fail to meet this gold standard are frequently criticized. For example, the Fair Labor Association (FLA) does not have representatives of labor unions in their governance structure and some groups therefore discredit the credibility of the initiative’s commitment (see e.g. FLA Watch). However, the doctrine of inclusion can also undermine the commitment of other actors to form a collective initiative based on rigorous standards. In the case of the FLA, for example, labor unions blocked progress and threatened to derail the plans for forming an MSI during early negotiations. To become operational, committed actors therefore moved forward without the labor unions yet without shutting the door for unions to join again at a later point in time (Baumann-Pauly et al. 2016a).

Similarly, the Global Network Initiative (GNI) was often blamed for only speaking for a fraction of its industry due to its failure to integrate telecommunication companies. The GNI recently responded to the criticism and telecommunication companies will now be integrated in the GNI. In January 2016, the GNI announced a merger with the Telecommunications Industry Dialogue (ID) to collaboratively protect and advance freedom of expression and privacy around the world. The decision to join forces with an industry-only initiative, however, was criticized by observers from academia and civil society. NYU’s Center for Business and Human Rights, for example, announced that it would leave GNI, due in part to the merger’s implications on the MSI’s governance structure that will shift in favor of corporate participants.
These examples from FLA and GNI show that inclusion in an MSI is a delicate issue that typically involves several fundamental trade-offs, some of which may affect the quality of the standard to which the initiative commits and its efficiency to implement the standard. To make informed decisions at these points of organizational development, the following research questions could be considered –

- **Legitimacy**: How can MSIs balance inclusion and output legitimacy? Is there only one best way for MSIs or are different forms of governance design equally legitimate? How could research on corporate governance structures inform the study of MSI governance? What are the limits?
- **Rigidity vs. flexibility/responsiveness**: Is rigidity key for ensuring trust among stakeholders of an MSI or are some adjustments to agreed-upon governance structures possible and also critical for the MSI to effectively govern governance gaps?
- **Organizational change**: To manage organizational change, what processes should be established to ensure that relevant stakeholders are part of the decision-making around change processes? Can we learn from organizational change literature?
- **Adjusting inclusion**: Could different membership-tiers in MSIs resolve the dilemmas linked with the doctrine of inclusion (Stein & Labowitz 2016)? What are the threats of offering differently stringent membership categories?
- **Impact of different MSI governance design choices**: How do different inclusion models impact output legitimacy?

### 2. Sustaining a strong civil society voice

For most MSIs, ensuring that civil society is adequately represented in their governance structures, and is able to participate regularly in decision-making processes represents a challenge (Baumann-Pauly et al. 2016b: 118). In an FLA case study, Auret van Heerden, former president and CEO of the FLA, for example points out –
“While the system of tripartite Board representation depends on creative tension between company, civil society and university representatives, the NGO bench has often been weakened because of vacant seats or over-stretched directors who cannot fulfill their Board obligations. This imbalance is even more noticeable at the committee level where specific technical knowledge and a substantial time commitment are required.“ (van Heerden 2016: 133)

To address this governance challenge, research could be focused on addressing the following questions -

- **Addressing power imbalances**: How can governance structures be designed to allow all stakeholder groups to participate equally, without fostering any potential power imbalances between them?
- **Incentive structures**: What kind of incentive structures could be created to ensure the independence of civil society in MSIs yet enable their participation? What role could governments play to sustain civil society participation in MSIs?
- **Inclusion of non-organized, local communities**: How could communities most affected by transnational corporations be integrated in the governance structures and decision-making processes of MSI? Which models exist to integrate communities in assessing MSI output legitimacy?

3. **Decision-making**

In practice, MSI decision-making processes often seeks consensus. At a minimum, however, each stakeholder group should be guaranteed the same amount of votes. Distributing voting power unevenly within an MSI would undermine the idea of equal representation, a foundational rule for Human Rights Governance MSIs.
At the FLA, the FLA Board of Directors comprises representatives from six companies, six NGOs, and six university representatives, as well as an independent Chair. The Board is a governing board, not simply an advisory one, and sets policy, decides the budget, votes on applications for membership, receives reports on monitoring activities and third-party complaints, and decides whether to accredit companies which have completed their implementation periods (van Heerden 2016: 129).

As a result of this organizational set-up, decision-making in MSIs can be very time and resource consuming. Given the heterogeneity of interests in MSIs, a preference for consensus may jeopardize effective decision-making. Research could explore how other organizations manage to balance the need for effective and time-sensitive decision-making with inclusive and participatory decision-making processes. In the FLA, for example, several sub-committees prepare decisions and serve as experts on specific, technical questions.

- Alternative decision-making formats: Given the obstacles that come with the consensus-orientation in MSIs, what other decision-making formats correspond with the idea of an MSI yet could improve efficiency?
- Subcommittee structures: Could the delegation of decisions into supplementary committee structures facilitate decision-making at the board level or do such additional structures obfuscate decision-making processes?

4. Available resources for operation
Appropriate funds are a precondition for establishing functioning organizational governance structures and procedures. Most MSIs to date struggle to come up with an adequate funding plan that allows them to develop their full organizational potential and longer-term planning. To our knowledge, among the Human Rights governance MSIs, currently only the FLA (and thanks to Swiss government funding
the International Code of Conduct for Private Security Contractors, ICOCA) has funding available that allows for adequate staffing (for an overview see Baumann-Pauly et al. 2016b: 120-121). The funding issue also raises questions about how much each MSI member should pay for participation. To acknowledge the different funding background of stakeholders, adjusted membership fees, for example for companies of different size and revenue, are necessary yet these should not fester informal power imbalances or compromise the rigidity of the standard. It would therefore be informative to get an overview of current membership fee structures, their implication on voting rights and the implementation requirements of the standards.

- Funding MSIs: How can MSIs strengthen their collective voice to facilitate funding for their operations? Is there a role for government to fund MSIs?
- Membership structures: How could membership fees be structured so that they neither put equal representation at risk nor undermine the implementation of a rigorous standard?

**Conclusion**

MSI governance is an emerging, interdisciplinary research field. However, what kinds of institutional features foster input and output legitimacy have not yet been sufficiently addressed. The institutionalization of MSIs highlights multiple trade-offs and research on aspects of these elements, particularly the MSIs' governance structures, could support an informed decision-making process at critical points of organizational development.

We are looking forward to discussing some of the questions in this context with the workshop participants.
References


