

Research Brief

No Rights Without Remedies – An Assessment of Corporate Remedy Channels

INTRODUCTION

The UN Guiding Principles for Business and Human Rights, adopted in June 2011, encourage corporations to express their commitment to human rights through formal policy statements. Fewer than 0.5% percent of the estimated 80,000 active multinational companies have done so.¹ Even among companies that have published such statements, however, a substantial number have yet to incorporate human rights commitments meaningfully into their business operations. We analyzed publicly available information from 369 companies that have made human rights commitments to assess how many of them have also established grievance mechanisms to identify and address human rights violations. We found that a quarter of corporations that publicly committed to respecting human rights lack any means to pursue remedies. Over half of the companies offer only ineffective remedy mechanisms. Almost six years after the adoption of the UN Guiding Principles, many corporations have yet to translate their policy commitments into meaningful action.

NO RIGHTS WITHOUT REMEDIES

Rights lack meaning without remedies.² Ideally, businesses will avoid human rights violations in the first place. But if preventative measures fail, companies should offer effective remediation to affected parties.

In assessing corporate remedy channels, we use Dinah Shelton’s definition of remedy as “the range of measures that may be taken in response

to an actual or threatened violation of human rights.” Such measures, Shelton writes, “embrace the substance of relief as well as the procedures through which relief may be obtained.”³ Remedies may take the form of apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions. They may also enable the prevention of harm through injunctions or guarantees of non-repetition.

TYPES OF CORPORATE REMEDY CHANNELS

Corporate remedy procedures vary depending on the company’s size, resources, location, and industry. Some companies invite grievances from their employees, some from external stakeholders such as civil society organizations in communities where they operate, and some accept grievances from both.

In our analysis of corporate remedy procedures we found that some corporations fully administer grievance mechanisms themselves, whereas others rely on third-party offices or institutions. Examples of such external resources include private law firms retained to manage complaints in lieu of corporations; Organization for Economic Co-operation and Development (OECD) representatives, who help ensure the effectiveness of the OECD Guidelines for Multinational Corporations; multi-stakeholders initiatives, such as the Fair Labor Association (FLA), which allows any stakeholder to report alleged violations perpetrated by companies that

have committed to the FLA's labor standards; and local industry-related associations.

Remedy channels take different forms. The most common mechanisms for handling complaints identified for both corporate structures and third-party offices/institutions are telephone hotlines, online forms, or email. Some companies have appointed an ombudsman for handling complaints or designated a corporate department to receive complaints.⁴ Some companies also conduct regular surveys to collect complaints; others invite external stakeholders to participate in open dialogues to discuss grievances.⁵

ASSESSMENT METHODOLOGY

Since its start in 2002, the Business & Human Rights Resource Center (BHRRRC) has tracked the public release of corporate human rights policies. In February 2017, it listed 369 companies with such policies. We used this database to analyze corporate websites, annual reports, and corporate social responsibility (CSR) reports. In particular, we looked for references to any type of grievance mechanisms. Our research is limited to publicly available information, but we consider this limitation acceptable because a grievance channel can function well only if it is publicly accessible. Unless grievance mechanisms are well-known and trusted, they will not be used by aggrieved parties.⁶ It is important to stress, though, that the implementation of a grievance mechanism does not automatically lead to the remediation of harm. Rather, such a step simply represents an important starting point.

ASSESSMENT RESULTS

According to our assessment, 272 out of the 369 companies provide information about grievance procedures on their corporate website. This means that about three-quarters of companies publicly committed to human rights have also established some form of grievance mechanism; one quarter have not.

A closer analysis, however, reveals that only 30 of the 369 companies supply information about grievance channels on their main corporate webpages. Easy access to information about filing grievances signals that a company considers the responsibility to be important (although it does not guarantee that complaints will be handled effectively).

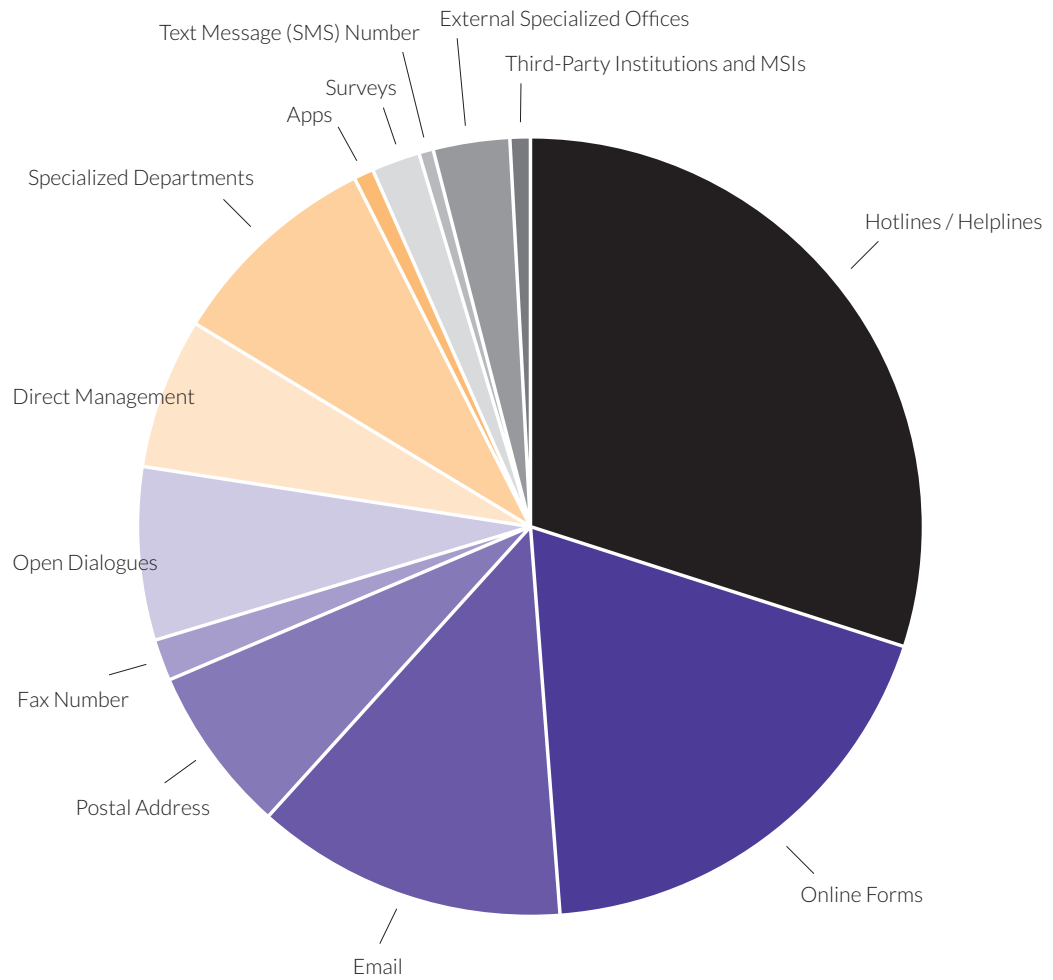
Currently, 184 companies make their grievance mechanisms available to employees as well as to stakeholders external to the company; 55 companies limit them to employees, and 33 companies do not specify their target group. Whether the grievance procedures that are exclusive to employees include workers in the supply chain is unclear. It is also unclear whether these grievance procedures serve primarily to resolve disputes over garden-variety human resource issues or are also used to address human rights issues outside the scope of human resources, such as land-rights issues or factory-safety concerns.

Of particular concern, 27 companies have designed their grievance mechanisms so that they cannot protect the anonymity of the person filing the complaint, which may deter potential victims from coming forward. Sixty-seven companies provide only one channel for filing grievances, which may limit victims' access. Eighty-four firms offer two grievance channels, and 121 corporations provide three or more alternatives for filing complaints.

DISCUSSION OF FINDINGS

The following pie chart breaks down the mechanisms found in our research:

Grievance Mechanisms by the type of Channel



Corporate human rights commitments are potentially more meaningful when companies present them alongside effective remedy procedures. Our assessment underscores that the adoption of a human rights policy marks only the beginning of a firm’s path to implement effective human rights due diligence. However, corporations must go beyond simply committing

to voluntary codes of conduct and take action to ensure sustained compliance with substantive international human rights standards, such as those contained in the Universal Declaration of Human Rights and subsequent treaties. Companies should also follow through on the affirmative commitment many have made to

respect human rights as articulated in the UN Guiding Principles for Business and Human Rights. Under the Guiding Principles' due diligence commitment, this entails developing industry-specific human rights standards, as well as monitoring mechanisms that can assess whether companies comply with the standards. In this context, grievances submitted through a remedy channel should be easier to assess because their eligibility has a clear reference point--namely, the industry standards.

Generally speaking, open dialogue and direct reporting to management can serve as important channels, but only if alternative procedures are also available. Victims may refrain from filing a complaint due to lack of privacy and fear of retaliation. Corporations, therefore, must provide channels that guarantee and preserve stakeholders' anonymity. It is discouraging that only six companies out of 369 cite third-party institutions—such as multi-stakeholder initiatives, trade unions, the OECD, or the FLA—as alternative remedy channels. Such outside institutions can provide affected parties with an important neutral avenue of redress. Only 47 companies explicitly state that an independent organization or office entirely handles their grievance process.

A poorly designed remedy mechanism can have a counterproductive effect on victims' grievances and a company's human rights performance. Unresolved grievances can aggravate the situation and further harm both the victim and the company's reputation.⁷ Resolving grievances successfully, by contrast, may help companies prevent and mitigate future human rights issues.

Finally, it is important to note that law and

regulation, enforced by judicial systems, provide a crucial form of remedy from outside of corporations. Part of what companies need to do is not undermine the role of governments as they seek to protect citizens by developing and enforcing those legal and administrative safeguards. Recent experience reflects an increasing tendency of companies and their advocacy groups to vigorously oppose many forms of government regulation. This trend is unfortunate. Absent the possibility of firm government enforcement, corporate remedies tend, as a practical matter, to be much weaker.

ENDNOTES

1. See the estimate of active MNCs in the World Investment Report from UNCTAD (2007), available here - http://unctad.org/en/Docs/wir2007_en.pdf
2. See, e.g., *Marbury v. Madison*, U.S. Supreme Court (1803).
3. Dinah Shelton (2015): *Remedies in International Human Rights Law*, Third Edition, Oxford, Oxford University Press, p. 17.
4. Most commonly, compliance, auditing, legal, and human resources departments handle complaints, but depending on its internal structure, a company may also task other departments.
5. Open dialogues can take the form of roundtables, discussion forums, workshops, seminars, one-on-one meetings, focus groups, audits, site visits, corporate open doors policies allowing parties to raise issues at any time, etc.
6. One criterion highlighted in the UN Guiding Principles for ensuring the effectiveness of a grievance mechanism is accessibility. As part of the corporate responsibility to respect human rights, grievance mechanisms should “be known to all stakeholder groups for whose use they are intended, and [provide] adequate assistance for those who may face particular barriers to access.” See United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (New York and Geneva: United Nations, 2011), 33, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
7. *Ibid.* 34