

# Ensuring effective rights holder engagement in Multi-stakeholder initiatives

## DISCUSSION NOTE



EUROPEAN CENTER FOR  
CONSTITUTIONAL AND  
HUMAN RIGHTS



## IMPRINT

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# ABBREVIATIONS

BMAS	Federal Ministry of Labour and Social Affairs
BMEL	Federal Ministry for Food and Agriculture
BMUV	Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
BMZ	Federal Ministry for Economic Cooperation and Development
CIR	Christliche initiative Romero
FESIIAAN	Federación de Sindicatos Independientes de las Industrias Automotriz, Autopartes, Aeroespacial y del Neumático
FNK	German Initiative on Sustainable Cocoa
GCCP	Ghana Civil Society Cocoa Platform
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Agency for International Cooperation)
GOTS	Global Organic Textile Standard
ICCO	International Cocoa Organization
ILO	International Labour Organization
LkSG	Lieferkettensorgfaltspflichtengesetz (German Supply Chain Act)
MSI	Multi-stakeholder initiatives
NAP	National Action Plan on Business and Human Rights
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
PANAO	Partnership for Sustainable Orange Juice
SAN	Sustainable Agriculture Network
SAVE	Social Awareness and Voluntary Education
SK	Steuerungskreis (steering committee)
UBM	Unternehmensübergreifender Beschwerdemechanismus (Cross-Company Grievance Mechanism)
UNGP	United Nations Guiding Principles on Business and Human Rights
VDA	Verband der Automobilindustrie (German Association of the Automotive Industry)
ver.di	Vereinte Dienstleistungsgewerkschaft (Largest service sector trade union)

## SUMMARY

Multi-stakeholder initiatives (MSIs) in Germany aim to strengthen corporate due diligence in the areas of human rights, environmental protection and corruption by addressing the negative impacts of corporate activities on foreign production sites and value chains of German industrial players. Their dialogue formats primarily bring together governmental, economic and civil society actors based in Germany and therefore tend to exclude, or only selectively involve, stakeholder groups (rights holders) who are (or may be) adversely affected by corporate activities or their regional interest groups. The result is a critical imbalance between exposure to corporate activities, representation and opportunities to influence MSIs. According to the UN Guiding Principles on Business and Human Rights (UNGPs), however, rights holder engagement is a crucial aspect of the human rights due diligence process – an obligation that is also set down in the German Supply Chain Act and the EU Commission’s draft Corporate Sustainability Due Diligence Directive (CSDD).

This paper addresses all stakeholders engaged in MSIs, in particular the German government, which may initiate, facilitate and participate in MSIs, as well as companies that are primarily responsible for involving rights holders. It illustrates the different dimensions of meaningful rights holder engagement in MSIs and highlights best practices developed by different German MSIs, thus showcasing how MSIs can contribute to due diligence implementation, at least in theory. In practice, however, rights holders have not yet been sufficiently involved in MSIs. This leads to a set of demands that need to be met by MSIs if they are to fully realize their potential. These demands are particularly pertinent as the German Supply Chain Act only offers up a vague definition of rights holder engagement in due diligence processes. This makes it all the more important for MSIs to ensure strict alignment of their objectives with the UNGPs in order to create tangible benefits when involving rights holders in practice. MSIs can support companies by pooling resources and helping them to implement effective due diligence measures at scale.

## OUR DEMANDS ON MSIs

1. MSIs must set down their **commitment to engage with rights holders** in their relevant founding and working documents. This also means that dialogues with rights holders and how these dialogues are organized must become part of the MSI's agenda.
2. Existing MSIs should **assess the status quo**, i.e. whether rights holders are currently involved, who these rights holders are, and which forms of participation they have access to. Particular focus should be placed on the legitimacy of such representation and how that representation is organized. If rights holders are already involved, MSIs should seek their feedback on the current engagement process and on potential improvements.
3. Building on the status quo assessment, an actor map should be created to **identify (potential) gaps**. These **gaps should be closed by identifying suitable representatives** for the rights holders to be involved.
4. Based on the status quo assessment and rights holders' feedback on their current involvement, MSIs need to **implement measures to promote rights holder engagement**. To this end, they should develop and publicly communicate a roadmap with clear goals and timelines. Specifically, these measures fall into one of the following categories:
  - *Financial means* to enable rights holder engagement in the first place and ensure their long-term independence throughout the process (see demand no. 5),
  - *Administrative measures*, such as providing translations of relevant documents or interpreting services at MSI events,
  - *Appropriate dialogue formats*, e.g. among rights holders, among North and South-based NGOs, but also dialogues between rights holders and MSI actors,
  - *Methodological measures* to strengthen rights holders' engagement with MSIs while also shielding them from the potentially negative impacts of their participation,
  - *Content-related measures*, e.g. working towards supply chain transparency as a basis for rights holder identification, or supporting member companies in meeting their due diligence obligation to involve rights holders,
  - *Governance measures* to create a level playing field by involving rights holders in higher-level decision-making processes or MSI subprojects.
5. The MSI should **provide the necessary human and financial resources** to implement these measures. This primarily concerns the financial resources assigned to rights holders, but also to MSI bodies and involved German civil society actors. Funding for the measures taken to involve rights holders should be primarily provided by the German government in its role as the MSI's initiator or facilitator. In the medium and long term, it should be explored whether companies can also contribute to the funding of these measures without jeopardizing the independence of rights holders.
6. The MSI should regularly consult with rights holders to **assess the effectiveness of measures** and make necessary adjustments.
7. The MSI should **report** regularly on the measures taken to involve rights holders. Building on dialogues with rights holders to assess the effectiveness of its measures, the MSI should disseminate good practices in suitable formats.
8. The MSI should establish **channels for safe feedback** that allow external stakeholders to provide feedback at any time on the MSI and on the rights holder engagement process in particular. In addition, there should be regular exchange formats that actively obtain feedback from rights holders.

## OUR DEMANDS ON COMPANIES

9. Corporate MSI members should **incorporate experiences and lessons learned from collective rights holder engagement into their respective due diligence processes**, adjust their operational processes, if necessary, and report on them.

# INTRODUCTION: MSIs AND DUE DILIGENCE IMPLEMENTATION

The UN Guiding Principles on Business and Human Rights (UNGPs) advise states to consider a “smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights”<sup>1</sup>. While the specific role of multi-stakeholder initiatives in ensuring corporate due diligence in the areas of environmental protection and anti-corruption remains a matter of debate, there is a broad consensus that due diligence implementation is part of their corporate responsibility that cannot be met by voluntary instruments. Such instruments, including MSIs, at best play a supporting role in their fulfilment of due diligence obligations.<sup>2</sup>

Until as recently as 2021, however, the German government’s National Action Plan for Business and Human Rights (NAP) relied exclusively on MSIs and other voluntary instruments to address challenges arising in connection with corporate due diligence. In response to the 2020 NAP monitoring report, which highlighted the shortcomings of voluntary instruments, the German Supply Chain Due Diligence Act (LkSG) was adopted in June 2021, which established binding requirements for companies to fulfil their due diligence obligations, marking a shift away from purely voluntary approaches. However, the Act explicitly recognizes collective measures launched by sector initiatives as one approach to remedial action for increasing leverage on responsible actors.<sup>3</sup> According to the Act, companies should resort to these measures if they are unable to prevent direct suppliers from violating human rights or environmental obligations in the foreseeable future (Sec. 7 (2) No. 2 LkSG); in the Act’s explanatory memorandum, they are further defined as an option for companies that wish to take appropriate preventive action against indirect suppliers (Sec. 9 (3) No. 2 LkSG). The potential of each industry initiative is subject to individual assessment and depends, among other things, on the objective, the requirements and the measures implemented.

The majority of MSIs active in Germany were not, however, initially founded with the objective to contribute to the implementation of human rights due diligence as defined in the UNGPs. Although most MSIs strive to align with the due diligence approach, many of them fail to meet the UNGPs requirements. Thus, membership in such MSIs does not signal that the respective companies are fulfilling their human rights due diligence obligations.<sup>4</sup> Still, MSIs can help companies to develop a comprehensive understanding of their due diligence obligations as laid out in the UNGPs and adopt appropriate measures individually or collectively. In no case, however, can membership in an MSI replace companies from their responsibility to meet their due diligence obligations and audit their effectiveness, nor can membership be taken as a guarantee that companies are ensuring full implementation of their due diligence obligations.

In light of this new legal framework in Germany and the EU, many MSIs are now under pressure to redefine their purpose if they want to continue to deliver value. To succeed, they will have to, on the one hand, ensure their objectives go beyond merely meeting the basic floor of minimum legal requirements and, on the other, help companies to implement effective measures that lead to positive impacts at the local level. Rights holder engagement is a central due diligence aspect that most MSIs have paid too little attention to date.

## Multi-stakeholder initiatives

MSIs are forums, dialogues or initiatives organized in varying forms and with varying levels of commitment that engage with stakeholders such as non-governmental organizations (NGOs), trade unions, companies and government actors, among others. MSIs exist in a vast range of sectors, each with its own objectives in terms of purpose and geographical scope.

1 Commentary to UNGP 3.

2 The commentary to UNGP 19, for example, identifies collaboration with other actors as an avenue to increase companies’ ability to prevent or mitigate adverse human rights impacts.

3 The Act does not clearly define the term “industry initiative” and, accordingly, not all industry initiatives are MSIs.

4 The OECD Alignment Assessment of the Alliance for Sustainable Textiles clearly showed this in 2019, when it examined whether the Alliance was aligned with the sector-specific OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. Subsequently, the Alliance made significant adjustments but did not achieve full alignment with the Guide.

# BACKGROUND AND OBJECTIVES OF THIS PAPER

Most multi-stakeholder initiatives (MSIs) in Germany aim to strengthen corporate due diligence in the areas of human rights, environmental protection and corruption by addressing the negative impacts of corporate activities on foreign production sites and value chains of German industrial players. Their dialogue formats primarily bring together governmental, economic and civil society actors based in Germany and therefore tend to exclude, or only selectively involve, stakeholder groups (rights holders) who are (or may be) adversely affected by corporate activities or their regional interest groups. The result is a critical imbalance between exposure to corporate activities, representation and opportunities to influence MSIs.

The UNGPs, however, define the participation of rights holders as a fundamental aspect of the human rights due diligence process. UNLP 18 requires companies to engage in “meaningful consultation” with potentially affected groups and other relevant stakeholders<sup>5</sup> when identifying and assessing any actual or potential adverse human rights impacts. The Interpretive Guide defines stakeholder engagement or consultation as an ongoing process of interaction and dialogue that enables the company to hear, understand and respond to interests and concerns, including through collaborative approaches.<sup>6</sup> The German Supply Chain Act also stipulates that persons whose protected legal positions<sup>7</sup> are directly affected by the commercial activities of companies or companies along the supply chain must be appropriately involved in all due diligence measures (Section 4 (4) LkSG). The EU Commission’s draft Corporate Sustainability Due Diligence Directive (CSDD) published in February 2022 also provides for the consultation of rights holders as part of due diligence implementation (Article 6 No. 4, Article 7 No. 2 (a)).<sup>8</sup>

However, many companies find it difficult to consult rights holders and have not yet fully fulfilled this task. The UNGPs recognise that consultation should “take into account the size of the business and the nature and context of its operations”. The LkSG similarly refers to an “appropriate” degree of involvement. This is where MSIs come in. They can – at least in theory – support such efforts by pooling resources, collectively enhancing supply chain transparency, and thus enhancing rights holders’ access to grievance mechanisms, for instance. Ideally, this can help to adopt effective due diligence measures at scale and create benefits, in particular for smaller companies.

## Rights holders

Rights holders are individuals or social groups that have particular entitlements in relation to duty bearers. Applied to corporate due diligence, these are groups of people whose rights are affected or potentially affected by corporate activities. This legal position distinguishes rights holders from other stakeholders along the corporate supply chain, in particular suppliers.

5 Suppliers may be adversely affected by irresponsible sourcing practices, especially by consumer-facing brands, retailers, and online retailers, and may be unable to comply with national or international standards, or their operations could be endangered. However, they are obliged to comply with corporate due diligence requirements and are not accorded human rights that can be violated by consumer-facing companies.

6 UN OHCHR (2012): The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, p. 8

7 Life and limb, for example.

8 EC (2022): Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.



**But why have rights holders not been sufficiently involved in MSIs so far? There are several possible reasons for this failure.**<sup>9</sup> While practical challenges, such as lack of time on the part of MSIs or lack of financial resources and time on the part of rights holders, could be easily remedied, other causes go deeper:

- Some actors involved in MSIs are not aware that rights holder engagement is important and beneficial.
- Some MSIs are not interested in engaging with local actors with potentially inconvenient positions.
- Particularly marginalized groups and other rights holders do not always have access to organized forms of representation, which compounds difficulties to identify and include relevant groups of actors.
- Power asymmetries between rights holders and MSI actors, especially companies and associations, hinder effective engagement. MSIs are often focused on the technicalities of corporate due diligence in Europe. Rights holders lack the financial and human resources to continuously engage in dialogue. While they are experts with regard to assessing their local situation and know the actual needs of their communities, they often lack expertise concerning the global dimensions of the respective supply chain and remain reluctant to engage in technical debates.
- Top-down approaches continue to dominate development cooperation, whether coordinated by state or by private actors. This means that projects and measures are frequently developed without, or only partially hearing the voice of rights holders and local civil society actors.
- In production countries, supply chains continue to be shaped by historical and in part post-colonial structures, which are hard to dismantle and generally do not assign priority to rights holder involvement in decision-making processes.
- It is not uncommon for MSIs to reproduce social power relations, which can fuel frustration and disengagement among rights holders. MSI actors whose interests are backed by large business lobbies, for example, have a stronger voice even despite the MSI's objective to create a level playing field for all stakeholder groups.
- Shrinking spaces, meaning the increasing restrictions felt by civil society actors, along with a rising number of attacks on activists defending human rights, the environment and land rights, are a growing challenge in some countries.

**If MSIs were to involve all rights holders and create a level playing field, they would benefit all stakeholders:**

- Engagement lends greater credibility to both MSIs and to the collective or individual measures implemented by companies.
- Involvement results in partnership-based collaboration, which in turn strengthens local actors' sense of ownership and enables them to experience themselves as first-hand agents of transformation.
- Engagement boosts the effectiveness of measures and prevents misallocation of funds and resources if these are directly aligned with rights holders' needs.
- Engagement minimizes the risk of undesired impacts of due diligence measures, as local civil society is in the best position to assess local framework conditions.
- Participatory involvement of rights holders and local civil society actors in the conception and implementation of measures increases acceptance of human rights due diligence regulations in production countries.
- Engagement gradually dismantles existing power asymmetries along global supply chains, thus tackling systemic causes of human rights violations and environmental degradation.
- Ensuring conformity with international guidelines such as the UNGPs when involving rights holders is paramount for companies, also in light of current supply chain legislation.

<sup>9</sup> See Insight 2 on Stakeholder Participation in the 2020 MSI Integrity report titled *Not Fit-for-Purpose. The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance*.

This paper addresses all stakeholders engaged in MSIs, in particular the German government, which may initiate, facilitate and participate in MSIs, as well as companies that are primarily responsible for involving rights holders. It illustrates the different dimensions of meaningful rights holder engagement in MSIs and highlights best practices developed by different German MSIs<sup>10</sup>, thus showcasing how MSIs can contribute to due diligence implementation. Subject to certain requirements, they support rights holder engagement by facilitating, accompanying and institutionalising dialogue with companies. Since the German Supply Chain Act only offers up a vague definition of rights holder engagement in due diligence processes it is all the more important for MSIs to ensure strict alignment of their objectives with the UNGPs in order to create tangible benefits when involving rights holders in practice. MSIs can support companies by pooling resources and helping them to implement effective due diligence measures at scale.<sup>11</sup>

#### **NOTE:**

As laid down in the UNGPs, the LkSG and the EU's draft Corporate Sustainability Due Diligence Directive (CSDD), corporate due diligence obligations require companies to engage in dialogue with rights holders (or their representatives). Dialogues with NGOs from the Global North cannot, however, replace dialogues with rights holders along corporate supply chains. Still, it may be reasonable for MSIs or companies seeking bilateral exchange to request additional expertise from NGOs based in the Global North, as long as these NGOs are not (mis)understood as speaking on behalf of all Southern partners.

#### **METHODOLOGY AND LIMITATIONS:**

NGOs based in the Global North and involved in MSIs and a partner organization from a producing country<sup>12</sup> came together for a workshop in January 2021 to share experiences, identify challenges and necessary improvements, and discuss possible solutions. Based on the outcome, they prepared a questionnaire to map the status quo of rights holder engagement in MSIs, which they sent out to NGO stakeholders from the German Initiative on Sustainable Cocoa, the Alliance for Sustainable Textiles, the Sector Dialogue Automotive Industry and the Partnership for Sustainable Orange Juice. The ideas presented in this paper are based on the responses to these questionnaires and on the workshop documentation. It should be noted that representation of rights holders at the workshop was limited to a specific region and a specific MSI. Moving forward, the following recommendations should therefore be discussed in detail with rights holders and South-based MSI partners, subsequently piloted and then undergo amendment in a follow-up process.

<sup>10</sup> This paper focusses on the following MSIs: German Initiative on Sustainable Cocoa, Alliance for Sustainable Textiles, Sector Dialogue Automotive Industry, Partnership for Sustainable Orange Juice

<sup>11</sup> Also see the explanatory memorandum to Section 9 para. 3 No. 2 LkSG, Bundestag publication no. 19/28649: "Joining industry-specific or cross-industry initiatives is an important instrument for developing risk-prevention measures together with other companies. The initiatives serve to standardize specifications, increase the company's influence, and achieve a reduction in expenses through synergy effects. Since the upstream supply chain often consists of complex and non-transparent supplier networks, collaborative approaches are of paramount importance."

<sup>12</sup> Repórter Brasil, a human rights organization from Brazil that deals with various aspects of rights holders, was involved as a Southern partner. Repórter Brasil is one of the civil society actors participating in PANAO.

# DIMENSIONS OF INCLUSION

## Identifying rights holder groups

The first step towards including rights holders is to identify the people whose lives, livelihoods or rights might be (negatively) impacted by the operations of a company that is member of an MSI. Potential rights holders may include farmers, agricultural workers, factory workers and residents, indigenous communities, human rights defenders, etc.

Risk analysis is a fundamental step in this process. MSIs need to carry out a **sector-specific risk analysis** that identifies all potential or actual negative human rights impacts. Initial dialogues with rights holders should be initiated at this early stage to obtain information on their assessment of the severity<sup>13</sup> and likelihood of occurrence of the identified risks. While companies must generally address all identified risks, UNGP 24 stipulates that risks can be prioritized based on the severity of identified human rights violations in order to decide which risks should be addressed first. This prepares the ground for a detailed **actor map** that helps to identify rights holders.

**NGOs from the Global North and their networks**, as well as existing and institutionalized **South-North networks**, can also help to identify rights holders. However, it is important to point out the potential bias of this avenue, as selection may favour established actors with access to international networks.

To ensure balanced representation of all relevant stakeholders, MSIs should access additional mechanisms and channels to avoid excluding key interest groups from the outset. One way to comprehensively identify rights holders is to **empower Southern-based civil society partners and trade union actors** to identify and nominate other organizations and informal groups in their country/region, for example by making available financial resources or content that is tailored to the needs of these organizations/groups (e.g. by translating content into local languages and dialects, or by using simple language and diagrams).



A pilot project launched as part of the Sector Dialogue Automotive Industry aims to set up an Cross-Company grievance mechanism (UBM) in Mexico. Its agenda includes plans to establish a local civil society coordination office, albeit on a temporary basis. The project also planned to create a comprehensive actor map in Mexico in 2022 to specifically identify local stakeholder groups and affected or potentially affected rights holders, alongside established civil society and trade union actors at the national level.



Similar steps taken by the Alliance for Sustainable Textiles show that supply chain transparency is an important first step in enabling Southern partners to activate local networks. Stakeholders in production countries are more easily emboldened to engage with an MSI and its member companies if they know they can rely on the MSI to respond should they be affected by problems occurring at production sites. So far, 25 out of 72 member companies have shared their supplier list with the Alliance Secretariat and via an aggregated list on the Open Apparel Registry.

<sup>13</sup> According to the commentary to UNGP 14, the severity of adverse human rights impacts is to be assessed according to their magnitude and extent and whether they can be remedied.

## Selecting rights holder group representatives

The identification of rights holders is a crucial and sensitive process. The same goes for selecting their representatives. Experience shows that it is difficult to handle rights holder identification and the selection of representatives as two distinct processes, since rights holder representatives are already involved in the identification stage.

In addition, MSIs should consistently distinguish between direct and indirect representatives of rights holders. Direct representatives are direct representatives of affected groups, such as elected trade union representatives, representatives of smallholder cooperatives and/or local NGOs that have a local membership base or are in dialogue with local community committees. Indirect representatives, by contrast, are national organizations such as NGOs that have extensive expertise on human rights issues, environmental protection and corruption prevention as well as an in-depth understanding of the broader political and socio-economic setting.<sup>14</sup>

## Legitimacy of representation

Rights holders' representatives should be equipped with sufficient capacity and motivation to participate in the respective processes. They should also have the legitimacy to articulate the concerns, perspectives and needs of rights holders in MSI processes. Depending on the value chain in question, business operations may well affect several million people throughout different countries. MSI actors must therefore be aware that in practice, comprehensive, transnational representation of the interests of all rights holders still remains to be achieved. Since many MSIs have a specific country focus, they should openly communicate that they are currently not (or not yet) taking into consideration the interests of rights holders from other countries.

Identifying advocacy groups in a specific country is an equally sensitive process. Often there are either no national-level advocacy groups or trade unions, or there are different actors competing for legitimate representation.<sup>15</sup> It should also be borne in mind that different rights holders at the base of the supply chain may sometimes have conflicting interests. If MSIs are aware of this difficulty, continually monitor the actor landscape in the production or cultivation countries and engage in dialogue with the various stakeholders, they will be able to resolve this limitation responsibly. The following questions can help to assess the legitimacy of local advocacy groups:

- Do potential or actual stakeholders have confidence in the work of the organization? In the case of long-established South-North network relationships, this may also mean that an NGO from the Global North is regarded as the legitimate advocacy group for certain issues.
- Whose interests do they represent, and what is their relationship with the rights holders?
- Are they a local NGO formed out of an association of stakeholders, or a trade union with a strong membership base?
- Are they a national-level (academic) NGO that has in-depth knowledge of the national political and socio-economic setting? If so, are they in direct and/or regular dialogue with rights holders?
- What communication channels exist between the local NGO and the rights holders, and how are those affected consulted? Are the perspectives of potentially particularly vulnerable or marginalized groups explicitly taken into account?
- How does the advocacy group inform rights holders about the MSI processes and how does it actively involve individual rights holders in the dialogue?
- Does the business model of the local organization consist of carrying out trainings or implementing measures on behalf of companies or development cooperation actors, i.e. do they only engage with rights holders in their role as service providers?
- Do inputs from rights holders' advocacy groups undermine the level of protection and ambition of existing national laws or international standards such as the UNGPs? If so, they should not be further involved.

<sup>14</sup> Power asymmetries may, of course, also be perpetuated by direct representatives because marginalization and discrimination (e.g. on the basis of geographical origin and gender) occur across all spheres of society.

<sup>15</sup> It should be mentioned that even in Germany there is not always only one advocacy group representing the interests of rights holders. In the agricultural sector, for example, the German Farmers' Association (DBV) and the Small Farmers Association (AbL) both represent the interests of farmers, however not always the same positions.

**NOTE:** MSIs tend not to engage with individual rights holders, except to resolve complaints. They almost exclusively interact at a collective level with rights holders' direct and indirect representatives. Direct engagement with individuals is beyond the capacity and modus operandi of MSIs. In the following sections, therefore, the designation "rights holder" is also used to refer to rights holders' representatives.



With an estimated 800,000 smallholder households growing cocoa in Ghana, the country is the world's second largest supplier of the crop. Yet to date, there is no national cocoa farmers' association representing the interests of farmers. While international and local NGOs have been engaged in projects to support sustainable cocoa production and to enforce human rights in the cocoa sector for years, the sector long lacked coordinated efforts to represent the interests of cocoa farmers in national and international political dialogue processes. The situation changed in 2018, when the Ghanaian NGO SEND brought together more than 20 Ghanaian development and environmental organizations, trade unions and media organizations with five cooperatives (producers' organizations). The initiative resulted in the formation of the Ghana Civil Society Cocoa Platform (GCCP), which works to represent the interests of farmers in political processes.

By sitting NGOs and cooperatives at one table, this collaborative strategic approach to advocacy broke new ground in Ghana in its effort to join rights holders' perspectives with the methodological and technical expertise of NGOs. Designated working groups have been set up, and to underline the platform's participatory approach, at least two general stakeholder meetings are held annually to develop advocacy strategies and position papers. Since its inception, additional cooperatives and NGOs have joined the GCCP, which counts 35 member groups today. The GCCP collaborates closely with Northern-based NGOs that are members of the German Initiative on Sustainable Cocoa (FNK). This allows the FNK to regularly incorporate the perspectives of local stakeholders. Recently, a similar civil society platform with members from local NGOs and cooperatives has been established in Côte d'Ivoire.



One of the pilot projects of the Sector Dialogue Automotive Industry aims to establish an Cross-Company grievance mechanism (UBM) in Mexico, which would also benefit workers in the plants of German car manufacturers and suppliers. The move is part of an attempt to push back so-called "protection unions", which are widespread in Mexico. Following a strictly pro-business agenda, they have been using dismissals, threats and disruptions to prevent workers from organizing freely for years. Although Mexican labour law created new inroads for workers to organize in 2019, most collective agreements with "protection unions" remain in effect.<sup>16</sup> There are only a few genuinely independent and freely elected trade unions in Mexico, such as those that have joined the FESIIAAN (Federación de Sindicatos Independientes de las Industrias Automotriz, Autopartes, Aeroespacial y del Neumático).

These dominant "protection unions" clearly lack any legitimacy to represent Mexican workers' interests. The challenge now faced by the Sector Dialogue Automotive Industry is to integrate Mexican actors into the UBM process while also addressing the fact that German companies themselves have been accommodating such "protection unions" in their Mexican plants.

<sup>16</sup> Interview with trade unionist Patricia Juan Pineda published in the German newspaper Frankfurter Rundschau on 20 February 2022: "This is a wake-up call for the workers in Mexico".

## Lack of organization

Although the term “rights holder” is used consistently throughout this paper, it does not designate a homogeneous group of people. In fact, it comprises people with different privileges, dependencies, powers, needs, and capacities, which, in turn, influence whether and how they are able to engage in political processes. Some of these groups may be particularly vulnerable to discrimination and marginalization and/or face unfavourable socioeconomic conditions in the sector. These groups are particularly vulnerable to a range of human rights abuses, which makes them key stakeholders for MSIs. At the same time, particularly vulnerable groups usually lack integration into political structures and networks and/or have fewer resources to advocate for their interests. As a result, not all identified rights holders have access to advocacy or representative bodies that are able to engage with an MSI and/or its subprojects. In practice, some MSIs unfortunately lack the sensitivity to register and address this issue, occasionally even formally conflating rights holders and representatives of well-organized producers’ associations from the Global South.



The German Initiative on Sustainable Cocoa regularly invites representatives of cooperatives to speak at events. Obviously, these representatives will promote the positions of already organized cocoa farmers, which in turn excludes the situation of cocoa plantation workers in Ghana and elsewhere from the picture. Since very few workers or tenants in Ghana are currently organized in organizations or trade unions,<sup>17</sup> their voice remains unheard at dialogue events.



In the textile sector, it has been documented that people who live close to factories are exposed to water contamination caused by the discharge of hazardous chemicals from dyeing, processing or fibre production. In some cases, the damage to their health takes years to surface, which makes difficult any form of organized engagement with (potentially) affected groups. At the same time, companies tend to overlook this group and focus instead on the employees in their supplier companies. An internal report submitted by the German Institute for Human Rights on the review process of the Textile Alliance confirms this observation. Approaches such as community-based monitoring<sup>18</sup> ensure that residents are heard and should therefore be endorsed by the Alliance for Sustainable Textiles.

<sup>17</sup> Hütz-Adams, Friedel (2018): Die ILO-Übereinkommen am Beispiel des Kakaosektors in Ghana.

<sup>18</sup> Community monitoring is an integrated process of involving civil society (especially local communities) and other stakeholders (potentially) affected by an economic activity. Community monitoring is aimed at, for example, monitoring the impact of economic activities on physical (water, air or soil quality), biological (flora and fauna) and social factors. See Germanwatch et al. (2022): ENVIRONMENTAL RESPONSIBILITY THROUGH SUPPLY CHAINS | Insights from Latin America.

## Level of involvement in MSIs

The involvement of rights holders can take on many forms, ranging from single information events to regular exchange formats to integration into the MSI's governance structure. This study attempts to define the spectrum along which rights holders and MSIs may engage with each other. In principle, it will distinguish two criteria: full-scale engagement with rights holders **at the MSI level** versus engagement via **sub-projects**, and **direct versus indirect representation** of rights holders.<sup>19</sup>

Preparing and sharing information in a way that is tailored to the needs of the target group is a first step in involving rights holders. A distinction must be made between **information obtained from rights holders and information that is exchanged reciprocally**. In the first case, for example, rights holders may share input on specific topics to provide MSI participants with information. In the second case, in addition to providing their inputs, rights holders may also receive information about projects and discussions taking place within the MSI.

However, any meaningful involvement of rights holders is built on **consultation**. Rights holders should be invited to comment on specific topics or drafts. It is crucial that MSIs seek to integrate such feedback as they move forward, and that rights holders are informed about how their suggestions and comments have been dealt with. If the MSI rejects individual suggestions, its decisions should be made transparent. Consultation, however, is not enough. Rights holders are generally not in a position to actively shape the process or the modus operandi of an MSI or its individual projects, since its agenda will have been set in advance by its members. It should also be noted that the intensity of consultations may vary widely, ranging from indirect and isolated consultations where rights holders are involved via NGOs from the Global North, in which case they are unable to directly engage in dialogue with the broader circle of MSI stakeholders, to direct ad libitum consultations between rights holders and all MSI stakeholders on individual topics, to regular consultations through recurring/institutionalized exchange formats that are embedded in the MSI's modus operandi or individual MSI subprojects.

The highest level of involvement, though, is achieved by embedding rights holders in MSI's **governance structures**, i.e. in the MSI itself and/or within the scope of pilot projects. In this way, they have leverage to actively influence the process or the project design and, ultimately, the MSI's priorities. This is particularly relevant for projects that address local settings and promote regional change. However, governance-level engagement with rights holders is not mandatory to ensure the effectiveness of an MSI if other (easily accessible) forms of consultation and involvement are implemented in earnest.

### How rights holders can be consulted in a meaningful way

- Rights holders are consulted directly as a stakeholder group; simply considering their input via NGOs from the Global North is not sufficient.
- Rights holders are involved at an early stage.
- Feedback from rights holders is taken into account in decision-making processes.
- Rights holders receive feedback on how their suggestions have been handled.
- Consultation is not limited to obtaining written feedback, but also includes oral discussions with MSI stakeholders.
- The consultation process allows sufficient time for preparation, comments, and discussion.
- Sufficient resources are available to support the consultation process (e.g. translations, information that is tailored to the target group).
- Rights holders are compensated for the time and human resources invested, if necessary.

<sup>19</sup> To recall, this paper distinguishes between direct representatives (direct representatives of stakeholder groups) and indirect representatives (national organizations such as NGOs).



The establishment of PANA O provides a case in point. The set-up process involved representatives from civil society, trade unions, research institutes and producer associations, as well as small farmers and certifiers over a two-year period between 2017 and 2019. Facilitated by the Christian Initiative Romero (CIR), discussions focused on defining the agenda and potential implementation measures of the new organization. From the outset, this approach gave rights holders and their representatives a voice in shaping the MSIs' objectives and pilot projects.

Civil society actors in Brazil are currently calling on the MSI to create a level playing field. They want to see various Brazilian stakeholder groups included in the MSI's governance structure, in particular human rights organizations, small farmers' organizations and trade unions.



By establishing a *Cross-Company Grievance Mechanism*, the Sector Dialogue Automotive Industry is pursuing efforts to support access to remedies for victims of (potential) human rights violations in Mexico. The project, while still in the planning phase, explicitly foresees the inclusion of rights holders or their direct or indirect representatives, e.g. members of local NGOs or trade unions, in the UBM's governance structure.



SAVE (Social Awareness and Voluntary Education), a local partner NGO of the *Partnership for Sustainable Textiles*, played a key role in formulating the programme of the Tamil Nadu Alliance Initiative. The Partnership for Sustainable Textiles is collaborating closely with SAVE, which is establishing a local MSI in Tamil Nadu that involves local trade unions, NGOs, producers and government representatives. SAVE has provided the impetus for institutionalizing ties between the Partnership and the Tamil Nadu Alliance Initiative.



## Measures to enhance inclusion

A wide range of measures must be taken to ensure rights holders are involved in a credible and meaningful way, some of which are quickly and easily implemented, while others require profound structural changes within existing MSIs. The following table provides a first set of possible starting points that should be gradually complemented and tested for feasibility. The list is based on the workshop held in 2021 (see page 10) and on the experiences of the four MSIs that were analysed in more detail.

	Short-term	Medium-term	Long-term
20			
<b>Policy statement</b>			
<ul style="list-style-type: none"> <li>All MSI stakeholders should acknowledge the need for rights holder engagement and commit to a meaningful engagement process. This commitment should be included in MSI documents (e.g. dialogue agreements, alliance goals, rules governing cooperation, bylaws) and implemented as a matter of priority. This can serve as an opportunity to embed rights holder engagement in the design of the MSI and its pilot projects from the outset – especially when establishing new MSIs.</li> </ul>			
<b>Financial measures</b>			
<ul style="list-style-type: none"> <li>Provide easily accessible funding for Southern-based actors to cover any additional costs related to their efforts to cooperate with the MSI or its pilot projects; support coordination work that Northern-based NGOs might have to invest to mobilize Southern-based actors.</li> </ul>			
<ul style="list-style-type: none"> <li>Provide financial support to allow rights holders to participate in conferences, e.g. compensation for travel expenses.</li> </ul>			
<ul style="list-style-type: none"> <li>Provide financial resources to NGOs from the Global North to bring together inputs from civil society and help interested civil society actors from the Global North and South to participate in MSIs or pilot projects.</li> </ul>			
<ul style="list-style-type: none"> <li>Develop formats to ensure independent and long-term funding for South-based actors, for example in the form of a fund in order to avoid direct funding through companies.</li> </ul>			
<b>Administrative measures</b>			
<ul style="list-style-type: none"> <li>Provide rights holders with information that is tailored to their needs to help them understand the MSI process and disseminate essential knowledge (e.g. translation into local languages and dialects, use of simple language and diagrams).</li> </ul>			
<ul style="list-style-type: none"> <li>Translate all documents into the official language of the producing countries and, if applicable, the rights holders' local language.</li> </ul>			
<ul style="list-style-type: none"> <li>Provide simultaneous interpreting at MSI workshops.</li> </ul>			
<ul style="list-style-type: none"> <li>Help participants with visa applications and other logistical challenges.</li> </ul>			
<ul style="list-style-type: none"> <li>Take into account diverging time zones and holidays when planning meetings.</li> </ul>			

20 The distinction between short-, medium- and long-term measures roughly indicates the time needed for their implementation. It does not prioritize the measures. Many of the measures described here require ongoing implementation.

	Short-term	Medium-term	Long-term
<b>Creating suitable exchange formats</b>			
· Create local structures to facilitate participation and coordination of rights holders (e.g. a regional coordination office with Southern partners, approaches such as worker- or community-based monitoring where rights holders can contribute and pool their perspectives <sup>21</sup> ).			
· Create separate exchange formats for rights holders and NGOs from the Global North, allowing them to negotiate and align their positions in a safe and secure setting.			
· Involve not only representatives <sup>22</sup> of rights holders, but on occasion also implement suitable formats to directly consult with rights holders.			
· Ensure regular and direct dialogue between the representatives of MSI structural bodies from all countries participating in the MSI to prevent exchange from being restricted to MSI secretariats.			
· Organize regular conferences/dialogue forums in selected producing countries to raise public awareness of the MSI and its goals among relevant stakeholders and to obtain local stakeholder perspectives.			
· Organize separate and regular exchanges with rights holders to obtain feedback on the engagement process as well as information on the needs and further requirements concerning the process. This should be initiated at an early stage so that rights holders have the opportunity to actively shape the timetable and design of MSI processes that affect them. These exchange formats can be carried out by external parties, the MSI secretariat or Northern NGOs that are part of the MSI.			
<b>Methodological measures</b>			
· Spark rights holders' interest in engaging with the MSI – by fostering active involvement, implementing gradual improvements and providing structured feedback on how inputs are managed.			
· Develop formats that empower rights holders and dissolve power asymmetries (e.g. courses, negotiation trainings)			
· Develop measures to protect rights holders against negative impacts that result from participation in the MSI or its subprojects (e.g. opportunities for anonymous involvement).			

21 See, among others, Germanwatch et al. (2022): ENVIRONMENTAL RESPONSIBILITY THROUGH SUPPLY CHAINS | Insights from Latin America zu Community-based Monitoring.

22 To recall, this paper distinguishes between direct representatives (direct representatives of stakeholder groups) and indirect representatives (national organizations such as NGOs).

	Short-term	Medium-term	Long-term
<b>Content-related measures</b>			
· Create MSI-specific supply chain transparency to facilitate the identification of rights holders and facilitate their engagement with relevant MSIs. <sup>23</sup>			
· Create formats to ensure that all MSI actors have access to the same knowledge (e.g. by sharing specialized knowledge on due diligence, but also by informing stakeholders of their rights). This explicitly includes the companies involved in an MSI.			
· Strengthen MSI member companies' individual implementation of due diligence obligations with regard to rights holder engagement, for example by jointly identifying and discussing good practices and placing greater emphasis on rights holder involvement in due diligence reporting.			
<b>Governance measures</b>			
· Transition from unilateral/mutual exchange formats to meaningful rights holder consultation or inclusion in governance structures by facilitating balanced participation in decision-making processes at MSI level or in MSI subprojects (see previous chapter).			

<sup>23</sup> If possible, this should be done in the beginning, as supply chain transparency prepares the groundwork for further steps such as the identification of rights holders. MSIs should continuously work on increasing the supply chain transparency of the companies they work with, since many supply chains are highly complex and lack transparency.

# OUR DEMANDS

## Demands on MSIs

### 1. Commitment

MSIs must set down their commitment to engage with rights holders in their relevant founding and working documents. This also means that dialogues with rights holders and how these dialogues are organized must become part of the MSI's agenda.

### 2. Evaluation of the status quo

Existing MSIs should assess the status quo, i.e. whether rights holders are currently involved, who these rights holders are, and which forms of participation they have access to. Particular focus should be placed on the legitimacy of such representation and how that representation is organized. If rights holders are already involved, MSIs should seek their feedback on the current engagement process and on potential improvements.

### 3. Identification and selection

Building on the status quo assessment, an actor map should be created to identify (potential) gaps. These gaps should be closed by identifying suitable representatives for the rights holders to be involved.

### 4. Implementation

Based on the status quo assessment and rights holders' feedback on their current involvement, MSIs need to implement measures to promote rights holder engagement. Unilateral exchange should be replaced by meaningful rights holder consultation. To this end, they should develop and publicly communicate a roadmap with clear goals and timelines.

### 5. Provision of financial resources

The MSI should provide the necessary human and financial resources to implement these measures. This primarily concerns the financial resources assigned to rights holders, but also to MSI bodies and involved German civil society actors. Funding for the measures taken to involve rights holders should be primarily provided by the German government in its role as the MSI's initiator or facilitator. In the medium and long term, it should be explored whether companies can also contribute to the funding of these measures without jeopardizing the independence of rights holders.

### 6. Assessment

The MSI should regularly consult with rights holders to assess the effectiveness of measures and make necessary adjustments.

### 7. Reporting

The MSI should report regularly on the measures taken to involve rights holders. Building on dialogues with rights holders to assess the effectiveness of its measures, the MSI should disseminate good practices in suitable formats.

### 8. Feedback from rights holders

The MSI should establish channels for safe feedback that allow external stakeholders to provide feedback at any time on the MSI and on the rights holder engagement process in particular. In addition, there should be regular exchange formats that actively obtain feedback from rights holders.

## Demands on companies

### 9. Individual implementation

Corporate MSI members should incorporate experiences and lessons learned from collective rights holder engagement into their respective due diligence processes, adjust their operational processes, if necessary, and report on them.