



INSIGHT 5

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Remedy

MSIs are not designed to provide rights holders with access to effective remedy



The Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) aims to reduce the harms and human rights abuses caused or exacerbated by the private sector. For the past decade, MSI Integrity has investigated whether, when and how multi-stakeholder initiatives protect and promote human rights. The culmination of this research is now available in our report, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance*.

The full report contains six insights from experience with, and research into, international standard-setting multi-stakeholder initiatives. It also contains key conclusions from these insights, and perspectives on a way forward for improving the protection of human rights against corporate-related abuses.

This is an excerpt of the full report, focusing on Insight 5. The six insights are:

Insight 1: Influence — MSIs have been influential as human rights tools, but that influence, along with their credibility, is waning.

Insight 2: Stakeholder Participation — MSIs entrench corporate power by failing to include rights holders and by preventing civil society from acting as an agent of change.

Insight 3: Standards & Scope — Many MSIs adopt narrow or weak standards that overlook the root causes of abuses or risk creating a misperception that they are being effectively addressed.

Insight 4: Monitoring & Compliance — MSIs employ inadequate methods to detect human rights abuses and uphold standards.

Insight 5: Remedy — MSIs are not designed to provide rights holders with access to effective remedy.

Insight 6: Impact — There is little evidence that MSIs are meaningfully protecting rights holders or closing governance gaps.

Read the full report to find out more about the other insights, our key conclusions, and the background and knowledge base that informs this Insight and our wider analysis. The full report is available at www.msi-integrity.org/not-fit-for-purpose/.

MSI Integrity is now embarking on a new direction: applying lessons learned from the grand experiment in multi-stakeholderism to promote business models that center workers and communities in their governance and ownership. See our new work: [Beyond Corporations](#).

Find out about our new direction at www.msi-integrity.org/beyond-corporations/

Look out for our upcoming blog series, “Rethinking MSIs.”

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Remedy:

MSIs are not designed to provide rights holders with access to effective remedy

In this chapter: This chapter discusses whether MSIs provide access to remedy for rights holders who have suffered abuses by analyzing their grievance procedures against internationally recognized guidelines for effective grievance mechanisms.

Summary of our insights: MSIs do not provide access to effective remedies for victims of human rights violations. Many MSIs either do not have a grievance mechanism or, if one exists, they have not developed procedures that meet internationally accepted minimum practices or engender trust among rights holders. By failing to provide rights holders with a route to an effective grievance mechanism, MSIs are not only allowing governance gaps to persist, but are also failing to serve the needs of rights holders and to recognize that harmed rights holders ought to be a privileged stakeholder in human rights interventions.

Key findings and observations:

- **Almost a third of MSIs do not have a grievance mechanism, and therefore, do not provide individuals or communities with the ability to seek remedy for rights violations.** Most of those MSIs instead require that their members have a grievance mechanism where rights holders can file complaints, but do not set sufficient standards to ensure that those mechanisms are designed or functioning effectively to enable rights holders to seek remedies.
- **Nearly all of the MSI grievance mechanisms we studied fail to meet internationally recognized criteria for effective access to remedy.**
 - **Not accessible:** Nearly all MSIs lack adequate procedures to ensure rights holders know about and can use the complaint process. For example, only 10 MSIs provide complaint information online in a language other than English, and even fewer MSIs offer translation or require that their members publicize the existence of the MSI's grievance mechanism to rights holders.
 - **Not predictable:** Most mechanisms either do not set out a clear procedure and time frame for each stage of the complaints process, or clarify and provide transparency about possible outcomes.
 - **Not equitable:** Many grievance procedures are complex and confusing to understand, yet most MSIs place little emphasis on equitable access to information, advice and expertise. Only six MSIs formally offer any form of assistance to complainants, such as making an advocate available or assisting with complaint preparation.
 - **Not transparent:** Only seven out of the 27 MSIs with a grievance mechanism disclose specific outcomes of complaints received, and only four MSIs publish the overall number of complaints filed or resolved.
 - **Not rights-compatible:** Few MSIs appear to have the power or practice of providing meaningful remedies directly to rights holders. Only three MSIs have procedures that specifically require input from harmed rights holders when determining the appropriate remedy.
 - **Not a source of continuous learning:** Complaints from rights holders contain important information about an MSI's weaknesses, impacts, and areas of improvement. However, only eight MSIs have procedures requiring an analysis of complaints, and only four have published any form of analysis.
 - **MSI grievance mechanisms are not rights holder-centric:** The design of MSI grievance procedures indicate most MSIs do not see their role as championing access to effective remedy and do not view harmed rights holders as a privileged stakeholder.
 - **MSIs referenced:** We analyzed the grievance mechanism procedures of all 40 MSIs listed in Appendix 1.

Background: Context and Approach

The “right to an effective remedy” is universally recognized under international human rights law.¹ Children who are forced into labor, communities whose land is logged without permission, and workers who experience illegal discrimination all have the right to a remedy that addresses the wrongs they experienced.² Without a remedy, the notion of “rights” is meaningless in practice, which is why the UN Working Group on Business and Human Rights recently established an “all roads to remedy” approach that it says “should inform the action of all relevant stakeholders to realize effective remedies for those affected by business-related human rights abuses.”³

Ensuring that victims of corporate human rights abuses are provided with effective remedies is seen as central to the notion of “corporate accountability,” and is explicitly recognized in the context of corporate human rights abuses.⁴ In some situations, victims of human rights abuses can hold corporations accountable by suing them in court. Indeed, the *United Nations Guiding Principles on Business and Human Rights* (UNGPs), which serve as the leading international framework for corporations’ responsibility to respect human rights, notes that governments have a legal duty to ensure that when “abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.”⁵ Yet some victims face multiple barriers that render them legally or financially unable to access a remedy through state-based systems.⁶ Given the transnational nature of many corporate abuses and the power imbalances between corporations and individuals, sometimes courts are not feasible avenues for victims to seek redress. This might be due to a lack of jurisdiction, inadequate resources, corruption, fear of reprisal, or other issues. This inability of rights holders to rely on states for access to remedy is often the case where MSIs operate, as many MSIs emerged in response to government failures to protect individuals against corporate abuses or provide remedy (see **Insight 1: Influence**).

Recognizing that rights holders are often unable to obtain remedy through state-based systems, governments and intergovernmental bodies have looked to MSIs to play a role in providing rights holders with access to remedy.⁷ The UNGPs specifically call on MSIs “to ensure that effective grievance mechanisms are available” and warn that MSIs’ legitimacy “may be put at risk” if they do not provide access to effective grievance mechanisms.⁸ They note that “the remedial functions of collaborative initiatives” can supplement state-based mechanisms for access to remedy.⁹

“The UNGPs specifically call on MSIs ‘to ensure that effective grievance mechanisms are available’ . . .”

Generally speaking, a grievance mechanism is a formal procedure to accept, assess, and resolve complaints by or on behalf of affected individuals or groups.¹⁰ The way they do this can vary widely, ranging from mediation to independent investigations resulting in fact-finding and a formal decision. For example, an MSI could facilitate access to an existing state-based non-judicial grievance mechanism, such as the National Contact Points established under the Organization for Economic Co-operation and Development (OECD) *Guidelines for Multinational Enterprises*, or it could establish its own mechanism.¹¹ Alternatively, in addition to or instead of having its own grievance mechanism, an MSI may require that its members have one, which may be referred to as an operational-level grievance mechanism (OGM). In any of these scenarios, the grievance mechanism should not interfere with, prevent access to, or supplant state-based mechanisms for accountability and redress.

Effective MSI grievance mechanisms ideally serve several functions:

- **Provide access to a remedy for harms or rights violations suffered by the rights holders that the MSI seeks to benefit or protect.** Many MSIs operate in locations where victims of human rights abuses may have limited opportunities to seek a remedy, making them the only

meaningful avenue for a community or individual to obtain redress for harms.

- **Diagnose ongoing violations and hold individual MSI members accountable when they cause harm.** Grievance mechanisms provide a means to track and measure violations over time, providing a better understanding of the scale of a problem and allowing an MSI to gauge its own effectiveness at detecting abuses. This is particularly important because MSI monitoring systems often have flaws that undermine their ability to protect rights holders from abuse. (See **Insight 4: Monitoring & Compliance** for more information on these shortcomings.)
- **Demonstrate the willingness of MSIs to advance the interests of the communities that they seek to benefit or protect.** More generally, an effective grievance mechanism shows the willingness of an MSI to ensure that its members—however large or powerful—are accountable to, and provide remedies for, individuals and communities in the event their rights are violated.

The functions will not be fulfilled and the benefits obtained, however, if an MSI simply provides access to *any* grievance mechanism. Rather, the UNGPs make clear that MSIs “should ensure that *effective* grievance mechanisms are available.”¹² International norms also recognize that effectiveness has both “procedural and substantive considerations,”¹³ meaning that it “should be effective in terms of both process and outcome.”¹⁴ The process, for example, must provide timely, affordable, and meaningful access to a procedure that is capable of addressing the violation, and the outcome must repair the harm of the violation.¹⁵ Ultimately, the question of whether harms against rights holders are, or could be, remediated by a remedial process is the central inquiry when examining the adequacy and effectiveness of remedial processes.¹⁶

Despite the expectation that MSIs will assist in providing rights holders with access to remedy, we have observed that MSIs have grievance processes that rarely meet even minimal criteria for effective grievance mechanisms. This chapter illustrates this trend through an analysis of the grievance mechanisms of the 40 MSIs included in this report, conducted based on the mechanisms that the MSIs had in June 2019.¹⁷ We do not focus on the OGMs of MSIs’ members, except to determine whether MSIs require that their members have a mechanism in place, nor do we examine ad hoc, informal, or other types of complaint processes that do not have established procedures. We also draw from our interviews and workshops with rights holders in 2017 in Cameroon, the Philippines, and Nigeria regarding their experiences with MSIs to highlight their perspectives on grievance mechanisms and some of the obstacles that can inhibit their access to remedy.

1 Many MSIs do not have a grievance mechanism, nor do they require that their individual members provide an *effective* grievance mechanism

Many of the 40 standard-setting MSIs in our MSI Database do not facilitate any effective access to remedy for rights holders when an MSI’s human rights standards have been violated. As shown in Table 5.1, 13 MSIs do not have any grievance mechanism of their own. Nine of these MSIs instead require that their members provide an OGM, while the remaining four have neither a grievance mechanism, nor any requirement that their members have one.

TABLE 5.1. MSIs with grievance mechanisms or that require members to have a mechanism

MSIs that have a grievance mechanism	MSIs without a grievance mechanism that require members to have one	MSIs without a grievance mechanism that do not require members to have one
<ul style="list-style-type: none"> • Alliance for Water Stewardship • Better Cotton Initiative • Bonsucro • Equitable Origin • Ethical Trading Initiative • Extractive Industries Transparency Initiative • Fair Labor Association • Fair Stone • Fair Wear Foundation • Fairtrade International Food Alliance • Forest Stewardship Council • GoodWeave International • ICTI Ethical Toy Initiative • Infrastructure Transparency Initiative • International Code of Conduct for Private Security Providers • International Sustainability and Carbon Certification • Marine Stewardship Council • Rainforest Alliance • Roundtable on Responsible Soy • Roundtable on Sustainable Biomaterial • Roundtable on Sustainable Palm Oil • Social Accountability International • Sustainable Forestry Initiative • UN Global Compact • UTZ • Voluntary Principles on Security and Human Rights 	<ul style="list-style-type: none"> • Alliance for Responsible Mining • Equitable Food Initiative • Florverde Sustainable Flowers • Global Coffee Platform • Global Network Initiative • HydropowerSustainability Assessment Protocol • Initiative for Responsible Mining Assurance • Program for the Endorsement of Forest Certification • Worldwide Responsible Accredited Production 	<ul style="list-style-type: none"> • Better Biomass • Diamond Development Initiative • Global Reporting Initiative • Global Sustainable Tourism Council

Source: The source data for this information is available from the “MSI Trends Dataset,” which is available on our website at www.msi-integrity.org/datasets and contains information current as of June 30, 2019.

However, all but one of the nine MSIs without grievance mechanisms of their own—that instead require that their members have an operational grievance mechanism—do not establish clear guidelines for the quality of those mechanisms that ensures they comply with the UNGPs’ minimum standards for their effectiveness. This failure to oversee the quality of the mechanisms means that individual members may have an ineffective framework. Ineffective grievance mechanisms risk causing more harm than good by exposing individuals who have survived abuses to further trauma or economic burdens as a result of protracted or unjust processes that frustrate access to remedy. As the UNGPs note, “poorly designed . . . grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.”¹⁸

Yet, eight of these nine MSIs not only fail to require compliance with the UNGPs, but often establish few requirements at all. In particular:

- The Alliance for Responsible Mining only requires that “[a] grievance procedure for human rights and environment must be in place, which includes a due diligence process.”¹⁹ However, it does require members to notify it about complaints so it can “follow up,” and the initiative reserves the right to set up a grievance mechanism for cases in which it perceives there is “real risk” for rights holders in using the regular mechanism.²⁰
- The Equitable Food Initiative requires that there is an “effective dispute settlement mechanism.”²¹ However, the criteria for assessing the effectiveness of the mechanism are limited to requiring that it allows for decisions to be appealed (without specifying to where, or any conditions for effective appeals) and prohibiting workers from waiving their legal rights.
- Florverde Sustainable Flowers only requires “a documented procedure” to handle and manage the complaints and claims of interested parties, that “demonstrates that effective action has been taken in order to resolve and respond to the complaints and claims received.”²²
- The Global Coffee Platform *Baseline Common Code* only requires that “[p]olicy and procedures include grievance mechanisms to secure equal rights exist and are communicated within the Producing Entity,” and that “efforts have been made in order to explain in further detail the procedures to [vulnerable groups].”²³
- Global Network Initiative (GNI) requires that members “make it possible for grievances about issues related to freedom of expression and privacy to be communicated to the company for consideration and, if appropriate, direct remediation.”²⁴ It sets out that “*the grievance mechanisms should be designed in accordance with the effectiveness criteria set out in principle 31 of the UN Guiding Principles on Business and Human Rights.*” However, as this is framed as “application guidance,” it is not mandatory.²⁵
- The Hydropower Sustainability Assessment Protocol requires an “appropriate grievance mechanism,” but does not specify what constitutes an “appropriate” mechanism.²⁶
- The Program for the Endorsement of Forest Certification standards only requires that “appropriate mechanisms shall be in place for resolving complaints and disputes.”²⁷
- The World Responsible Accredited Production standard inquires if there is a “grievance mechanism known to all workers,” if “there are any penalties associated with using the grievance mechanism,” and asks for “reference numbers to any evidence of the grievance mechanism being used.”²⁸

This is not because establishing requirements and guidance is difficult. The minimum expectations set out by the UNGPs have been established since 2012, well before all the nine MSIs published their standards. Yet, the Initiative for Responsible Mining Assurance is the only one of these nine MSIs that requires that its members’ grievance mechanisms must comply with the effectiveness criteria in the UNGPs (which we explore further in this chapter).²⁹ Indeed, the initiative goes further than the UNGPs criteria by adding requirements relating to confidentiality, providing marginalized and vulnerable

groups with assistance, and other issues.³⁰

The lack of guidance for, and wide discretion left to, companies in establishing their own OGMs—that is, mechanisms established at the company or project level—is concerning because many existing OGMs have been found to be ineffective and contributed to the grievances experienced by rights holders.³¹ Indeed, the International Commission of Jurists (ICJ) recently undertook a research project into OGMs because “[the] people the mechanisms were meant to help have been unaware of their very existence, the procedures have been unfair or unclear and outcomes have been inadequate for the kind of harm experienced.”³² Their study found that “[t]here are significant shortcomings in the way certain [OGMs] operate which in many instances exacerbate the existing imbalance of power between the parties to the dispute,”³³ and that, “[i]n practice, most grievance mechanisms used by companies to redress abuses need major improvements in all respects.”³⁴

Thus, without ensuring that their members’ mechanisms are effective and rights-consistent, these MSIs run a real risk that rights holders do not have any access to effective remedy. Indeed, even with guidance, in the absence of the ability of rights holders to appeal decisions or bring unsatisfactorily resolved complaints to the MSI, violations of an MSI’s standards may continue unresolved or without the MSI’s awareness. This situation is highlighted in Spotlight 5.2.

SPOTLIGHT 5.1. Global Network Initiative: Company-level grievance procedures vary widely in quality

GNI formed in 2008 to provide guidance “to the ICT industry on how to respect, protect, and advance user rights to freedom of expression and privacy, including when faced with government demands for censorship and disclosure of user’s personal information.”³⁵ One of the key events that led to its formation was the disclosure that a Yahoo! subsidiary shared information with the Chinese government that led to the arrest and imprisonment of Chinese journalist Shi Tao; it marked a “tipping point” for public concern over risks of technology companies’ complicity in human rights abuses.³⁶

Despite public promises to develop a complaint mechanism since 2010,³⁷ GNI does not have a grievance mechanism that allows individuals to seek a remedy for the human rights violations that it formed to address. While creating a mechanism to handle every privacy or freedom of expression issue would be a large undertaking, the initiative could develop a mechanism that focuses more narrowly on the specific emergency circumstances that prompted its formation: e.g., when individuals allege they have experienced arrest, imprisonment, or torture as a result of technology companies’ failure to respect privacy or freedom of expression (see **Insight 1: Influence**).

Instead, GNI only requires that its member companies have an operational-level grievance mechanism to receive grievances filed by their users,³⁸ and if GNI receives any complaints it refers them to its members.³⁹ The initiative’s assessment process verifies whether its members have a grievance mechanism, but it does not systematically review how member companies handle these grievances or examine rights holders’ perspectives on how their complaints were handled. Instead, the member assessment entails an outside evaluator review of select case studies.⁴⁰ Concerns about the adequacy of that audit and review process are detailed in Spotlight 4.2 in **Insight 4: Monitoring & Compliance**.

This lack of oversight perhaps explains the wide variability in GNI members' grievance mechanisms. In a recent assessment of GNI members' grievance mechanisms by Ranking Digital Rights Corporate Accountability Index, members Telefónica and Vodafone ranked highest for providing a clear and effective grievance mechanism, while members Google and Facebook were among the lowest scorers; Facebook's grievance and remedy mechanisms were among the weakest of any company studied.⁴¹ Importantly, the lack of oversight also leaves open the possibility that rights holders are experiencing abuses by GNI members, yet are not able to access an effective remedy.

SPOTLIGHT 5.2. Worldwide Responsible Accredited Production: Operational-level grievance mechanism failing to resolve workers' complaints

The American Apparel Manufacturers Association, an industry association, formed Worldwide Responsible Accredited Production (WRAP) in 2000 to address labor abuses in the textile industry. It monitors individual factory sites for compliance with a set of responsible labor practices and issues three levels of certification—platinum, gold, or silver. WRAP does not have a grievance mechanism, but instead requires that its certified facilities have one. Its assessment of this criterion asks if the facility has a grievance mechanism, if it is known to all workers, and for “reference numbers to any evidence” that workers use the mechanism.⁴²

In 2017, MSI Integrity staff conducted field research on rights holder experiences with MSIs, which included interviews with 20 workers at a WRAP-certified factory in the Philippines about their working conditions and knowledge of or interaction with WRAP. Half of the workers indicated that the factory's OGM failed to provide any resolution for complaints that they had.⁴³ Workers said that they appointed co-workers to serve on a Labor Management Committee, which accepted complaints, but alleged that nothing was done in response to their grievances. The Committee members also noted this as a problem. They told us:

We submit a list of problems from the departments and then the management will approve or not. That's the limitation, the final decision is with management. . . . We get caught in between, because the workers are mad at us because nothing is happening, and the management is mad at us. . . . It should be a neutral party to decide—outside the company, to decide. Should be someone who understands the issues and the laws.⁴⁴

Management approaches me. We tell them our problems, but they haven't responded adequately. The people elected me, put their trust in me, management listens but they don't do anything.⁴⁵

The result was that these workers' complaints were never resolved or brought to the attention of the MSI. This illustrates that when an MSI does not offer its own grievance mechanism, or another way for rights holders to directly appeal to or raise grievances with it, an initiative loses a key means of detecting whether their members are failing to resolve complaints as required by their standards. It also means that potential breaches of the MSI's standards may persist undetected by the MSI.

2 Nearly all MSI grievance mechanisms fail to meet the minimum internationally recognized criteria for access to effective remedy

There is a growing body of international guidance about what makes a grievance mechanism effective. This emanates from the UNGPs, which set out minimum general effectiveness criteria for grievance mechanisms.⁴⁶ Specifically, they provide that an effective grievance mechanism is one that is accessible, equitable, legitimate, predictable, transparent, a source of continuous learning, and rights-compatible.⁴⁷ These principles serve as a floor—not a ceiling—of what an effective grievance mechanism must provide.⁴⁸ Later efforts to further develop and apply those criteria in practice—such as reports by ICJ and the Office of the United Nations High Commissioner for Human Rights—recognize that these mechanisms “should be at the service of rights holders, who should be consulted meaningfully in creating, designing, reforming and operating such mechanisms.”⁴⁹ The centrality of harmed rights holders has, as explained further in this chapter, become the touchstone of understanding whether a remedy or remedial process is effective. Ultimately, if harmed rights holders are unable to access, utilize, or feel that their harms were remediated by a grievance mechanism, then it is not an effective remedial mechanism.

“Ultimately, if harmed rights holders are unable to access, utilize, or feel that their harms were remediated by a grievance mechanism, then it is not an effective remedial mechanism.”

Despite the fact that governments and intergovernmental bodies have looked to grievance mechanisms as a means to improve access to remedy, their procedures and processes are inadequate to fulfill this function.⁵⁰ Applying the UNGPs’ effectiveness criteria to 27 MSIs with grievance mechanisms reveals that nearly all of them have major procedural flaws, and ultimately, fail to meet those criteria. Given that the criteria are minimum requirements, and much work has been done to build on them since their introduction in 2011, MSIs are falling well short of playing a meaningful role in providing access to remedy. These shortcomings compromise MSIs’ effectiveness as human rights accountability tools and illustrate another critical way in which MSIs are failing to serve the needs of rights holders. Each criterion is explored in detail in the discussion that follows.

A. Accessibility: Lack of procedures to ensure rights holders are aware of grievance mechanisms and have the ability to file complaints

An effective grievance mechanism must be accessible from the perspective of its intended users.⁵¹ The UNGPs advise that accessibility requires consideration of the barriers that affected stakeholders may face, such as “language, literacy, costs, physical location and fears of reprisal”—all of which can hinder a rights holder’s ability to file a complaint.⁵² In addition, our research has identified the following specific elements as essential for an effective grievance mechanism: requiring that MSI members make information about the MSI grievance mechanism available to the public in languages widely spoken by affected populations, providing multiple formats for complaint filing (phone, mail, internet), and allowing a complainant to remain anonymous from the subject of the complaint.⁵³

Nearly all of the MSI grievance mechanisms we reviewed, however, do not meet these minimum standards. Three of the 27 MSIs we reviewed have grievance mechanisms that only allow complaints that are brought by their members.⁵⁴ The other grievance mechanisms allow complaints from third parties, including rights holders, but pose multiple barriers to access, as reflected in Table 5.2.

TABLE 5.2. MSI grievance mechanisms: Procedural barriers to right holders

We exclude the grievance mechanisms of Better Cotton Initiative, Ethical Trading Initiative, and the Voluntary Principles on Security and Human Rights from this table, as these MSIs do not allow third-parties to file complaints in their mechanisms. This creates a significant procedural barrier for rights holders as they are directly barred from filing complaints.

	Require that members share information on MSI grievance mechanism	Complaint information available in language other than English	Translation service offered	Allow verbal complaints	Explicitly guarantee anonymity to the complainant if requested
Bonsucro	No.	No.	No.	No.	No.
Equitable Origin	No.	No.	Yes.	No.	Yes.
Extractive Industries Transparency Initiative	No.	No.	No.	No.	No.
Fair Labor Association	No.	Yes.	No.	No.	No.
Fair Stone	No.	No.	No.	No.	No.
Fair Wear Foundation	Yes.	Yes.	Yes.*	Yes.	Yes.
Fairtrade International	No.	No.	No.	No.	No.
Food Alliance	No.	No.	No.	No.	No.
Forest Stewardship Council	No.	Yes.	No.	No.	No.
GoodWeave International	No.	No.	No.	No.	No.
ICTI Ethical Toy Initiative	Yes.	Yes.	Yes.*	Yes.	Yes.
Infrastructure Transparency Initiative	Yes.	No.	No.	Yes.	Yes.
International Code of Conduct for Private Security Providers	No.	Yes.	No.	Yes.	Yes.
International Sustainability and Carbon Certification	No.	No.	No.	No.	Yes.
Marine Stewardship Council	Yes.	No.	Yes.	No.	No.
Rainforest Alliance	Yes.	Yes.	No.	No.	Yes.
Roundtable on Responsible Soy	No.	No.	No.	No.	No.

	Require that members share information on MSI grievance mechanism	Complaint information available in language other than English	Translation service offered	Allow verbal complaints	Explicitly guarantee anonymity to the complainant if requested
Roundtable on Sustainable Biomaterials	No.	No.	No.	No.	Yes.
Roundtable on Sustainable Palm Oil	Yes.**	Yes.	Yes.	No.	Yes.
Social Accountability International	No.	Yes.	No.	No.	Yes.
Sustainable Forestry Initiative	No.	No.	No.	No.	No.
UN Global Compact	No.	Yes.	No.	No.	No.
UTZ Certified	No.	Yes.	No.	No.	No.
TOTAL (of 24)	6	10	6	5	12

*Fair Wear Foundation (FWF) and the ICTI Ethical Toy Initiative do not offer translation per se, but use local complaint handlers to take verbal complaints.

**The Roundtable on Sustainable Palm Oil's (RSPO) Dispute Settlement Facility (DSF) requires that RSPO itself "establish a program to enable RSPO members, local stakeholders, and other parties' awareness and understanding of how to use the DSF," rather than place the obligation on members.⁵⁵

Source: The source data for this information is available from the "MSI Trends Dataset," which is available on our website at www.msi-integrity.org/datasets and contains information current as at June 30, 2019.

In addition to the issues raised in Table 5.2, cost can also undermine accessibility. For example, in the past, the Common Code for the Coffee Community (4C), which has since become the Global Coffee Platform, charged complainants a fee of €1,000 (approximately US\$1,050) for filing a complaint. In addition, the losing party was required to cover the fee for the mediators and 4C's legal counsel, which was €3,000 per half-day of mediation. Although complainants could apply to have the fee waived, it illustrates the extent to which an MSI can impose barriers that deter rights holders from accessing a remedy.

(i) Lack of procedures to promote awareness of the grievance mechanism

A grievance mechanism is only effective to the extent that its intended users know that it exists. Yet, as Table 5.2 shows, only 6 of the 24 MSIs with a grievance mechanism open to complaints from rights holders explicitly require potential complainants be given information about the complaint process.

While it was beyond the scope and resource constraints of this report to assess the degree to which rights holders are aware that MSIs' grievance mechanisms exist, or to analyze the awareness-raising efforts by all MSIs for such mechanisms, our earlier work raises important questions about whether and how MSIs raise awareness around their grievance mechanisms. For example, during our research into rights holders' perspectives of MSIs in 2017, four of the six initiatives we included in our research had initiative-level grievance mechanisms: Fairtrade International, Fair Labor Association (FLA), Forest Stewardship Council (FSC), and UTZ. However, **Fairtrade was the only initiative whose affected community members were aware of their ability to file a grievance.**⁵⁶ Although two of

the four initiatives (Fairtrade and FLA) require certified sites to maintain OGMs and inform affected communities about them, none of the MSIs require suppliers to share information to community members about their respective initiative-level mechanisms.⁵⁷ Nor did any have local contact points, telephone hotlines, or other localized avenues for information about the mechanisms. Instead, they seemed to rely primarily on the website as the way for community members to file complaints.

Our assessment was that rights holders knew about the Fairtrade grievance mechanism because the initiative is designed in such a way that the MSI engages with the community with respect to how the Fairtrade premium is invested. By comparison, the other MSIs do not necessarily have any direct relationships with the communities in which they operate, and the rights holders we met with had not perused an MSI's website and therefore were not aware of the mechanisms.

All of the MSIs in our MSI Database with grievance mechanisms use their websites to provide information on how to submit complaints. While it is unclear how many MSIs rely solely on their websites to inform rights holders about their grievance mechanisms, as a preliminary matter, it bears highlighting that raising awareness through websites alone would exclude potential complainants who do not have access to the internet. This is a real concern given that over four billion people—more than half of the global population—remain offline, and the largest offline populations are in China, Pakistan, and Bangladesh, where many supply-chain MSIs are active.⁵⁸ Women are overrepresented in the offline population as are people who are rural, low income, elderly, or illiterate.⁵⁹ Few MSIs outlined the steps they took to ensure rights holders were aware of their grievance mechanism, although a good example of an MSI taking steps to promote awareness is included in Spotlight 5.3.

Even if we assume that potential complainants have access to MSI websites, we have observed that it is often difficult to find information on MSI websites about how to file a complaint. Only 11 of the MSIs that allow third party complaints link to complaint information directly through their homepage or a “contact us” page.⁶⁰ Others posted links to grievance mechanism information under vague sections of their websites, such as:

- The “Safeguards” section, located via a dropdown menu entitled “Transparency”;⁶¹
- The “Downloads” or the “Documents” sections;⁶² and
- The “Verification” section, located via a “What We Do” dropdown menu.⁶³

Thus, even in situations where individuals have internet access and a sufficient data connection to visit an MSI's website, the site itself obscures information behind terms that may be particularly difficult for people with limited knowledge of English or limited digital literacy to navigate.

While it is possible that some MSIs have dedicated outreach practices that go beyond relying on their internet portals, we encourage further study and consideration into whether rights holders are aware of MSIs' grievance mechanisms, and whether MSIs are overcoming barriers to access for particularly vulnerable workers and communities. To that end, we note that, per the discussion in Part 2.E., only three MSIs have publicly reported receiving more than 20 complaints. While not a perfect measure, given that many MSIs cover thousands of rights holders, the low numbers of cases could be an indicator of lack of awareness of the initiative's mechanism. This, too, is worth further exploration.

(ii) Lack of procedures to address language or literacy barriers

The UNGPs specifically note that literacy and language barriers may impede access to remedy.⁶⁴ Despite this, most MSIs with grievance mechanisms require written complaints, do not provide complaint information in multiple languages, and do not offer translation services. As Table 5.2 shows, nearly all MSI grievance mechanisms open to complaints directly from rights holders require aggrieved parties to file complaints in writing—either by mail, email, or through an online form. Only five MSIs explicitly

allow verbal complaints. This insistence on written complaints makes it impossible for individuals with limited internet access or limited to no English skills to file grievances.

Moreover, only 10 out of the 24 MSIs with grievance mechanisms open to complaints from rights holders provide complaint information online in a language other than English. Only six MSIs explicitly offer translation services or employ a local complaint handler to take complaints.

This reliance on English is inappropriate in light of the global reach of many MSIs. Bonsucro, for example, explicitly requires that complainants submit complaints in English, despite the fact that it certifies in more than 40 countries.⁶⁵ Similarly, the Roundtable on Sustainable Biomaterials provides information online only in English, but certifies entities in 22 countries, only 12 of which have English as an official language.⁶⁶ Fair Stone provides information solely in English and German despite the fact that its focus includes supply chains in China, Vietnam, and India.⁶⁷ The International Sustainability and Carbon Certification provides information only in English, but has issued certificates in more than 100 countries.⁶⁸

“Only five MSIs explicitly allow verbal complaints. This insistence on written complaints makes it impossible for individuals with limited internet access or limited to no English skills to file grievances.”

(iii) Lack of explicit guarantees of complainant confidentiality

Many potential complainants and their allies may fear and face serious risks of retaliation if they file complaints with an MSI. Threats and violence against human rights defenders have been on the rise.⁶⁹ In addition, many MSIs address labor issues where the risk of employment termination is high. Thus, the UN Working Group on Business and Human Rights has recognized the need for grievance mechanisms to ensure that complainants do not face reprisals for raising complaints, noting, “Freedom from fear of victimization in seeking remedies is an integral component of access to effective remedies.”⁷⁰

“... half of the MSI grievance processes that accept complaints from rights holders fail to prominently state that a complainant may choose to remain anonymous to the subject of the complaint.”

Despite this, half of the MSI grievance processes that accept complaints from rights holders fail to prominently state that a complainant may choose to remain anonymous to the subject of the complaint.⁷¹ In contrast, FLA’s complaint form states in large bold letters that the information will not be shared with factory management.⁷² Similarly, FWF’s procedure also directs the local complaint handler to discuss potential adverse impacts and retaliation risks with the complainant, and form a mitigation plan if applicable.⁷³ As seen in Spotlight 5.3, we have heard from rights holders about their fears of retaliation and their strong need for measures, such as complaint confidentiality, that address these fears. By failing to design grievance mechanisms with these measures in place, MSIs are failing to serve the needs of rights holders, not only from a theoretical perspective, but also from the articulated perspective of rights holders on the ground.

SPOTLIGHT 5.3. Rights holder voices: Fear of retaliation forecloses complaints

Our 2017 interviews with rights holders directly affected by MSIs revealed how fear of retaliation can prevent them from filing complaints. Indigenous villagers residing near a forest concession, workers at factories and farms, and their allies made the following comments:

We fear that they will have a “hot eye” on us if we file a complaint, they will watch our every move. One small mistake [after you’ve filed a complaint], and you will be given a disciplinary action. Three disciplinary actions and then you are fired.⁷⁴ I would like to report complaints over email. . . . But the factory would be angry. We should [be able to] remain anonymous.⁷⁵ We want to protect the rights of communities, but at what cost? Reporting issues comes at huge personal risk.⁷⁶

[D]enouncing misdeeds of companies exposes the community leader [who does not have protections against retaliation]. There is a need for such protection. . . . You can be arrested for just entering the [forest] concession. There is no legal protection. It would be ideal if the community leader was able to directly inform the company of problems, but with proper legal protection.⁷⁷ We need a neutral person who we can bring our problems to directly. . . . Because now, if I complain, I would be afraid.⁷⁸ No one would take the risk to call [a complaint system]. If you called and complained, they may find out and fire you.⁷⁹

These views were also echoed at a workshop MSI staff conducted with rights holders affected by UTZ and the Voluntary Principles on Security and Human Rights in Nigeria. There participants reported that technology requirements, language barriers, and lack of sufficient complainant protections made grievance mechanisms inaccessible.⁸⁰

B. Equitability: Lack of procedures to address power imbalances between complainants and companies

Even if a rights holder is able to overcome all of the barriers that have been identified in the preceding sections—such as lack of awareness of a mechanism or inability to access it—and file a complaint, an effective grievance mechanism still needs to ensure that the process for handling the complaint is “equitable.”⁸¹ Under the UNGPs, a grievance mechanism is equitable if it seeks 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.”⁸²

However, the majority of MSI grievance mechanisms we studied that are open to rights holders fall far short of this principle. Out of the 24 MSI grievance procedures open to complaints from rights holders, only six provide for any form of assistance to complainants.⁸³ This is despite the fact that many of the MSI grievance procedures are confusing, vague, or unduly complex. In researching and analyzing MSI grievance mechanisms for this report, MSI Integrity staff, who are all lawyers, found it difficult to understand the procedures of many MSIs or to determine where complaints should be filed. For example:

- FSC requires that complaints concerning member compliance go to the monitoring entity, but then states that complaints regarding its “Policy for the Association of Organizations” must

follow a separate procedure, without explaining the distinction or role of that policy;⁸⁴

- The Fair Stone procedure states that “any stakeholder” can lodge a complaint against any “entity part of the Fair Stone supply chain network about its compliance with the requirements,” but also states that complaints against “certified entities” must “be dealt with by the respective complaints and appeals procedures put in place by the auditing companies;”⁸⁵
- The Marine Stewardship Council complaints procedure states that complaints about audits, assessments, and certification decisions must go to the monitoring entity, but notes that it accepts complaints regarding the “management” of the certification program.⁸⁶ It also requires “appropriate objective justification and evidence to substantiate any claim”;⁸⁷ and
- The Roundtable on Responsible Soy requires that complaints include “[d]etails and background on [the] complainant, including information pertinent to demonstrate legitimacy as [a] legal entity and also on issues raised.”⁸⁸

Without any assistance to provide guidance, such confusing language may discourage complainants from filing a complaint.⁸⁹ Other barriers may undermine complainants’ ability to fairly represent their allegations. For example, five of the MSIs we studied require that complainants find and download a lengthy policy document for guidance on how to file and what to include.⁹⁰ At least one other MSI requires that complainants identify the specific provision in the standard that a member violated.⁹¹ The standards, however, are often long and complex documents, and may not be readily available to complainants. In addition, written submission requirements eliminate any initial opportunity for the complainant to talk to someone and clarify the basis for his or her allegations.

SPOTLIGHT 5.4. The Fair Wear Foundation: Demonstrating that MSIs can design grievance mechanisms that meet the minimum criteria for effectiveness

The FWF formed to improve wages and working conditions in the garment industry. Its corporate members are clothing brands that commit to upholding a code of labor standards at the factories of their suppliers.⁹²

The FWF’s complaint procedure is unique among the MSIs that we reviewed in that its design reflects many good practices and appears to be centered on the needs of potential complainants, providing a remedy for well-founded complaints. It demonstrates that it is possible for MSIs to design more rights holder-centered mechanisms than many MSIs currently have.

- **Accessibility:** FWF creates “worker-focused promotional materials and trainings” and requires that members have them distributed at factories.⁹³ FWF trains and manages local complaint handlers in each of the countries where it is active. The complaint handlers accept complaints in multiple formats, including calls or, where possible, social messaging apps. Complainants have the option to remain anonymous to the subject of the complaint. FWF covers the cost of the complaint investigation and provides a translation of the outcome to the complainant if needed.
- **Equitability:** The procedure specifies that complaint handlers should inform complainants about the possibilities and limitations of the FWF grievance mechanism as well as other local options to seek a remedy. The complaints handler must ask explicitly whether the complainant (or involved workers, when the complaint comes from a third party) wishes to begin a formal complaint procedure. If so, then the handler explains the procedure and timelines.

- **Legitimacy:** The procedure identifies FWF’s role as leading the investigation of complaints as a neutral third party. The criteria for selecting an investigation team include: accessibility, ability to speak the local language, expertise on labor standards and local law, and independence.
- **Predictability:** The process is detailed and clearly describes the steps involved, with time frames. The local complaint handler is required to explain the timeline to the complainant.
- **Transparency:** FWF has an active case tracker similar to that in Figure 5.1 that has updated information on all current and historic cases. Reports on the final decisions include the complainant’s evaluation of the outcome, which is posted on its website.
- **Remedy:** If the complaint is found to be grounded, then FWF consults with the complainant on remediation. The member brand is responsible for ensuring that the remediation plan is carried out. FWF specifically requires that member companies use their leverage to ensure suppliers remediate harms. FWF monitors progress by continuing contact with the complainant and the union or worker representative at the factory,⁹⁴ and provides the specific steps it takes to ensure members carry out remediation, including reporting failures in the public complaint report. Before a complaint is closed, FWF specifically asks the complainant to evaluate the outcome.
- **Continuous learning:** The complaint procedure specifies that FWF will share its “learnings from the system with local institutions and international grievance mechanisms, business associations and trade unions.”⁹⁵

Source: Fair Wear Foundation, *The FWF Complaints Procedure*.

C. Legitimacy: Lack of procedures to address potential conflicts of interest or promote binding and independent decisions

The UNGPs state that, in order to be effective, a grievance mechanism must have legitimacy in the eyes of the groups it is intended to serve.⁹⁶ Legitimacy encompasses “[a]ccountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct.”⁹⁷ This is essential for building trust and encouraging parties to use the process. ICJ has also highlighted the importance of “independence and impartiality” in complex or contested cases.⁹⁸

Despite the importance of fairness and impartiality, some MSI grievance mechanisms do not have procedures regarding a potential conflict of interest. Out of the 24 MSIs that have a grievance mechanism open to rights holders, six fail to explicitly address how they ensure that the decision-maker is free from any interest in the outcome.⁹⁹ For this subset of MSIs, the lack of a publicly shared conflict of interest prohibition can undermine the perceived fairness of the grievance mechanism, which in turn can discourage rights holders from using it.

It is worth noting more generally that, while it is not necessary to do so, all the MSIs have retained control over their grievance processes, rather than elect to use independent ombudsmen

“Despite the importance of fairness and impartiality, some MSI grievance mechanisms do not have procedures regarding a potential conflict of interest.”

or other independent actors. In addition, consistent with the finding in **Insight 4: Monitoring & Compliance**, none of the grievance mechanisms have any binding power. By electing to remain strictly voluntary, rather than require members who join to adopt legally binding standards, or otherwise be bound by a remedial framework, MSIs have promoted a model in which remedies are only available to rights holders when members are willing to cooperate in the investigation, accept the findings, and take corrective action or provide the proposed remedy. Members who do not wish to abide by the rules of an MSI, including any orders to provide a remedy, can simply withdraw from the MSI. As presently constituted, MSIs' only recourse when their members disagree with the findings of a complaint is to expel or suspend a recalcitrant member with the hope that this threat is sufficient leverage to compel action. The weakness of this approach, and examples of it failing in practice, are outlined in **Insight 4: Monitoring & Compliance** (see Figure 4.2). Both of these are features that, while not strictly necessary for legitimacy under the UNGPs, would significantly boost a grievance mechanism's legitimacy.

To that end, we note MSIs themselves need not create their own mechanisms in order to provide rights holders with access to remedy. Instead, they could improve access to existing grievance mechanisms or to the courts. MSIs could require that members consent to the jurisdiction of the courts in the countries where they operate, or they could include binding obligations on members that give intended beneficiaries the legal power to enforce these obligations in court or in binding arbitration. Alternatively, they could collaborate with certain state-based non-judicial grievance mechanisms, such as the National Contact Points created under the *OECD Guidelines on Multinational Enterprises*, to hear complaints. While these existing state-based systems have their own shortcomings,¹⁰⁰ it is worth noting that, so far, MSIs have not embraced or sought to strengthen these systems, but instead elected to keep decision-making within their own realm.¹⁰¹

D. Predictability: Lack of procedures that set forth specific steps, time frames, and potential outcomes available

Predictability requires that the grievance mechanism employ “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.”¹⁰² Most MSI grievance mechanisms are deficient in one or both of these areas, however.

While most MSIs provide a time frame for specific aspects of the complaint process, such as when a complainant will receive an acknowledgement that the complaint was received, many do not provide a time frame for every step, such as for the investigation or the decision if a complaint is appealed. Bonsucro, for example, provides no information on how long it may take the complaint manager to make a recommendation, or how long it may take to reach a decision on an appeal.¹⁰³ Similarly, the Roundtable on Responsible Soy does not set forth time frames for their complaint investigation or for issuing a decision if a member submits a response to the complaint finding.¹⁰⁴

When an MSI does not have a clear time frame for resolving complaints, it creates an opportunity for delay when members contest the allegations or findings. As one recent study of non-judicial grievance mechanisms showed, “the problem is that the company has a variety of techniques to prevent a bad outcome from their perspective,” including engaging in stalling tactics, attempts to create conflict within the community, and providing inaccurate information.¹⁰⁵ MSIs may also introduce a delay if they need to agree on how to appropriately investigate allegations and, when the results come back, how to decide which information to credit. Moreover, in situations where the MSI's entire board or a committee must decide on a complaint outcome, its multi-stakeholder composition might make reaching agreement time-consuming. The six examples listed in Figure 4.2 in **Insight 4: Monitoring & Compliance** illustrate how, without clear timeframes for resolution, complaints can sometimes take many years to resolve.

“... nearly half [of MSIs with grievance mechanisms]—13 out of the 27—do not provide clarity about potential complaint outcomes.”

In addition, out of all of the MSIs that have grievance mechanisms (including those which are open to rights holders and those which are not), over half—18 out of the 27—either do not indicate the outcome of the process (5) or refer to corrective action without providing clarity about potential complaint outcomes (13) (see discussion in section 2(G) below).¹⁰⁶ Bonsucro, for example, states that it “will monitor progress” on corrective measures and that decisions are binding for four years, but it does not specify any consequences if no progress is made.¹⁰⁷ Similarly, the Roundtable on Responsible Soy states, in cases where there are “serious grounds” for termination, “that members would be required [to] take action to remedy or resolve the situation to the satisfaction of the Grievance Committee.”¹⁰⁸ The FLA procedure requires a specific remediation plan and reports on progress but, in the event “that either a sufficient level of remediation has been achieved, or that it is unlikely it will be achieved,” states that “at that point the Association will prepare a final Summary Report.”¹⁰⁹

E. Transparency: Failure to publish complaints and outcomes

Transparency is crucial to the legitimacy of MSI grievance mechanisms. Without it, there is no way to determine whether rights holders actually use the mechanism, how the MSI handles complaints, or the outcomes when complaints are well-founded. Indeed, the UNGPs advise that transparency requires “providing sufficient information about the mechanism’s performance to build confidence in its effectiveness,” as well as keeping parties informed in individual cases.¹¹⁰

Yet, despite the importance of transparency very few MSIs publish information about the cases they receive or their outcomes. Only seven out of the 27 MSIs with a grievance mechanism have disclosed information about any specific complaint decisions as shown in Table 5.3. It is thus not known whether the other 20 MSIs have not received any complaints or whether they have received numerous complaints, but simply not made this information public. Furthermore, the information in or accessibility of the information about the complaints from the seven MSIs that have acknowledged receiving cases is of variable quality and detail. For example, at the time of our research, in the case of Bonsucro, Equitable Origin and the Ethical Trading Initiative, while they are each among the seven MSIs that have information available about resolved cases, this information can only be found through a search of the website. There is no dedicated case tracker or portal. The information available about these cases is very limited. For example, a discussion by Bonsucro about how it handled a complaint does not include any description of the alleged abuse or harm;¹¹¹ blogs about a complaint filed by the AFL-CIO with the Equitable Origin do not explain the final outcome of the case.¹¹²

Four MSIs with grievance procedures provide a complete list of complaints, their status, and outcomes (see Table 5.3). An example of a tracking chart is in Figure 5.1. These four MSIs provide significantly more information than the other initiatives. For example, the RSPO has a dedicated “case tracker” (similar to that in Figure 5.1) that lists over 100 cases, for which background information and, in some cases, the full decision, is provided.¹¹³

However, none of these four MSIs include information in their tracking pages on whether a remedy was provided. To determine this requires that each of the individual cases is read. For the MSIs with a large number of complaints—which ought to be seen, from the perspective of accessibility, as a potentially positive indicator— this can be difficult. When tallied, three of these MSIs have received a significant number of cases: FWF tracks over 400 complaints; the RSPO lists over 100 complaints; the Fair Labor Association has more than 60 cases in its tracker; the FSC notes 15 “current cases” in its tracker, which appear to date to 2007.¹¹⁴ The large numbers make it difficult to conduct any at-a-glance assessment around key questions related to remedy: how many mechanisms have provided remedies to rights

holders? What type of remedies are provided? How many cases are upheld by the grievance body? This is compounded by the failure of MSIs themselves to analyze the effectiveness or outcomes of their mechanisms or complaints filed, as discussed in the next section.

TABLE 5.3. MSI transparency regarding complaints

	Publishes the number of complaints filed	Publishes the number of complaints resolved	Information available about individual complaint decisions or outcomes
Alliance for Water Stewardship	No.	No.	No.
Better Cotton Initiative	No.	No.	No.
Bonsucro	No.	No.	Yes.*
Equitable Origin	No.	No.	Yes.*
Ethical Trading Initiative	No.	No.	Yes.*
Extractive Industries Transparency Initiative	No.	No.	No.
Fair Labor Association	Yes.	Yes.	Yes.
Fair Stone	No.	No.	No.
Fair Wear Foundation	Yes.	Yes.	Yes.
Fairtrade International	No.	No.	No.
Food Alliance	No.	No.	No.
Forest Stewardship Council	Yes.	Yes.	Yes.
GoodWeave International	No.	No.	No.
ICTI Ethical Toy Initiative	No.	No.	No.
Infrastructure Transparency Initiative	No.	No.	No.
International Code of Conduct for Private Security Providers	No.	No.	No.
International Sustainability and Carbon Certification	No.	No.	No.
Marine Stewardship Council	No.	No.	No.

	Publishes the number of complaints filed	Publishes the number of complaints resolved	Information available about individual complaint decisions or outcomes
Rainforest Alliance	No.	No.	No.
Roundtable on Responsible Soy	No.	No.	No.
Roundtable on Sustainable Biomaterials	No.	No.	No.
Roundtable on Sustainable Palm Oil	Yes.	Yes.	Yes.
Social Accountability International	No.	No.	No.
Sustainable Forestry Initiative	No.	No.	No.
UN Global Compact	No.	No.	No.
UTZ	No.	No.	No.
Voluntary Principles on Security and Human Rights	No.	No.	No.
TOTAL (of 27)	4	4	7

* Information about the complaints can be found through searches and reviews of blog posts or news articles. However, there is not a dedicated platform that holds or tracks all complaint decisions.

Source: The source data for this information is available from the “MSI Trends Dataset,” which is available on our website at www.msi-integrity.org/datasets and contains information current as at June 30, 2019.

F. Source of continuous learning: Lack of procedures requiring analysis of complaints

The grievances filed with MSIs hold a wealth of critical information about an initiative’s impact, weaknesses, and areas for improvement. Complaints of violations at multiple suppliers for a particular brand might indicate that the brand is not engaging in sufficient human rights due diligence when selecting suppliers. Multiple complaints emanating from one company might indicate inadequate local complaint mechanisms. Repeated complaints regarding a particular issue may suggest evidence of a sector-wide problem. The UNGPs recognize this, noting that MSIs’ grievance mechanisms should be a source of continuous learning. This means that MSIs should “identify lessons for improving the mechanism and preventing future grievances and harms.”¹¹⁵ Among the 27 MSIs we reviewed that have grievance mechanisms, however, only eight have a procedure requiring an analysis of complaints.¹¹⁶

Even fewer MSIs *publicly* analyze complaints to distill patterns of alleged abuse and lessons learned. Among the 27 MSIs we studied that have grievance mechanisms, only four have published any form of analysis.¹¹⁷ In contrast, non-judicial grievance mechanisms in other contexts regularly publish such reports. The Compliance Advisor Ombudsman for the International Finance Corporation, for example, publishes an annual report on the complaints it received that year,¹¹⁸ as does the Independent Redress Mechanism of the Green Climate Fund.¹¹⁹

G. Rights-compatible: Lack of procedures that ensure rights-compatible remedies for victims of abuses

The UNGPs recognize that effective grievance mechanisms should be “rights-compatible.”¹²⁰ This means that the processes “affecting the lives, wellbeing and dignity of individuals and groups should be based on inclusion, participation, empowerment, transparency and attention to vulnerable people.”¹²¹ It also requires that “all complaints are addressed in a manner that reflects and respects human rights, including, crucially, the right to effective remedy.”¹²² Different remedies may be appropriate in different situations, making it vitally important that rights holders be able to choose and obtain “a bouquet of remedies” depending on the unique circumstances of each case.¹²³ Fundamentally, a remedy should put things right by restoring rights holders to their position before the violation occurred, and do so in a way that is both culturally appropriate, non-discriminatory, and that reflects the views of rights holders.

“... the vast majority of MSIs do not have procedures in place that privilege the needs and desires of injured rights holders when deciding on an appropriate remedy.”

Yet, MSIs appear to have given little consideration to the types of remedies that rights holders *themselves* believe would appropriately remediate the harm. Only three MSIs—FWF, FSC, and GoodWeave International—specifically refer to seeking input *from the party who suffered harm* about the appropriate remedy.¹²⁴ Thus, the vast majority of MSIs do not have procedures in place that privilege the needs and desires of injured rights holders when deciding on an appropriate remedy. While it is possible that MSIs may do this in practice, the failure to build it into the system reveals a fundamental failure to center rights holders (discussed further in the next part of this chapter).

To the contrary, for most MSIs, rights holders may be unable to tell from the outset what sort of remedies are available if their complaint is upheld. In total, five out of the 27 MSIs with a grievance mechanism do not state what happens when a complaint is well-founded.¹²⁵ Similarly, while 13 out of the 27 MSIs with grievance mechanisms specifically mention corrective action as a possible outcome, it is not clear whether corrective action provides remedies directly to victims of abuse, such as apologies, back pay, or compensation, or if it merely resolves non-compliance with standards by, for example, a member showing that it has implemented a new policy. However, at least one MSI explicitly makes clear that it cannot order financial compensation for rights holders.¹²⁶

By failing to explicitly state whether available remedies are focused on remediating or addressing the concerns of rights holders, such as requiring members to apologize or rehabilitate harm, many MSIs risk undermining the fundamental notion of an effective remedy: to “counteract or make good any human rights harms that have occurred.”¹²⁷ While sanctioning companies or governments or demanding corrective actions can certainly be effective remedies, the types of remedies available in the business and human rights contexts are broad: “apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”¹²⁸ Ultimately, the question of whether they will be in fact remediate or satisfactory to rights holders can only be resolved after listening to rights holders directly. That so few MSIs have explicitly built this into their procedures is concerning and indicates a failure to center rights holders, as discussed in the next section of this chapter.

FIGURE 5.1. An example of an MSI that tracks basic information about complaints received

DATE	NATURE OF COMPLAINT	FACTORY*	FACTORY LOCATION	COMPLAINANT	FLA AFFILIATED COMPANY*	STATUS	ADDITIONAL INFORMATION
3/16/20	Freedom of association, harassment or abuse, hours of work, wages	Jeans Knit Private Limited	India	Union	adidas	Step 3	
2/11/20	Freedom of association, discrimination, non-payment of Social Security contributions	Bienno S.A.	Guatemala	Workers	Hanesbrands	Step 2	Summary report published at: https://www.fairlabor.org/report/bienno-sa-guatemala-summary-report
11/4/19	Payment of worker benefits	PT Jaba Garmindo	Indonesia	NGO, Union	Fast Retailing, s. Oliver	Step 3	
7/23/19	Freedom of association, dismissals, payment of worker benefits	Star S.A. / Gildan	Honduras	Union	Gildan	Step 4	Report published at: http://www.fairlabor.org/report/gildan-star
7/22/19	Freedom of association, unlawful dismissal	Hilandería de Algodón Peruano S.A. (HIALPESA)	Peru	Union	'47 Brand LLC, The Burton	Step 4	Report published at https://www.fairlabor.org/report/hialpesa

Source: "Third Party Complaint Tracking Chart," Fair Labor Association, accessed March 14, 2019 <https://www.fairlabor.org/third-party-complaint-tracking-chart>.

3 MSIs fail to respect the centrality of rights holders to grievance mechanisms

The functions of non-judicial grievance mechanisms are to overcome the barriers to access to remedy through traditional state-based systems, as well as to encourage early reporting, intervention, and remediation of abuses. As is clear from the proceeding analysis, however, the procedures that most MSIs have put in place are not capable of reliably fulfilling those functions.

This failure evidences a disregard for both the needs of rights holders and the internationally accepted expectation that grievance mechanisms should consult and include rights holders in their design and implementation. ICJ has noted the importance of rights holders participating in the "pre-design and design stages" of OGMs, and that "it is similarly important for communities to have input in how grievances will be investigated, how harm caused will be determined, and how appropriate remedies will be applied."¹²⁹ As the United Nations Working Group on Business and Human Rights has made clear (emphasis added):

[Grievance mechanisms] should not treat rights holders merely as recipients of remedy. Rather, all mechanisms should be at the service of rights holders, who *should be consulted meaningfully in creating, designing, reforming and operating such mechanisms*. Such engagement would ensure that remedial mechanisms and their processes are geared towards protecting and redressing the rights of communities affected by business-related human rights abuses.¹³⁰

While it is beyond the scope of this report to investigate the extent to which every MSI has sought and considered the input of rights holders in the design of their grievance mechanisms, we are unfamiliar with any mechanisms that have been either co-designed with rights holders or that had the meaningful input and participation of rights holders in their design. We note that passive public consultation or feedback periods are not the same as active rights holder participation, particularly as affected communities may not even be aware of these opportunities for consultation.

The inaccessibility and inadequacy of the mechanisms that MSIs have created indeed suggest that MSIs have failed to meaningfully include rights holders in the design of these mechanisms, and did not have them in mind as the central beneficiary or critical stakeholder for whom these mechanisms have been designed. If MSIs had focused on the needs of these rights holders in the process of creating their grievance mechanisms, then it is unlikely that there would be so many barriers to access and such little effort to overcome the power imbalance between rights holders and the alleged wrongdoers. Taken as a whole, MSIs appear to have invested resources in bureaucracy—lengthy procedural documents, complaint forms, webpages, complaint screenings, and formation and administration of decision panels—rather than in the community outreach, relationship-building, and deep involvement that could have resulted from the co-creation with communities of grievance mechanisms that reflect rights holders’ needs and capacities.

If MSIs had “take[n] both the rights holders and their suffering seriously,” as the UN Working Group instructs, then they would have more actively engaged rights holders in the creation, design, operation, and reform of their grievance mechanisms.¹³¹ Ultimately, “rights holders should be central to the entire remedy process” as it is they who suffer harm from business-related human rights abuses, and thus, it is their view on whether a grievance mechanism—indeed, an MSI as a whole—is effective that “should matter the most.”¹³² It is the rights holders affected by business-related human rights abuses—not external experts, or MSI staff or members—who know whether or how a mechanism will be accessible, equitable, and legitimate to them. As discussed in **Insight 2: Stakeholder Participation**, meaningful rights holder involvement requires more than passively allowing public comment on proposed development of, or reforms to, a grievance mechanism, and instead necessitates engagement, trust-building, and active input from affected, or potentially affected, rights holders. The fact that some MSIs have developed processes that are more centered on the needs of rights holders (see Spotlight 5.3.), indicates that it is feasible for them to develop and operate effective grievance mechanisms; yet, most MSIs have elected not to do so. In the end, MSIs have failed in developing mechanisms that reflect the centrality of rights holders.

Our Insights

MSIs do not provide access to effective remedies for victims of human rights violations. Many MSIs either do not have a grievance mechanism or, if one exists, they have not developed procedures that meet internationally accepted minimum practices or engender trust among rights holders. By failing to provide rights holders with a route to an effective grievance mechanism, MSIs are not only allowing governance gaps to persist, but are also failing to serve the needs of rights holders and to recognize that harmed rights holders ought to be a privileged stakeholder in human rights interventions.

If MSIs were committed to privileging harmed rights holders or centering their experiences, then the remedial mechanisms or strategies adopted by MSIs would look very different. Non-judicial grievance mechanisms should serve to overcome the barriers to access to remedy, as well as to encourage rights holders to engage in early reporting and remediation of abuses. The procedures that most MSIs have put in place, however, are not capable of reliably fulfilling those functions. Few MSIs appear to have the power or practice of providing meaningful or appropriate remedies that reflect the requests of harmed rights holders, or to have processes that ensure they are cared for when filing, responding to, or resolving complaints.

Even where MSIs have established grievance mechanisms, very few have processes that meet even minimum criteria for effective grievance mechanisms. The mechanisms established by most MSIs pose considerable barriers to access, fail to address the power imbalances that exist between individual complainants and the companies that they are complaining about, and lack transparency. The procedural shortcomings are so extensive that they risk being so unfriendly to users, that the rights holders who have experienced abuses or other violations of an MSI's standards may not know about or trust the mechanisms sufficiently to use them.

Within all MSI grievance mechanisms, the balance of power favors member companies or governments over individual complainants. Member companies and governments often help to formulate MSI standards and procedures, and are generally more versed in and familiar with complex dispute resolution processes. In contrast, potential and actual complainants—such as farm and factory workers, or indigenous communities near palm oil plantations—may have never navigated a non-judicial grievance mechanism. Yet, MSIs have not adopted measures to affirmatively make their procedures more equitable, such as offering assistance to complainants.

In addition, MSI grievance procedures' lack of transparency and clarity regarding time frames and potential outcomes can all contribute to complainant unwillingness to report abuses. Complainants have little incentive to participate without reassurance that violations will be addressed in a timely manner and an understanding of what will happen if their complaint is well-founded. MSIs' lack of complaint transparency means that potential claimants cannot identify patterns of behavior among MSI members, or connect with former complainants or organizations assisting them in order to facilitate their own journey through the complaint process. Even if complaints are filed by individuals, few MSIs appear to have the power or practice of providing meaningful remedies directly to those individuals or communities—or outcomes that facilitate a remedy.

All of this suggests that MSIs have not recognized that harmed rights holders ought to be a privileged stakeholder. The vision that MSIs would play a central role in providing rights holders with mechanisms to access an effective remedy has not come to fruition. To the contrary, MSIs' failure to provide victims

with access to effective remedy means that violations of MSIs' standards may go undetected and can create a false illusion—both within MSIs and in the public at large—that there are no violations, and that the underlying problems in the industry have been resolved.

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Endnotes

- 1 The first universal human rights instrument to codify the right to remedy is the UN *Universal Declaration of Human Rights* (December 10, 1948; Art. 8). Other instruments followed suit: [UN International Covenant on Civil and Political Rights \(Art. 2\)](#); [International Convention on the Elimination of All Forms of Racial Discrimination \(Art. 6\)](#); [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(Art. 14\)](#); [Convention on the Rights of the Child \(Art. 39\)](#); [American Convention on Human Rights \(Art. 25\)](#); and [the Convention for the Protection of Human Rights and Fundamental Freedoms](#) (Art. 13). The UN Resolution 60/147 on the right to remedy collects additional international instruments where this right is enshrined, as well as other sources of international legal obligations: UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: Resolution*, UN doc. A/RES/60/147, (New York: UN, 2006).
- 2 The aim of remedies is “to place an aggrieved party in the same position as he or she would have been in had no injury occurred.” Dinah Shelton, *Remedies in International Human Rights Law*, 1st ed. (Oxford: OUP, 1999), 38.
- 3 UN General Assembly, [Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Access to Effective Remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#), UN doc. A/72/162, (New York: UN, 2017), para. 2.
- 4 Office of the United Nations High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#), Principle 25 (New York: UN, 2011), 27.
- 5 OHCHR, *Guiding Principles*, 27.
- 6 “Effective judicial systems must be at the core of any such system of remedy, yet they are not always available, accessible, appropriate, or the desired avenue of those impacted.” UN General Assembly, Human Rights Council, [Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Addendum: Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned](#), UN doc. A/HRC/17/31/Add.1, (New York: UN, 2011).
- 7 Republic of Chile, Ministry of Exterior Relations, [National Action Plan on Business and Human Rights: Chile](#) (Santiago: Ministry of Exterior Relations of Chile: 2017), 62. “A category of non-state-based mechanisms are those managed by a business enterprise alone, or in conjunction with stakeholders, by an economic association, or by a multilateral group of stakeholders. This allows business enterprises and communities to develop spaces for dialogue, measurement, resolution and/or remedy, and to look for solutions within the relevant administrative structures that are culturally appropriate and compatible with human rights.” European Union Agency for Fundamental Rights, [Improving Access to Remedy in the Area of Business and Human Rights at the EU Level: Opinion of the European Union Agency for Fundamental Rights](#) (Vienna: FRA, 2017), 58. “Non-judicial grievance mechanisms can be based on multi-stakeholder initiatives, where a range of actors come together to establish, support or rely on a remedy.” OHCHR, *OHCHR Accountability and Remedy Project, Improving Accountability and Access to Remedy in Cases of Business Involvement in Human Rights Abuses: Phase III: Enhancing the Effectiveness of Non-State-Based Grievance Mechanisms: Scope and Programme of Work* (New York: UN, 2018), 17, [ohchr.org/Documents/Issues/Business/ARP/ARPIII-PoW.pdf](#).
- 8 OHCHR, *Guiding Principles*, Principle 30, commentary, 32–33.
- 9 OHCHR, *Guiding Principles*, Principle 25, commentary, 28.
- 10 Grievance mechanisms are sometimes interchangeably referred to as “complaints processes” or “remedial frameworks.” For the sake of clarity, this report uses the term “grievance mechanism.” Although grievance mechanisms do not have a formal definition, we note that the UNGPs provide that “[t]he term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.” OHCHR, *Guiding Principles*, Principle 25, commentary, 28. See also, Office of the Compliance Advisor/Ombudsman, International Finance Corporation, Multilateral Investment Guarantee Agency. *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, Advisory note, (Washington, DC: CAO, 2008), iv, which defines a “company-community grievance mechanism” as “a locally based, formalized way to accept, assess, and resolve community complaints concerning the performance or behavior of a company, its contractors, or employees.”
- 11 Organization of Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises*, 2011 ed., (Paris: OECD, 2011), 68, requiring that adhering states establish National Contact Points to serve as non-judicial grievance mechanisms that resolve issues related to the implementation of the *OECD Guidelines*.
- 12 OHCHR, *Guiding Principles*, Principle 30 (emphasis supplied).
- 13 OHCHR, *Guiding Principles*, Principle 25, commentary, 27.
- 14 UN General Assembly, *Report of the Working Group*, para. 15. Several MSIs were founded before the UNGPs were adopted in 2011. See Appendix 2 listing MSIs by the date they were established. In addition, MSI Integrity is aware that several MSIs, such as Bonsucro, the Extractive Industry Transparency Initiative, Fairtrade International, and the Initiative for Responsible Mining Assurance, are currently undergoing strategic planning or revisions, or have done so since we compiled the data for this report in June 2019 that may result in changes that take into account the UNGPs’ recommendations concerning grievance mechanisms and access to effective remedy.
- 15 May Miller-Dawkins, Kate Macdonald, and Shelley Marshall, *Beyond Effectiveness Criteria: The Possibilities and Limits of Transnational Non-Judicial Redress Mechanisms*, (Corporate Accountability Research, 2016), 5–6, [corporateaccountability.squarespace.com/s/NJM01_beyond-effectiveness-criteria.pdf](#).
- 16 See UN General Assembly, [Report of the Working Group](#), para. 21; see also International Commission of Jurists, *Effective Operational-Level Grievance Mechanisms* (Geneva: ICJ, 2019), 13–16.
- 17 The source data for this information is available from the “MSI Trends Dataset,” which is available on our website at [www.msi-integrity.org/datasets](#) and contains information current as at June 30, 2019.
- 18 OHCHR, *Guiding Principles*, Principle 31, commentary, 34.
- 19 Alliance for Responsible Mining, [Fairmined Standard for Gold from Artisanal and Small-Scale Mining, Including Associated Precious Metals](#), vers. 2.0 (Envidado: Alliance for Responsible Mining, 2014), 22. While the standards refer to the effectiveness criteria for grievance mechanisms in the UNGPs, it does not require that operational-level mechanisms comply with these criteria.
- 20 Alliance for Responsible Mining, *Fairmined Standard*, 22, 63.
- 21 Equitable Food Initiative, [The Equitable Food Initiative Social Standards, Guidance & Interpretations](#), vers. 2.0 (Washington, DC: EFI, May 2019), 10. It also includes requirements around training, but these are not relevant to the actual procedures set by the mechanism.
- 22 Florverde Sustainable Flowers, [Florverde Standards for the Sustainable Production of Flowers and Ornamentals](#), vers. 7.1 (Bogotá: Florverde, 2018), 6.
- 23 Global Coffee Platform, [Baseline Common Code](#), vers. 2.1, (Bonn: GCP, 2016), 16.

- 24 Global Network Initiative, *Implementation Guidelines for the Principles on Freedom of Expression and Privacy* (Washington, DC: 2017), 7.
- 25 Global Network Initiative, *Implementation Guidelines*, 7.
- 26 This is required at multiple stages, but see, e.g., International Hydropower Association, *Hydropower Sustainability Assessment Protocol* (London: IHA, 2018), 49.
- 27 Program for the Endorsement of Forest Certification, [Group Forest Management Certification—Requirements: PEFC Benchmark Standard](#) (Geneva: PEFC, 2018), 12; PEFC, [Sustainable Forest Management—Requirements: PEFC Benchmark Standard](#) (Geneva: PEFC, 2018), 17.
- 28 Worldwide Responsible Accredited Production, [Worldwide Responsible Accredited Production Certification Program: Pre-Audit Self-Assessment](#) (Arlington: WRAP, 2019), 65.
- 29 Initiative for Responsible Mining Assurance, [IRMA Standard for Responsible Mining](#) (Port Townsend: IRMA, 2018), 32–33.
- 30 Initiative for Responsible Mining Assurance, *IRMA Standard*, 32–33.
- 31 See, e.g., Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic, [Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Concerns and Lessons Learned](#) (2015).
- 32 ["How Businesses Can Make Right Their Wrongs: The ICJ Establishes Advisory Panel on Company Grievance Mechanisms,"](#) International Commission of Jurists, February 13, 2017.
- 33 International Commission of Jurists, *Effective Operational-Level Grievance Mechanisms*, 11.
- 34 ["Companies around the World Must Do More to Ensure Effective Operational Grievance Mechanism Practices and Provide Clear and Transparent Information,"](#) International Commission of Jurists, November 26, 2019.
- 35 ["Core Commitments,"](#) Global Network Initiative, accessed October 14, 2019.
- 36 Dorothee Baumann-Pauly et al., ["Industry-Specific Multi-Stakeholder Initiatives That Govern Corporate Human Rights Standards: Legitimacy Assessments of the Fair Labor Association and the Global Network Initiative,"](#) *Journal of Business Ethics* 143 (Feb. 2016): 9.
- 37 The governance charter of the Global Network Initiative (GNI), released in 2010 and revised in 2015, states that GNI has plans to establish a complaints mechanism "through which the public can share information with the GNI, provide feedback, ask questions, and raise concerns related to GNI activities and [its standards]." Global Network Initiative, "Governance Charter," 2015, 8–9 (on file). The most recent revision continues to promise the development of a mechanism: "Due to the complexity of the global landscape regarding online freedom of expression and privacy, and the potential scale of complaints, the GNI will develop an appropriate complaints procedure consistent with its size and available resources." [Global Network Initiative, GNI Governance Charter](#) (Washington, DC: GNI, 2017), 6, 10.
- 38 See Global Network Initiative, *Implementation Guidelines* (Washington, DC: GNI, 2017), 7, 2.13 (f).
- 39 Global Network Initiative, *Governance Charter*, 10.
- 40 Global Network Initiative, [GNI Assessment Toolkit](#) (Washington, DC: GNI, September 2018), 6.
- 41 Ranking Digital Rights, [2019 RDR Corporate Accountability Index](#) (Washington, DC: RDR, 2019), 34–35.
- 42 WRAP, *Pre-Audit Self-Assessment*, 65.
- 43 Interviews 68, 69, 71, 75, 76, 77, factory workers, Philippines, August 16, 2017; Interview 80, factory worker, Philippines, August 18, 2017; Interviews 81, 83, factory worker, Philippines, August 19, 2017; Interview 86, factory worker, Philippines, August 27, 2017.
- 44 Interview 83, factory worker, Philippines, August 19, 2017.
- 45 Interview 69, factory worker, Philippines, August 16, 2017.
- 46 OHCHR, *Guiding Principles*, Principle 31, commentary, 34.
- 47 OHCHR, *Guiding Principles*, Principle 31, 33–34.
- 48 See Benjamin Thompson, "Determining Criteria to Evaluate Outcomes of Businesses' Provision of Remedy: Applying a Human Rights-Based Approach," *Business and Human Rights Journal* 2, no. 1 (January 2017): 58, noting that, apart from the requirement that grievance mechanisms be "rights-compatible," the UNGPs' criteria only relate to process. Moreover, research has shown that it is possible to fulfill the effectiveness criteria set forth in the UNGPs "in a formal way, yet still fall very short of delivering effective redress or remedy for human rights violations committed in the context of business activities." Miller-Dawkins, Macdonald, and Marshall, *Beyond Effectiveness Criteria*, 6–7.
- 49 UN General Assembly, *Report of the Working Group*, para. 21.8; see also International Commission of Jurists, *Effective Operational-Level Grievance Mechanisms*.
- 50 For more on MSIs' emergence and prominence, see **Insight 1: Influence**.
- 51 See, e.g., UN General Assembly, *Report of the Working Group*, 8, 11; see also Stefan Zagelmeyer, Lara Bianchi, and Andrea R. Shemberg, [Non-State Based Non-Judicial Grievance Mechanisms \(NSBGM\): An Exploratory Analysis](#) (Manchester: Alliance Manchester Business School, 2018), 41, finding, in a study of several MSI grievance mechanisms, that they "might have significant entry barriers, and individual workers rarely use them directly, not because they wouldn't be entitled but because processes are not easily accessible."
- 52 OHCHR, *Guiding Principles*, Principle 31, commentary, 34.
- 53 MSI Integrity, [The Essential Elements of MSI Design](#) (Berkeley: MSI Integrity, 2017), 13; MSI Integrity and the International Human Rights Clinic, Harvard Law School, [MSI Evaluation Tool: For the Evaluation of Multi-Stakeholder Initiatives](#) (Berkeley: MSI Integrity and IHRC, 2017), 27.
- 54 The three MSIs that only allow members to bring complaints are Better Cotton Initiative, Ethical Trading Initiative, and the Voluntary Principles on Security and Human Rights. The source data for this information is available from the "MSI Trends Dataset," which is available on our website at www.msi-integrity.org/datasets and contains information current as of June 30, 2019.
- 55 Roundtable on Sustainable Palm Oil, [RSPO Dispute Settlement Facility DSF: Framework, Terms of Reference, and Protocol](#) (Bogor: RSPO, 2012), 4.
- 56 Interview notes on file with MSI Integrity.
- 57 The source data for this information is available from the "MSI Trends Dataset," which is available on our website and contains information current as of June 30, 2019.

- 58 McKinsey & Company, *Offline and Falling Behind: Barriers to Internet Adoption*, Briefing Note, (New York: McKinsey, 2014), 1–2; “[Connected Society Programme: Unlocking the Power of Mobile Internet](#),” GSMA.
- 59 McKinsey & Company, *Offline and Falling Behind*, 2.
- 60 As of June 2019, the eleven MSIs that had a complaint information directly accessible from their home page or “contact us” page were Bonsucro, Equitable Origin, Fairtrade International, Forest Stewardship Council (has a “Dispute Resolution” link), ICTI Ethical Toy Program (has a “Worker Helpline” link), International Code of Conduct for Private Security Providers, International Sustainability and Carbon Certification, Marine Stewardship Council, Roundtable on Responsible Palm Oil, Sustainable Forestry Initiative (the “SFI Standards” tab in the main menu has a dropdown menu to “Complaints”), and UTZ. The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019.
- 61 [Homepage](#), Fair Labor Association accessed June 30, 2019.
- 62 [Homepage](#), Fair Stone accessed June 30, 2019; [Homepage](#), Roundtable on Responsible Soy, accessed June 30, 2019, <http://www.responsiblesoy.org/?lang=en>.
- 63 [Homepage](#), International Sustainable Seafood Foundation, accessed June 30, 2019, <https://iss-foundation.org>.
- 64 OHCHR, *Guiding Principles*, Principle 31, commentary.
- 65 “[Certified Members](#),” Bonsucro, accessed January 26, 2020.
- 66 “[Participating Operator](#),” Roundtable on Sustainable Biomaterials, accessed January 26, 2020.
- 67 “[Countries](#),” Fair Stone, accessed January 26, 2020.
- 68 “[About Impact: Providing Sustainability Solutions for Fully Traceable and Deforestation Free Supply Chains](#),” International Sustainability and Carbon Certification.
- 69 See UN General Assembly, Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UN Doc. A/HRC/34/52, (New York: UN, 2017), <https://undocs.org/A/HRC/34/52>; “Key Findings (Feb 2018),” Business & Human Rights Resource Centre.
- 70 UN General Assembly, *Report of the Working Group*, para. 36.
- 71 Both UTZ and the Forest Stewardship Council (FSC), for example, use complaint forms that require the complainant’s contact information and only address anonymity in separate policy documents elsewhere on their websites, which then only provide anonymity in “exceptional circumstances.” UTZ, *UTZ Grievance Procedure, vers. 1*, (Amsterdam: UT, 2020) 2.
- 72 Fair Labor Association, Fair Labor Association (FLA) *Third Party Complaint Form* (Washington, DC: FLA), accessed March 18, 2020.
- 73 Fair Wear Foundation, *The FWF Complaints Procedure* (Amsterdam: FWF, 2018), 6.
- 74 Interview 71, factory worker, Philippines, August 16, 2017.
- 75 Interview 80, factory worker, Philippines, August 18, 2017.
- 76 Interview 18, local civil society representative, Cameroon, May 22, 2017.
- 77 Interview 14, local civil society representative, Cameroon, May 22, 2017.
- 78 Interview 59, factory worker, Cameroon, June 8, 2017.
- 79 Interview 115, farmer, Cameroon, June 6, 2017.
- 80 MSI Integrity, *Understanding Community Experiences of Certified Cocoa Farming and Extractive Site Security: A Workshop to Explore Community Engagement in the Voluntary Principles on Security and Human Rights and UTZ Certified*, Summary report, Port Harcourt, Nigeria, June 20–21, 2017, (Berkeley: MSI Integrity, 2017), 23.
- 81 OHCHR, *Guiding Principles*, Principle 31, 33.
- 82 OHCHR, *Guiding Principles*, Principle 31, 33.
- 83 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website at and contains information current as of June 30, 2019.
- 84 Forest Stewardship Council, *FSC Procedure: Processing Complaints in the FSC Certification Scheme* (Bonn: FSC, 2014), 8.
- 85 Fair Stone, *Complaints and Appeals Procedures and Responsibilities: Fair Stone e.V.* (Kirchheim unter Teck: Fair Stone, 2016), 1–2.
- 86 Marine Stewardship Council, *MSC Complaints Procedure*, vers 3.2 (London: MSC, 2019), at p. 5.
- 87 Marine Stewardship Council, *MSC Complaints Procedure*, 7.
- 88 Roundtable on Responsible Soy, *RTRS Grievances Procedure* (Zürich: RTRS), 2, accessed May 14, 2020.
- 89 Out of the 24 MSI grievance procedures open to complaints from rights holders, only 6 have procedures designed to provide for any form of assistance to complainants. The source data for this information is available from the “MSI Trends Dataset,” which is available on our website at www.msi-integrity.org/datasets and contains information current as of June 30, 2019. While we have not reviewed these procedures in practice, such help has the potential to make a difference in whether a complaint is filed or accepted.
- 90 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019.
- 91 Bonsucro’s complaint web page asks the complainant to provide “[d]etails on [the] nature of grievance (i.e. which article (a-d, above) is being broken?)” but does not include the articles, nor does it link to them. “[Making a Complaint](#),” Bonsucro, accessed June 28, 2019.
- 92 “[Become a Member Brand](#),” Fair Wear Foundation, accessed June 28, 2019.
- 93 Fair Wear Foundation, *The FWF Complaints Procedure*.

- 94 Fair Wear Foundation, *FWF Complaints Procedure*, 15.
- 95 Fair Wear Foundation, *FWF Complaints Procedure*, 2.
- 96 OHCHR, *Guiding Principles*, Principle 31, 33.
- 97 OHCHR, *Guiding Principles*, Principle 31, commentary, 34.
- 98 International Commission of Jurists, *Effective Operational-Level Grievance Mechanisms*, 46. MSI Integrity has also recommended that grievance mechanisms should “[e]nsure that the appointment process for independent decision-makers is transparent and contains a conflict of interest policy such that the actor implicated in the complaint is prohibited from being part of the decision-making process.” MSI Integrity, *Essential Elements*, 13.
- 99 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019.
- 100 See, e.g., OECD Watch, *The State of Remedy under the OECD Guidelines: Understanding NCP Cases Concluded in 2018 Through the Lens of Remedy* (Amsterdam: OECD Watch, 2019), 1–2. “[T]o date, we find that meaningful remedy from the NCP complaint system remains difficult to achieve.”
- 101 See, e.g., European Union Agency for Fundamental Rights, *Improving Access to Remedy*, 14, recommending that operational-level grievance mechanisms “be enhanced by businesses joining forces with other actors, including state-based non-judicial bodies with a remedial role, to establish multi-stakeholder remedies available at company level.”
- 102 OHCHR, *Guiding Principles*, Principle 31, 33.
- 103 Bonsucro, “Making a Complaint.”
- 104 Roundtable on Responsible Soy, *RTRS Grievances Procedure*.
- 105 Miller-Dawkins et al., *Beyond Effectiveness Criteria*, 38.
- 106 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019.
- 107 Bonsucro, “Making a Complaint.”
- 108 Roundtable, *RTRS Grievances Procedure*, 2.
- 109 Fair Labor Association, *Charter Document*, 33.
- 110 OHCHR, *Guiding Principles*, Principle 31, 33.
- 111 “[Public Notification of Decision in the Matter of the Inclusive Development International \(IDI\), Equitable Cambodia \(EC\), and the Cambodian League for the Promotion and Defense of Human Rights \(LICADHO\) Complaint against Mitr Phol](#),” Bonsucro, December 21, 2018.
- 112 “[EO Review of Complaint Regarding Labor Practices at Certified Site Moving Forward](#),” Equitable Origin, January 30, 2015, noting that final responses will be published, but which do not appear to be available anywhere on the MSI’s website.
- 113 “[Status of Complaints](#),” Roundtable on Sustainable Palm Oil, accessed March 12, 2020.
- 114 These numbers were calculated by tallying the total number of complaints on the complaints tracking pages of the four MSIs: “[Remediating Worker Issues](#),” Fair Wear Foundation, accessed March 11, 2020; “[Status of Complaints](#),” Roundtable on Sustainable Palm Oil; “[Third Party Complaint Tracking Chart](#),” Fair Labor Association, accessed March 14, 2020; “[Current Cases](#),” Forest Stewardship Council, accessed June 6, 2020.
- 115 OHCHR, *Guiding Principles*, Principle 31, 34.
- 116 For example, UTZ states that “after a grievance is resolved, learnings are documented and shared with relevant parties within UTZ to facilitate continuous improvement of the assurance system, and to prevent reoccurrence of the grievance” but does not apparently publicly share this information. UTZ, *UTZ Grievance Procedure*. Similarly, the International Code of Conduct Association procedure states that the secretariat will publish guidance and best practices concerning the operation of effective grievance procedures, but does not appear to publish this information; International Code of Conduct Association, *Procedures: Article 13: Receiving and Processing Complaints* (Geneva: ICocA), accessed February 7, 2020.
- 117 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019.
- 118 See, e.g., Compliance Advisor Ombudsman, *2018 Annual Report* (Washington, DC: CAO, 2018).
- 119 See, e.g., Independent Redress Mechanism, *Building on Accountability: 2018 Annual Report* (Incheon: Green Climate Fund/Independent Redress Mechanism, 2018).
- 120 OHCHR, *Guiding Principles*, Principle 31.
- 121 Corporate Social Responsibility Initiative, *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders* (Cambridge: Harvard University John F. Kennedy School of Government, 2008), 7.
- 122 Corporate Social Responsibility Initiative, *Rights-Compatible Grievance Mechanisms*, 8.
- 123 UN General Assembly, *Report of the Working Group*, para. 39.
- 124 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019. Note that, while FSC does not have a formal procedure that refers to remedy for victims, its position and practice are that members who have been expelled cannot renew their association with FSC unless they remedy the social and environmental harm caused, and the scope of harm and remedy is defined by FSC in consultation with the affected and interested stakeholders.
- 125 The source data for this information is available from the “[MSI Trends Dataset](#),” which is available on our website and contains information current as of June 30, 2019.
- 126 UTZ, *UTZ Grievance Procedure*, 1. “[N]o claims for financial compensation are accepted.”
- 127 OHCHR, *Guiding Principles*, Principle 25, commentary, 27.
- 128 OHCHR, *Guiding Principles*, Principle 25, commentary, 27, quoted in UN General Assembly, *Report of the Working Group*, para. 39.

129 International Commission of Jurists, *Grievance Mechanisms*, 44.

130 UN General Assembly, *Report of the Working Group*, para. 21.

131 UN General Assembly, *Report of the Working Group*, para. 19. See also, Columbia Law School Human Rights Clinic and Harvard Law School International Human Rights Clinic, *Righting Wrongs?*

132 UN General Assembly, *Report of the Working Group*, para. 19.