

The value of complaints mechanisms in the private labour regulation of GVCs: A case study of the Fair Labor Association

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Abstract. *Can complaints mechanisms strengthen the private labour regulation of global value chains (GVCs)? This article empirically investigates the results produced by the Fair Labor Association's (FLA) complaints mechanism, which alone allows outcomes to be verified from the complainant's perspective. Although the vast majority of complainants find this mechanism to be valuable, it also has a number of limitations that seriously affect outcomes for workers. The authors utilize the concept of "grounding" to explore how national, social and corporate dimensions affect the performance of the FLA complaints mechanism for workers. The implications of these findings are then considered for complaints mechanisms in other GVCs.*

Keywords: *complaints mechanisms, private regulation, multistakeholder initiative, clothing industry, value chains, labour standards, case study.*

1. Introduction

Transnational private regulation describes both processes of industry self-regulation and systems of regulation in which coalitions of non-state actors (companies, non-governmental organizations (NGOs) and trade unions, among others) codify, monitor and, in some cases, certify firms' compliance with labour, environmental and human rights and/or other standards of accountability (Abbott and Snidal 2009). Private regulation purports to fill regulatory gaps where governments have been unwilling or unable to regulate. But there is now strong scepticism towards private regulation, with many voices questioning whether private governance systems can effectively improve labour rights

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(de Bakker, Rasche and Ponte 2019). Lead firms are often found to be responsible for at least some of the labour rights violations occurring in their supply chains through, for example, “predatory purchasing practices” (Anner 2019). Thus, transnational corporations are “creating governance structures to deal with problems which they themselves generate, thereby privileging themselves as judge and jury in cases of their own violations” (Morris, Jenkins and Donaghey 2021, 10).

Criticisms of private regulation concern weaknesses in the design of private regulatory mechanisms, their governance structures and, most of all, the way they are implemented and enforced (Morris, Jenkins and Donaghey 2021). There is a widely recognized “enforcement gap” in transnational labour governance, reflected in a lack of effective legal mechanisms to hold private actors to account. Audits, in particular, are seen as a very weak means of ensuring compliance with standards (LeBaron and Lister 2015; Marx and Wouters 2016). As a result, there has been an increasing focus on enhancing accountability through different means of implementation and enforcement of labour standards, often using public regulatory efforts to strengthen private regulatory initiatives (Bartley 2018; Locke, Rissing and Pal 2013; Franssen and Burgoon 2017). This has included harnessing bottom-up monitoring processes that involve local civil society organizations that are in tune with the facts on the ground (Bartley 2018).

In theory, complaints mechanisms could have a significant role to play in addressing enforcement problems. Audits are top-down processes driven by the needs of participating companies in which auditors obtain limited snapshots of what is happening to workers at particular moments and in specific locations. Complaints mechanisms, in comparison, create bottom-up processes and provide for “continuous monitoring since they allow parties to file a complaint whenever a standard has been breached and to hold violators accountable” (Marx and Wouters 2016, 446). They also potentially disrupt power dynamics within private governance mechanisms by giving a voice to marginalized actors, such as workers, or communities who can “ring the alarm” when their rights are violated (Macdonald 2020). This article therefore seeks to explore the value of complaints mechanisms in private governance mechanisms and their potential to contribute to closing the enforcement gap in transnational labour governance.

It is a particularly apt moment to study these questions, as complaints mechanisms are set to become a more prominent phenomenon. In particular, the German Act on Corporate Due Diligence Obligations in Supply Chains¹ and the EU proposal for a Directive on corporate sustainability due diligence (currently at the draft stage)² both require companies to provide for, or participate in, human rights complaints mechanisms. Amfori, a supply chain management multi-stakeholder initiative (MSI) that is based in Europe and has over 2,400 members with a collective annual turnover of €1.6 trillion, has prepared rules of procedure for a complaints mechanism that it is now field testing for its

¹ Act on Corporate Due Diligence Obligations in Supply Chains (*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*) of 16 July 2021 (entry into force on 1 January 2023).

² See procedure file, [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/0051\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/0051(COD)) (accessed 17 November 2023).

members' use.³ In addition, the institution formerly known as the Bangladesh Accord has a complaints mechanism that has handled thousands of worker claims. Its model, including its complaints mechanism, is being rolled out in additional countries.

However, at the moment there is a lack of research into complaints mechanisms as an aspect of private labour regulation of GVCs. Most studies of private regulatory initiatives ignore complaints mechanisms. Those who do seek to engage with this issue have noted that the design, and therefore the operation, of complaints mechanisms varies widely (Landau and Hardy 2021; Marx 2014; Schleifer 2019). Accordingly, it is not possible to make generalizations about how they operate and their potential impacts. Marx and Wouters (2016) suggest that use of complaints mechanisms is often relatively infrequent and that outcomes may be affected by various political and economic factors, including the strength of the rule of law in particular countries, local labour market supply and demand, and the strength of sanctions available. However, in the general absence of detailed empirical studies investigating how complaints mechanisms operate in practice, these hypotheses remain largely untested (Marx and Wouters 2016; Landau and Hardy 2021).⁴

This gap in the literature is perhaps unsurprising given that the vast majority of complaints mechanisms in private regulatory initiatives do not provide sufficient information to permit empirical study. The complete lack of transparency in companies' internal complaints mechanisms means that analysis is restricted to a very small number of high-profile cases (Grama 2022). When it comes to MSI complaints mechanisms, there is a little more transparency. However, as we explain in section 2, only one MSI, the Fair Labor Association (FLA), has received a significant number of complaints about labour issues and has sufficient publicly available information about its complaints process to allow independent verification of the results from the complainant's perspective.

The FLA is an interesting case study because it is a private regulatory initiative that has been the subject of considerable criticism (see, for example, Sethi and Rovenpor 2016; Macdonald 2011; Anner 2012). Yet, we find that the vast majority of workers who use the FLA's third-party complaints procedure consider it to be valuable. Beyond this surprising finding, our research allows us to identify some of the strengths and weaknesses of the FLA complaints mechanism, both of general applicability and as relevant to specific contexts.

Our article utilizes the concept of "grounding" (Graz 2022; Bartley 2022) to interrogate the differentiated functioning and results of the FLA complaints mechanism for workers in different contexts. Grounding draws our focus to the local when considering transnational private regulatory initiatives. It invites us to explore local contexts, cultures and institutions to understand how they "ground" and thereby support or limit the implementation of transnational private regulation (Graz 2022). The precise range of factors that support or limit

³ See Amfori, Supply Chain Grievance Mechanism (SCGM) Programme, <https://amfori-foleon.com/speak-for-change/scgm/> (accessed 20 October 2022).

⁴ One exception is Haines and Macdonald (2020), which focused primarily on community complaints rather than on worker complaints.

the implementation of labour rights on the ground remain underexplored. We therefore unpack grounding in the context of our case study by identifying three dimensions – the national, the social and the corporate – which are critical to how complaints mechanisms perform. By the “national”, we mean the differentiated legal and political frameworks of the States where complaints are brought. By the “social”, we mean the extent of social capital that complainants are able to draw upon to support them in the complaints process. By the “corporate”, we mean the attitudes and relative power of the individual factories and brands whose interrelationships are vital to what the complaints mechanism can achieve. We argue that a legitimate and effective complaints system needs to recognize and respond to these grounding issues. We also hope to encourage other scholars to consider the extent to which the dimensions we identify are relevant to unpacking the concept of grounding in other studies of transnational private governance initiatives.

The remainder of the article is organized as follows. The second section sets out the methodology that we followed to identify the FLA for our case study and to gather information for our empirical analysis. In the third section, we present our results regarding the perceived value of the FLA complaints mechanism by its users. In the fourth section, we consider the limitations of the FLA model at three different stages of the process: when accessing the system, during the claims process and in the enforcement of successful claims. In the fifth section, we discuss our findings regarding the potential and the limitations of complaints mechanisms for closing the “enforcement gap” in transnational private labour regulation initiatives, presenting the concept of grounding as a key avenue for future research. The final section concludes.

2. Methodology

Our analysis of the FLA was conducted as part of a larger study of MSI complaints mechanisms (Harrison and Wielga 2023). For the purpose of that study, we defined complaints mechanisms as platforms that (1) enable individuals and communities to report harm suffered owing to a company’s failure to follow requisite labour (and, in some cases, broader human rights) standards, (2) issue a decision on the validity of claims and (3) require remedial action when claims are upheld.

We first undertook research to identify complaints mechanisms that made sufficient information on individual complaints publicly available to allow an evaluation of the system. We identified six complaints systems that provided us with access to critical information, including whether or not claims were accepted, where the events alleged in the claim took place, a description of the claim, its current status, investigation findings and any remedial action undertaken. The six MSIs were Bonsucro, the Fair Labor Association (FLA), the Fair Wear Foundation (FWF), the Forest Stewardship Council (FSC), the Roundtable on Sustainable Palm Oil (RSPO) and the Bangladesh Accord (which has since transitioned into the RMG Sustainability Council). We created a database to record information for all the cases from the six MSIs, including the FLA,

for which information was available.⁵ The FLA was the only mechanism that had received a significant number of complaints on labour issues and made the identity of claimants publicly available. The FLA was, therefore, alone in enabling us to (i) verify the information that it provided about the resolution of complaints with the complainants themselves and (ii) consult their views about the process and outcome of complaints. This article thus focuses primarily on our findings in relation to the FLA complaints mechanism, but these are contextualized by the discussion of our broader findings in relation to the other five MSIs we studied (see section 5).

We attempted to contact complainants in all 48 accepted FLA cases and, between September 2020 and May 2022, we managed to conduct 46 semi-structured interviews with 34 interviewees in relation to 30 claims. We spoke to some interviewees several times to allow them to expand on their views about specific cases and the FLA system in general. Interviewees included worker claimants, claimants who were representatives of a union, and individuals from union leagues and NGOs helping claimants through the FLA claims process. We also interviewed other parties involved in the process, including four people who conducted investigations of claims for the FLA. We interviewed four FLA staff, including the head of the claims system and the regional managers who handled the claims. In addition, we interviewed four NGO representatives who worked on labour rights in apparel supply chains and were familiar with particular claims submitted to the FLA. We also read any documentation interviewees shared with us. For a few high-profile cases, we reviewed NGO and press reports.

Interviews with claimants and/or their representatives were semi-structured and were designed to develop a detailed factual understanding of claims and explore a range of issues associated with those claims and the FLA system itself. Topics included: the reasons for choosing the FLA and the other mechanisms that claimants had used or considered using; the claimants' experiences of using the FLA mechanism, including any positive and negative aspects; whether the FLA claims process produced any valuable results and what that value was; the likelihood of claimants using the FLA mechanism again; and ideas about how to improve the mechanism in the future. Interviews with FLA personnel were focused on the FLA system, how it worked in practice, what its goals were, its strengths and weaknesses, as well as detailed questions on individual claims and results. Thematic analysis was subsequently used to analyse interviews.

3. The FLA's complaints system: Value and achievements

The FLA is an MSI committed to labour rights in the apparel manufacturing supply chain.⁶ It was formed in 1999 and brings together 48 apparel brands (including some world leaders such as Nike, Under Armour, Patagonia and

⁵ Database available at <https://nomogaia.org/access-to-remedy/>.

⁶ It has recently expanded to include agriculture and now has agricultural labour standards. Nestlé and Olam are both member companies (see <https://www.fairlabor.org/accountability/standards/agriculture/>). To date, its complaints mechanism has not yet handled any agricultural complaints.

Adidas), 12 manufacturing companies (which supply the brands), over 100 US and Canadian universities, and 11 labour NGOs.

The large, mostly US-based brands in the FLA are part of the global apparel and footwear supply chain. This has evolved in recent decades so that brands design, market and sometimes sell products, but outsource their manufacture. The assembly of products is almost always performed in factories not owned or legally controlled by brands. Those factories are usually in Asia and Latin America and are owned by a multitude of companies, some local and some international, ranging in size from large complexes with tens of thousands of workers to enterprises with fewer than 100 workers. Typically, these are apparel assembly factories in which the key manufacturing step involves many individuals working at sewing machines, producing one garment at a time. The workers are mostly women working long hours for low wages. Some of these factories continue to be classic “sweatshops” with poor, and sometimes dangerous, working conditions. Many of the countries where apparel manufacturing takes place have weak labour protections (Rossi, Luinstra and Pickles 2014).

The FLA’s member companies commit to the FLA Workplace Code of Conduct, which includes many ILO standards.⁷ Setting aside the small group of suppliers that are FLA members, the FLA member brands do not manufacture the clothes they sell, and so the FLA Workplace Code of Conduct does not apply directly to them, but to the thousands of factories that supply apparel to the brands. Thus, the FLA standards are agreed to by one group of companies (the brands) but apply to another (the suppliers).

The FLA’s third-party complaint procedures are formally laid out in the FLA Charter.⁸ The complaint process begins with the submission of a complaint; the FLA then decides whether to accept the complaint, considering whether it contains “reliable, specific and verifiable evidence or information that [an] Alleged Noncompliance [with the Workplace Code of Conduct] has occurred” (section XI(A)); if the complaint is accepted, the member brand (or in a few cases, the university licensee) may investigate the complaint itself or allow the FLA to investigate.

Although there have been occasions when the investigation has been conducted by the FLA or by brand personnel, the investigator is usually a third-party consultant picked by the brand or the FLA and paid by the brand. These individuals can be legal or non-legal labour experts with experience in factory audits and investigations. Their investigation normally includes both a review of records and interviews with claimants and factory management. The investigators gather evidence, decide its weight and apply the standards in the Workplace Code of Conduct. If the brand does the investigation, the FLA reviews

⁷ FLA, Workplace Code of Conduct and Compliance Benchmarks, as amended at 28 October 2020, available at: https://www.fairlabor.org/wp-content/uploads/2022/04/fla_workplace_compliance_benchmarks_rev_10.2020.pdf (accessed 16 November 2023).

⁸ Charter Document Fair Labor Association, as amended at 5 February 2021, available at https://www.fairlabor.org/wp-content/uploads/2022/03/fla-charter_revised_feb_2021.pdf (accessed 16 November 2023).

the brand's assessment. Should the FLA disagree with the assessment, as has occurred in a few cases, it can order its own investigation, and if a violation is found, the FLA and the brand draw up a remedial action plan. The FLA and the brand are then responsible for ensuring that the factory implements the plan. All of this is reported publicly in a complaint tracking chart on the FLA website.⁹

The first claim reported on the FLA website was received in 2013. Since then, 68 claims have been received. Twenty have been rejected (accurate as of 3 June 2022), mostly because the factory in question no longer sold products to an FLA member brand (FLA representative, Zoom call, 6 October 2020; Claimant representative, Zoom call, 15 January 2021). Forty-eight complaints have been accepted from 14 countries. Most claims are from the Latin America and the Caribbean region (hereafter "Latin America") (29) and El Salvador is the country with the highest number of claims (12), followed by Guatemala (4), Nicaragua (4), Peru (4), Honduras (3) and the Dominican Republic (2). Only ten claims come from East and South Asia, despite the concentration of production in that region (as we discuss in section 4). India is the country with the most claims in this region (4), followed by Viet Nam (2), Indonesia (1), Bangladesh (1), Myanmar (1) and China (1). Of the remaining claims, most are from Turkey (6), with a few from the United States (2) and Kenya (1).

The great majority of claimants are unions, or workers trying to form a union. Three claims have also been filed by FLA member university licensors. The claims tend to directly involve unions and the right to unionize (36), but they often also raise issues such as wrongful dismissals, unpaid compensation, factory conditions and worker abuse. Three cases are based on factory closures with unpaid compensation left owing to the workers.

We were able to confirm that the FLA complaints system did provide some meaningful benefit to aggrieved rightsholders in a significant number of cases. Some 61 per cent of the cases adjudicated by the FLA system found that an FLA standard had been violated and a remedy was ordered (Harrison and Wielga 2023, 56). In more than two thirds of cases where a remedy was ordered, the claimants received some benefit, including monetary compensation, recovery of lost jobs with or without seniority, firing of abusive managers, and improved working conditions, hours of work and compensation systems. While there are multiple reasons why these benefits are not effective remedies, as we will discuss in the next section, most rightsholders who "won" their cases considered that the results they achieved were valuable and, on that basis, said that they would use the FLA complaints system in the future. As a claimant from Guatemala acknowledged:

FLA's complaints system is valuable. I would use the FLA complaints mechanism again because it was the main reason we got paid a compensation [after the factory closure]. I would use it again and recommend that others use it. (FLA claimant from Guatemala, WhatsApp call, 4 May 2021)

Indeed, perhaps the most compelling statistic about the value of the system is that approximately 85 per cent of interviewed complainants said that they would use it again. Union representatives who had not yet used the system

⁹ See <https://www.fairlabor.org/accountability/fair-labor-investigations/tpc-tracking-chart/>.

were also encouraged to do so after hearing about positive results achieved in other cases. For instance, an interviewee from Guatemala decided to file a complaint because he was aware of successful cases in Guatemala, Honduras and El Salvador. Although his own case did not work out as he had hoped, the interviewee did believe that the FLA gave the workers something valuable (partial payment of amounts owed) (FLA claimant, Guatemala City, Guatemala, 22 April 2022).

It is noteworthy that even when claimants did not receive any substantial benefit, a number said that they would continue using the FLA system. This is in part because they felt that no alternative complaints system gave them a realistic chance of obtaining remedy. Workers and their representatives in most countries where complaints were made perceived national courts as being slower, less responsive and more expensive and pro-business than the FLA system (FLA claimant from El Salvador, Zoom call, 16 January 2021; FLA claimant, Guatemala City, Guatemala, 22 April 2022). The FLA's complaints system was therefore most useful to claimants "grounded" in countries where they could not easily enforce their rights through the state apparatus.

We use the FLA system because we feel defenceless. Sometimes, with the power vacuums in the country, and the State not protecting workers' rights, we have to try to find out who can help us through these mechanisms. ... In Honduras, legal proceedings are very lengthy, and getting them to sanction a company is very difficult. Also, they give the companies many ways to [avoid serious consequences]. If there are monetary fines, they can come to an arrangement, and that's it. (FLA claimant from Honduras, WhatsApp call, 25 May 2021)

An independent investigator for FLA claims across Central America stated that:

In general, I believe that more is accomplished [by the FLA] than with a judge, and court cases last for years and years. The judgment can be finally handed down when the result is no longer meaningful, or the worker has died. (FLA claim independent researcher, Zoom call, 1 February 2021)

Claimants choose to go directly to an international complaints system such as the FLA's, rather than to factories or individual brands' internal systems because the latter are either non-existent or are perceived as biased (Independent researcher, Google Meet call, 9 March 2021). As one repeat user of the FLA in India stated:

We first tried to talk to the factory but got nowhere. Then we tried the brand but had no contacts we could call. We saw the brand was part of FLA so we thought we would try FLA. FLA responded immediately. [They] were fast and effective. There were a lot of good changes that this claim brought about. ... This case was a success ... [compared to other MSI complaints systems]. FLA is by far the best. (FLA claimant, Bangalore, India, 18 March 2021)

Since the FLA is structured so that brands are the members and they respond to complaints made against factories producing for them, many claimants use the FLA because it is the only way they can make the brands listen (FLA claimant from El Salvador, WhatsApp call, 13 May 2021; FLA claimant, Guatemala City, Guatemala, 26 April 2022). The brands can influence the factories' behaviour through the leverage of their contracts and commercial agreements. We repeatedly found that, where remedies were achieved, cases involved brands who

were willing to use this leverage. Whatever the views of workers about the FLA itself, they filed claims in its system because they thought that the brands might take action.

You have to file the complaint with the FLA ... Whether or not the result is favourable. We don't have another option of where to go because that is where the brands are. (FLA claimant, Guatemala City, Guatemala, 22 April 2022)

For instance, in the *CSA Guatemala* case, a factory closed because of a fire and workers were paid only a small fraction (reportedly less than 10 per cent) of the total indemnity owed to them.¹⁰ A successful complaint and work by the FLA and the Worker Rights Consortium (WRC), an NGO, resulted in further payments by GAP and Hanesbrands (brands and FLA members who sourced from the factory), which brought the indemnity payments up to nearly 50 per cent of the total amount due (excluding compensation for the time the workers had had to wait to be paid) (FLA claimant from Guatemala, WhatsApp call, 4 May 2021; WRC 2020).

As well as obtaining results in individual cases, some claims have also contributed to systemic results that changed specific behaviours inside factories. For example, in the *Delta Apparel* case¹¹ a union representative from Honduras recognized that:

Things have changed with this company [after the case was upheld]: Tomorrow they are signing their third collective bargaining agreement. There is better communication with the workers; before it was very confrontational. The change can be clearly seen because the claims and the fact they had to compensate the workers was a big blow. Then they started to create a work environment with adequate conditions. They had to commit and fulfil what they promised. (FLA claimant from Honduras, WhatsApp call, 25 May 2021)

Complaints have also led to some changes beyond the factory level. For instance, in El Salvador, there were recurring FLA complaints, as well as problems uncovered by audits, relating to the payment of the first three days of medical leave by employers (from the fourth day on, the government pays), which the FLA standards deem compulsory (FLA 2018). The FLA lobbied the Ministry of Labour and published an “issue brief” recommending that the employer pay the first three days of medical leave. This led to changes in the general practices of the industry in El Salvador, such that the FLA now estimates that approximately 80 per cent of factories working for FLA brands comply (FLA representative, Guatemala City, Guatemala, 22 April 2022). Although it was relatively rare to find such broader systemic changes, we return to this subject in section 5.

4. Limitations of the FLA system

The FLA complaints system has therefore produced significant value for claimants in a number of settled cases. But there are also critical limitations to the system. In this section, we identify three key types of limitation in the FLA model

¹⁰ FLA, *C.S.A. Guatemala, S.A. Investigation Report*, March 2019, 3 and 22. <https://www.fairlabor.org/reports/c-s-a-guatemala-tpc-report/>.

¹¹ FLA, *Final Report: Third Party Complaint: Delta Apparel (Honduras)*, 27 August 2018. <https://www.fairlabor.org/reports/delta-apparel-honduras-tpc-report/>.

at three stages of the process. First, workers wishing to use the system have problems accessing it. Second, once claims have been accepted, there are difficulties and problems with the claims process. Third, for successful claimants, the results at the end of the process are often inadequate.

4.1. Access

In the first stage of the FLA process – accessing the system – 73 per cent of the claims handled by the FLA complaints mechanism were filed by unions and only 16 per cent were filed by workers.¹² An FLA representative explained that “third-party complaints come from unions and rather specific kinds of organizations, but workers and other organizations are not using it.” (FLA representative, Google Meet call, 14 April 2021).

In some national contexts, the reliance on unions to bring claims raises fundamental legitimacy issues about the FLA complaints system. The distribution of FLA claims does not match the geographical location of the factories covered by its system. FLA claims are mostly from Latin America, while a large proportion of the world's, and the FLA's, apparel factories are found in East Asia (see table 1). The location of FLA claims therefore diverges considerably from the location of the factories working for its member brands. While there are doubtless multiple reasons for this, an important one is the FLA's strategy of primarily engaging with unions, which is extremely problematic in some countries. For example, the FLA has received a strikingly small number of claims from China (1) and Viet Nam (2), despite their large apparel production industries. Neither country has legitimate independent trade unions to confront factories over labour rights abuses (despite recent reforms in Viet Nam) and so the lack of FLA claims in such countries is not surprising (Chan 2020). However, these numbers raise questions about the legitimacy of a garment industry complaints system that focuses on engagement with unions, while large-scale production is found in countries where those unions are not effective.

Even in countries with effective unions, there were still significant barriers to accessing the system. While FLA claim handlers did on one occasion (the *Gildan Star* case in Honduras)¹³ respond to controversies by proactively asking if a union wanted to file a claim (FLA claimant from Honduras, Google Meet call, 30 April 2021), there is a general lack of outreach and awareness-raising by the FLA among unions and workers about the complaints mechanism and how to access it.

The FLA's Code of Conduct is posted in the factories, but the workers don't know what it is for, what it does, or what they can do if their rights are threatened. Neither do they know which brands buy from the factory where they work or if they are FLA members. The FLA does not train workers on this; it only reacts to their claims. (NGO representative, Guatemala City, Guatemala, 21 April 2022)

In a number of Latin American countries where claims were brought, union officials themselves often had to rely on other expert organizations – including

¹² See <https://nomogaia.org/access-to-remedy/> (accessed 22 June 2022).

¹³ FLA, *Final Report: Gildan Star S.A.*, 29 July to 2 August 2019. <https://www.fairlabor.org/reports/gildan-star/>.

Table 1. Geographical distribution of FLA brands' factories compared to FLA claims

Region	Number of factories			Number of complaints in the FLA system
	Adidas	Fast Retailing (Uniqlo)	Under Armour	
Latin America	4 (2%)	3 (<1%)	21 (14%)	29 (64%)
China and Viet Nam	99 (53%)	295 (65%)	55 (38%)	3 (7%)
Rest of world	82 (44%)	157 (35%)	70 (48%)	13 (29%)
Total	185	455	146	45

Note: This table is indicative only. We accessed the distribution of suppliers to three of FLA's large member brands from the Open Apparel Registry (which has since become the Open Supply Hub, <https://opensupplyhub.org/>) for the most recent available data (2020, 2021 and 2022 for Adidas, Fast Retailing and Under Armour, respectively). As each factory's production data are not reported, the percentages are only of number of factories.

Source: Open Apparel Registry and FLA.

NGOs such as the Commission for the Verification of Codes of Conduct (COVERCO), the Solidarity Center and the WRC, and trade union federations – to help them find out about the FLA (FLA claimant, Guatemala City, Guatemala, 21 April 2022; FLA claimant from Nicaragua, WhatsApp call, 26 June 2021; FLA claimant from the Dominican Republic, WhatsApp call, 28 July 2021; FLA claimant from Peru, Google Meet call, 6 August 2021). Without these expert contacts, which acted as a form of social capital, they would not have been able to file complaints. As one union official in El Salvador commented:

Other El Salvador union organizations with more experience told us about the FLA because [they are] active in labour issues and in the maquila sector. That is where we found out about the brands' [complaint] mechanisms and we got to know the FLA. (FLA claimant from El Salvador, WhatsApp call, 13 May 2021)

There are certain types of complaints that do not feature in the FLA system. For example, there are no cases regarding gender-based violence, despite the fact that the labour force in the garment industry is highly feminized, and gender-based discrimination, including sexual harassment and other forms of violence, is an “endemic problem in maquila factories throughout Central America and in garment export factories around the world” (Maquila Solidarity Network, n.d.). However, female workers said that they did not know that they could report these cases through the FLA complaints system (FLA claimant from El Salvador, San Salvador, 30 April 2022), demonstrating how their awareness of their legal rights or “legal consciousness” was constrained by how the system was presented to them both by those who managed it and those who helped them file cases (Maher, Monciardini and Böhm 2021).

Even those workers who were made aware of the complaints process still experienced significant barriers to successfully lodging claims. Instructions and information about filing a claim on the FLA's webpage were only provided in English and its complaints hotline was answered only in English, which most workers do not understand, thus discouraging them from filing a claim (NGO representative from Guatemala, WhatsApp call, 17 December 2020). Another option was to fill in a form in English on the FLA website, which many workers found very complex, and which they sometimes struggled to do because of internet access problems and language barriers (FLA claimant from El Salvador,

Zoom call, 16 January 2021; NGO representative from Guatemala, WhatsApp call, 17 December 2020).¹⁴ Accordingly, workers and their representatives in Latin America who successfully filed claims often relied heavily on expert organizations to do so.

We relied on the Centre for Labour Studies and Support, an NGO formed by unionists in El Salvador, which gave us free technical support. They helped us fill out the forms and with all the procedures because we are not very well educated. (FLA claimant from El Salvador, Zoom call, 16 January 2021)

In other countries where higher numbers of claims were filed, claimants did not rely on external organizations in the same way. However, most cases were filed either by large, sophisticated unions – often with strong ties to the FLA – or by an exceptionally tenacious union leader. In Turkey, the two main claimants are the Deriteks union, which is over 70 years old and is a major player in the national labour movement, and TEKSİE, which has approximately 50,000 members and had a representative on the FLA Complaints Mechanism Expert Advisory Panel (FLA claimant from Turkey, Zoom call, 15 January 2021; FLA claimant from Turkey, Zoom call, 20 January 2021). In India, the Garment Labour Union in Bangalore, which is a repeat FLA claimant, has a famously indomitable leader who founded the female-run union despite attacks and severe harassment. She is an extremely strong advocate of the FLA's complaints mechanism (FLA claimant, Bangalore, India, 18 March 2021).

Overall, FLA claimants were more likely to access the system in countries where unions have legitimacy but lack effective means of achieving remedy for rights violations through government processes (for example, through their Ministry of Labour or court system). However, in such contexts workers' capacity to file claims was limited by their lack of social capital, struggling to find representation and expert assistance to navigate the complexities of the FLA system. All of these limitations in accessing the FLA system are reflected in the small number of accepted cases (48) relative to the notorious extent of labour rights abuses across the factories that are producing for FLA member brands (Rossi, Luinstra and Pickles 2014).

4.2. The claims process

Workers who did manage to file a claim faced various impediments and barriers during the processing stage. Although the FLA complaints procedure is much faster than bringing cases to court, complainants still found that the time taken to address complaints posed a serious problem. At the beginning of the process, time is allowed first for the FLA to reach a decision on the admissibility of the claim and then for the brand to decide if it will conduct the investigation itself or delegate to the FLA. Next, a formal period of 30 days (extendable to 45 days) is provided for the completion of the investigation and the report, but this sometimes takes longer (FLA representative, Google Meet call, 14 April 2021; FLA representative, Google Meet call, 6 June 2021). The whole process, from filing

¹⁴ Most unions and the expert organizations that support them in claim processes file their claims via email directly with the FLA in Spanish. However, this possibility is not a formal part of FLA's third-party complaints system process and is not publicly notified to potential claimants.

to resolution, takes, on average, 8.4 months (Harrison and Wielga 2023). In this regard, one NGO representative familiar with the FLA's complaints mechanism observed that:

The process remains very slow. In the time it takes to accept the claim, decide whether to process, ask the brands if they will investigate or if the FLA will do it, evidence is often lost and then the FLA dismisses the case for lack of evidence. The FLA should not wait for the brands to decide if they are going to investigate but investigate directly. (NGO representative from Guatemala, WhatsApp call, 17 December 2020)

The length of the process could have serious consequences for claimants:

It hurt us a lot that after struggling with the FLA for eight months our brothers were still starving in the streets. (FLA claimant from El Salvador, Zoom call, 16 January 2021)

Both while cases were ongoing and when they had been settled, many claimants reported reprisals for using the FLA complaints mechanism. Workers and union members who had filed claims reported discrimination from supervisors and co-workers, and even threats to their lives and security (FLA claimant from Peru, Google Meet call, 6 August 2021; FLA claimant from Guatemala, WhatsApp call, 28 November 2020). In Guatemala, a representative of an NGO that had assisted many workers with their cases reported that:

In every case, except [one], there have been reprisals against workers for filing cases with the FLA and/or the brands: blacklisting, discrimination, threats, kidnapping and attempted murder, among others. (NGO representative, Guatemala City, Guatemala, 21 April 2022)

Another claimant from Guatemala gave a specific example of the retaliatory action taken against her and her colleagues: "For filing the FLA complaint, they moved us to other workplaces, they didn't give us night shifts [where more money can be earned], so that affected us" (FLA claimant, Guatemala City, Guatemala, 21 April 2022). Reprisals could even occur outside work. A claimant from Guatemala said that her husband once beat her for spending too much time on the complaint and neglecting her home (FLA claimant, Guatemala City, Guatemala, 27 April 2022).

Perhaps the most common reprisal identified by FLA claimants was being blacklisted. Before hiring workers, factories do background checks and will not employ workers included on a blacklist, limiting workers' chances of employment. One claimant reported that, "They blacklisted workers and they did not hire us at any factory. They did not give us work because they said we were troublemakers. All doors were closed to us" (FLA claimant, Guatemala City, Guatemala, 26 April 2022). Evidence of backlisting even appears in the *C.S.A. Guatemala* case report, where the owner of C.S.A Guatemala "confirmed that workers are not given the opportunity for access to employment in some factories because they are ... considered promoters of unions."¹⁵

The FLA does not publicly offer preventive measures to protect claimants against reprisals, besides offering the possibility of anonymity. For instance, neither its Code of Conduct nor any other public brand and factory commitments preclude the use of blacklists, and it does not have any public protocol to manage possible retaliations against workers who file claims in the FLA system.

¹⁵ See note 10.

Accordingly, we found that the FLA not only failed to take action to address the kinds of reprisals listed above but also created barriers to accessing the complaints system by failing to guarantee the protection of the workers who might use it.

Another serious limitation of FLA procedures is that they allow complaints to be investigated, or investigators to be appointed, not only by the FLA itself, but also by member brands and even by factories who were themselves the direct subject of complaints. While all three parties generally (although not always) used independent consultants to perform the actual investigations, the independence and impartiality of the investigation process is open to question when factories and brands are involved in this way. The problem with factory involvement is self-explanatory and the results of investigations (while based on a small sample size)¹⁶ should come as no surprise: while 74 per cent of brand-led investigations and 69 per cent of FLA investigations resulted in a report in favour of the claimants, only 29 per cent of claims submitted to factory-led investigations were upheld. There were some cases, however, where the FLA rejected the factory's investigation and commissioned their own (FLA claimant from Turkey, Zoom call, 20 January 2021; FLA claimant from El Salvador, WhatsApp call, 13 May 2021).

While these figures suggest that brand-led investigations produced more positive results for claimants, the role of the brands in the process of investigating complaints was still questioned by a number of claimants:

I thought the FLA was more independent and then I realized that it had a lot of limitations with the brands because it is from the brands. And if they see that something is against their interests, they simply don't participate. And that keeps us away from the FLA and it has been many years since we filed a claim in their mechanism. (FLA claimant from the Dominican Republic, WhatsApp call, 28 July 2021)

Overall, delays, reprisals and the identity of investigators all significantly affected complainants' experience of the complaints process. On all of these issues, the FLA could have done more to make the process work better for complainants and establish more effective constraints to prevent key corporate actors from frustrating the system (for example, by taking action against reprisals and ensuring the independence of investigations).

4.3. Remediation

Lastly, as regards the results of successful claims processes, there were limitations in terms of the implementation of the resultant remedial action plans (RAPs). The role of the brands and their relationships with individual factories largely determined what the complaints mechanism could achieve:

It is the brands that get the results or can ensure that there are results. If the brands are not committed to remedy, they just implement actions because they have to and the work has no real impact. If the brands don't pressure the factories, nothing happens because it is the business requirements that make things happen. (FLA claim independent researcher, Zoom call, 1 February 2021)

¹⁶ Of 45 claims, 23 were investigated by the brands, 15 by the FLA and 7 by factories. See note 9.

The FLA's system did not help ensure that pressure from the brands led to the necessary action. The complaints mechanism "closed" the cases when the RAPs were finalized, not when the implementation of the remedy was confirmed (FLA claimant from Nicaragua, WhatsApp call, 26 June 2021). Verification of remedy was not part of the claim system but was an independent audit process that was only conducted in some cases. This means that the system was not intended to systematically monitor whether remedy or partial remedy was provided. There were many reasons why RAPs may not in fact have been fully implemented, such as companies' lack of willingness or resources, factory closures and, more recently, the COVID-19 pandemic.

For example, in the 2015 *Topy Top S.A.* case in Peru, the "union alleged a series of violations of worker rights, principally freedom of association and anti-union discrimination."¹⁷ This included the dismissal of 40 officials and union members. An independent consultant hired by Hugo Boss (an FLA brand) investigated the complaint and confirmed most allegations. The resultant RAP included rehiring former workers, training workers and supervisors, and establishing a dialogue table between the factory and the union in the presence of a mediator. In October 2017, the FLA reported that the implementation of the RAP was under way and called Hugo Boss to "conduct regular assessments to confirm progress".¹⁸ The FLA has not published any further reports on this case, but a claimant reported that:

If we reread FLA's recommendations, we would say that less than 50 or even 40 per cent has been applied. Only rehiring of the workers. The majority of the remaining recommendations in the RAP have not been acted on. The supervisors did one or two trainings and then that was put aside. The company felt like FLA left and so it did not take responsibility to complete [the Plan]. (FLA claimant from Peru, Google Meet call, 06 August 2022)

Just as they did when obtaining access to the system, workers and their representatives, particularly in Latin America, often sought to harness their "social capital" to improve their chances of remedy. Alongside registering their complaints in the FLA system, they notified and directly informed the brands involved, other organizations, such as the WRC, the Solidarity Center, international unions and labour organizations, and the US Embassy. Workers had previously found that such action drew international attention to complaints, increased the pressure on the brands and factories to act and improved results (NGO representative, Guatemala City, Guatemala 21 April 2022; FLA representative, Guatemala City, Guatemala, 22 April 2022; FLA claimant from El Salvador, WhatsApp call, 13 May 2021; FLA claimant from the Dominican Republic, WhatsApp call, 28 July 2021; FLA claimant from Honduras, WhatsApp call, 25 May 2021).

For instance, a claimant in the *JoeAnne* cases¹⁹ in the Dominican Republic indicated that they obtained tangible results but attributed them to the efforts of

¹⁷ FLA, *Summary Report: Third Party Complaint; Topy Top S.A. (Peru)*, 11 October 2017, 1. <https://www.fairlabor.org/reports/topy-top-s-a-peru-tpc-report/>.

¹⁸ See note 17.

¹⁹ FLA, *JoeAnne Dominicana, Dominican Republic: Third Party Complaint Final Report*, 12 October 2015. <https://www.fairlabor.org/reports/joanne-dominicana-dominican-republic/>; *Final Report regarding JoeAnne Dominicana in the Dominican Republic*, April 2014. <https://www.fairlabor.org/reports/joanne-dominicana-dominican-republic-2/>.

a combination of engaged organizations (more than five international organizations, university students and the Union League) and the brand's commitment, not just the FLA's involvement (FLA claimant from the Dominican Republic, WhatsApp call, 28 July 2021). In this case, the claim alleged that, because they had participated in union meetings, seven workers had been dismissed, thereby violating their right to freedom of association. After the claim was upheld, all the workers that pursued reinstatement were rehired, although they allege that discrimination against them continued.

Indeed, successful cases did not always lead to successful longer-term outcomes for workers. Factories could avoid taking action if the costs of compliance and unwanted publicity became too great. Sometimes factories preferred to close their operations in certain countries or stop supplying certain brands rather than respect labour rights. For instance, the 2015 *Petralex* case in Honduras found that workers had been wrongfully dismissed.²⁰ The FLA and the WRC drew up a joint RAP, which the factory signed. The workers were reinstated, Petralex's management paid for most of the wages that workers had foregone and the RAP was under implementation. However, the factory then "closed" even though, according to union members and former workers who we interviewed, it continued to operate in the same location under another name and hiring a number of former Petralex workers (FLA claimant from Honduras, WhatsApp call, 5 May 2021). Accordingly, the third-party complaint initially provided remedy to the workers dismissed in 2015 for unionizing but, in the end, it did not benefit them since the company closed and the union could not function there. A number of major brands sourced from Petralex,²¹ but we do not know if they continued to place orders with the "new factory".

Brands themselves could also take actions that frustrated the remedy provided through FLA proceedings. For instance, they could decide to stop sourcing from the factory where the violations had occurred. One example of this is the *Bienno* case in Guatemala, where workers forming a union filed a complaint with the FLA in January 2020 for various labour rights violations at the factory, including discrimination against those forming the union.²² Because of the pandemic, work at the factory was suspended and resumed only several months later. According to the claimants, the company called most of the workers back, leaving out a group of 40–45 people, including the committee that had been in the process of forming the union. In January 2021, the committee sent a letter to the FLA informing them of this situation. The FLA report says that Hanesbrand (the brand) confirmed the allegations and drew up an RAP, but its implementation was suspended on account of the pandemic. The FLA encouraged Hanesbrand to work with the factory on implementing the RAP. However, Hanesbrand stopped buying from this factory in December 2020 so, according to the FLA report, they

²⁰ FLA, *Final Report: Petralex, S. de R.L.*, 8–11 April 2015. <https://www.fairlabor.org/reports/petralex-honduras/>.

²¹ These included Box Seat Clothing, Dallas Cowboys Merchandising Ltd., Gear for Sports (including Under Armour under a licence agreement), Outerstuff (under licence from the Adidas Group) and VF Corporation.

²² FLA, *Summary Report: Third Party Complaint, Bienno S.A. Guatemala*, 11 May 2020. <https://www.fairlabor.org/reports/bienno-s-a-guatemala-summary-report/>.

had no grounds to proceed with the implementation of the RAP (FLA claimant, Guatemala City, Guatemala, 26 April 2022).

In short, in this final stage of the claims process, the results achieved were significantly influenced by both their social and, in particular, their corporate grounding. From a social perspective, complainants could deploy their networks to increase pressure on the brands and factories to provide remedies. But even more importantly, the complex interrelationships between brands and factories influenced outcomes in decisive ways that we are only just beginning to uncover.

5. Discussion of findings and implications for the future of complaints systems

There is a widely recognized “enforcement gap” in transnational private regulation of labour. Can complaints systems be part of the solution? Our empirical investigation of the FLA is the first detailed attempt to understand how a complaints system works in practice from the perspective of complainants. Given the scepticism about the FLA’s success in addressing labour rights issues more generally (see, for example, Sethi and Rovenpor 2016; Macdonald 2011; Anner 2012), it is somewhat surprising that our study found that the FLA complaints system did address cases in a way that was generally seen as valuable by complainants. As a bottom-up mechanism for signalling and addressing labour rights issues, it may therefore have some potential to close the enforcement gap.

We have, however, identified a number of critical flaws in the FLA complaints system that seriously undermine that potential. Considering these flaws sequentially, they can be categorized as problems related to (1) accessing the system, (2) the processing of accepted claims and (3) the adequacy of the results obtained by successful claimants. Section 4 identified a number of individual problems, but we now concentrate on how the FLA complaints mechanism’s operation and outcomes differed depending on localized contextual factors, using the concept of “grounding” (Graz 2022; Bartley 2022). We argue that this concept could be usefully unpacked into three key dimensions of national, social and corporate grounding.

Nationally, we have observed how the FLA system is unable to function effectively in countries with legal and political frameworks that do not allow genuine trade unions (for example, Viet Nam and China). The disconnect between the concentration of apparel production in those countries and the low number of complaints that they generate raises fundamental legitimacy concerns about the FLA system. In national contexts where legitimate trade unions do exist and state-based legal processes are seen as ineffective, the FLA system was considered valuable. However, complainants still need to have sufficient knowledge and expertise to access and then navigate the FLA system. Those with sufficient social capital are more likely to access the FLA system and put pressure on brands and factories to remedy rights violations, although we found that the FLA sometimes struggled to restrain the power of key corporate actors to frustrate the system during the investigatory process. Furthermore, even when cases were won, the implementation of remedies also depended

on the corporate dimension – that is, the attitudes of the individual factories and brands involved in the cases and their willingness to resist or enforce FLA judgments. The unevenness of outcomes reflects the FLA's struggle to control this dimension.

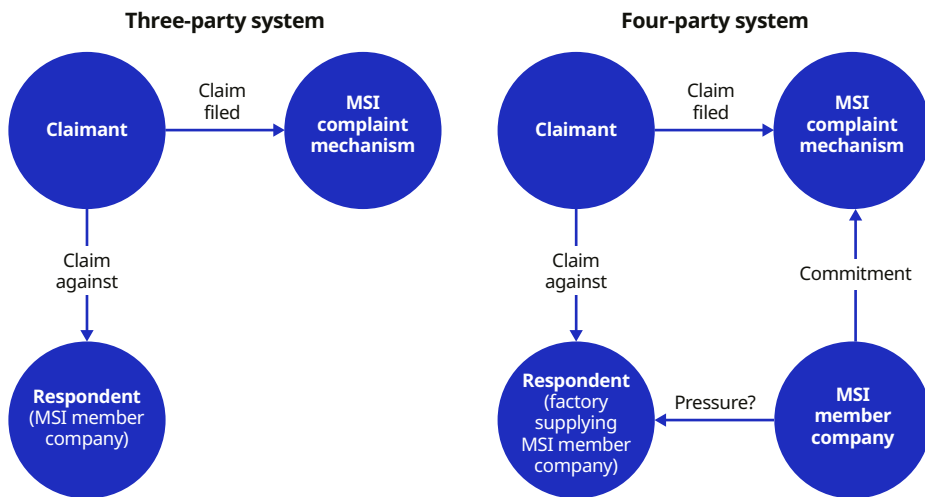
Unpacking the concept of grounding into these three dimensions draws precise and focused attention to what we would argue are the three key contextual factors influencing outcomes for workers. The national, social and corporate dimensions of grounding all need to be understood in order to reach fully informed opinions about complaints mechanisms. Previous studies of private governance initiatives that have applied the concept of grounding have not attempted to delineate its sub-elements so clearly and, we would argue, our typology enhances the explanatory potential of this concept in the future. We therefore encourage scholars studying other aspects of transnational private regulatory initiatives to consider the usefulness of these three dimensions.

Moving from the academic to the policy implications of our study, its bearing on the wider potential of using complaints mechanisms to bridge the enforcement gap in private governance initiatives hinges on two questions. First, how likely is an FLA-style complaints mechanism to produce outcomes that are valued by complainants in other GVC settings? And, second, could the limitations that we have found in the FLA system be overcome in the future?

On the first question, we have observed that harnessing brand power to pressure factories into compliance with labour standards is a necessary (although by no means sufficient) aspect of how the FLA complaints system functions. In other GVCs where complaints mechanisms involve complainants filing claims directly against sites of production and MSIs harnessing brand power to help address violations, complaints mechanisms could play a similar role. This finding is confirmed by our broader study of six MSI complaints mechanisms. In the two other MSI complaints mechanisms open to workers or their representatives that harnessed the power of brands to enforce labour standards in factories (the FWF and Bangladesh Accord), we found relatively high numbers of accepted claims that produced some significant benefits for workers. This is the case of 58 per cent of the claims submitted to the Bangladesh Accord and of 56 per cent of those submitted to the FWF, as opposed to 41 per cent for the FLA (Harrison and Wielga 2023). These figures suggest that this type of complaints system could potentially play a meaningful role. However, in contrast to our research on the FLA, we were unable to verify independently whether the complainants considered the outcomes from the Bangladesh Accord and the FWF to be valuable, having to rely instead on the MSIs' own view of whether remedy had actually been provided. Nevertheless, both of these complaints mechanisms systematically contact claimants to confirm that the remedy ordered has actually been applied (claims system representative, Zoom call, 18 June 2021; claims system representative, Zoom call, 21 December 2021).

We also studied three MSI complaints mechanisms in which claims are made against the member companies themselves, since they are directly responsible for the production process (RSPO, Bonsucro and the FSC). In these systems, not a single complaint was successful in obtaining the recognition of labour

Figure 1. Three- and four-party systems



Source: Authors' compilation.

violations or remedy for the claimants (Harrison and Wielga 2023; Wielga and Harrison 2021). Although we identified a number of other limitations in these three complaints systems, the main problem was that each MSI was seeking to enforce standards against its own (voluntary) members. It is therefore perhaps unsurprising that none of these MSIs made sufficient efforts to encourage workers to use their systems. Nor is it surprising that they were unable to address violations on the rare occasions that complaints were made (Harrison and Wielga 2023).

We would therefore argue that complaints mechanisms that involve what we term a “four-party system” have far greater potential to play a significant role in enforcing labour standards than “three-party systems” (see figure 1). In four-party systems (e.g. the FLA, FWF and Bangladesh Accord), complaints are made to the MSI (first party) by a complainant (second party), not against a member company (third party) but against a company (fourth party) operating a factory that supplies an MSI member through a global value chain. We define a three-party system as one where complaints are made to the MSI (party one) by a complainant (party two) against a member company (party three) for directly violating the MSI’s standards (e.g. the RSPO, FSC and Bonsucro).

There are, of course, other types of private complaints mechanism. The most common is the so-called “operational-level grievance mechanism” in which an employee or affected community member files a claim directly against the company that is allegedly violating their rights. This is in effect a “two-party system”, with the inherent weakness of having the company as the investigator, judge and jury. Virtually all the factories covered by the FLA, for instance, have factory-level complaints systems. Their recognized failings are a major reason for the FLA creating its own complaints mechanism.

Considering our FLA study in the context of our broader assessment of how other complaints mechanisms perform also provided some useful insights in relation to our second question. The other complaints systems that we studied appear to be performing better than the FLA in a number of key areas. For instance, on access to the system, the Bangladesh Accord (as it was formerly known) and the FWF do much more work to publicize their complaints systems and make them more easily accessible to a wider range of workers (Harrison and Wielga 2023). Amfori's supply chain grievance mechanism, which is currently being tested through a one-country pilot scheme, uses independent third-party investigators, allowing it to harness the power of the brands but ensuring that they are kept out of the investigation process.²³ Further research should systematically review existing practice in established and emerging complaints systems to identify elements of best practice that address the limitations that we have outlined in this article. These should then become fundamental attributes of any well-respected system. A critical part of this analysis will be to understand the cost of running such a complaints system. While such a system can look good on paper, outreach, independent and timely investigation, and taking action against reprisals all require significant funding if they are to function effectively.

Beyond this is the question of whether complaints mechanisms can go beyond individual violations and begin to address the root systemic (and endemic) problems in production processes as found in the apparel industry (Rossi, Luinstra and Pickles 2014). Can complaint proceedings lead to wider changes in the corporate culture of individual factories or even on a wider sectoral or national scale? Being a catalyst for this type of systemic change is certainly necessary if MSIs such as the FLA are to overcome fundamental concerns about the power of dominant stakeholders within their structures and their outcomes for more marginalized stakeholders, including workers (MSI Integrity 2020). Our study has identified limited examples of individual cases leading to broader changes, but further analysis is needed of the kind of institutional structures and practices that ensure that key lessons from cases are systemically internalized. This includes looking beyond the behaviour of production sites and tackling the power of the brands themselves, which are frequently part of the problem. It is widely recognized that it is often pressure from brands for cheap products and quick turnaround times that leads factories to reduce the costs and timescales of production and, in so doing, violate workers' rights (Anner 2019). If complaints mechanisms are to address the broader structural imbalances in GVCs, they cannot simply deal with individual complaints in isolation but must be the "canary in the coal mine", acting as catalysts for structural reform and ensuring brands pay their fair share to fix problems. Private governance initiatives must ensure that, in harnessing brand power to address individual complaints, they do not neglect the structural problems for which those same brands bear significant responsibility.

²³ See note 3.

6. Conclusion

Our exploration of the FLA's complaints mechanism has found, somewhat surprisingly, that it has often produced results that claimants using the system find valuable. But it also has fundamental flaws in terms of complainants' ability to access the system, navigate the complexities of the claims process and then obtain meaningful remedies. If these flaws are to be overcome in the FLA, as well as in the complaints systems of other private governance initiatives, then reformers need to pay serious attention to the national, social and corporate grounding of those systems. Unpacking the concept of grounding into these three dimensions may also be valuable for studies of other aspects of private regulatory initiatives in the future.

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