

Notes, WG 3 Expert conference call with Tyler Giannini and Amelia Evans of Harvard Law School

Attending:

- Melike Yetken, US Dept. of State (Chair)
- Sylvia White, Aegis
- Michael Clark, G4S
- Phil Rudder, WSI International
- Glynne Evans, Olive Group, Security in Complex Environments Group (SCEG)
- Ian Ralby, SCEG
- Mark DeWitt, Triple Canopy
- Andy Orsmond, Human Rights First
- David Dutton, Australian Department of Foreign Affairs and Trade
- Doug Cahn, Consultant
- Tricia Feeney, Rights & Accountability in Development
- Rachel Davis, legal advisor to Special Representative John Ruggie
- Erica Razook, in personal capacity
- Will Imbrie, Dyncorp
- Anne-Marie Buzatu, DCAF

Presentation of Harvard Project on Multi-stakeholder Initiatives (MSI's) by Tyler Giannini and Amelia Evans

History

For nearly a year have been studying effectiveness of MSIs by looking at:

- 1) Fair Labor Association
- 2) Roundtable on Oil
- 3) Kimberley Process
- 4) 4C Coffee Association
- 5) Voluntary Principles

6) Extractive Industry Transparency Initiative)

Through this study we have developed a comprehensive set of quantitative tools to assist both formation and assessment of MSI's; aim is for these to lead to qualitative assessments in order to really measure effectiveness

Standards

These need to be:

- 1) Accessible
- 2) Obligatory
- 3) Verifiable
- 4) Based on International Law

In addition the standards need:

- 1) Community involvement and outreach
- 2) Ongoing review process

Internal Governance System

To be effective, the following aspects need to be taken into consideration:

- 1) Balance of power among stakeholders
- 2) Proper representation and involvement of all stakeholder groups—industry, civil society and from community, as well as other constituent groups involved in decision-making processes
- 3) Dispute resolution mechanisms for both 3rd parties as well as for governance of MSI
- 4) Sustainability of funding

Implementation of MSI

To be effective, this requires the following elements:

- 1) Proper external grievance procedure.
- 2) Systems development – important to map out a timeframe and next steps
- 3) Programs and outreach-- local community is aware of MSI and how it is developing
- 4) Monitoring program to evaluate compliance with standards
 - a. Provides basis for how MSI is regulating the group

- b. Should be independent, compulsory, on-site, occur with regularity, and must balance resources.
- 5) Incentive regime / certification
- 6) Transparency
- 7) Community involvement: regular communication increases trust and respect for MSI, improves community relationship
- 8) System of internal review to improve MSI as a whole: helps to improve credibility as well as provide indicators for effectiveness of system.

Recommendations on governance:

Should take a function-based approach to the structure, i.e.,

- 1) Body that makes decisions (e.g., board)
- 2) Body that implements decisions (e.g., secretariat)
- 3) Body that adjudicates disputes, including developing jurisprudence
- 4) Expert body that develops learning in the area, including internal review of implementation of MSI which supports good governance

How to ensure multi-stakeholder participation, two approaches:

- 1) Specific seats allocated to each stakeholder group, or
- 2) Different stakeholder pillars that report back to the board of directors

Important to involve community as a stakeholder

Costs and funding

Important that spending strikes an appropriate balance between administrative and implementation costs, e.g., base your office in area where a lot of related activities are happening

Shouldn't only be industry funding, there should be a **fee structure**, so that if civil society contributing or smaller scale companies, they should be assessed at levels appropriate to what they can pay

Should have very clear guidelines on how money is spent, in particular to avoid conflicts of interest

Need to assess long-term costs that support the goals of the MSI, including a feedback loop to communities. Costs are not just administrative, but need to think broadly about overall goals and costs that could arise

Grievance Mechanisms

Should have permanent (instead of *ad hoc*) mechanism that is open to accept complaints related to the MSI with the following characteristics:

- 1) Standards-based: the mechanism should be focused on standards so that any complaint should be in breach of the standards, and there should be some kind of public statement of what standards were breached and what measures were taken.
- 2) Transparent: should be very transparent, although may be appropriate to have a less public initial procedure that takes e.g., an ADR approach. Such procedures should be tailored to the particular aims of the MSI

Standards

- 1) Standards (basis) : international law should be basis for overarching principles, and standards are based on these principles
- 2) Transparency of standards and development: there should be a transparent process for stakeholders to participate / challenge the development of the standards

Group Discussion

Possible conflicts with state regulation

So far have not seen governments voicing concern over MSI's in their own legal system, but this might be different if MSI's overseeing activities that touch on criminal matters

Liability of MSI based on findings of mechanisms

Have not yet seen a stakeholder go after an MSI itself

Impacts on "discoverable" information

Although hear this a lot as a concern, have not actually seen situations where MSI processes create a record that then leads to state action. Ex. Settlement discussions are not discoverable, and there would be ways to set up procedures and protections so that some info is not discoverable.

Real grievances v. spurious claims

Think it is important that anyone can file claim, but can have some kind of filter system to distinguish between those claims

Appropriate balance of stakeholders for governance

Essential point is diversity of stakeholders / viewpoints and opportunity to have real voice / real participation—e.g., local communities. Need to have sufficient resources to support this, e.g., translation resources

Relationship of internal company grievance mechanism to MSI grievance mechanism

Recommend that any internal company grievance mechanism operate according to same overall standards. Could have a tiered approach where the internal grievance mechanism is mech of first instance, and external MSI is the “appellate” level. However, this tiered approach may depend upon the subject matter of the grievance for the appropriateness of the venue—e.g., more serious grievances may be more appropriately heard at the MSI

Standing to file complaints

Both individuals and civil society organizations (including on their behalf) should be able to file complaints