

Initial Report on Research into the Effectiveness of MultiStakeholder Initiatives' Human Rights Complaint Mechanisms

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I. Do MSI grievance mechanisms provide effective remedies to rightsholders?

Pillar Three of the United Nations Guiding Principles on Business and Human Rights (the “UNGPs”) provides that rightsholders should have access to remedies for human rights infringements arising from business activities. (UNGP 25-31) Companies are required to establish or participate in these mechanisms. (UNGP 29) While governments have a role in access to remedy, so too do non-government mechanisms. Among these are complaint systems operated by multistakeholder initiatives (“MSIs,” See, e.g. UNGP 30).

Research to date has not come close to answering the fundamental question of whether these complaint mechanisms provide effective remedies to rightsholders. If MSI grievance mechanisms do work, they should be multiplied and empowered. They could have an essential role in fulfilling Pillar Three. If they may work, or work sometimes and not others, then they should be improved or used only in situations in which they function adequately. If they do not and cannot work, efforts should go elsewhere, and claims of their effectiveness should not create a false impression of their importance.

This Report presents an initial overview of our research into MSI grievance mechanisms. Its primary goal is to describe what we did and share what we found. This Report is not our detailed analysis of the data or an account of all our findings. That will come over time in a variety of forms: peer-reviewed academic publications, presentations, and additional NomoGaia reports. We welcome others to analyze our data and reach additional conclusions. We could not resist putting some, generally high-level, analysis in this Report. But the data are rich enough to support multiple levels of review, commentary, and analysis, and to lead to further research. This Report is a first step.

II. Definitions: Who and What

To assemble a data set to be meaningful for remedy research, we looked at:

- 1) human rights claims,
- 2) submitted to grievance mechanisms,
- 3) run by MSIs.

The human rights we are considering are those addressed by the UNGPs (UNGP 12). This is somewhat flexible, as in addition to a standard set of rights (the International Bills of Rights and the ILO Core Conventions), other internationally recognized human rights may be included. We include in this research all human rights claims broadly considered. We eliminated claims that were clearly not related to human rights. These included such things as a company’s misuse of an MSI’s certification to make sustainability claims, or what were clearly business disputes. Eliminating these claims required no difficult decisions. Considering all MSI’s together, most claims were based on

core labor rights. There were also some claims involving community land and forests, environmental harms, and security force violence. All were included.

What is a grievance mechanism? While that can be a *most interesting* question, for the purposes of what to include in this research, it was an easy call. We are looking at what MSIs claim to be grievance mechanisms. If an MSI has something called a “complaint” or “grievance” mechanism, with a formal process, we included it. We had no reason to exclude systems from this analysis. So, this element of the definition of our work was not difficult to apply.

The “run by an MSI” element requires a definition of MSI. For that, we again were not anxious to exclude any systems. The essence of a multistakeholder initiative is that it is created, constituted, and directed by multiple stakeholders with fundamentally different connections to the issue and business sector with which the MSI is concerned. An industry business group is not an MSI. A group with companies, labor, NGOs, and academics can be an MSI. When is an industry group masquerading as an MSI? When is the odd NGO or academic member a mere fig leaf? These are legitimate questions, which we did not try to answer at the outset, but were open to self-identified MSIs and did not want to exclude systems. In fact, the result of this study may further fuel the debate on which MSIs are genuine, which are not, and what is the true nature of MSIs.

There is no definitive set of MSIs and no definitive subset of MSIs with grievance mechanisms. Before it pivoted in 2020,¹ MSI Integrity kept a database of MSIs’ with grievance mechanisms.² There were 45 MSIs, of which 19 reported that they had grievance mechanisms. We started from that set and created our study set, which includes all the MSIs with grievance mechanisms that provided publicly available information about the results of claims. We added to this list over the last few years with any additional such systems that we could find. Here are the MSI’s grievance mechanisms we studied:



¹ Not Fit-for Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability Human Rights and Global Governance https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL.pdf

² MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics, MSI Stakeholder Initiative Database (no date) <https://msi-database.org/> (accessed 25 November 2021).

This is a diverse set of institutions. Some are in one commodity's supply chain (Bonsucro-Sugar; RSPO-palm oil, Forest Stewardship Council-lumber), the others are in apparel manufacturing (Fair Labor Association, Fair Wear Foundation, and Bangladesh Accord).

There is a fundamental problem with the transparency of human rights claims handled by MSI complaint mechanisms. Many MSIs state they have a complaint system, but provide no information on claims. For the systems listed above, the amount of information provided varied greatly. RSPO and the Forest Stewardship Initiative make public the entire claims file, often with detailed information about the claimants and the allegations of the claim. The Bangladesh Accord very rarely provides the name of the claimant or even the factory at issue and provides only a few lines of explanation. The Fair Wear Foundation also does not identify the claimants or the factory at issue, but does name the brand sourcing from the factory (the brand is the Fair Wear member, the factory is not). It also gives a summary of the case, which varies from being cursory to rather detailed. The information from these systems is not symmetrical, and the amount and usefulness of the information provided varies enormously.

III. Methodology

We first reviewed and organized all the available information on all claims from every MSI. For systems with numerous claims, we organized this information in separate spreadsheets. For each claim we listed the information reported by the system and tailored the spreadsheet to accommodate this information. We were most concerned with case outcomes and so we defined a discrete set of outcomes (see **Section VI** below). For the cases in which the system reported that the claim was valid (in the sense that they interpreted the evidence to conclude that a standard had been violated) and in which a substantial benefit was provided to the claimant, we looked for further sources of information. That information included contacting the claimants in every case in which we could determine their identity and interviewing them regarding their opinions of the result of the claim and the complaint process in general. In addition, when needed and when we could find it, we looked for other sources of information in the media, scholarly articles and books, and NGO reports. Due to multiple factors, the start and end dates we used for the claims included in the data were roughly, but not exactly, the same.³

We used this information to compare the complaint systems. First, we noted distinctive characteristics of the MSI and the complaints systems they operated. For the MSIs, we differentiated them by industry type and membership size. We then categorized the claims, noting the number of complaints, who made them, the substance of the claims, what country the claims came from, and how long the process took. These results gave us an overview of the claims made.

We then looked at the process and structure of the claims systems. We analyzed their formal procedures, how the claimants interacted with them, how hard were they to access, and how long they took. We interviewed representatives from each system. In some cases, such as the Fair Wear

³ The claims reviewed were all available through: RSPO-April 1, 2020. FSC-September 1, 2021. Bonsucro-January 1, 2021. Fair Labor Association-September 1, 2021. Fair Wear Foundation-January 1, 2021. Bangladesh Accord-September 30, 2021 (when its current iteration terminated).

Foundation, we spoke with the MSI managers, the manager of the claims system and many individual claims handlers dealing with claimants on a daily basis. In all, we conducted 23 interviews of people working in these complaint systems, not including many informal and ongoing conversations.

We also interviewed others who engaged with these complaint systems in 57 interviews. In addition, 89 others participated in focus groups or group discussions we organized and ran. These interviews and discussions included individual claimants, representatives of claimant institutions (such as labor unions and union federations), advisors of claimants, investigators used by the systems, NGOs knowledgeable about claims made, and representatives of companies that were members of the MSIs which run the complaints mechanism. We used these interviews at every step of our analysis to inform and enlighten the judgements made. They were an invaluable component of this work.

IV. MSIs and their Grievance Mechanisms

The MSIs and their grievance systems are compared in Table 1.

Table 1: MSIs and their Complaint Systems

	RSPO	FSC	Bonsucro	Fair Labor Association	Fair Wear Foundation	Bangladesh Accord
Sector	Palm oil	Lumber	Sugar	Apparel	Apparel	Apparel
Number of Members Companies	<4,000	<1,000	<270	>60	147	>190
Date of First Claim Report	2006	2007	2011	2013	2009	2016
Number of Complaints	39	8	1 ⁴	66	455	2034
Most Common Countries	Indonesia, Liberia	DRC, Indonesia	Cambodia	El Salvador, Nicaragua, Turkey	India, China, Myanmar	Bangladesh
Most Common Complainant	Communities assisted by local or international NGOs	International NGOs	Communities assisted by local and international NGOs	Labor Unions	Individual Workers	Individual Workers
Most Common Complaint	Land Rights	Land Rights	Land Rights	Labor Rights	Labor Rights	Labor Rights

- a. **Sector.** Three of the MSIs have product certification schemes that are focused on plants grown in the tropics used to produce raw materials. The other three are in the apparel

⁴ The same substantive claim was filed by the same claimants against the same respondent twice, once in 2011 and once in 2016.

- supply chain. The first three deal mostly in low governance contexts with high ecological values for products sold to brand-name consumers--an obvious combination of drivers for certification schemes which purport to have human rights values. The latter three deal with the apparel sector and are focused on labor claims.
- b. **Number of Members.** There is no particular pattern in the number of members. FLA with comparatively few members, include several that are enormous in reputation and footprint (e.g. adidas, PVH). While the size varies, these MSIs are large organizations whose member companies are essential parts of the globalized world economy.
 - c. **Date of First Claim.** These complaint systems have changed and evolved over time. It would be misleading to compare, for example, the Fair Labor Association's early-stage mechanism from the early 2000s with the one it has today. The first claim dates are intended to show roughly the timespan of the datasets. These are not new or transient systems.
 - d. **Number of Claims.** The number of human rights claims differs dramatically from system to system. FWF and the Bangladesh Accord stand out as much more numerous than the others. These include many relatively small cases involving a single worker, and in some cases even a single payment to a single worker. While such a claim may be extremely important to that claimant, it is small in scope when compared to Fair Labor Association claims involving all the workers at a factory or the RSPO claims involving multiple communities. A 'claim' here is not at all a standard unit, but something that differs in order of magnitude.
 - e. **Most Common Countries.** These are quite informative as to why these systems are needed and how they operate. The RSPO countries are tropical with significant land areas transitioning from forest and small-scale agriculture to large palm oil plantations. They are representative of the countries where oil palm is produced. The apparel factories are concentrated in Asia and Latin America. All of these systems have a connection to the enforcement of local law and so the strength of national government systems is a factor in whether these systems are necessary and how often they are used. They are not representative of the countries where apparel is produced but are a quite limited subset of those countries.
 - f. **Most Common Claimants.** Claims and claimants are connected. Community land claims are asserted by communities, often with the assistance of local NGOs. Labor claimants are either individuals (or small groups of workers suffering common impacts) or labor unions. Labor unions are important advocates for victims. They have filed claims in all the systems except Bonsucro, and they are the dominant user of the FLA grievance system.
 - g. **Most Common Complaints.** These systems are used for different kinds of complaints. The tropical agriculture MSIs get mostly community claims about land. The apparel supply chains MSIs get almost exclusively labor claims.

V. Characteristics of MSI Grievance Mechanisms

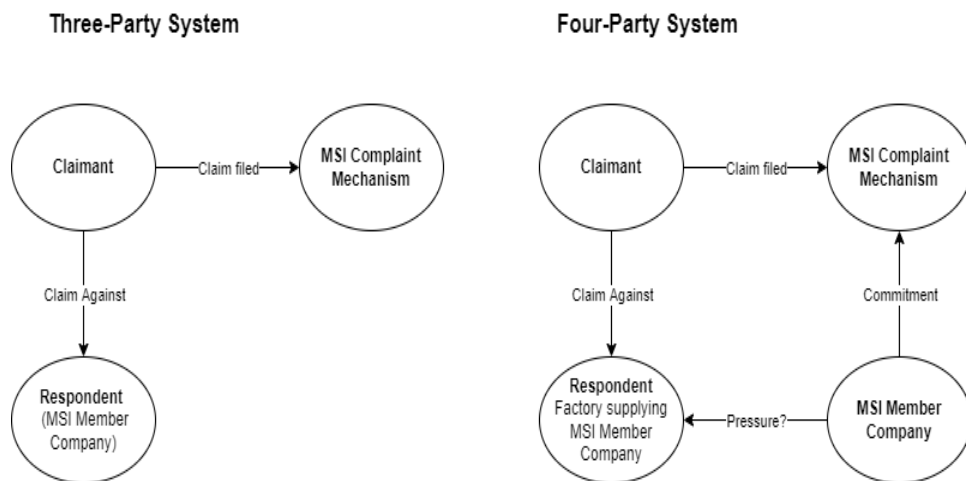
Some important characteristics of MSI grievance mechanisms are compared in Table 2.

Table 2: Complaint Mechanisms Characteristics

	RSPO	FSC	Bonsucro	Fair Labor Association	Fair Wear Foundation	Bangladesh Accord
System Type	Three Party	Three Party	Three Party	Four Party	Four Party	Four Party
Scope of Claim	General	General	General	General	Individual	Individual
Number of Claims	39	4	1	44	357	1,500
Language	English	English	English	English and Spanish	Twenty Local Languages	Local Language
Known by Claimants?	Variable	No	No	Variable	Yes	Yes
Length of Process	Long	Long	Long	Medium	Short	Short
Transparency	High	High	Uncertain	High	Moderate	Moderate

- a. **System Type.** We would like to make a distinction here between two types of systems. The first is a system in which there are three main participants in a claim: 1) the claimant, 2) the respondent (a company that is a member of the MSI), and 3) the complaint mechanism itself. We will call that a “Three Party System.” The other type operates in supply chains where the member of the MSI is a brand, but the respondent is a factory producing for that brand. Here there are four participants in a complaint: 1) the claimant, 2) the respondent (factory), 3) the brand, and 4) the complaint mechanism. (see Figure 1) We will call them “Four Party Systems.” Once this distinction is noted, it is not difficult to place each complaint mechanism in one group or the other.

Figure 1: Three- and Four-Party Complaint Systems



- b. Scope of Claim.** Claims can be about an event (“I did not get maternity leave”, “I was wrongfully fired”) or about a system which creates widespread, persistent problems (“There is no maternity leave”, “All union members were laid off”). Claimants can be individuals, small groups of individuals, whole communities, or classes of people. One farmer may lose her farm, or one person may be sickened by pollution, but an entire community may also lose their farms or made sick. Some complaint systems welcome and address individual claims. Others are much more focused on changing the system that creates these claims or of address mass claims with a common nucleus of harm, which are here called “general” claims. Almost all systems have some mix of the two kinds of claims, but the one that clearly predominated is noted here.
- c. Number of Claims.** We are repeating this row from Table 1 as it is an important Characteristic of the Complaint Mechanisms as well.
- d. Language.** This notes an important formal and practical restriction on the claimant, the language in which the claim is lodged. This affects who actually uses the systems. It can be both a barrier to use and a signal of who is expected to use the complaint system. Until recently for FLA, all the public information has been in English, but we have confirmed that many claims in Latin America have been filed in Spanish.
- e. Known by Claimants.** Do claimants know that the complaint mechanism exists? “Yes” means the complaint system is well publicized and claims do not report a problem knowing that it exists and how to access it. “No” means that the complaint mechanism is only known to a few, usually sophisticated, organizations and as a practical matter is not known by the great majority of potential claimants. “Variable” means there are some places where it is fairly well known and types of claimants that know about it, and other places where it is not known.
- f. Length of Process.** How long does it take to go from claim filed to a case decided and, when appropriate, remedy provided? “Long” is an average (mean) time of more than 18 months with a significant number of cases taking years. “Medium” is a mean of less than 9 months with a significant number of cases taking more than one year. “Short” is a mean of approximately 6 months with many claims taking less than two months.
- g. Transparency.** How much information does the MSI make public? This differed greatly. Some systems (e.g. RSPO) have the equivalent of full court files with evidence, documents and formal decisions. Others do not identify the claimant, the factory respondent or the brand involved. “High” means the claimant and respondent were identified as well as the most important details of the claim. “Moderate” means enough information was given about the claim to determine its nature and how the system addressed it. Bonsucro did not have enough claims, or a formal reporting system, to be able to make a judgment.

There are a great many observations which can be made from these characteristics. We will only note a few here. The Four Party Systems tend to have many more claims. Particularly, FWF and the Bangladesh Accord have by far the most claims and also stand out in their outreach to claimants and ease of claim filing. FWF goes to extraordinary efforts to allow claims to be filed locally in a local

language. The Bangladesh Accord does this as well, but has the advantage of only operating in one country. FLA has the fewest number of claims among the Four Party Systems, but is focused on general claims, so one of its claims can affect hundreds or even thousands of people. The Four-Party Systems are generally better known to claimants than the Three-Party Systems, and they take a significantly shorter time to resolve. Determining and acting on a claim in shorter time period takes more effort by the system, as does handling more claims, staffing claims handlers in multiple languages, and ensuring that claimants know about these systems. All of these characteristics indicate that the Four-Party Systems require more cost and effort, and are strong evidence that these MSIs invest greater resources in their complaint systems.

VI. Outcomes
a. Methodology

We defined a set of outcomes, which are described below. As we were most interested in what the systems provided as remedies to impacted rightsholders, we focused our attention on positive outcomes for the claimants. Much can be learned about grievance mechanisms from analyzing why claims failed, and we encourage others to investigate this rich question, but that is not the goal or focus of this work. The outcome categories were defined to be general so that they could apply to all the MSI grievance mechanisms. All the claims we reviewed were put into one of the outcome categories described below.

b. Data

The outcomes for the systems are compared in Table 3. The data is presented in the NomoGaia spreadsheets⁵. The RSPO claims are discussed in an academic paper co-authored by NomoGaia staff.⁶

Table 3: MSI Complaint Systems Outcomes

Outcome	Three Party Systems			Four Party Systems		
	RSPO	FSC	Bonsucro	Fair Labor Association	Fair Wear Foundation	Bangladesh Accord
Not Processed	Not Reported	Not Reported	1	23	35	1071
Settled	11	1	0	1	38	251
Lost	18	1	0	16	116	300
Won	10	6	0	27	172	410
Won: Company Out	6	6	0	0	2	0
Won: No Remedy	3	0	0	3	28	0
Won: Potential Remedy	1	0	0	24	142	410
TOTAL	39	8	1	67	361	2034

⁵ <http://www.nomogaia.org/access-to-remedy>

⁶ Mark Wielga and James Harrison, Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil; Business and Human Rights Journal, (2021), pp. 1–26, 2021. Cambridge University Press. doi:10.1017/bhj.2020.33

Here is a summary explanation of the outcome categories in Table 3:

1. **Not processed.** These claims were not accepted by the system which judged them to be out of the system's scope. This was either because the respondent was not in the MSI (or a supplier to a member of the MSI) or because the claim did not allege a violation of the MSI's standards.
2. **Lost.** The system did not determine the claim to be valid. This could be for multiple reasons, including that the facts alleged were determined to be false or that the claimant stopped prosecuting the claim (for example not answering their phone calls).
3. **Settled.** The claimant and respondent agreed to resolve the claim and it was dropped from the system.
4. **Won-Company Out.** The system determined the claim to be meritorious and ordered a remedy, but the respondent company left the MSI and is beyond the jurisdiction of the complaint mechanism. For FSC, these were companies expelled from the MSI. For RSPO these companies left voluntarily after receiving a claim or getting a negative ruling by the complaint mechanism.
5. **Won-No Remedy.** The system determined the claim to be meritorious, and ordered a remedy, but the claimant did not receive a substantial benefit.
6. **Won-No Remedy Yet.** The system determined the claim to be meritorious, and ordered a remedy, but no remedy has yet been received and the system has not closed the case.
7. **Won-Potential Remedy.** The system has determined the claim to be meritorious and ordered a remedy, and the claimant has received a substantial benefit.

We have no further category beyond "Won-Potential Remedy." "Effective Remedy" is a complex, nuanced concept in an individual case. Making a final judgment that an effective remedy has actually been provided to a rightsholder in a particular case is a serious step, which we would not take lightly. We are not ready to make such a judgment without an in-depth evaluation of individual cases based on reliable evidence and personal knowledge. In many cases key reliable evidence may not be available to any researcher, no matter how diligent. This research was not designed to perform such a deep analysis of these many individual cases. We will leave that serious and necessary step to other projects or other people. For now, "potential remedy" is a reliable and useful category which we will use.

VII. Initial Observations

The most central observation is that Three-Party Systems do not provide potential remedies.⁷ This finding may reveal a deeper truth. The Respondent in a Three-Party System is there voluntarily; the respondent in a Four-Party System is not. Prior agreement to be part of a complaints system can

⁷ Except in one lone case, and even that one was problematic. It was a success story in that it stopped a planned expansion of a large company's palm oil plantation on to community land. The community still has that land. However, the company retaliated against its workers from that community and have tried what the community feels to be underhanded efforts to undo the result of the claim. We investigated this case in person over several years. It is reported in more detail the paper cited in footnote 6, above.

be evaded when that company realizes it is likely to be subjected to real accountability. This means that voluntary complaint systems absent any external oversight have a natural limit of effectiveness. Such a result is supported by jurisprudence and common sense. A company will participate in a complaints system, through membership in an MSI or any other way, because it determines that this participation will benefit the company. When this participation becomes a net monetary loss, it becomes economically rational to leave or evade the system. This analysis, of course, leaves other values, ethical or human rights-based, aside.

We will limit ourselves to a few other observations that come out of the data shown above, as well as our many interviews.

1. A complaint system is meaningless without complaints. Bonsucro does not have a functioning complaint system.⁸ Whether due to mistrust, opacity, or incapacity, accessibility is a threshold requirement for any complaint system.
2. Having many claims does not mean an MSI is weak. Millions of workers are covered by the Bangladesh Accord and many claims filed are about one worker being mistreated once. The grass roots, multitudinous, massive range of its complaint system is a feature, not a bug. Similarly, the fact that it must weed out many claims as “out of scope” is due to its extreme accessibility as well as its unusually limited scope, arising as it did, out of a concern for fire safety.
3. Accessibility is key. The two systems with by far the most claims are accessible by phone in a local language, present trainings about the complaint mechanism in factories, and have posters on factory walls with their phone numbers. Fair Wear Foundation and the Bangladesh Accord go to great expense and effort both to handle claims and to educate potential users about their systems. Outreach gets results.
4. Apparel is special. One level (final assembly) of one supply chain (apparel) dominates this field. It is a supply chain that is notorious for its multi-decade history of human rights claims. It is also one in which powerful international brands dominate, but rarely directly manufacture. This leads to complaint systems (FLA, Fair Wear Foundation) in which the results come from the power and influence the brands have over the factories that are dependent on their business.

⁸ Bonsucro purports to apply numerous human rights standards to many large operations covering millions of workers and affected communities in dozens of low governance countries. All of this in an industry notorious for ongoing, widespread, egregious human rights violations. The sugar sector is widely recognized as one of the most exploitative in the world. This has been borne out in detailed research. See, e.g. Ben Richardson, *Sugar*, Polity Press 2015. The absence of complaints to the sugar sector premier sustainability certification body does not suggest a lack of problems.

5. Brands are key. The “fourth party” that makes the Four Party System work is the brand. We repeatedly found in our research that strong, actively engaged brands that care make all the difference to the functioning of the complaint systems. There are, of course, weak brands as well who cause these systems to fail in individual cases.
6. Where are all the claims? Considering the time period these systems have been operating combined with their wide geographical scope, it is apparent that all of these systems could have been accessed by an enormous number of human rights claimants. The relatively small numbers reported here are doubtlessly dwarfed by the number of legitimate claims of human rights violations that could have been filed.

VIII. Conclusion

This initial investigation calls for more work, both more empirical research and analysis. MSI human rights complaint mechanisms result in a mixture of failure and success. There are some systems which are making a real difference to peoples’ lives and others that are little more than window dressing to defend a damaging *status quo*. One problem is will. There are complaint systems that are simply not intended to work. These need to be called out for what they are. However, there are also systems that are committed to working for rightholders and are looking for ways to improve. This research, and the future work based on it, is ultimately intended to give concrete guidance to help them improve and so increase the ability of rightholders to obtain effective remedy for corporate human rights infringements.