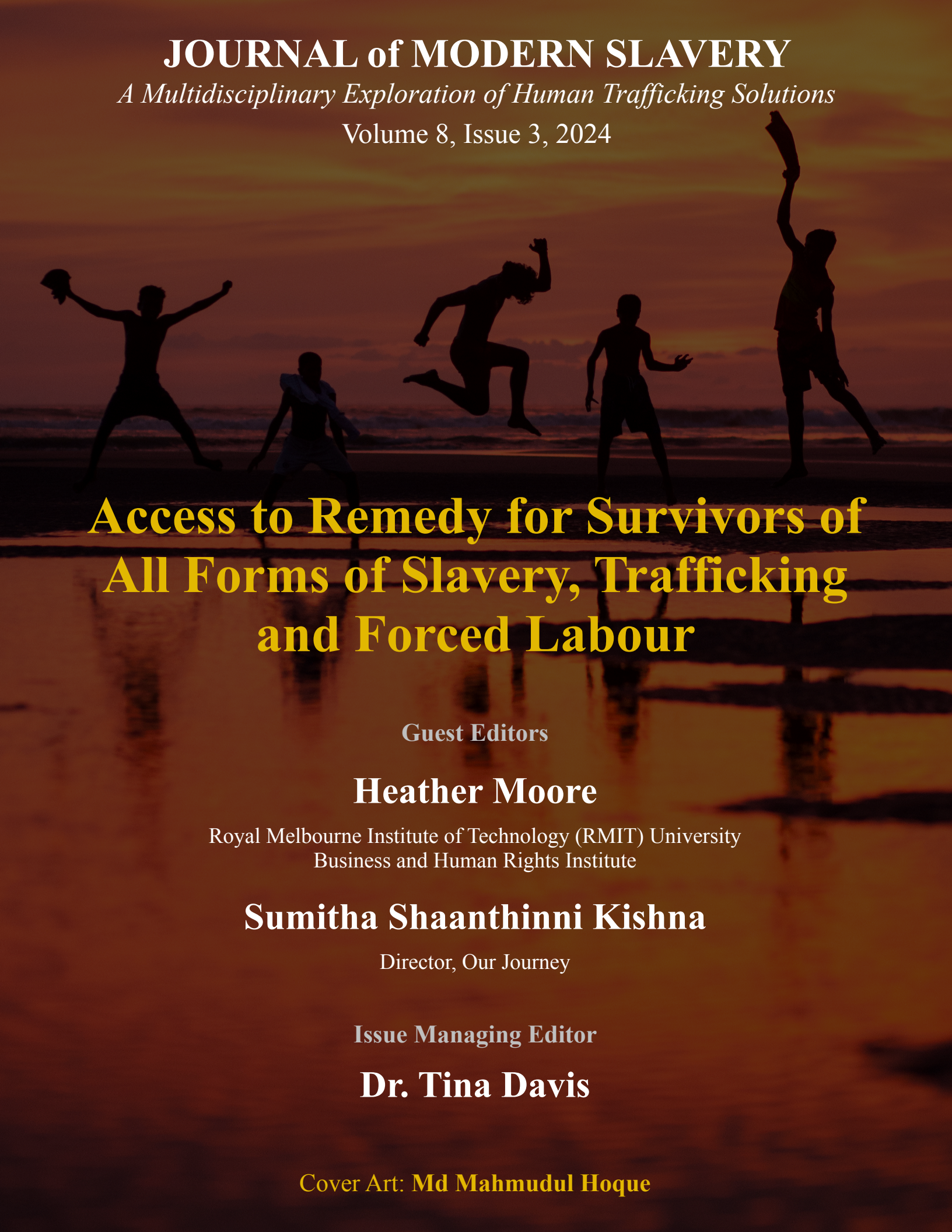


JOURNAL of MODERN SLAVERY

A Multidisciplinary Exploration of Human Trafficking Solutions

Volume 8, Issue 3, 2024



Access to Remedy for Survivors of All Forms of Slavery, Trafficking and Forced Labour

Guest Editors

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Royal Melbourne Institute of Technology (RMIT) University
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Access to Remedy – Our Greatest Failure, Our Biggest Opportunity

Heather Moore

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Access to remedy has recently come to the fore of public debates around contemporary forms of slavery. This is particularly so in the context of business responses to labour abuses in global supply chains, propelled mainly by ‘modern slavery’ and mandatory human rights due diligence laws, as well as increasing shareholder activism and now measures to stop the importation of goods made with forced labour (i.e. import bans). Despite the focus on business and supply chains, this fundamental right has long been enshrined in numerous international frameworks addressing the myriad forms of what we now call modern slavery and the rights of workers vulnerable to labour exploitation and indecent work. Individually, these aim to address the uniqueness of different forms of serious labour exploitation, from forced labour to human trafficking to slavery. Other instruments target related issues, including indecent work, unfair recruitment and the need to protect distinct groups who are vulnerable to exploitation, such as domestic workers.

While it is positive to have the right to remedy so strongly and consistently asserted across these different instruments, it may have unintentionally caused confusion about what the term means and to whom it is owed. Thus, it is an opportune time to revisit key questions regarding this often overlooked, but absolutely critical component of any effective response to modern slavery and related practices: What do we mean by remedy? What constitutes effective remedy? Who decides? Moreover, who *should* decide and do they have a seat at the proverbial table? How do we deploy remedy as more than just a correction of harm, but as a strategy in itself to deter and prevent future exploitation and mistreatment? And how do we know if we have accomplished that?

The intention behind this Special Issue was to critically examine remedy across contexts; however, as readers will see, the majority of our articles focus on slavery, human trafficking and labour exploitation in business supply chains. While this is a limitation, this collection still adds much needed clarity and depth to the conversation about remedy. These articles offer firsthand accounts from the perspective of people impacted by modern slavery and provide critical analyses of various anti-exploitation/anti-slavery instruments, suggesting feasible ways to reshape these instruments to improve access to remedy for affected parties.

The articles in this collection give an excellent overview of remedy at multiple points across the continuum of exploitation and provide a fresh reminder of the possibilities for prevention if remedy is applied before inappropriate workplace conditions devolve into more serious, criminal forms of exploitation. Several articles accentuate the role of the State to ensure meaningful access to remedy and to ensure laws are designed and enforced to hold lawbreakers

to account and ensure meaningful access to judicial and non-judicial grievance mechanisms and remedy.

We are also reminded that regardless of our involvement in the struggle against human exploitation, the right of harmed individuals to receive remedy, is something that unites and connects us. Without remedy, there can be no justice; and it is, after all, a just world that we are all seeking.

What is remedy?

The definition of remedy can be confusing, particularly for those confronting these issues for the first time. Stakeholders of different persuasions use the word interchangeably with terms such as ‘response’ and ‘address’. Sometimes these terms relate to the harm caused; other times they relate to the causes of harm. In other contexts, the notion of remediation is taken as something much more abstract, particularly in business contexts, where firms respond to modern slavery as a broad challenge or as regulatory requirement. Even within the academic scholarship, we see great variation in how researchers frame the term—a point we will return to in a moment. Similarly, when we talk about those who are entitled to remedy, we use a range of terms such as ‘rightsholders’, ‘workers’, ‘affected parties’, ‘victims’, and ‘survivors’. The latter two terms are often joined as ‘victim-survivors’ to simultaneously recognise different types of modern slavery as victim-based crimes; and the triumph of survivors over adversity. These are not necessarily mutually exclusive, and it is important to acknowledge that someone who has experienced slavery or slavery-like conditions may identify as any or all of the above. Indeed, taking this into due consideration may illuminate not only what is remedy, but the various points along the continuum of exploitation that remedy may be delivered.

Remedy is defined and scoped in several primary international frameworks concerned with the rights of people affected by modern slavery and the responsibilities of States and business to respect and protect those rights. Beginning with the former, the UN Office of the High Commissioner for Human Rights’ Recommended Principles and Guidelines on Human Rights and Human Trafficking¹ (**OHCHR Recommended Principles**) and the Dhaka Principles for Migration with Dignity (**Dhaka Principles**) both set out the rights of victim-survivors of human trafficking and migrant workers.

The OHCHR Recommended Principles assert the international legal right of trafficked persons to adequate and appropriate remedies. They stipulate that States and, where applicable, intergovernmental and non-governmental organisations, should consider: (1) ensuring that victims of trafficking have an enforceable right to fair and adequate remedies; (2) providing information as well as legal and other assistance to enable trafficked persons to access remedies; and (3) making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative

¹ UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1 (Geneva: United Nations, 2002), <https://www.ohchr.org/documents/publications/traffickingen.pdf>.

proceedings.² This latter point is particularly crucial for migrant or seasonal workers whose right to work and remain legally in a destination country is connected to their employer. The ninth component of the Dhaka Principles provides that migrant workers should have access to judicial remedy and to credible grievance mechanisms without fear of recrimination or dismissal.

Turning to the obligations of business, the United Nations Guiding Principles (UNGP) on Business and Human Rights³ assert that business has a responsibility to ‘counteract or make good’ those human rights violations to which they contribute or which they cause directly and that remedy should be decided in consultation with affected parties. The UNGPs set out a broad scope for remedy that may involve a range of actions from a formal apology, restitution and rehabilitation to management-level changes, financial compensation and preventative measures.

Similarly, the OECD Due Diligence Guidance on Responsible Business Conduct (OECD Guidance)⁴ stipulates that the provision of remedy is a critical process that business due diligence should enable and support. Providing practical support for the implementation of the OECD Guidelines for Multinational Enterprises (MNEs), the OECD Guidance describes methods to determine appropriate remedy and a range of remediation mechanisms, including legal processes, global framework agreements and non-judicial state-based grievance mechanisms, such as OECD National Contact Points.

Beyond obligations on business, States’ duty to ensure access to remedy is enshrined in international law, including for example, the United Nations Convention Against Transnational Organized Crime, the International Covenant on Civil and Political Rights, and the Protocol of 2014 to the Forced Labour Convention, 1930 (No 29) (**Forced Labour Protocol**).

Together these frameworks, supported by numerous expert guidance, provide a robust and holistic expression of effective remedy, which for clarity and simplicity, may be distilled into four key elements: agency and self-determination; safety; compensation; and economic security.

Agency and Self-determination

The act of restricting someone’s freedom and self-determination to exploit their labour is, in itself, the deprivation of agency. Thus, it follows that the first act of remedy must be to restore that agency. Indeed, as the Global Business Coalition against Human Trafficking asserts, supporting a survivor to reclaim “autonomy, confidence, and decision-making skills [are] key components of survivor empowerment programs.”⁵

² *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 12.

³ UN Office for the High Commissioner of Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, (Geneva: United Nations, 2011). https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

⁴ OECD, *OECD Due Diligence Guidance on Responsible Business Conduct*, (OECD, 2018), <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

⁵ Global Business Coalition Against Human Trafficking, *Empowerment and Employment of Survivors of Human Trafficking A Business Guide*, (GBCAT, 2020), 10, <https://www.gbcat.org/survivor-empowerment-and-employment>.

The primacy of worker agency is reflected in the Principles for Worker-driven Remedy, which are featured in this Special Issue.⁶ The second of these Principles asserts that effective remedy places rightsholders at the core of remediation processes. This Principle further asserts the determination of appropriate remedy should not be a top-down process, but rather, should be based on the rights of those directly affected by the harm, including workers and communities. Similarly, Principle 7 asserts workers' freely chosen trade unions or other worker representatives should have a formal role in the entirety of the remedy process, including the design, governance, implementation, and monitoring of remedy mechanisms.

Focusing on another point on the exploitation continuum, IMPACTT asserts that worker agency and participation in the repayment process [of recruitment fees] are critical to any best practice approach, stating: “rather than being passive recipients of payments that have been determined by other stakeholders, it is important for workers to be involved across all key stages of the repayment process, including investigation, repayment calculation, and verification. A lack of meaningful worker agency or social dialogue limits the robustness of the repayment process and may therefore significantly limit the overall effectiveness of the intended remedy.”⁷

Also supporting this is the Ethical Trading Initiative's (ETI) recommended remedy process, the first step of which recommends consultation with affected workers.⁸ Regarding child labourers, ETI recommends businesses should consult with the child and their family to understand their wishes and needs.

Speaking on grievance mechanisms, Anti-Slavery International stipulates “migrant workers, or their credible representatives, should be engaged and have agency in the grievance mechanism process – from design to oversight.”⁹ Similarly, ETI recommends consultation with workers and with key stakeholders to effectively design, revise and monitor grievance mechanisms. Further still, the Working Group on Business and Human Rights stipulates that all grievance mechanisms should be at the service of rightsholders, who should be consulted meaningfully in creating, designing, reforming and operating such mechanisms.¹⁰

⁶ Martina Trusgnach, Olga Martin-Ortega and Cindy Berman, “Towards Worker-Driven Remedy: Advancing Human and Labour Rights in Global Supply Chains,” *J of Modern Slavery* (April 2024).

⁷ IMPACTT, *Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees and Related Costs*, (IMPACTT, 2021), 3, <https://impacttlimited.com/principles-for-repayment-of-recruitment-fees/>.

⁸ Cindy Berman, Ben Rutledge, and Samir Goswami, *Access to Remedy – Practical Guidance for Companies*, (Ethical Trading Initiative, 2019), 13, https://www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf.

⁹ Anti-Slavery International, *Migrant Workers' Access to Remedy: A Briefing Paper for Business*, (Anti-Slavery International, 2022), 11, https://www.antislavery.org/wp-content/uploads/2022/02/ASI_AccessToRemedy_Report.pdf.

¹⁰ Working Group on Business and Human Rights, *Report on Access to Effective Remedy for Business-related Human Rights Abuses A/72/162* (17 July 2017), 8, <https://www.ohchr.org/en/documents/thematic-reports/a72162-report-access-effective-remedy-business-related-human-rights>.

Safety

A key indicator of slavery, forced labour, human trafficking and related conditions is physical and psychological threats. Thus, victims and affected parties need to feel safe and not be put at further risk as a result of any remediation or investigative process (by business, law enforcement or otherwise). Importantly, as noted by the Institute for Human Rights and Business (IHRB), if workers do not feel they can report grievances safely and confidentially, they will not report their experiences and exploitative practices will continue.¹¹ This is also recognised in OHCHR Guideline 5, which asserts that many victims are reluctant to report because of the absence of any effective protection mechanisms and the corruption or complicity of law enforcement officials in trafficking crimes.¹² Further to this point, ETI advises that when reporting to police, businesses should ensure that this does not put workers' safety at risk and that workers will not be subjected to further punishment or ramifications if the police are known to be corrupt or in alliance with the perpetrators of the crime.¹³

The OHCHR Recommended Principles emphasise safety as a key component of remedy.¹⁴ Principle 6, for example, stipulates that trafficked persons should be protected from further exploitation and harm and have access to adequate physical and psychological care. Recognising that the trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked, Guideline 6 also stipulates that appropriate protection and support should be extended to all trafficked persons without discrimination, including safe and adequate shelter. Similarly, IMPACTT stipulates that all stakeholders involved in repayment must take steps to ensure that all workers *and* their families are protected from harm and retaliation throughout that process.¹⁵

Compensation

As contributors to this issue note¹⁶, if reporting workplace abuses does not result in recovery of wages, workers will not trust the systems that purport to uphold their rights and there will be little impetus to access grievance mechanisms or report crimes to authorities and regulators. Therefore, as ETI asserts, effective remedy must provide or facilitate workers' access to compensation, including for lost earnings, unpaid wages as well as for pain and suffering.¹⁷

¹¹ Institute for Human Rights and Business, *Responsible Recruitment: Remediating Worker-Paid Recruitment Fees*, (IHRB, 2017), 20, <https://www.ihrb.org/focus-areas/migrant-workers/remediating-worker-paid-recruitment-fees>.

¹² *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 7.

¹³ *Access to Remedy – Practical Guidance for Companies*, 13.

¹⁴ *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 8, 10.

¹⁵ *Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees*, 5.

¹⁶ Karen Stauss and Samantha Rudick, "A Case Study in the Mauritian Garment Industry: the Promise and Challenge of Securing Effective Remedy," *J of Modern Slavery* (April 2024).

¹⁷ *Access to Remedy – Practical Guidance for Companies*, 13.

As discussed earlier, both the UNGP and the OECD Guidelines specifically name compensation as a key element of remedy;¹⁸ and the Palermo Protocol and Forced Labour Protocol require States parties to provide access to compensation.

The International Organization for Migration (**IOM**) further states that financial assistance may be particularly important when the aggrieved party has not received any payment and/or has incurred debts to secure their job, for instance, to pay recruitment fees.¹⁹ IMPACTT explains that repayment of recruitment fees and costs “can and does ameliorate or even remove entirely situations of severe debt bondage that contribute to forced labour and modern slavery-like situations.”²⁰

Economic Security

Relatedly and finally, affected parties must have access to assistance to secure new employment so they do not experience undue economic insecurity as a result of their exploitation being reported or discovered. Research with migrant workers has revealed the fear of losing access to income and right to work as a key barrier to reporting workplace abuses and exploitation.²¹ Indeed, the International Transport Workers Federation (**ITF**) found that crew have often been reluctant to raise grievances due to fears about being blacklisted or banned from future employment.²²

In the first instance, workers should be protected from such retaliation. However, where the discovery of workplace violations results in loss of employment, effective remedy should include work and income security for affected parties. For example, ETI recommends providing support for affected workers to find alternative employment as a key component to remedy.²³ In cases involving child victims, they recommend businesses offer the child’s job to a qualified adult member of the family. Echoing this are contributors to this issue who assert that “sustainable remediation programs focus not only on immediate removal from exploitation and

¹⁸ *Guiding Principles on Business and Human Rights*, 27; *OECD Due Diligence Guidance on Responsible Business Conduct*, 91.

¹⁹ International Organization for Migration, *Operational Guidelines for Businesses on Remediation of Migrant Worker Grievances*, (IOM, 2021), 4, <https://publications.iom.int/books/operational-guidelines-businesses-remediation-migrant-worker-grievances>.

²⁰ *Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees*, 2.

²¹ Marie Segrave, *Exploited and Illegal: The Impact of the Absence of Protections for Unlawful Migrant Workers in Australia*, (Melbourne: Monash University, 2017); Bassina Farbenblum and Laurie Berg, *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages In Australia*, (Migrant Worker Institute: Sydney, 2018), <https://www.migrantjustice.org/highlights/wage-theft-in-silence>.

²² International Transport Workers Federation, “ITF wins back \$1.7 million in owed wages as more seafarers abandoned”, *ITF Seafarers* (3 December 2020), <https://www.itfseafarers.org/en/news/itf-wins-back-17-million-owed-wages-more-seafarers-abandoned>.

²³ *Access to Remedy – Practical Guidance for Companies*, 13.

rehabilitation but also on ensuring the social reintegration, education, vocational training, and economic empowerment of survivors.”²⁴

As readers will see, our first article in this Special Issue is by a survivor advocate who proposes a conceptualisation of remedy that is not explicitly captured in predominant frameworks and guidance: that is, “relational remedy.”²⁵ As distinct from worker-centred remedy, relational remedy implies something deeper and more personal. As the author explains, relational remedy involves holding ourselves accountable to engage with persons affected by modern slavery as human beings. While remedy may be conceptualised and imparted in different ways to different people at different points on the exploitation continuum, remediation is most effective when it is kind, empathic, responsive and respectful.

Developments in the Discourse on Remediation

Despite its importance and ubiquity in international human rights frameworks, progress on remediation has evolved slowly. This is not for want of trying; many stakeholders, including several contributors to this Special Issue have been at the forefront of efforts driving a more vigorous global conversation about right to remedy in their respective jurisdictions and contexts. The growing evidence revealing the limitations of third-party audits²⁶, of worker-feedback technologies²⁷, and corporate voluntary measures²⁸ have also magnified the urgency for change and may serve to foster greater engagement from duty bearers.

One area of notable progress has been recruitment fees, often linked with debt bondage—the most common form of modern slavery in the world today. A growing number of businesses

²⁴ Silvia Mehra and Hem Bahadur Moktan, “Rehabilitation and Reintegration of Child Labor and Trafficking Survivors: A Case Study of Nepal GoodWeave Foundation's Transit Home “Hamro Ghar,” J of Modern Slavery, (April 2024).

²⁵ Sarah S, “Remedy as Relational,” J of Modern Slavery (April 2024).

²⁶ Jolyon Ford and Justine Nolan, “Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains: The Discrepancy between Human Rights Due Diligence and the Social Audit,” *Australian Journal of Human Rights* 26, no. 1 (January 2020): 27-45, <https://doi.org/10.1080/1323238X.2020.1761633>; Amy V. Benstead, Lisa C. Hendry and Mark Stevenson, “Detecting and Remediating Modern Slavery in Supply Chains: A Targeted Audit Approach,” *Production Planning & Control* 32, no. 13 (2020): 1136-1157, <https://doi.org/10.1080/09537287.2020.1795290>; Transparentem. *Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform*, Transparentem (2020), <https://transparentem.org/wp-content/uploads/2021/09/Hidden-Harm-Audit-Deception-in-Apparel-Supply-Chains-and-the-Urgent-Case-for-Reform.pdf>.

²⁷ Lisa Rende Taylor and Elena Shih, “Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains: Examining the Effectiveness of Remediation-oriented and Due-diligence-oriented Technologies in Identifying and Addressing Forced Labour and Human Trafficking,” *Journal of the British Academy*, 7 (2019): 131–165, <https://doi.org/10.5871/jba/007s1.131>; Laurie Berg, Bassina Farbenblum, and Angela Kintominas, “Addressing exploitation in supply chains: Is technology a game changer for worker voice?” *Anti-Trafficking Review* 14, no.14 (2020): 47-66, <https://doi.org/10.14197/atr.201220144>.

²⁸ Jessica Decker Sparks, Lee Matthews, Daniel Cárdenas and Chris Williams, “Worker-less Social Responsibility: How the Proliferation of Voluntary Labour Governance Tools in Seafood Marginalise the Workers They Claim to Protect,” *Marine Policy* 139 (2022): 1-14, <https://doi.org/10.1016/j.marpol.2022.105044>; Genevieve LeBaron, Remi Edwards, Tom Hunt, Charline Sempéré and Peneope Kyritsis, “The Ineffectiveness of CSR: Understanding Garment Company Commitments to Living Wages in Global Supply Chains,” *New Political Economy* 2 (2020): 95-115, <https://doi.org/10.1080/13563467.2021.1926954>.

have taken on illegal recruitment fees as a key component of their broader human rights commitment to provide decent work. Fair recruitment is the basis for numerous international concepts and frameworks, including the Employer Pays Principle²⁹ and the 2019 ILO framework on Recruitment Fees and Costs. These have provided necessary clarity for business on the nature and characteristics of these issues, which supports companies to improve their remediation strategies and enables others to hold them to account.

Still, it is puzzling that access to remedy in all its forms has not received a front row ticket in the deliberations about how to “fight” modern slavery. Rather, in this author’s experience, remedy has often been left as an afterthought or secondary to primary interventions such as prosecution and supply chain monitoring. At times, it even feels like remediation takes a backseat to the popular, and somewhat easier, interventions of raising awareness and capacity building. This may be, amongst other reasons, because remedy is commonly perceived as an outcome; and measurable, impactful outcomes are difficult to achieve, especially in the broad and varied context of modern slavery. It is far easier to occupy oneself and one’s organisation with the process of “doing”, regardless of whether it achieves anything. Imagine what we might achieve if we reconceptualised remedy as something more than an outcome, but also as a strategy—something that, if done well, at scale, could achieve systemic and structural change in the struggle against contemporary slavery and labour exploitation?

In the absence of remedy, other strategies falter

Despite the multiple instruments to slavery and slavery-related conditions, the Protocol to Suppress Trafficking in Persons [**Palermo Protocol**]³⁰ dominated States’ response to this issue across the early 2000s. While the Palermo Protocol assigns equal importance to prevention, protection and prosecution, the majority of signatories built their national responses on a criminal justice approach, many of which focused only on sex trafficking; thereby neglecting or failing to balance these obligations. This is perhaps best illustrated by the fact that in most countries, access to support, including various remedies, is contingent on participating in the criminal justice process, regardless of the victim-survivor’s wishes or needs. In some countries, it is contingent on a criminal justice *outcome*, which is well beyond any victim’s control and has nothing to do with a person’s status as a victim of crime. If prosecutions were having a demonstrable impact in deterring crime, one may argue (albeit with some difficulty) that these conditions may be worthwhile; but the facts do not bear this out.³¹

²⁹Institute for Human Rights and Business and Leadership Group for Responsible Recruitment, *Six Steps to Responsible Recruitment: Implementing the Employer Pays Principle*, (IHRB, 2017), https://www.ihrb.org/uploads/member-uploads/Six_Steps_to_Responsible_Recruitment_-_Leadership_Group_for_Responsible_Recruitment.pdf.

³⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

³¹ ILO, Walk Free and International Organisation for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, International Labour Organisation (ILO) (Geneva: United Nations, 2022); UNODC, *Global Report on Trafficking in Persons*, (Geneva: United Nations, 2023).

The Global Estimates of Modern Slavery, indicated that 50 million people were living in modern slavery in 2021, including 28 million in forced labour, and that this number is rising. In contrast, only 5,600 human traffickers were convicted worldwide—a small increase from the year before but still much lower than in the years prior to the COVID-19 pandemic.³² The UN Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons 2022 found a “global slow-down” for convictions, noting the number of convictions recorded globally has declined by about 44 per cent since 2017. While focused strictly on trafficking in persons, the numbers provide compelling insight into the overall success rate of prosecutions.

More than twenty years on from Palermo, the data suggest criminal justice interventions are not deterring human trafficking at scale. Convictions are costly and difficult; criminals, perceiving a low-risk operating environment, continue to offend; and victim-survivors are dragged through years of traumatic proceedings, where their character is systematically attacked, often for very little gain. Where there is lack of will or evidence, other survivors are denied the opportunity to have their day in court, compounding the sense of injustice and being silenced. How do these individuals access remedy?

In light of the limitations of “leading with the law”, what might we achieve by “leading with remedy”? Principles of procedural justice tell us that the *process* by which justice is achieved is more important than the *outcome* of a case—a point asserted by our first author.³³ As she asserts, remedy is a process of healing through a series of inter-personal relationships and interactions. Victim-survivors’ perceptions of justice are influenced by opportunities to be involved in the decisions that affect them, by meaningfully participating in the systems meant to help them, and by having a voice and expressing their experiences in their own time and in their own way.

Rather than thinking of prosecution as facilitating remedy, how might things be different if we conceptualised remedy as a *means* to enhance the prospects of successful prosecution? As a means to enhance the credibility of the criminal justice system itself? The principle of open justice asserts that to be done, justice must be seen to be done.³⁴ Perhaps if victims of slavery crimes and labour rights violations around the world saw other victims being treated with fairness, dignity, and respect by the systems meant to protect them, more crimes and violations would be reported, more evidence could be gathered, more victims could bear the pressures of trial. In such circumstances, remedy could become the ultimate deterrent.

More recently, with the advent of modern slavery laws, more attention has been drawn to the role of business in addressing serious labour exploitation. Pushing traditional labour governance into the territory of business relations in supply chains, these laws have undeniably shifted corporate understanding of and responsibility for modern slavery. Despite this progress, however, remediation has largely remained an afterthought, situated behind risk assessments and

³² Statista Research Department, *Total Number of Convictions Related to Human Trafficking Worldwide from 2007 to 2022*, <https://www.statista.com/statistics/459622/number-of-convictions-related-to-human-trafficking-worldwide/>.

³³ Sarah S, “Remedy as Relational”.

³⁴ James Spigelman, “Seen to Be Done: The Principle of Open Justice,” *Australian Law Journal* 74 (2000) as cited in Jason Bosland and Jonathan Gill, “The Principle of Open Justice and the Judicial Duty to Give Public Reasons” *Melbourne University Law Review* 38, no. 2 (2014): 482-584. <https://www.proquest.com/docview/1661349518/fulltextPDF/484E9D64271C4BF9PQ/1?accountid=30812&sourcetype=Scholarly%20Journals>.

mitigation strategies. Taking the Australian Modern Slavery Act as one example, government-led consultations and parliamentary deliberations concentrated on how far business could be pushed; in comparison, there was far less consideration for what business would or should do once charged with the obligation to seek out and find slavery in their supply chains. This guidance would not come until many months after the Act was passed and as contributors to this Special Issue demonstrate, there is still great confusion about how to establish effective remediation processes.³⁵

As these authors demonstrate, modern slavery laws are not yielding effective remedy on scale, nor are they necessarily leading firms to successfully detect modern slavery—a point we will return to momentarily.³⁶ Numerous public guidance³⁷ provides direction on remediation; however, because these laws do not bind firms to a particular standard or outcome, the nature and disclosure of any remedy provided is completely voluntary—a point made by several contributors to this issue. Advocates for mandatory human rights due diligence laws recognise this, but cases like Nevsun³⁸ and Tesco/Intertek³⁹ demonstrate the extreme challenges rightsholders face in accessing justice through lengthy, complex, international litigation. Here again, we must take steps to strengthen faulty strategies to prioritise remedy and avoid over-reliance on those that, while worthwhile and necessary, have considerable limitations.

Turning to another articles in this Special Issue, the newest experiment in fighting forced labour is ‘import bans’—a mechanism of customs enforcement born out of the United States that allows customs officials to temporarily withhold imports suspected to have been made with forced labour. While this is proving to have some positive effects on business behaviour and government responsiveness,⁴⁰ the stories of affected workers reveal the corrective actions taken by firms to have these orders lifted are only rarely providing appropriate and lasting remedy for affected parties. As the authors explain, customs officials defend this strategy as not intending to deliver remedy to individuals, which raises the question: why not?

Of course, remedy alone cannot deter criminal or unethical conduct. It is not a panacea and as the above discussion explains, we must continue to experiment with a suite of strategies

³⁵ Samuel Pryde, Justine Nolan, Shelley Marshall, Andrew Kach, Martijn Boersma, Fiona McGaughey and Vikram Bhakoo, “Understanding Remedy under the Australian Modern Slavery Act: From Conceptualisation to Provision of Remedy,” *J of Modern Slavery* (April 2024).

³⁶ Pryde et al, “Understanding Remedy.”

³⁷ See generally *Access to Remedy – Practical Guidance for Companies; Migrant Workers Access to Remedy; Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees*; Australian Government, *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities* (May 2023), <https://modernslaveryregister.gov.au/resources/>; Walk Free, Human Rights Resources and Energy Collaborative, 2021. Walk Free and Human Rights Resources and Energy Collaborative, *Modern Slavery Response and Remedy Framework*, <https://www.walkfree.org/reports/modern-slavery-response-remedy-framework/>.

³⁸ *Nevsun Resources Ltd. v. Araya*, Supreme Court of Canada [220] 1 SCR 166 Case No 37919. 2020 SCC 5.

³⁹ Emily Dugan, “Workers in Thailand Who made F&F Jeans for Tesco ‘Trapped in Effective Forced Labour’,” *The Guardian*, December 19, 2022, https://www.theguardian.com/business/2022/dec/18/workers-in-thailand-who-made-ff-jeans-for-tesco-trapped-in-effective-forced-labour?CMP=Share_iOSApp_Other.

⁴⁰ Archana Kotecha and Nawin Santikarn, “How Import Bans Affect Access to Remedy for Individuals Affected by Forced Labour,” *J of Modern Slavery* (April 2024).

that match the incredible complexity and diversity of contemporary forms of slavery. What is clear, however, is that as long as criminal justice processes, modern slavery laws, import bans and other strategies do not embed and prioritise access to remedy—in its various forms—they will continue to have limited effect. It is time for a reconceptualisation of remedy—as more than a way to correct isolated instances of exploitation, to become a weapon against exploitation...a powerful tool to change the status quo.

Remedy in the Literature

The concept of remedy is not new to many fields of study, including law, human rights and social justice. Across these literatures, scholars have examined the right to remedy as set out under various national and international legal frameworks.⁴¹ They have tested and documented innovative means to secure remedy for affected workers, such as strategic litigation; and in doing so have held a range of perpetrators to account, from multi-national companies to senior diplomats and consular officials.⁴²

Others have identified how alternative forms of justice (i.e. restorative, procedural and transitional) can complement or compensate for traditional justice system remedies⁴³; and the growing body of literature on worker-driven social responsibility is becoming a game-changer in reconceptualising what effective remedy looks like.⁴⁴ Leading non-governmental organisations, including contributing authors to this Special Issue, have leveraged their own experience at the

⁴¹ Josephine Suchecki, “Remedies for Victims of Human Trafficking under the Palermo Protocol and United Nations Basic Principles: A Case Study Analysis,” *Notre Dame J. Int’l Comp. L.* 9, no. 1 (2019): 1-31, <https://scholarship.law.nd.edu/ndjicl/vol9/iss1/8>; Anne T. Gallagher, “The Right to an Effective Remedy for Victims of Trafficking in Persons: A Survey of International Law and Policy,” Paper submitted for the expert consultation convened by the UN Special Rapporteur on Trafficking in Persons, especially women and children, Ms. Joy Ngozi Ezeilo on: ‘The Right to an Effective Remedy for Trafficked Persons’, Bratislava, Slovakia (22 -23 November 2010), https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf.

⁴² Dan Werner and Kathleen Kim, *Civil Litigation on Behalf of Victims of Human Trafficking*, Immigrant Justice Project Southern Poverty Law Center; (2008), <https://humantraffickinghotline.org/sites/default/files/Civil%20Litigation%20on%20Behalf%20of%20Trafficking%20Victims.pdf>; Martina E Vandenberg and Sarah Bessell, “Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States,” *Duke J. Comp. & Int’l L.* 26 (2016): 595-633, <https://scholarship.law.duke.edu/djcil/vol26/iss3/6>.

⁴³ Lilly Yu, Jeanette Hussemann, Hanna Love, Evelyn McCoy, and Colleen Owens, *Alternative Forms of Justice for Human Trafficking Survivors: Considering Procedural, Restorative and Transitional Justice* (2018), https://www.urban.org/sites/default/files/publication/97341/alternative_forms_of_justice_for_human_trafficking_survivors.pdf; Maximilian J.L. Schormair and Lara M. Gerlach, “Corporate Remediation of Human Rights Violations: A Restorative Justice Framework,” *Journal of Business Ethics* 167, (2020): 475-493, <https://doi.org/10.1007/s10551-019-04147-2>.

⁴⁴ Grace Ann Rosile, David M. Boje, Richard A. Herder and Mabel Sanchez, “The Coalition of Immokalee Workers Uses Ensemble Storytelling Processes to Overcome Enslavement in Corporate Supply Chains,” *Business & Society* 60, no.2 (2021): 376-414. <https://doi.org/10.1177/0007650320930416>; Opi Outhwaite and Olga Martin-Ortega, “Worker-Driven Monitoring – Redefining Supply Chain Monitoring to Improve Labour Rights in Global Supply Chains,” *Competition & Change* 23, no. 4 (August 2019): 378-396. <https://doi.org/10.1177/1024529419865690>; Juliane Reinecke and Jimmy Donaghey, “Towards Worker-Driven Supply Chain Governance: Developing Decent Work through Democratic Worker Participation,” *Journal of Supply Chain Management* 57, no.2 (2021): 14-28, <https://doi.org/10.1111/jscm.12250>.

front line to provide insights on how to improve access to remedy in both the grey and peer-reviewed literature.⁴⁵

In contrast, the business and management literature has been criticised for its lack of attention to modern slavery.⁴⁶ While this is changing with the relatively recent and increasing focus on ‘modern slavery in supply chains’ (MSSC), leading scholars refer to the study of modern slavery within the business and management discipline as “highly underdeveloped” and a “non-field.”⁴⁷ Noting advancements from within the supply chain management (SCM) literature, they observe SCM scholarship still requires a fundamental rethink to appropriately conceptualise and understand modern slavery challenges, including, among others, remediation.

A particular gap is critical scholarship regarding the application by firms of normative frameworks that set out obligations to remediate, such as those discussed earlier. Here, there is very limited empirical research exploring how firms judge their obligations to remedy; what, if any, remedy is delivered; to what extent affected parties are involved in these decisions; and the outcomes of remedy when provided.

For instance, the UNGPs contend that firms cannot deny their responsibility to act and that responsibility transcends commercially-focused interventions to include worker-focused or victim-focused interventions.⁴⁸ More specifically, the expectation is that responses to a human rights violation should not be limited to corrective action at the contractual level, such as correcting a supplier’s breach of a contract clause or a code of conduct. Rather, the expectation is that firms will take steps, either directly or through their supply chains, to address the impacts of harm (to which they have contributed and caused) on individuals.⁴⁹

Yet, despite the criticality and salience of remediation to contemporary business debates, researchers have given surprisingly little attention to whether and how businesses are meeting their responsibility to remediate. Of the limited scholarship on the topic, a significant proportion of studies have focused on how firms are responding to the broader *issue* of modern slavery rather than specific *incidents*. Foregrounded earlier in this introduction, scholars tend to frame remediation in terms of engagement with suppliers or sub-suppliers to potentially address

⁴⁵ See generally *Access to Remedy – Practical Guidance for Companies; Migrant Workers’ Access to Remedy; Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees* and Rende Taylor and Shih, “Worker Feedback Technologies.”

⁴⁶ Robert Caruana, Andrew Crane, Stephen Gold, Genevieve LeBaron, “Modern Slavery in Business: The Sad and Sorry State of a Non-field,” *Bus Soc* 60 (2021): 251–287, <https://doi.org/10.1177/0007650320930417>; Bill Cooke, “The Denial of Slavery in Management Studies,” *Journal of Management Studies* 40 (2003): 1895-1918, <https://doi.org/10.1046/j.1467-6486.2003.00405.x>.

⁴⁷ Caruana et al, “Modern Slavery in Business”, 275-276.

⁴⁸ *Guiding Principles on Business and Human Rights*, 15.

⁴⁹ *Guiding Principles on Business and Human Rights*, 1.

contractual violations leading to harm⁵⁰; corporate reactions to the demands of the law⁵¹; or broad, industry-based initiatives to tackle the issue as a whole⁵². While these are worthwhile lines of inquiry, it is necessary to extend attention to whether and how firms are attempting to address the harm itself if we are to have measurable, positive impact on human lives. As contributors to this issue observe, such knowledge is also vital to comprehending if corrective action is having any lasting impact on the site and the system in which the abuse took place.⁵³ A possible explanation for the limited scope of research to date is the trend of relying on secondary data analysis as a methodological approach to understand remediation challenges. Indeed, a great number of studies on modern slavery in supply chains rely on modern slavery statements and other corporate self-reporting. There are comparably few studies in the same literature that observe remediation from the perspectives of people with lived experience of slavery and other forms of labour exploitation.

Another potential explanation is the reality, observed some time ago by New, that firms may be reluctant to partner in research that exposes the weaknesses of current practice.⁵⁴ In response to this challenge, he calls for research to take a “grittier, more complex character,” lest scholars become “complicit in a process in which firms engage in a mild form of competition for perceived ethical merit.”⁵⁵ He suggests scholars must diversify research methods to rely less on corporate self-reporting and more on “enacted practice.” Caruana and colleagues⁵⁶ reiterate this tension and suggest that researchers’ tendency to examine slavery as something exogenous—rather than endogenous—to business models and practice is what has held the literature back.

While this presents a very real and legitimate challenge, it also suggests the status quo approach to research and lack of attention to remediation of harm may be enabling firms to avoid the necessary reckoning with the unanswered question: ‘what do you do when you find it?’ If scholars are to help inform the response to this vital question, we must expand theoretical and disciplinary approaches to modern slavery scholarship to positively impact policy and practice beyond the bounds of academia. We must also find ways to bring business to the research table

⁵⁰ Mark Stevenson and Rosanna Cole, “Modern Slavery in Supply Chains: A Secondary Data Analysis of Detection, Remediation and Disclosure,” *Supply Chain Management* 23 (2018): 81–99, <https://doi.org/10.1108/SCM-11-2017-0382>.

⁵¹ Stephen John New, “Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility?” *Supply Chain Management* 20 (2015): 697–707, <https://doi.org/10.1108/SCM-06-2015-0201>; Mark Rogerson, Andrew Crane, Vivek Soundararajan, Johane Grosvold, Charles Cho, “Organisational Responses to Mandatory Modern Slavery Disclosure Legislation: A Failure of Experimentalist Governance?” *Accounting, Auditing & Accountability Journal* 33, no. 7 (2020): 1505–1534, <https://doi.org/10.1108/AAAJ-12-2019-4297>.

⁵² Tingting Liu, Emiliya Suprun, Rodney A. Stewart, Shane Duran, “Developing a Framework for Assessing the Readiness of Entities in the Construction Industry in Addressing Modern Slavery,” *Sustainable Production and Consumption* 31 (2022): 139–151, <http://dx.doi.org/10.1016/j.spc.2022.02.003>.

⁵³ Pryde et al, “Understanding Remedy”.

⁵⁴ New, “Modern Slavery and the Supply Chain”, 704.

⁵⁵ New, “Modern Slavery and the Supply Chain,” 704.

⁵⁶ Caruana et al, “Modern Slavery in Business”, 252.

and to partner with rightsholders to advance a courageous, innovative and “humanized”⁵⁷ research agenda.

Filling some gaps

In light of the above challenges, we are delighted to share this special issue of the *Journal of Modern Slavery*, which aims to begin to fill some of these gaps. As a whole, the issue provides perspectives on ‘access to remedy’ from around the globe, including Nepal, Australia, Mauritius, Thailand and Nordic countries to name a few. It touches on various approaches to remedy, including the strengths and limitations of such approaches, from National Action Plans on Business and Human Rights to customs enforcement mechanisms to modern slavery disclosure legislation. One article focuses on the role of NGOs and considers remedy through the lens of rehabilitation to address and prevent child trafficking, while another highlights the role of the financial services sector. Importantly, several articles provide insights on remedy from the perspectives of people who have experienced forced labour, human trafficking and other forms of exploitation. These voices sound the pervasive gaps in current strategies to meaningfully include affected parties in the design, delivery and evaluation of remedy. In hearing these voices, it should be no surprise why the ILO’s estimates are on the rise, despite so much money, time and human effort being invested in this global problem.

Together, the articles in this edition advance our understanding of remediation and provide new insights and feasible pathways forward. While some represent the culmination of many years of work, others aim to start or extend emerging lines of inquiry. The *Journal* is very grateful to all the authors for their time and expertise.

Special Issue Overview

We thought it fitting to begin the issue with a survivor’s perspective on remedy. Sarah S, a survivor advocate and leader from Australia, explains that, at its core, remedy is relational. Just as slavery occurs on a continuum, so does remedy. It is not an isolated event, but rather, a process of healing, through different relationships, over time. As Sarah explains, it can take different forms along that process, from basic support to simply survive, to access to information and peer support to envision a future beyond current suffering. Sarah proposes that remedy also involves recognition as a victim of crime and the importance of being listened to, heard and respected as a human being. Conceptualising remedy as relational does not absolve duty bearers of their obligations to respect and protect human rights. Rather, Sarah emphasises that remedy is more than system responses; it is about creating accountability for personal integrity and meaningful outcomes in those responses.

Our next article provides a case study illustrating how rehabilitation as a form of remedy can be carried out through NGO-government-business partnerships. In “Rehabilitation and Reintegration of Child Labor and Trafficking Survivors: A Case Study of Nepal GoodWeave

⁵⁷ Vivek Soundararajan, V., Miriam M. Wilhelm, and Andrew Crane, “Humanizing Research on Working Conditions in Supply Chains: Building a Path to Decent Work,” *Journal of Supply Chain Management* 57 (2021): 3–13, <https://doi.org/10.1111/jscm.12260>.

Foundation's Transit Home 'Hamro Ghar'", Silvia Mera and Hem Bahadur Moktan highlight the challenges within contexts where child trafficking and the worst forms of child labour are endemic in business operating models and where State responses fall short. Continuing in the theme of 'relational remedy,' the article shares insights on access to remedy from the perspective and experience of child trafficking survivors themselves who convey the importance of having mentors and seeing the possibilities of a life without exploitation in the experiences of older children who have successfully left exploitative work.

Referencing yet another relevant international framework, the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International and Human Rights Law and Serious Violations of International Humanitarian Law*, the authors explain that remedy is more than just assistance; it is about the restoration of rights and addressing the causes of vulnerability. Resonating the definition of remedy provided earlier in this introduction, they explain that remedy includes safe withdrawal from exploitation, access to basic supports and compensation, and reintegration with family and education in a manner that prevents a return to exploitation work.

Addressing a significant gap in both policy and practice, this case study demonstrates how innovative partnerships between NGOs and social auditors can facilitate a natural referral pathway between identifying labour abuses and remedy. They also demonstrate how access to inclusion, education and survivor-centred support can fundamentally shift the trajectory of children's and their families' lives.

Turning to the Global North, Dr Tina Davis and Saara Haapasaari consider the situation for exploited migrant workers in their article "Access to Remedy and Grievance Mechanisms: A Brief Review of the Situation for Exploited Migrant Workers in Finland and Norway". The review forms part of a larger study by the European Institute for Crime Prevention and Control (HEUNI), the Coretta and Martin Luther King Institute for Peace, and Ethical Trading Initiative Sweden. In their article, Davis and Haapasaari analyse the accessibility and effectiveness of state and non-state-based grievance mechanisms and remediation processes for migrant workers in Finland and Norway. They conduct their analysis through a review of the two countries' respective National Action Plans (**NAP**) on Business and Human Rights; text-analysis of corporate sustainability reports of twelve companies operating in high-risk sectors; and a gap analysis of current policy and practice.

Similar to views of other contributors to this issue, the authors observe that access to remedy is the forgotten pillar of the UNGPs, especially concerning migrant workers. They find that, while Finland and Norway's NAPs are carefully aligned with the UNGPs, gaps at the juncture between policy and practice restrict migrant workers' access to remedy and justice.

Emphasising the duty of the State to ensure access to judicial and non-judicial remedies, the authors highlight the importance of congruence and harmony across frameworks and demonstrate the consequences when these frameworks are not aligned. For example, Norway does not recognise migrant workers as a vulnerable group in national policy or in the NAP. Rather, Norway's NAP focuses on risks and violations that occur internationally, which the authors argue has effectively segregated businesses and business-related exploitation from national response strategies and stakeholder initiatives. In the inverse, domestic policies on exploitation do not incorporate the UNGPs.

Mirroring findings of other contributors to this issue, both Finland and Norway share several common challenges, including poor corporate disclosure regarding how businesses communicate and provide meaningful access to grievance mechanisms. Here, Davis and Haapasaari also assert that corporate transparency laws must be strengthened to ensure businesses' actions and disclosures correspond with the nature of risk in their respective operating environments; and that disclosure should shed more light on how firms are operationalising remedy.

This point naturally segues to our next article by collaborators in a multi-institutional evaluation of Australia's Modern Slavery Act (AMSA). In "Understanding Remedy under the Australian Modern Slavery Act: From Conceptualisation to Provision of Remedy", Samuel Pryde, Justine Nolan, Shelley Marshall, Andrew Kach, Martijn Boersma, Fiona McGaughey and Vikram Bhakoo examine the extent to which remedy is being provided by firms reporting under the AMSA. Going beyond modern slavery reports analysis, this article presents findings from one of the few longitudinal studies on modern slavery in supply chains, involving a national business survey and four in-depth focus groups with industry groups, businesses and civil society. This article is also amongst the first studies examining in detail, how business representatives conceptualise, deliver and describe remedy.

In line with Davis and Haapasaari, the authors find that while firms are referencing remedy in their modern slavery statements, these references are superficial and fail to provide substantive detail on how and what remedy was provided. Similarly, they find a consistent lack of transparency regarding corporate grievance mechanisms, where statements provide little detail about how such tools have been designed to address the many barriers to reporting and accessing justice. Where firms do disclose the type of remedy provided, the most common form is compensation followed by repayment of wages and making a report to authorities. In direct contrast to the conceptualisation of remedy as something relational, the authors' findings confirm that most firms view remedy as a transactional 'monetary exercise.'

Also in contrast to 'relational remedy' are the authors' findings regarding consultation in the design of remedy. On this subject, survey responses indicated a general preference to consult stakeholders with expertise on matters of interest to the company, such as legal professionals and consultants, rather than more legitimate worker representatives. On a more positive note, the authors found that when companies engaged key stakeholders, they correspondingly reported more effective remediation practices.

Generally, the authors find that firms' remediation strategies are not appropriately aligned with the UNGP's recommendations for remedy—a deficiency they attribute to "definitional and enforcement limitations of the law" that leave significant scope for interpretation. To address these limitations, they argue that corporate disclosure laws like the AMSA would be strengthened by the inclusion of mandatory due diligence requirements prescribing a minimum standard for remedy. These observations are quite timely as Australia is currently considering amendments to its modern slavery laws and as other countries experiment with their own variations of disclosure and due diligence legislation.

Our fifth article is also extremely timely as Canada and the EU enact, and other jurisdictions consider, measures to control the importation of goods made with forced labour. In their article, "How Import Bans Affect Access to Remedy for Individuals Affected by Forced

Labour”, Archana Kotecha and Nawin Santikarn provide a summary of The Remedy Project’s landmark 2023 report, “Putting Things Right: Remediation of Forced Labour under the Tariff Act 1930”. The report is amongst the first and most comprehensive studies examining the extent to which withhold release orders (**WROs**) in the United States are leading to effective remedy for people in conditions of forced labour. The article discusses findings of nine case studies focusing on instances where a company has sought to lift an import ban imposed under the Tariff Act. Developed from desk-based research, stakeholder interviews, and interviews with 53 workers in WRO-affected companies, the case studies identify areas of strength and weakness in the WRO mechanism.

Of particular importance is the authors’ commentary on how the US Customs and Border Protection (CBP) decides to modify or revoke a WRO. As the authors explain, a WRO or Finding may be modified or suspended where the company demonstrates to CBP that it has ‘remediated’ all 11 indicators of forced labour; an order may be revoked if CBP determines the company was not engaged in forced labour. Notably, the CBP does not require evidence of remediation to individuals, reflecting a departure from the normative definition of remedy in the UNGPs and similar frameworks discussed earlier.

In step with broader trends and mirroring the results of the Australian Modern Slavery Act study, Kotecha and Santikarn find that the most common form of remedy provided in response to WROs was monetary, primarily in the form of repayment of recruitment fees. Beyond this, few other remedies were provided. While they find that WROs have helped to strengthen grievance mechanisms and corporate sustainability, the authors observe this mechanism would be greatly strengthened by requiring evidence of remedy to individuals that is in alignment with the UNGP definition.

Despite this limitation, the authors find WROs can spur governments to assume their proper role in monitoring labour conditions. For examples, in Taiwan, a WRO prompted the prosecution of alleged perpetrators of trafficking and forced labour and spurred the adoption of an official Action Plan for Fisheries and Human Rights. In Thailand, a threatened import ban led the Royal Thai Government to commit to ending the manufacture of fishing nets using prison labour. In Malaysia, the Government introduced several reforms to labour laws, including a new forced labour criminal offence, following a series of import bans against glove makers and palm oil companies.

Turning to our next piece, also a case study, Karen Stauss and Samantha Rudick of Transparentum share a summary of findings from an in-depth, multi-year investigation into working conditions in the Mauritian garment industry. In their article, “A Case Study in the Mauritian Garment Industry: the Promise and Challenge of Securing Effective Remedy,” the authors detail Transparentum’s engagement with 18 buyers purchasing from apparel factories where numerous indicators of forced labour were uncovered through the investigation.

Similar to other contributors’ findings, the discovery of these indicators has led to some positive outcomes, including three buyers agreeing to repay a portion of fees; and firms committing to improvements to working and living conditions; strengthening workers’ council representation; and improving policies. However, the picture for remedy in this case is disappointing and the authors provide a compelling indictment of the voluntary corporate sustainability initiatives in this case. For example, as buyers professed a strengthening of their

human rights policies, the investigation found inadequate systems to effectively operationalise buyers' policy commitments to respect and protect human rights in their supply chains. In line with the broader literature,⁵⁸ the authors also explain how standard business practices, such as outsourcing foreign worker recruitment, act to obscure the very risks corporate policies purportedly target; meanwhile firms continue to rely on faulty detection mechanisms, which are open to fraud and deception and fail to address the fear and mistrust that commonly prevent workers from reporting workplace misconduct.

Notably, however, is the authors' message of hope, which resonates with the main thrust of this introduction and is evident in both the title and text of their article. Remedy presents a challenge but it also presents an opportunity. Emphasising the "promise" of effective remedy, the authors observe the potential for countries to become more attractive to foreign buyers by becoming model sourcing destinations through "responsible recruitment and consistent protection of migrant workers' rights."

Our penultimate article discusses a promising new project under the Finance against Slavery and Trafficking (FAST) Initiative, United Nations University Centre for Policy Research (UNU-CPR). In their article, "Increasing the Prospects of Corporate Accountability, Compensation, and Financial Health for Victims and Survivors of Forced Labour and Human Trafficking," authors Loria-Mae Heywood and Andy Shen share how the Asset Recovery and Restitution Initiative (ARRI) proposes to fill the remedy gap through the combined use of trade (i.e. WROs) and anti-money laundering frameworks and inter-agency and multistakeholder cooperation. In leveraging these strategies together, the ARRI aims to address the disparity between the enormous profits generated by slavery-related crimes and the compensation provided to those affected. The potential strength of this new strategy lies in the word "combined" where existing but currently isolated frameworks are brought together and supported by the involvement of key stakeholders with unique roles to play throughout the process of delivering remedy.

Similar to other contributors, Heywood and Shen observe the disconnect between law and practice that creates and sustains barriers to accessing remedy. In questioning the effectiveness of mainstream strategies to address slavery and worker exploitation, they assert the need to rethink remedy and experiment with new and innovative strategies to improve access. Echoing the need to embed economic security into remediation, they shrewdly remark that it is not sufficient to simply return a person to the state they were in prior to harm if they remain vulnerable. Rather, the provision of effective remedy would correct both the harm as well as causes of original vulnerability. In line with other contributors to this issue, they emphasise that effective remedy does not occur in a vacuum. Cooperation with other agencies and stakeholders is not just helpful, but essential to facilitate the delivery of remedy to affected parties.

We conclude this Special Issue with Martina Trusgnach, Olga Martin-Ortega and Cindy Berman's article, "Towards Worker-Driven Remedy: Advancing Human and Labour Rights in Global Supply Chains." This article contextualises and explains the recently released *Principles*

⁵⁸ Andrew Crane, "Modern Slavery as a Management Practice: Exploring the Conditions and Capabilities for Human Exploitation, *Academy of Management Review* 38 (2013): 49–69, <https://doi.org/10.5465/amr.2011.0145>; Christina Stringer and Snežina Michailova, "Why Modern Slavery Thrives in Multinational Corporations' Global Value Chains, *Multinational Business Review* 26 (2018): 194–206, <https://doi.org/10.1108/MBR-04-2018-0032>.

of Worker-Driven Remedy. Developed by Electronics Watch in consultation with trade unions, labour rights organisations, and public buyers, the Principles represent the beginning of a process to “develop a new, coherent framework to systematically...change the narrative on remedy from corrective action to rights-based remedy for human rights abuses.”⁵⁹ Ahead of introducing the Principles, the authors provide a sobering overview of the “remedy-deficient landscape” of global value chains and speak to several of the gaps identified above. Namely, the authors observe the failure by firms to address harm, preferring to focus on supplier compliance. They share two case examples that illustrate the human consequences of failure to remediate and why legitimate worker representatives and human rights defenders are essential in ensuring justice and remedy. Of particular note, they emphasise the crucial role of ‘personal agency’ in designing and delivering remedy—a noticeable gap in both scholarly and policy debates.

In introducing these Principles, the authors take us a step closer to breaking through the veneer of current corporate practice, often characterised by ineffective audits, symbolic compliance and tokenism. The Principles provide a way forward to replace these with more effective, human-centred measures; and in doing so, provide direction for future research, particularly around what kind of tools and support could help facilitate behaviour change and more worker-focused decision-making within business.

Conclusion

A central theme throughout the articles in this issue is the recognition that addressing harm to people brings more than individual benefits—it can change systems. While it is absolutely essential to address localised causes of harm, the system’s reliance on worker grievances to identify rights violations requires trust. If workers do not receive remedy or perceive the system to act in their interests, they are less likely to access grievance mechanisms and abuses will go undetected. Without detection, there can be no remedy.

To this end, there is great need for empirical research that explores the link between effective remedy and detection, where affected parties may be more likely to report rights violations when the system works to protect and uphold rights. Also needed is more exploration of the nexus between State-based and non-State-based grievance mechanisms and the overall effectiveness of those mechanisms in delivering appropriate remedy.

As mentioned earlier, this Special Issue examines remedy primarily in the context of business supply chains. A broader analysis of remedy in other contexts remains a critical gap, which we hope will be filled in future editions of this and other publications.

The gaps we have identified in the literature do not simply inform pathways for academic pursuits; they represent an opportunity and an obligation to involve affected parties, including workers, communities, victims and survivors, in research design and implementation. It is vital for future research to become more “relational” with greater focus on telling the stories of the people who have experienced labour rights violations detailing success stories to show duty bearers the way forward. In doing so, research itself can be a form of remedy.

⁵⁹ Trusgnach et al, “Towards Worker-Driven Remedy”.

Remedy as Relational

Sarah S

Survivor Advocate

What does remedy mean for survivors of modern slavery? As businesses grapple with the complexity of risks in their supply chains, the human dimension of this issue is beginning to break through the haze of reputational concerns. This shift underscores a growing recognition that simply identifying risks is insufficient, and that effective action is needed to remediate those affected by these horrific crimes.

But what does remedy look like for people who have been victimised by situations of modern slavery outside of business supply chains? A person whose exploitation has not been at the hands of a corporate entity, but rather, a personal perpetrator. What kind of remedy would provide restitution for the destruction unleashed by taking ownership of someone else's life?

I have heard a variety of suggestions, all with a degree of merit. Maybe remedy is the help provided to rebuild a life materially: Providing shelter, food, medical care, and a way to start a new life. Perhaps there is an argument to be made for a form of compensation that can balance the scales of harm in financial terms: the sum of unpaid wages, or the profit margin obtained from stolen freedom. Maybe there is a sentence that could be handed down to do justice to the weight of suffering inflicted. Perhaps remedy is all of these things, or something more.

What is the value of someone's *being*, their functional autonomy, their sense of worth, their dreams, and the future they might have had without the trauma of modern slavery? How do we adequately compensate someone for those losses? I have tried to understand this through the lens of my own experience of modern slavery...

They will always live in my memory - the images caught by my lowered eyes. The corner of the bedside cupboard, the carpet disappearing under the bed, the sound of his voice ringing in my ears. It was in that moment, that I truly understood freedom, because it was taken from me. It was visceral – the agony of ownership and the reality of being sold under duress for the profit of another person: An incredulous, searing realisation that my body in its most intimate form was no longer my own. I had experienced abuse before, but this was far darker, and it swallowed every aspect of my life. There was a fierce battle for freedom, but escape was not where the impact ended. It was merely the moment that the dust settled on the crater that my life had become.

At that point, the remedy I needed was immediate, not retrospective. It was less about making restitution for the inordinate amount of profit derived from my body, or even seeing justice for the crimes committed, and more about surviving. It was about dealing with the impact of abuse that left me paralysed at the thought of making even a simple decision for myself, a shameful indictment on my lost ability to function as an adult in the world. It was the struggle to work to keep a roof over my head, while trauma wracked my body, making it almost impossible to eat or sleep. It was about finding a way to pay the endless medical costs to recover. It was the excruciating effort required to interact with anyone in the outside world, and the struggle to know what to say to those who found out what had happened. At that point, I would have said

that remedy was help to survive: to recover enough medically, physically and psychologically to regain functionality.

Slowly the shock wore off and the processing started. I couldn't understand what had happened to me, how it had happened – I didn't even have a name for it. Shame consumed me, and I no longer wanted to survive. I wanted to die. I had nothing left to fight for. I was certain that I would never be able to adjust to life in the outside world, and was convinced that I was doomed to a life without love, family, or a future. The brokenness was all consuming. Sometimes I was desperate enough to give in to late night google searches - trying to find someone or something that could help. Slowly, I started piecing together information, but most of it was from overseas. It was very confusing. They called what happened to me 'trafficking'. It seemed a horrid word, something I was sure couldn't have happened to me.

But there were moments when realisation overcame the denial, and I started to accept it. I found comfort in spending time with the others that had escaped with me. We supported each other in those early days, trying to make sense of it all together. Eventually COVID and our own struggles splintered us apart. I tried to find other survivors outside of our situation that I could talk to. I felt they might be able to help me understand how to recover from this, but I couldn't find any. At that time, remedy would have been access to information. It would have been peer support. It would have been someone to help me process what had happened, or tell me where to get help. Remedy would have been a way to understand and to find hope that there might be a future beyond this.

Eventually the fight returned. As I pieced together more information and accepted what had happened, I started reaching out for help. For myself, and the other girls. I tried everything I could think of - several times: Aid organisations, lawyers, police. It was confusing and heartbreaking. Even now, I still ask myself what I did wrong, what I could have said differently, to get help. Because help didn't come. The reality then was, as one of the other survivors said to me, that our trafficker now was no longer a person. Rather, it was desperation that took the choice and freedom away that we should have been reclaiming.

At that point remedy would have looked like housing, or a way to make an income for the girls who didn't have any qualifications to fall back on. It would have been help from lawyers to understand the legislation, or information about how to report. It could have been access to the Victims Services scheme. Remedy would have been police that recognised the crime and followed up the case. Eventually, my google searches gave me the courage to approach the Federal Police and I was referred to the Support for Trafficked Persons Program through the Red Cross. I also found a social worker who talked to me once a week on the phone as I battled a constant sense of despair. At this point remedy looked like acknowledgement and support.

As our justice process stalled, I needed to find meaning in what had happened to me. I believe that it was a lack of awareness, along with other circumstances of abuse in my life that left me vulnerable to exploitation. I wanted to do everything in my power to prevent others from suffering in the same way. There was also a desperate need to reclaim my voice. My perpetrator had silenced us and believed that he had buried our stories. He thought that we would never be strong enough to speak out. I started pursuing advocacy to fight back. Soon, I found myself working in the antislavery sector and learned that what happened to me had a different name in Australia: Modern Slavery. I started to use my voice and found other survivors and allies who

helped me to get stronger. Now, remedy looks like being heard, being empowered to fight the harm that almost completely destroyed me. I can't change what happened to me, but maybe I can change it for others like me.

So, in all of that, what does remedy mean to survivors of modern slavery? Remedy holds different meaning for every survivor. It can even mean different things at various stages of recovery. There are times where the financial pressure of rebuilding a life would be alleviated by monetary compensation. Access to adequate medical treatment would lessen the ongoing physical and psychological burden of trauma. It would be incredible to see remedy in the form of criminal justice that could, at minimum, prevent perpetrators from reoffending. But in the end, remedy to me, means healing.

So what does healing mean?

I recently read a quote by John Nehme, president and CEO of Allies against Slavery, that resonated with me:

“When harm is relational, healing must be relational. Recovery isn't about shelters, it's about relationships.”

The greatest impact on my life, that no amount of money or justice process can ever remedy, is the daily struggle to overcome the trauma that impacts my ability to be functional and relational as a *person*. We all have a fundamental human need to connect with others in meaningful ways. It is central to the way in which we exist in the world, at work or in personal relationships. Complex trauma that was characterised by grooming, catastrophic betrayals of trust in core relationships, coercive control, psychological abuse, and sexual violence over prolonged periods of time in a situation of entrapment, has decimated my ability to feel safe in building relationships with other humans. I work incredibly hard to counteract the fear and stress responses that make it difficult to trust people, resolve conflict, and make it even harder to show or receive love.

There is ongoing debate about the place of storytelling in survivor advocacy, but the next time you hear a survivor's story, pay attention to the points of remedy. There will be key moments in which they talk about what helped them *heal*. For most, it will be relational – a person that gave them hope. It will be the person that believed them, a case worker that helped them, an ally that gave them an opportunity, or a fellow survivor that supported them. It will be someone that gave them a sense of safety or *delivered* on a promise of help. They may also talk of the agony of re-traumatisation - when any hope they had left was betrayed again - by systems and people that should, or could have helped. Any interactions that are misleading, unreliable, controlling or unkind, can fracture the delicate sense of trust and hope a survivor is struggling to rebuild.

In order to heal, interactions need to *counteract* previous relationships with perpetrators that built trust only to break it, deceived in order to trap, promised help only to take freedom, and exploited you in unspeakable ways. Remedy then, looks like learning to believe that humans can be kind, empathetic, responsive, and respectful. These kinds of relationships give you hope that there is a place where you can be heard, accepted, and your dignity is restored.

So if remedy is relational, does that absolve government and business entities of their responsibility to create effective systems of remediation? Does it negate the need for policies, programs, and infrastructure to meet the material needs of survivors, as they fight for freedom? Is providing justice redundant? My answer to all of these questions, is no. Rather, when we see remedy through the lens of relational healing, we create accountability for personal integrity and meaningful outcomes in system responses.

As human beings, we have the opportunity to respond to the issue of modern slavery, in or outside of the complex mechanism of antislavery efforts. Whether we engage in peer support as survivors, provide case management as social workers, medical care as healthcare professionals, or are part of the criminal justice system, we are more effective when we are person-centred. Whatever our role, we can build an environment of healing and safety in the relationships we foster. We can restore agency, interact with empathy, centre self-determination, provide transparency, act with accountability and support empowerment. We all have an opportunity to extend this kind of remedy to survivors of modern slavery in their journeys of recovery.

Rehabilitation and Reintegration of Child Labor and Trafficking Survivors: A Case Study of Nepal GoodWeave Foundation's Transit Home "Hamro Ghar"

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Abstract

This paper focuses on rehabilitation as a crucial aspect of remediation for child labor and trafficking survivors. It explores successful center-based programs for children removed from exploitation and emphasizes how the creation of an enabling environment tailored to survivors' needs can serve the best interest of the child. Drawing from the case study of the Kathmandu-based transit home *Hamro Ghar*, run by Nepal GoodWeave Foundation, this paper describes rehabilitation approaches and activities, including insights from child labor survivors. This analysis highlights effective strategies for the rehabilitation and reintegration of child labor and trafficking survivors into school and society.

Key words: Center-based rehabilitation, child labor, child trafficking, Nepal, remedy, survivor.

"I have supported a lot of children. [...] When I share my real story, they're motivated. [...] And you know, in addition to that, I always say to them: Please compare your life. How was your life in the past, and how it is now? And how should you make it in the future? For that, you should make your goal of life." – Hem Moktan⁶⁰

⁶⁰ GoodWeave International, *Hem Moktan: He Made It*, June 2020. <https://www.youtube.com/watch?v=MbqLLo3TQIE>

1. Introduction

Child trafficking for the purpose of labor exploitation remains a grave concern in Nepal. As a source, transit, and destination country for human trafficking, Nepal's geographic location, poverty, and social vulnerabilities contribute to the high prevalence of child trafficking within its borders.⁶¹ Trafficked children are forced into hazardous labor, subjected to physical and emotional abuse, and deprived of their fundamental rights to education, health, and a safe childhood. Whilst access to remedy is inconsistent and ad-hoc, some programs have led the way in providing comprehensive assistance, rehabilitation, and reintegration services to children removed from exploitation. This paper emphasizes the rehabilitation aspect of remedy, particularly concerning children trafficked for the purpose of labor exploitation. While acknowledging the significance of other aspects of remediation, such as financial restitution, access to justice and perpetrators' accountability, this paper deliberately narrows its scope to contribute to an understanding of effective center-based rehabilitation interventions that facilitate the healing, well-being, and reintegration of child trafficking survivors into society.

This paper draws from the case study of Nepal GoodWeave Foundation (NGF)⁶², a non-governmental organization (NGO) based in Nepal and country affiliate of GoodWeave International (GWI)⁶³, a global nonprofit working to stop child labor in global supply chains. NGF operates rehabilitation programs and provides short and long-term assistance to children removed from labor exploitation, including a transit home in Kathmandu, called *Hamro Ghar* ("our home" in Nepali). By analyzing its specific approach to rehabilitation activities, we seek to identify the key components that contribute to their effectiveness and explore the lessons that can be learned for future initiatives. We first look at the key principles that underpin effective and just remediation for children. We then highlight center-based programming as a rehabilitation pathway for trafficked children, particularly in the context of Nepal. The paper then examines good practices from the case study of NGF's center-based rehabilitation program at *Hamro Ghar*, including how it prioritizes the best interest of the child, perspectives on the involvement of survivors in deploying remediation programs, as well as implementation challenges.

⁶¹ US Department of State, *Trafficking in Persons Report/Nepal*, accessed June 20, 2023. <https://www.state.gov/reports/2023-trafficking-in-persons-report/nepal>; World Bank, *Vulnerability To Human Trafficking in Nepal: From Enhanced Regional Connectivity*, December 2021, p. 5. <https://documents1.worldbank.org/curated/en/981551639049704664/pdf/Vulnerability-to-Human-Trafficking-in-Nepal-from-Enhanced-Regional-Connectivity.pdf>

⁶² <http://goodweavenepal.org/>

⁶³ www.goodweave.org

2. Methodology

Our methodology involved the following approaches:

- 1) Review of relevant literature, as well as internal and public documents developed by GWI (for example, their *Child Protection Policy*)⁶⁴.
- 2) Analysis of case data from child labor survivors, tracked throughout their rehabilitation period by GWI and affiliates at NGF and GoodWeave Certification Nepal (GCN) as part of their quarterly monitoring and evaluation activities.
- 3) Interviews with key informants: Conversations via Microsoft Teams were conducted in English by Sivia Mera with staff at both GWI and GCN in June, July and December 2023. Hem Moktan conducted in-person group discussion in Nepali with 28 children currently residing at *Hamro Ghar*, both male and female, and aged 12 to 15 years old, in June 2023. A few questions were prepared to kick-start the conversation, which lasted about an hour. A few children were also engaged in short, individual follow-up conversations.
- 4) Hem Moktan – one of the authors – contributed his lived experience as a child labor and trafficking survivor, former *Hamro Ghar* student and current Child Development Officer at NGF.
- 5) Using a smaller sample size and interviews with select staff members was intentional, aligning with the specific case study's depth and scope and acknowledging the limitations to the extent in which findings can be extrapolated to wider contexts or populations affected by child labor and trafficking.

3. Safeguarding the Rights of Child Labor and Trafficking Survivors

3.1 Remediation Guiding Principles

In 2021, a total of 3.3 million children were in situations of forced labor – a form of modern-day slavery – on any given day, accounting for about 12% of all individuals in forced labor. Close to 1.3 million (39%) of these children are exploited for labor in various industries linked to domestic and global supply chains, with the remainder trapped in sexual exploitation (51%) and in state-imposed forced labor (10%).⁶⁵ Children account for one in every two detected victims of human trafficking in low-income countries. Most of these children are trafficked for the purpose of labor exploitation.⁶⁶ Trafficked children are separated from their families,

⁶⁴ GoodWeave International, *Child Protection Policy*, August 2021, <https://goodweave.org/wp-content/uploads/2021/08/GWI-CP-Policy-v.4-Final-Jan-2019.pdf>

⁶⁵ International Labor Organization (ILO), Walk Free, International Organization for Migration, *Global Estimates of Modern Slavery: Forced Labor and Forced Marriage*, 2022, p. 46. [wcms_854733.pdf \(ilo.org\)](https://www.wcms_854733.pdf)

⁶⁶ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, 2020, p. 81. [GLOTiP_2020_15jan_web.pdf \(unodc.org\)](https://www.unodc.org/glotip/2020_15jan_web.pdf).

compelled to work, and exposed to serious hazards and illnesses, often at a very early age.⁶⁷ It is important to note that the issue of "consent" is considered irrelevant in the case of child trafficking: any child (defined as a person under 18) recruited for the purpose of exploitation is considered trafficked, whether or not they have been deceived, coerced, or have consented in any way to being exploited.⁶⁸

The plight of children in modern-day slavery demands immediate attention, concerted efforts, and the implementation of effective strategies that uphold their rights and ensure access to remedy. *Remedy* indicates the process of restoring rights to survivors, including helping to facilitate withdrawal from an exploitative situation and provide near-term medical, psychological, social, legal and educational assistance to ensure freedom as well as financial restitution, satisfaction, and guarantee of non-repetition.⁶⁹ However, globally, only a very small share of those subjected to forced labor and human trafficking are provided with some form of remedy. Measures that meet the protection and participation needs of children are applied inconsistently across countries and groups of children (for example, migrant children).⁷⁰

Trafficked children need special support to access remedy for breaches of their rights.⁷¹ Their path to restitution should be dealt with separately from adult victims in terms of laws, policies, programs, and interventions.⁷² Any child going through a remediation process must be protected and have all rights guaranteed without discrimination. The United Nations Committee on the Rights of the Child recommends that states establish effective and child-sensitive procedures to provide child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where the rights of the child have been violated, remedies should

⁶⁷ ILO, *What is child labor*, accessed June 2023. <https://www.ilo.org/ipec/facts/lang--en/index.htm>

⁶⁸ Mike Dottridge and Ann Jordan, "Children, Adolescents and Human Trafficking: Making sense of a complex problem"; *Center for Human Rights and Humanitarian Law - American University Washington College of Law*, Issue Paper 5 (May 2012). <https://documentation.lastradainternational.org/lisidocs/Making%20sense%20of%20a%20complex%20problem.pdf>; United Nations Convention Against Transnational Organized Crime, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000. <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

⁶⁹ United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International and Human Rights Law and Serious Violations of International Humanitarian Law*, 2009. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

⁷⁰ ILO, *Ending forced labor by 2030: a review of policies and programmes* (2018) pp. 89-112 and 122-123. https://www.ilo.org/global/topics/forced-labour/publications/WCMS_653986/lang--en/index.htm

⁷¹ United Nations Office on Drugs and Crime, *Providing Effective Remedies for Victims of Trafficking in Persons*, 2016, p. 7. https://www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_3._Providing_Effective_Remedies_for_Victims_of_Trafficking_in_Persons_2016.pdf

⁷² Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, Principle 10 and Guideline 8.8. <https://www.ohchr.org/en/publications/reference-publications/recommended-principles-and-guidelines-human-rights-and-human>

include appropriate reparation, compensation and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration.⁷³

Remediating forced child labor requires a comprehensive and principled approach that places the rights and well-being of the affected children at the forefront. Under international law, remediation should, at a minimum, be conducted in the best interests of the child, without discrimination, with a focus on empowering the children, keeping those responsible for their redress accountable and addressing short as well as long-term needs.⁷⁴

More specifically, fundamental guiding principles include:

a) The principle of the *best interests of the child*, which ensures that all decisions and actions prioritize the child's well-being, protection, and development. It requires holistic and child-centered approaches that consider the child's physical, emotional, social, and educational needs;⁷⁵

b) *Non-discrimination*, which upholds the equal rights and opportunities of all children, irrespective of gender, ethnicity, socio-economic background, or any other characteristic. It ensures that remediation efforts are inclusive and address the specific vulnerabilities and needs of all children, including those from marginalized groups;⁷⁶

c) *Empowerment*, which recognizes the rights of child labor and trafficking survivors to actively participate in decision-making processes that affect their lives. It involves providing survivors with information, support, and opportunities to exercise their agency, voice their opinions, and be involved in the design, implementation, and evaluation of remediation programs;⁷⁷

d) *Accountability*, which holds responsible parties accountable for their actions and ensures justice for child labor and trafficking survivors. It entails effective legal frameworks, robust law enforcement, and access to justice mechanisms that enable the prosecution of

⁷³ United Nations Committee on the Rights of the Child, General Comment No. 5, *General measures of implementation of the Convention on the Rights of the Child*, 2003 (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FGC%2F2003%2F5&Lang=en

⁷⁴ The 2014 Forced Labor Recommendation states that protective measures for children subjected to forced labor should take into account the special needs and best interests of the child, and, in addition to the protections provided for in the Worst Forms of Child Labor Convention, 1999 (No. 182) should include: (a) access to education for girls and boys; (b) the appointment of a guardian or other representative, where appropriate; (c) when the person's age is uncertain but there are reasons to believe him or her to be less than 18 years of age, a presumption of minor status, pending age verification; and (d) efforts to reunite children with their families, or, when it is in the best interests of the child, provide family-based care. International Labor Organization, R203 - *Forced Labor (Supplementary Measures) Recommendation*, 2014 (No. 203).

⁷⁵ Nations Committee on the Rights of the Child, General Comment No. 5, *General measures of implementation of the Convention on the Rights of the Child*, 2003, Article 3(1), UN Doc. CRC/GC/2003/5. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FGC%2F2003%2F5&Lang=en

⁷⁶ Ibid. Article 2.

⁷⁷ Ibid. Article 24.

perpetrators. Additionally, accountability extends to ensuring that survivors have access to remedies, including compensation, restitution, and rehabilitation services;⁷⁸

e) *Sustainability*, which underscores the long-term impact and durability of remediation efforts. It involves addressing the root causes of child labor and trafficking, promoting prevention measures, and creating sustainable alternatives for affected children and communities. Sustainable remediation programs focus not only on immediate removal from exploitation and rehabilitation but also on ensuring the social reintegration, education, vocational training, and economic empowerment of survivors.⁷⁹

3.2 Remediation Pathways

The goal of remediation for children withdrawn from exploitation should be to ensure that they can be at home with their family, successfully re-integrate into mainstream schooling, or access vocational training opportunities. Facilitating family reunification is a crucial element of child trafficking remediation. The Principles and Guidelines on Human Rights and Human Trafficking ask authorities to take all necessary steps to identify and locate children's family members, where this is in the best interests of child.⁸⁰ Furthermore, the 2022 United Nations' Report on the Rights of the child and family reunification states that "Children must be treated as children in all circumstances and guaranteed their rights [...], including the right to be with their families, unless it is not in their best interests". It adds that the term "family" should be interpreted and applied in a broad sense, to include biological, adoptive or foster parents, or, where applicable, members of the extended family or community, as provided for by local custom.⁸¹ Kinship, which is family-based care within the child's extended family or with close friends of the family known to the child, is the closest alternative to family reunification.⁸² However, when reunification with the immediate or extended family is not the safest option, other solutions, such as foster care or center-based (or "residential") care, must be explored.

⁷⁸ For a framework for corporate accountability in relation to child labor and trafficking, see the United Nations Guiding Principles (UNGPs) on Business and Human Rights, adopted by the United Nations Human Rights Council by Resolution 17/4 on 16 June 2011. <https://www.undp.org/laopdr/publications/guiding-principles-business-and-human-rights>

⁷⁹ International Organization for Migration, *Handbook on Direct Assistance for Victims of Trafficking*, 2015, pp. 81, 97, 267. <https://publications.iom.int/books/iom-handbook-direct-assistance-victims-trafficking-0>

⁸⁰ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002, Guideline 8.8. <https://www.ohchr.org/en/publications/reference-publications/recommended-principles-and-guidelines-human-rights-and-human>

⁸¹ United Nations High Commissioner for Human Rights, *Report on the Rights of the child and family reunification*, Human Rights Council, Forty-ninth session, 28 February–1 April 2022, Agenda items 2 and 3, p. 15. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/274/38/PDF/G2227438.pdf?OpenElement>

⁸² Kinship care is described as "family-based care within the child's extended family or with close friends of the family known to the child", United Nations General Assembly, *Guidelines for the Alternative Care of Children*, February 2010, A/RES/64/142. <https://digitallibrary.un.org/record/673583>

Foster care offers children the opportunity to live in a family setting and receive individualized attention.⁸³ Foster care is typically intended to be temporary, with the goal of reuniting the child with their biological family or finding permanent placement with a family. Whilst it is considered a preferable alternative to residential care, there are documented cases where it can be detrimental, for example when systems fail to provide minimum standards of safety or cause long-term harm to children's development by moving them across multiple temporary homes or let them reach adulthood with no legal family and nowhere to go.⁸⁴

Center-based rehabilitation refers to providing therapeutic interventions and support within a dedicated facility or setting, aimed at promoting children's physical, cognitive, and emotional development. This rehabilitation usually happens in residential care facilities (the "centers") where multiple children live together under the care of paid staff. These facilities provide a group living environment and typically accommodate a larger number of children who live following a structured routine and share facilities. Transit homes can be considered a form of residential care and are typically intended as facilities where children and young people live while waiting for placement in a suitable alternative care setting or while receiving support with integrating back into the community, and where children can undergo assessments to determine their specific needs.⁸⁵ Center-based care is viewed as a last resort⁸⁶, due to serious concerns of abuse and maltreatment, and evidence of an increased risk of developmental delays, as well as high costs compared to home-based care, raised in the past few decades.⁸⁷ Yet, despite the focused policy push toward the advancement of family-and-community-based care, center-based care remains a relevant and highly utilized setting in many countries, fulfilling functions of care and accommodation as well as education and treatment.⁸⁸ This care is not always accessible to young people if there is a lack of family support or difficulties at home that remain unresolved upon their return from a trafficking situation, which makes them more vulnerable to re-trafficking.⁸⁹ When center-based programs provide an enabling environment where young survivors receive the necessary care and support to heal, access education, and stay in school, they may prove a suitable option.

⁸³ Brenda Jones Harden, "Safety and Stability for Foster Children: A Developmental Perspective" *The Future of Children*, Vol. 14, No. 1, (Winter, 2004): pp. 30-47. <https://doi.org/10.2307/1602753>

⁸⁴ Sarah Font, Elizabeth Gershoff, "Foster Care: How We Can, and Should, Do More for Maltreated Children", *Social Policy Report*, Nov, 33(3): 1-40, (2020). <https://doi.org/10.1002/sop2.10>

⁸⁵ "Quality care", SOS Children's Village, accessed July 3rd, 2023. <https://www.sos-childrensvillages.org/our-work/protection/quality-care>

⁸⁶ Mary Dozier, Charles H. Zeanah, Allison R. Wallin, and Carole Shauffer. "Institutional Care for Young Children: Review of Literature and Policy Implications.", *Social Issues and Policy Review* 6, no. 1, (2012): 1-25. <https://doi.org/10.1111/j.1751-2409.2011.01033.x>.

⁸⁷ Sigrid James, Lucas Wilczek, Juri Kilian, *et al.*, "A Comparative Analysis of Residential Care: A Five-Country Multiple Case-Design Study", *Child Youth Care Forum*, Vol. 51, pp. 1031–1062 (2022). <https://doi.org/10.1007/s10566-021-09666-6>

⁸⁸ Ibid.

⁸⁹ International Organization for Migrations. *The Causes and Consequences of Re-Trafficking. Evidence from the IOM Human Trafficking Database*, 2010, p. 39. https://publications.iom.int/system/files/pdf/causes_of_retrafficking.pdf

This paper delves into center-based rehabilitation programming through the case study of *Hamro Ghar*, a transit home in Kathmandu, Nepal. In the following sections, we first present a succinct overview of child trafficking and remediation in the local context of Nepal, then examine the interventions offered at *Hamro Ghar* and how these are underpinned by the remediation principles that were outlined in this section.

4. Child Protection in the Context of Nepal

In 1990, Nepal ratified the Convention on the Rights of the Child and included safeguarding the rights and interest of children in its Constitution.⁹⁰ In addition, Articles 51 and 39 of the 2015 Constitution of Nepal ensure the best interests of children and guarantee their rights, with another 11 articles related to the welfare of children.⁹¹ At the national level, Nepal has enacted legislation to combat child labor⁹² and trafficking, and provide legal remedies for survivors. The 2007 Human Trafficking and Transportation Control Act protects the rights of people who have been trafficked by ensuring the right to confidentiality, social rehabilitation, and reintegration in the family, among other provisions.⁹³ Nepal also participates in regional and international collaborations to address child trafficking, such as the South Asian Association for Regional Cooperation which facilitates regional cooperation and exchange of best practices.⁹⁴ The Child Labor (Prohibition and Regulation) Act (CLPRA) of 2000 defines the minimum working age, regulates the work of adolescents, and bans hazardous occupations and forced labor⁹⁵. The Act Relating to Children of 2018 (ARC)⁹⁶ takes a rights-based approach in protecting children and has a wider scope than the CLPRA, 2000. However, there are still gaps and contradictions on different clauses in laws related to child labor. For example, the legal working age is 14 years, as per the CLPRA, 2000, however, the rights of compulsory and free education are guaranteed for children up to 13 years of age only.⁹⁷ Recently, Nepal has become a

⁹⁰ OHCHR, *Pledge by Nepal, Celebrating 30 years of the Convention on the Rights of the Child* <https://www.ohchr.org/en/treaty-bodies/crc/celebrating-30-years-convention-rights-child/pledge-nepal>

⁹¹ ILO, *Constitution of Nepal, 2015, (unofficial translation)*. <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL1000>

⁹² ILO, Policy Brief. Child labour and social protection in Nepal, December 2022, p. 5. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_864661.pdf

⁹³ ILO, *Nepal - Human Trafficking and Transportation (Control) Act, 2064, 2007*. https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=87492&p_country=NPL&p_count=127&p_classification=03&p_classcount=2

⁹⁴ UN Women Global Database. *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*, accessed December 10, 2023. <https://evaw-global-database.unwomen.org/fr/countries/asia/india/2002/south-asian-association-for-regional-cooperation#:~:text=The%20main%20purpose%20of%20this,the%20countries%20of%20the%20SAARC>

⁹⁵ Nepal Law Commission. *Child Labor (Prohibition and Regulation) Act, 2056 (2000)*. <https://lawcommission.gov.np/en/?cat=367>

⁹⁶ UNICEF. *Act Relating to Children*, 2018 (unofficial translation). <https://www.unicef.org/nepal/sites/unicef.org.nepal/files/2018-12/Act%20Relating%20to%20Children%202018%20-%20Eng%20-%20Revised.pdf>

⁹⁷ ILO, Policy Brief. Child labour and social protection in Nepal, December 2022, p. 5. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_864661.pdf

pathfinder country under Alliance 8.7, committing to "go further and faster to achieve Target 8.7"⁹⁸ of the Sustainable Development Goals, namely to eradicate modern slavery, human trafficking and end child labor in all its forms by 2025.⁹⁹

Despite this political and legislative framework, Nepal continues to be a source, transit, and destination country for trafficking in persons, with children being particularly vulnerable to exploitation. Recent studies estimate that 1.1 million children in Nepal are engaged in child labor (accounting for 15% of the population of children aged 5-17 years).¹⁰⁰ 10,000 children were in forced labor over the past five years, especially in agriculture, domestic work, brick kilns, the embroidered textile industry, as well as in carpet factories and stone quarrying. The actual number of cases is likely much higher, as many instances of trafficking go unreported or unnoticed.¹⁰¹ Both the government and NGOs have noted an increase in trafficking risk since the earthquakes of 2015.¹⁰² Furthermore, years of political instability, slow economic growth and the recent COVID-19 pandemic have exacerbated the country's dependencies on foreign remittances, as well as its people's vulnerabilities. Following the pandemic, migrant workers had to return to their home villages, where immediate means of income and job opportunities were lacking. Many households in Nepal lost a source of income, with 27% becoming indebted, putting children at risk of having to enter the workforce to support their families.¹⁰³ One and a half million Nepalis, especially youth, girls, and individuals coming from traditionally marginalized castes were deemed at high risk of trafficking in 2022.¹⁰⁴

Access to remedy for trafficked children remains a significant challenge despite ongoing efforts by the Nepali government and NGOs. While the government has created some policies to improve service for victims, significant gaps remain. As of 2022, the government lacked formal standard operating procedures for victim identification and referral to services.¹⁰⁵ Existing remediation frameworks have fallen short in terms of delivering the intended benefits to individuals

⁹⁸ Alliance 8.7, Pathways to progress (no date), accessed December 10, 2023. <https://www.alliance87.org/pathfinders>

⁹⁹ Target 8.7 mandates to "Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms." – see United Nations, Department of Economic and Social Affairs Sustainable Development, accessed December 10, 2023. <https://sdgs.un.org/goals/goal8>

¹⁰⁰ Ibid.

¹⁰¹ US Department of State, *Trafficking in Persons Report/Nepal, 2023*, accessed June 20, 2023. <https://www.state.gov/reports/2023-trafficking-in-persons-report/nepal>

¹⁰² Manuela Brulisauer, "Human Trafficking in Post-Earthquake Nepal: Impacts of the Disaster on Methods for Victim Recruitment", *MAS ETH Development and Cooperation*, 2016. https://ethz.ch/content/dam/ethz/special-interest/gess/nadel-dam/teaching/mas/mas-essays/MAS%20Cycle%202014%20-%202016/Essay_Manuela%20Brulisauer.pdf

¹⁰³ "COVID-19 child and family tracker: Findings. Tracking the socio-economic impact of COVID-19 on children and families in Nepal", United Nations Children's Fund, Child and Family Tracker (CFT), Kathmandu, Nepal, April 2022. <https://www.unicef.org/nepal/reports/covid-19-child-and-family-tracker-findings>

¹⁰⁴ National Human Rights Commission of Nepal, 2019.

¹⁰⁵ Ibid.

who are removed from trafficking or helping them make their voices heard,¹⁰⁶ with referrals remaining inconsistent. Victim care is low, mostly in the forms of shelters and children's homes.¹⁰⁷ Currently, there are 17 transit homes in the Kathmandu area.¹⁰⁸ Available services are often limited in scope and capacity. Safe houses and transit homes struggle to accommodate all individuals removed from trafficking due to space constraints. Local trafficking remediation efforts lack policies and programs that are integrated within the broader concerns of child protection and children's rights to participate in decision-making.¹⁰⁹ The quality and sustainability of services provided, including access to education and vocational training, are sometimes compromised due to inadequate funding and resources. In 2021 and 2022, the National Child Rights Council, which monitors childcare homes, removed more than 150 children from unregistered homes.¹¹⁰ At the end of 2022, the Nepali government finalized a standard operating procedure for operating childcare homes – in consultations with NGF among other local NGOs – and began efforts to reduce the overall number of children's institutions; however, implementation has been slow.¹¹¹

5. Background on GoodWeave International and Nepal GoodWeave Foundation

GWI is a global non-profit founded by Nobel Peace Prize laureate Kailash Satyarthi in 1994.¹¹² Through a market-based, holistic model, GWI leverages private sector partnerships to bring visibility to informal, marginalized workers, identify and remediate child and forced labor, and address root causes of worker exploitation. The GoodWeave® label found on select products assures companies and consumers that no child was involved in the making of their goods. GWI operates in India, Nepal and Bangladesh through its local affiliated organizations and other frontline partners who conduct deep supply chain mapping and due diligence, as well as remediation and prevention programming in alignment with global policies and procedures. Affiliated organizations in Nepal include NGF and GCN.¹¹³

¹⁰⁶ Shovita Dhakal Adhikari & Pawan Adhikari, "Implementation of the anti-child trafficking framework in Nepal: an impaired diffusion process", *Development in Practice*, 33:2 (2023) 180-189. DOI: <https://doi.org/10.1080/09614524.2022.2114429>

¹⁰⁷ US Department of State, *Trafficking in Persons Report/Nepal*, 2023. Accessed June 25, 2023. <https://www.state.gov/reports/2023-trafficking-in-persons-report/nepal>

¹⁰⁸ Data shared by NGF in June 2023.

¹⁰⁹ Shovita Dhakal Adhikari, Jackie Turton "Understanding 'trafficking vulnerabilities' among children: the responses linking to child protection issues in Nepal", *Children's Geographies*, 18:4 (2020), 393-405. DOI: <http://goi.gov/10.1080/14733285.2019.1676398>

¹¹⁰ US Department of State, *Trafficking in Persons Report/Nepal*, 2023. Accessed June 25, 2023. <https://www.state.gov/reports/2023-trafficking-in-persons-report/nepal>

¹¹¹ Ibid.

¹¹² GoodWeave International, *Kailash Satyarthi on the Founding of GoodWeave*, May 12, 2017. <https://goodweave.org/kailash-satyarthi-on-the-founding-of-goodweave/>

¹¹³ GoodWeave International, *The GoodWeave System*, <https://goodweave.org/proven-approach/the-goodweave-system/>. Accessed December 12, 2023

NGF is an organization dedicated to combating child labor and trafficking and promoting child rights in the carpet and home textiles industry of Nepal, as well as in the brick kiln sector. Established in 1995, the foundation offers a range of services aimed at protecting and rehabilitating children removed from trafficking and labor exploitation, including the transit home *Hamro Ghar* and community-based programs in the Kathmandu Valley, Sindhupalchok, Makawanpur, Bara, Sarlahi, Rautahat and Chitwan districts of Nepal.¹¹⁴ NGF works in concert with GCN, a private company that conducts audits and inspections in carpet and textile worksites in the Kathmandu Valley. GCN specializes in assessing subcontracted worksites, which comprise the majority of production, but are rarely visible to international buyers and where child labor risk is highest.¹¹⁵ From 1995 through March 2023, GCN identified and withdrawn almost 1,500 child laborers from carpet worksites.¹¹⁶

Since 2018, the Nepali government has classified carpet manufacturing as a hazardous occupation, making it illegal to employ anyone under 18 in this sector.¹¹⁷ Despite this, children continue to be involved in carpet manufacturing, albeit in a more concealed manner. Carpet exports are one of Nepal's largest sources of GDP, accounting for \$70 million of products exported to more than 60 countries¹¹⁸, however the labor shortage within the industry, the effect of climate change on rural areas of the countries¹¹⁹, and widespread poverty have exacerbated child labor within the industry. Carpet-making subcontractors need workers and rely on recruiters and contractors – who charge a commission – to collect work from villages and to bring workers to the factories. Impoverished rural families, pushed by increasing food and land insecurity, agree to send their children along with the contractors to work in factories with promises of good pay. In many cases, these children have never stepped inside a classroom. Others are forced to drop out of school. Children travel from remote areas to take up jobs in Kathmandu, but end up in harsh living and working conditions, earn much less than what was promised to them, and are unable to leave their workplaces. Carpet factories often receive subcontracted work from bigger exporters. Since carpet subcontractors sit a layer below exporting factories in the supply chain, they are not visible to international buyers who typically only have direct relationship with the exporters they buy the

¹¹⁴ Nepal GoodWeave Foundation is a nonprofit making, non-government organization established in December 1995 as a result of collaboration among Carpet Entrepreneurs, Child Right NGOs, and International Development Organizations (UNICEF, German Agency for Technical Cooperation, and Asian American Free Labor Institute).

¹¹⁵ Oliver Balch, "10,000 children estimated to work in Nepal's carpet industry", The Guardian, 20 November 2014, accessed 8 December 2023. <https://www.theguardian.com/sustainable-business/2014/nov/20/10000-children-estimated-to-work-in-nepals-carpet-industry>

¹¹⁶ Data provided by GoodWeave International in June 2023.

¹¹⁷ Nepal Child Labour Prohibition and Regulation Act 2056, 2000. <https://leap.unep.org/countries/np/national-legislation/child-labor-prohibition-and-regulation-act-2056-2000#:~:text=This%20Act%2C%20consisting%20of%2032%20sections%20divided%20into,be%20satisfied%20for%20obtaining%20a%20child%20labour%20authorization.>

¹¹⁸ Nepal Trade Information Portal, https://nepaltradeportal.gov.np/web/guest/major-commodity?p_p_id=commodityportlet_WAR_tepc&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&refererPlid=20137&_commodityportlet_WAR_tepc_param=getDetail&id=3, accessed December 12, 2023

¹¹⁹ Government of Nepal's Ministry of Forests and Environment, *Vulnerability and Risk Assessment and Identifying Adaptation Options*, 2021. <https://www.mofe.gov.np/uploads/documents/vulnerability-renew1630571413pdf-2940-766-1658827788.pdf>

finished product from, nor are included in their social audit scope. This results in child labor remaining undetected. GWI and its country affiliates' inspection and monitoring protocols use techniques to access all worksites linked to an exporter, including subcontractors, and assess whether children are being employed.

After children are identified and withdrawn from worksites by GNC, they are provided with care and a range of remediation services by NGF on a case-by-case basis. GCN works closely with local ward authorities and child protection officers from the relevant municipalities to get approvals for the removal of the child laborer from the factory. When child laborers are unaccompanied by their parents or guardians, or these cannot be located, children are transported to NGF's transit home *Hamro Ghar*. Upon arrival, the NGF social work team details the physical and psychological conditions of the child. This includes ascertaining their immediate needs, assessing their family, social and economic background, how they started working, and whether it is safe to reunite them with their family through its community-based rehabilitation (CBR) program. This work – from withdrawing to rehabilitating children – is implemented in alignment with GWI's *Child, Forced and Bonded Labor Remediation Policy*, as well as country-level standard operating procedures.¹²⁰

According to the *Remediation Policy*, NGF makes all possible efforts to implement CBR, reintegrate the child with their parents or close family members and provide ongoing support, including a food allowance if needed. Remaining at *Hamro Ghar* for longer-term center-based rehabilitation is considered and discussed with the child in cases when they are at-risk of re-trafficking, are orphaned, lack the possibility of reuniting with their families, or belong to families whose whereabouts are unknown or who are unable to meet their basic needs, including education. Activities at *Hamro Ghar* are predominantly funded by GWI, through sub-awards funded by license fees that international buyers pay to be part of GoodWeave's due diligence and certification program, as well as occasional public and private grants. *Hamro Ghar* is periodically evaluated by a monitoring committee of the National Child Rights Council (NCRC) and Kageshwori Manohara Municipality against NCRC's requirements, which are based on the ARC and other relevant laws. In the most recent evaluation, in August 2023, *Hamro Ghar* was rated at the 6th position among all homes in Nepal for compliance with the national standard.

6. Center-Based Remediation Programming: The Case Study of *Hamro Ghar*

"[At my village] there was not a single day where we had enough food. Some days we did not eat at all. So I ran away with my close friend and came to Kathmandu. After joining the factory, I worked there for about two years, but they still have not paid me. I used to have cuts and bruises on my hands while weaving. The blood from the cuts on my hands used to fall on the carpet. I was 10 years old at that time. After a while, a man from GoodWeave found me and took me to [GoodWeave]'s transit home, and I was provided with an education." – Nirmala¹²¹

¹²⁰ GoodWeave International, "Child, Forced and Bonded Labor Remediation Policy", 17 May 2021. <https://goodweave.org/wp-content/uploads/2020/06/GWI-Remediation-Policy-v.4-Jan-2016.pdf>

¹²¹ GoodWeave International, *Nirmala's Story*, https://www.youtube.com/watch?v=DkRFO_4hKKY&t=13s

Between 2018 and 2022, *Hamro Ghar* enrolled 62 new children, 38 boys and 24 girls, who were withdrawn from illegal employment in the carpet sector. Most children are between 12 and 15 years old, although they can be as young as 10 and as old as 18. As of June 2023, 28 children, 18 boys and 10 girls, live on the premises, as do four of the seven staff. Boys and girls live on different floors, while classrooms, a dining hall, a courtyard, and a TV room are shared spaces. Children stayed at the transit home for periods that ranged from one month to three years. Some children reside at *Hamro Ghar* for a short period of time then reunite with their families. If the environment back home continues to be an unsuitable option, provisions are made for longer-term support at the transit home. Between January 2021 and March 2023, out of 46 child laborers who were provided remediation support, 14 returned to their communities immediately after being withdrawn from worksites; eight enrolled in Hamro Ghar and later returned to their communities, and 24 chose to remain at Hamro Ghar.¹²²

Three mutually reinforcing principles underpin both short and longer-term support: creating an inclusive, safe space for children to be children; providing access to education and opportunities for continued learning; and taking a child-and-survivor-centered approach to program implementation. The following sections highlight key aspects of each approach and draw from our conversations with the children residing at *Hamro Ghar* as well as with colleagues at GWI, NGF and GCN.

6.1 Creating an inclusive, safe space for children to be children

Establishing an inclusive and secure environment to foster the normal development of children is a key objective of *Hamro Ghar*. This happens by helping children overcome trauma, offering recreational activities, helping non-Nepali-speaking children feel accepted, and fostering a sense of community in the transit home. Robust policies and procedures provide a framework for activity implementation.

Survivors' experiences have lasting impacts and continue to affect their mental health far beyond their rescue or escape. Psychosocial support is a key avenue to address the impact of survivors' trauma on their mental health.¹²³ Children enrolled at *Hamro Ghar* have been removed from exploitative situations and often encounter various physical, psychological, emotional, and behavioral challenges. Once they are admitted into the transit home, their mental and physical health is assessed. Children and their guardians are informed about what the process and protocols are once admitted at *Hamro Ghar*, so they know what to expect. This includes filling in an intake form and undergoing a medical visit to check their overall health conditions. Effective counseling during the children's stay at the home also plays a critical role. A dedicated female counselor assumes the responsibility of providing psychosocial counseling, which begins with an initial session for each child and then follow-up sessions based on each child's needs. Whilst it is

¹²² Data provided by GoodWeave Nepal Foundation in June 2023.

¹²³ Sanjeev Dasgupta and Ana Maria Soto, "Psychometric Measures of Empowerment and Disempowerment of Survivors of Human Trafficking: Developing and Piloting Tools to Assess the Positive and Negative Impacts of Post-Trafficking Interventions and Environments on Trafficked Persons", Issara Institute, *Empowerment Incubator* Series Paper 1, 2018, p. 11. ISBN: 978-616-93096-8-0

encouraged that children start seeing the counselor shortly after being admitted at the transit home, children start when they are ready. Besides the counselor, *Hamro Ghar* staff and teachers observe children's behavior with the goal to guide them toward psychosocial support when appropriate. These sessions focus on addressing trauma and anxiety, which are commonly experienced by children, and are informal and play based. Both individual and group counseling sessions assist the children in navigating their difficulties.

Recreational activities are another integral part of the support provided. Children are encouraged to engage in sports, as well as art, music, and dance classes. These activities provide them with new avenues to enhance their confidence, express their emotions, and nurture their creativity, which were previously hindered during their experiences in factories. Team sports may be an important and scalable resilience builder. Being part of a team, working together toward a common goal in a competitive environment, may help give kids the skills to manage or overcome their own issues.¹²⁴ One 15-year-old *Hamro Ghar* student shared that playing football makes her happy, because it is a game, she plays with friends, and it is about teamwork. A 14-year-old shared that karate was her favorite sport, because knowing a martial art provides a sense of security. Some children have discovered their talents and gained a sense of empowerment through participation in singing classes. Daily meditation sessions are conducted in the mornings to promote inner tranquility and self-awareness among the children. According to recent research, through mindfulness practices, children who have experienced trauma are able to better learn about the connection between their minds and their bodies and access different ways to assist their minds and bodies in calming down¹²⁵, as well as enhance attention and reduce chronic harsh self-judgment.¹²⁶ A 14-year-old shared that yoga helps "starting the day with a fresh mind".

Language inclusiveness is also important, since most children at the transit home are *Tamang* (a Tibeto-Burman ethnic group of Nepal) and predominantly speak Tamang. Language barriers have historically isolated the Tamang and other indigenous communities from access to services and job opportunities, and children from mainstream education, since instruction and materials are primarily available in Nepali only. More recently, and a result of advocacy from the Nepal Federation of Indigenous Nationalities, the government has started promoting the preservation of multiculturalism and multilingualism.¹²⁷ However, it is still unclear in practice how multilingualism should be implemented in schools, and many schools still opt for utilizing

¹²⁴Bob Cook, "Can Sports Help Kids Overcome Their Childhood Trauma?", *Forbes*, May 30, 2019, accessed December 7, 2023. <https://www.forbes.com/sites/bobcook/2019/05/30/can-sports-help-kids-overcome-their-childhood-trauma/>

¹²⁵ David Black, Randima Fernando, "Mindfulness Training and Classroom Behavior Among Lower-Income and Ethnic Minority Elementary School Children", *Journal of Child and Family Studies*, 2014 Oct; 23(7), pp. 1242-1246. DOI: <https://doi.org/10.1007/s10826-013-9784-4>

¹²⁶ Randy Semple, Jennifer. Lee, Dinelia Rosa, *et al.*, "A randomized trial of mindfulness based cognitive therapy for children: Promoting mindful attention to enhance social-emotional resiliency in children", *Journal of Child & Family Studies*, 2010, 19(2), pp. 218-229. <https://doi.org/10.1007/s10826-009-9301y>

¹²⁷ The 2015 Constituent of the Federal Democratic Republic of Nepal states that Nepal is a "multilingual, multicultural, and multi-ethnic country". See ILO, *Constitution of Nepal, 2015, (unofficial translation)*. <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL100061%20Eng.pdf>

Nepali, or English, in the case of private school, as the medium of instruction.¹²⁸ Tamang children do not feel at ease speaking Nepali once they arrive at *Hamro Ghar* and need extra language support. Two of the residential staff at *Hamro Ghar* are Tamang, as is Hem Moktan, NGF Child Development Officer. A third staff member understands the language. This has helped children feel understood and supported through the transition to learning fluent Nepali.

Children need time and support to get comfortable with the new rules and limitations that come with living in a residential facility. Many of them did not have any healthy boundaries when they were working in factories, and picked up dangerous habits such as smoking, drinking and endlessly playing on phones. At *Hamro Ghar*, these habits need to be given up. Children usually demonstrate resistance, which occasionally leads to tension and a desire to leave the facility. However, over time, their resistance tends to diminish and fade away. During class time, children are taught the difference between healthy and unhealthy habits and the consequences for the body and mind. Lessons that focus on health and science help support these explanations. In addition, staying busy and focused on a healthy daily routine comprised of morning meditation, physical education, classes, extracurricular activities, and play time helps curb these habits. For cases where it is particularly difficult to quit, for example in the case of smoking, chewing gums or sweets are temporarily offered to help the urge subside.

Establishing a sense of community and routine is important to promote integration and nurture children's self-acceptance and feeling of belonging. *Hamro Ghar* children come from exploitative contexts where they were required to work very long shifts, and there was no time to socialize or make friends. Newcomers often are shy and do not immediately take part in activities, but with time they learn from their peers and get comfortable in their new environment. Children are involved in the commemoration of special days, such as the World Day Against Child Labor (June 12), Children's Day (September 14)¹²⁹, and festivals. During these occasions, children receive new clothing, shoes, and gifts, and partake in visits to monasteries and temples as a family would. Two celebrations have proven to be particularly uplifting. On Foundation Day (December 24), NGF and *Hamro Ghar* organize various programs at different theaters, attended by donors, government agencies, partner organizations, and representatives of the business sector, including carpet manufacturers that partner with GoodWeave. Throughout the year, children who participate in extracurricular activities, such as dance, sport, or singing, can decide to sign up to perform in these events. The second event, the "Common Birthday" program, is celebrated every year on January 1st. Many children living at *Hamro Ghar* do not have accurate knowledge of their date of birth. The common birthday celebration allows everyone to commemorate their birth and aims to instill a sense of the significance of that day.

Children at times miss home and worry about their families. A 13-year-old shared that she was worried about her younger brothers' future. The brothers had recently taken up work as laborers in a brick kiln and there was no school in the proximity of the kiln. Contact with their

¹²⁸ Prem Phyak, "Language education policy in Nepal and the denial of the right to speak in Indigenous languages", *Melbourne Asia Review*, Ed. 7, 2021. <https://doi.org/10.37839/MAR2652-550X7.7>

¹²⁹ Children's day falls on 14th September, or, in Nepali, 29th Bādhrā, and commemorates the day the Nepali government signed the United Nations Convention on the Rights of the Child.

families is facilitated as much as possible. Children can phone home once a week. Most families can be reached through mobile, although signal in rural areas can be unreliable. As much as feasible, children also travel back to their villages to spend major festivals with their families. These visits are organized following a protocol that ensures appropriate documents and arrangements are in place for the children to travel with their parents or relatives. Parents and relatives are also able to visit children at *Hamro Ghar*. At times, while visiting their home village, children decide not to return to the transit home. When this happens, NGF looks into whether a food allowance is needed and if there are schools the child can enroll in to continue studying, although this is not always sufficient to keep children in school or prevent them from taking up work again.

6.2 Providing access to education and opportunities for continued learning

Education plays a crucial role in the foundation's approach. Most children brought to *Hamro Ghar* are illiterate or have dropped out of school. One of the transit home's main goals is to enable their successful reintegration into formal schools, and to provide opportunities to continue studying in secondary school or access vocational training.

Upon enrolling at *Hamro Ghar*, children's age and educational level is assessed, and they are divided into three grades based on their level: Intro, Basic, and Advanced. From Sunday to Friday, children attend regular classes taught by three teachers who employ child-friendly, Montessori-style teaching methods. Teachers try to engage children actively, instead of using frontal instruction, where there is little opportunity for interaction. Children who speak only Tamang are given extra support to learn Nepali so they can join classes as quickly as possible. Other subjects include English, math, science, and social studies. Unlike traditional schools, the transit home operates on a six-month academic session, allowing academically proficient children to advance to higher grades twice a year. This system, referred to as the *Accelerated Education Program* grants children the opportunity to progress swiftly and catch up with peers their age, even if they have fallen behind. Alongside academic pursuits, extracurricular activities such as competitions, crafts, and games offer opportunities to enhance the children's overall knowledge. Regular assessments, including examinations held every three months, track the children's performance. After each examination date, a small prize distribution ceremony acknowledges the top-performing children. The transit home school calendar aligns with that of formal schools, facilitating a smoother transition for children seeking admission to mainstream education. Children who leave *Hamro Ghar* to be reunited with their families may enter a community-based rehabilitation program. They are enrolled in local schools, and their attendance is tracked by the NGF team. However, the dropout rate has been higher in community-based programs than in *Hamro Ghar*. Often there are no schools in proximity to the children's villages, and public transport is lacking or too costly for their family. This results in children dropping out of school. For example, almost half of the 28 children enrolled in local schools through the community-based rehabilitation program dropped out in the academic year 2022/2023, despite regular follow up by NGF staff.¹³⁰

¹³⁰ Data provided by Nepal GoodWeave Foundation in June 2023.

Many children graduating from *Hamro Ghar* show little interest in pursuing secondary education and instead prefer to acquire vocational skills for employment purposes. NGF offers vocational training opportunities to these children, aiming to equip them with practical and marketable abilities that can lead to sustainable job prospects. The training options include handicrafts, plumbing, chef training, and more, consisting of a short learning phase followed by a longer practical application phase. NGF collaborates with the Nepal Vocational Academy and the Vocational Training Institute to provide these programs. However, the limited availability of resources has restricted the range and quantity of training options available to the children.

Academically proficient students who graduate from *Hamro Ghar* are given the opportunity to choose continued school-based rehabilitation through a sponsored, residential program at Kathmandu's Laboratory Higher Secondary School (Lab School), with tuition paid by GoodWeave. The Lab School is one of the most elite boarding schools in the country. Under an arrangement made with *Hamro Ghar*, a number of spots at this school are reserved each year for children graduating from *Hamro Ghar*. Candidates must pass tests before admission to the Lab School, for which teachers at *Hamro Ghar* help them prepare. In the past five years, 25 children (11 girls and 14 boys) have enrolled at the Lab School. Students are exposed to international opportunities, including attending college abroad. Graduates from the Lab School often go on to lead successful careers in business, engineering, art and medicine. For example, in 2020, when still studying in the eighth grade at the Lab School, Sumitra, a *Hamro Ghar* graduate, shared:

*"In my future, I want to be a nurse. My role model is Florence Nightingale. I want to be like her. I came from a carpet factory, in transit home. I didn't see any future there [in the carpet factory]. When my father was suffering from TB [tuberculosis], that time I didn't get chance to cure him, so I want to cure many patients and persons who are suffering from different diseases in my future. [...] I want to visit Nepal and other countries to cure patients [...] and this is my hope for my future."*¹³¹

In 2023, Sumitra was selected for a prestigious study abroad program in Germany, where she will pursue a course in public health, along with another Lab School student who will study photography.

6.3 Taking a child-and survivor-centered approach to program implementation

Children's safety is paramount, and the transit home follows rigorous procedures, from the time of enrollment to discharge. All the staff is trained on GWI's *Child Protection Policy*¹³², which includes specific behavior guidelines for *Hamro Ghar* staff and anyone who enters into contact with children through any NGF or GCN programming. This policy must be

¹³¹ GoodWeave International, *Hem Moktan: He Made It*, June 2020. <https://www.youtube.com/watch?v=MbqLLo3TQIE>

¹³² GoodWeave International, *Child Protection Policy*, August 2021. <http://comments.goodweave.org/wp-content/uploads/GWI-Child-Protection-Policy-Feb-2014-v.3.pdf>

acknowledged and signed by anyone entering the transit home. NGF has appointed a monitoring officer who conducts regular checks of the activities within the transit home and assesses the performance of staff members. The officer also observes the children's behavior, interacts with them, and alerts the counselor if any issues require attention. Protocols and ethical guidelines are in place to ensure sensitive information is handled securely and shared only on a need-to-know basis. The Nepali government also routinely monitors the home's living and food standards. The transit home recently introduced a gender equality and social inclusion policy that builds on the existing *Child Protection Policy*.

Facilitating the growth and strengthening of survivors' decision-making powers is a critical element of rehabilitation, and a direct response of their previous loss of control over basic aspects of their lives.¹³³ *Hamro Ghar* involves the children in decision-making processes through various channels and provides orientations on how to use them. One channel is the *Child Advisory Committee*, which is comprised of the children residing at *Hamro Ghar* and gathers on a quarterly basis or more frequently, if needed. The function of the committee is to gather the children's feedback on the overall programs and share it with the staff and NGF's Board. Another is a suggestion box, kept outside of CCTV circuits, and opened once a month. A third channel is the *Child Club*, which meets once a month, to take and discuss feedback from the children about aspects of daily life at the transit home – such as weekly menus, or on the use of the common outdoor space for activities or sports. The psychosocial counselor includes taking feedback from the children as part of her sessions. Finally, the Child Protection Committee, comprised of three members of the NGF board, is responsible for developing and providing oversight for the implementation of policies related to child protection, takes feedback on concerns related to safeguarding. A positive change that spurred from these open feedback channels has been implementing inclusive sports programs. Previously limited to boys, activities like martial arts and football are now open to both genders on dedicated days each week.

Another important aspect of remediation programming at *Hamro Ghar* is the inclusion of survivors in the shaping and implementation of rehabilitation programs. A recent study found that when organizations include people with lived experience as employed colleagues embedded within project teams, program benefits are deepened and outlined with greater precision, due to the unique insight and understanding offered through lived experience expertise.¹³⁴ Since 2016, Hem Moktan, one of the authors of this paper and a child labor survivor, has taken the role of Child Development Officer at NGF and directly oversees programming at the transit home. Two other former child laborers were hired to serve as caretaker and teacher, respectively. The full-time opportunity has proven transformative for both the employees and the children in their care. Studies demonstrate that survivors who have the skills and ability to work gain hope for a bright future, as they feel they had the agency to pursue specific work opportunities they wanted. On the other hand, when survivors feel that they did not have basic skills to help themselves, they

¹³³ Sanjeev Dasgupta and Ana Maria Soto, "Psychometric Measures of Empowerment and Disempowerment of Survivors of Human Trafficking: Developing and Piloting Tools to Assess the Positive and Negative Impacts of Post-Trafficking Interventions and Environments on Trafficked Persons", Issara Institute, *Empowerment Incubator* Series Paper 1, 2018, p.2. ISBN: 978-616-93096-8-0 https://docs.wixstatic.com/ugd/5bf36e_7fd24765f0f34f6cacf560915255697a.pdf

¹³⁴ Ibid.

feel inferior and helpless.¹³⁵ Providing job opportunities to survivors also directly challenges tokenistic engagement, where affected individuals' sharing of their trafficking experience is seen as the primary form of work they are equipped to do or should do.¹³⁶ Engagement should always lead towards tangible and meaningful change, for communities or beneficiaries or the organizations and people involved in designing and delivering programs.¹³⁷ Instead, tokenistic engagement carries the high risk of perpetuating trauma, whilst survivors are trying to look at the future. This is key to motivating children at *Hamro Ghar*. Survivors cannot "always think of the past, of the factories, or the abuse. We need to move ahead".¹³⁸

Lived experience helps survivors empathize with the children and understand their challenges, approaching them not as "charity cases" but as individuals with lived experience that they recognize. For example, at times, children wait outside Hem's office to talk to him and get his advice. His personal stories have fostered trust for the children to open and share their feelings, which sometimes are too difficult to communicate, even during professional counseling sessions. Seeing a former child laborer's personal journey from being in a situation of exploitation to becoming key staff at a renowned NGO inspires hope among the young transit home residents. "Whilst it feels deeply emotional at times, it also makes me very happy to see that I can talk to the children and in one conversation convince them to stick to school"—Hem shared.¹³⁹ By witnessing the transformation and achievements of people who once experienced the same abuse, the children develop a sense of self-belief, resilience, and determination, which are crucial for their own rehabilitation and reintegration into society.

7. Limitations

This paper has limitations that warrant acknowledgment. Firstly, it is important to note that the scope of this study is limited to the rehabilitation aspect of remediation for children trafficked for the purpose of labor exploitation. This includes qualitative aspects such as psychosocial support, education, and community engagement. Other components of remediation, such as financial restitution, access to justice, and accountability are not addressed. The examination of supply chain actors' involvement, potential contributions, and accountability mechanisms would provide a more comprehensive understanding of what their role should be in the broader remediation ecosystem. Future research could explore these dimensions to shed light

¹³⁵ Sanjeev Dasgupta and Ana Maria Soto, "Psychometric Measures of Empowerment and Disempowerment of Survivors of Human Trafficking: Developing and Piloting Tools to Assess the Positive and Negative Impacts of Post-Trafficking Interventions and Environments on Trafficked Persons", Issara Institute, Empowerment Incubator Series Paper 1, 2018, p. 12. ISBN: 978-616-93096-8-0

¹³⁶ Wendy Asquith, Allen Kiconco and Alex Balch, "A review of current promising practices in the engagement of people with lived experience to address modern slavery and human trafficking", Modern Slavery & Human Rights Policy and Evidence Centre, October 2022. <https://modernslaverypec.org/assets/downloads/Engagement-lived-experience-full-report.pdf>

¹³⁷ Ibid.

¹³⁸ Quote from Hem Moktan from a conversation between the authors of this paper.

¹³⁹ Ibid.

on the roles and responsibilities of various stakeholders in promoting effective rehabilitation practices and ensuring sustainable impact.

Furthermore, it is important to acknowledge that this study primarily examines the role and effectiveness of center-based rehabilitation through the case study of a transit home. While playing an important role in providing immediate support and care to trafficked children, center-based rehabilitation represents only one of several rehabilitation pathways. The article does not provide a comparative analysis with other examples of transit homes or rehabilitation settings in Nepal, and takes the form of a specific case, focusing on NGF's *Hamro Ghar*. The intentional use of a small sample size and targeted interviews with staff aligned with the study's depth and specificity. However, this focused approach limits the possibility to generalize findings beyond the specific context under investigation and caution should be exercised in extending the study findings to other center-based rehabilitation facilities. Future research could consider conducting comparative studies across multiple center-based programs to enhance the breadth of knowledge in this field and provide a more comprehensive understanding of their strengths, limitations, and effectiveness in rehabilitating trafficked children.

8. Conclusions

This paper presented an analysis of how center-based rehabilitation programs can be implemented in the best interests of the children they serve, drawing from the case study of the transit home *Hamro Ghar* in Nepal. The paper underscored the crucial importance of providing children withdrawn from exploitation with support to reintegrate into society and mainstream schooling. While family reunification is the primary goal, center-based rehabilitation is explored as an option that provides therapeutic interventions catering to children's physical, cognitive, and emotional needs when it is unsafe or impossible to reunite them with immediate or extended family members.

The paper provided examples of the *Hamro Ghar* transit home's inclusive, participatory practices that aid children healing, getting back on track with their education, reintegrating into mainstream schools, and pursuing secondary education. While it is crucial to tailor rehabilitation to each child's individual needs and the local context, the case study of *Hamro Ghar* offers insights into an program that provides children with a sense of community, belonging and empowerment, helping them overcome the profound hardships of exploitation, trauma, and isolation during the critical years of childhood that are meant for play and learning. The paper also highlighted the importance of including survivors in developing and deploying remediation programming, and how their involvement can instill confidence, motivation, and a positive outlook on the future in beneficiary children.

Access to Effective Remedy and Grievance Mechanisms: A Brief Review of the Situation for Exploited Migrant Workers in Finland and Norway

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Abstract

This article examines access to effective remedy and grievance mechanisms for exploited migrant workers in Finland and Norway. It reviews the countries' National Action Plans on Business and Human Rights to understand their uptake of Pillar III of the United Nations Guiding Principles on Business and Human Rights in a national context. It then analyses state-based judicial mechanisms and disclosed company-based grievance mechanisms and remediation processes to identify their accessibility and effectiveness in providing remedy for exploited migrant workers at home. Finally, it exposes gaps in policy and practice that makes it difficult for this cohort to access remedy in the two countries. Despite recent legal improvements to protect human rights, there is a need for stronger focus on outcomes from states and business in line with their commitments and responsibilities. Access to effective remedy can only become a reality for rightsholders when it is based on a participatory approach that is equally grounded in business ethics.

Keywords: Finland - Norway - Migrant workers - Labour exploitation - Remedy - Grievance Mechanisms - Business and Human Rights - UNGPs - NAPs

1. Introduction

Access to remedy is at the core of the business and human rights frameworks.¹⁴⁰ The UN Guiding Principles on Business and Human Rights (UNGPs) has three key pillars of which pillar III calls for States and companies to ensure access to effective judicial and non-judicial remedy

¹⁴⁰ Ramasastry, Anita. "Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability." *Journal of Human Rights* 14, no. 2 (2015): 237-259. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2705675.

for victims.¹⁴¹ However, access to remedy has been described as the “forgotten pillar” of the UNGPs, and one neglected area concerns access to remedy for migrant workers.¹⁴² This article focuses on grievance mechanisms and access to remedy for exploited migrant workers in Finland and Norway.

We begin this article by examining the principles set out in the UNGPs to guide States and business enterprises on access to effective remedy, and then provide context to labour migration in Finland and Norway.

To situate our analysis of grievance mechanisms and remediation processes within judicial and private sector perspectives in the two Nordic countries, we first examine Finland and Norway’s National Action Plans on Business and Human Rights (NAPs) and their uptake on pillar III of the UNGPs in national contexts. We then analyse judicial state-based mechanisms, and disclosed company based grievance mechanisms and remediation processes to identify their accessibility and effectiveness in providing remedy for the cohort of exploited migrant workers in Finland and Norway. Finally, we set out to identify possible gaps in policy and practice that may hinder the substantive and procedural aspects that are needed to provide access to effective remedy.¹⁴³

2. Methodology

Examining substantive and procedural aspects of remedy in Finland and Norway is important, because it will give a clearer picture of how policy and practise together function in providing access to effective remedy for exploited migrant workers. To do so, this article employs qualitative methodologies to evaluate the NAPs, the judicial mechanisms, and the public corporate statements to understand possible underlying causes for access to effective remedy or lack thereof.¹⁴⁴ Firstly, we have employed secondary data collection and analysis of scholarly articles, grey literature, government documents, international normative frameworks, statistics and media reports to gain insight into the nexus between migrant worker exploitation, NAPs, judicial and private sector grievance mechanisms and remedy, and to investigate our research questions.¹⁴⁵ Secondly, we employ thematic analysis, a method used to identify and analyse patterns in qualitative data that is also suitable for smaller data sets¹⁴⁶ such as the one we

¹⁴¹ UN Working Group on Business and Human Rights. “The UN Guiding Principles on Business and Human Rights: An Introduction,” OHCHR, Accessed October 26th, 2023. https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf.

¹⁴² Anti-Slavery International. “Migrant workers’ access to remedy. A briefing paper for business.” 2021. Accessed: December 1, 2023 https://www.antislavery.org/wp-content/uploads/2022/02/ASI_AccessToRemedy_Report.pdf

¹⁴³ UN General Assembly, Report of the Working Group on the Issue of Human Rights and transnational Corporations and Other Business Enterprises, A/72/162. 2017.

¹⁴⁴ Sandelowski, Margarete. Focus on research methods: Whatever happened to qualitative description? *Research in Nursing and Health*, 11, No. 4. (2000): 334-335. <https://pubmed.ncbi.nlm.nih.gov/10940958/>

¹⁴⁵ Heaton, Janet. Secondary analysis of qualitative data: An overview. *Historical Social Research*, 33, No. 3 (2008): 33-34. <https://www.jstor.org/stable/20762299>

¹⁴⁶ Clarke, Victoria and Virginia Braun. Teaching thematic analysis. *Psychologist*, 26, No. 2 (2013): 120-123. https://www.researchgate.net/publication/269928387_Teaching_thematic_analysis_Overcoming_challenges_and_developing_strategies_for_effective_learning.

use in this article to analyse the corporate statements under the EU Non-Financial Reporting Directive (NFRD) for the Finnish companies and the human rights due diligence (HRDD) Transparency Act for the Norwegian companies.

The article seeks to answer the following questions:

How is exploitation of migrant workers addressed in the Finnish and Norwegian National Action Plans (NAPs) on Business and Human Rights?

What state-based judicial mechanisms exist in Finland and Norway, and how effective are they in providing remedy for exploited migrant workers?

What grievance mechanisms do Finnish and Norwegian companies have, and do they provide remedy?

3. Grievance mechanisms and access to remedy for migrant workers

To understand appropriate grievance mechanisms and access to effective remedy for exploited migrant workers at a national level, we first need to explore the principles set out to guide states and business enterprises to prevent and address violations. Rights and remedies are closely linked, and when breaches take place, the right holders should be able to seek remedy. Without this ability, rights mean very little in practice, and that is why the right to effective remedy is a core principle of human rights law and a key component of the UNGPs.¹⁴⁷

States have an obligation to prevent and protect individuals from human rights violations, and to provide justice and remedy in situations of grievance under international law and the UNGPs. This is the foundational principle of remedy.

States may also address grievances if business enterprises fail to do so, and are the sole provider of justice when a crime has been committed, for instance in cases of forced labour.¹⁴⁸ Grievance mechanisms provide a channel for rights holders and others to identify concerns, and are defined as “any routinised state-based or non-state-based or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought”.¹⁴⁹ In order to allow for early intervention of grievances in line with the UNGPs, companies should establish effective operational-level grievance mechanisms for individuals or communities who may be adversely affected, so that the situation can be remediated. And as the foundational principle of access to remedy asserts, states must “take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that affected people

¹⁴⁷ UN General Assembly, Report of the Working Group on the Issue of Human Rights and transnational Corporations and Other Business Enterprises, A/72/162. 2017.

¹⁴⁸ M. Law. Government Approach to Remedy for Workers. What Can Companies Learn? A Discussion Paper. Cerno. 2017. Accessed on February 20th, 2024. https://www.ethicaltrade.org/sites/default/files/shared_resources/cerno_government_remedy_paper.pdf.

¹⁴⁹ OHCHR. “Guiding Principles on Business and Human Rights.” 2011. <https://documents.un.org/doc/undoc/gen/n17/218/65/pdf/n1721865.pdf?token=VaMiPUA5ael2UxMQCP&fe=true>.

within their territory or jurisdiction have access to effective remedy”.¹⁵⁰ This also includes acting as a watch-dog on businesses.¹⁵¹

Although there are existing state-based remedial mechanisms and non-state based remedial systems in place, they are perceived as difficult to use.¹⁵² Access to remedy for grievances is hindered by both structural and situational factors, such as difficulty to access the mechanisms; lack of awareness about existing mechanisms; and lack of trust in the mechanisms by workers. Other hindrances can be language barriers, fear of retaliation or termination of contract, costs, and lack of access to expert or legal support.¹⁵³

3.1 Labour Migration in Finland and Norway

Migrant workers play an important part in the global economy. Of the more than 281 million international migrants in the world today,¹⁵⁴ 169 million are migrant workers who are employed in different countries to where they are nationals.¹⁵⁵ Migrant workers also provide much needed labour to sectors in the Nordic countries.¹⁵⁶

As EU and EEA member states, both Finland and Norway have experienced an increase in migration into the countries since the expansions in 2004 and 2007.¹⁵⁷ In Finland, labour migration has steadily grown, with 15 012 applications in 2021 and 20 960 in 2022.¹⁵⁸ In 2022, the most common nationalities from outside the EU were Russian, Indian, Ukrainian, Filipino and Chinese. And the largest cohorts from EU countries were Estonians, Germans and Latvians.

¹⁵⁰ OHCHR. “Guiding Principles on Business and Human Rights.” 2011.

¹⁵¹ Law. Government Approach to Remedy for Workers. What Can Companies Learn? A Discussion Paper. 2017.

¹⁵² Wintermayer, Irene and Amy Weatherburn. “Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands.” (2021). https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_783811.pdf.

¹⁵³ Brunovski, A. and A.M. Ødegård. Menneskehandel i arbeidslivet. 2019. Fafo. Accessed on February 20th, 2024. <https://www.faf.no/images/pub/2019/20732.pdf>; Brunovskis, Anette. "Special rights within universal welfare: Assistance to trafficking victims in Norway." *Journal of Comparative Social Work* 11, no. 1 (2016): 5-37. <https://journals.uis.no/index.php/JCSW/article/view/134/118>; Anti-Slavery International. “Migrants’ Workers Access to Remedy. A briefing paper for business.” 2021. https://www.antislavery.org/wp-content/uploads/2022/02/ASI_AccessToRemedy_Report.pdf; Davis, Tina. Recruitment of Migrant Workers, a study from Norwegian food production. 2023. https://kinginstituttet.no/wp-content/uploads/sites/4/2023/08/Rapport_A4_digital.pdf.

¹⁵⁴ IOM. “World Migration Report.” 2022. <https://worldmigrationreport.iom.int/wmr-2022-interactive/>

¹⁵⁵ ILO. “ILO Global Estimates on International Migrant Workers. Results and Methodology.” Third Edition. 2021. https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_808935.pdf

¹⁵⁶ Schoultz, Isabel, Marlene Spanger, Anniina Jokinen, Synnøve Økland Jahnsen, Heraclitos Muhire, and Anna-Greta Pekkarinen. "Constructions of migrant victims of labor exploitation in Nordic court cases." *International Review of Victimology* (2023): 02697580231174912.

¹⁵⁷ Davis, T. “Rekruttering av migrantarbeidere: En studie fra norsk matproduksjon” 2023. King Institute: Oslo.

¹⁵⁸ The number of applications for persons outside the EU and EEA applying for a residence permit to Finland for the first time, based on work.

The sectors where migrant workers are most sought after include cleaning, healthcare, restaurant, and agriculture.¹⁵⁹

The largest groups of migrant workers in Norway come from Poland, Lithuania and Romania, and Ukraine and India for persons from third countries outside of the EU/EEC.¹⁶⁰ In 2022, around 170 000 temporary migrants came to Norway to work.¹⁶¹ The country has relatively high wages compared to most countries in Europe and has therefore been an attractive country for migrants to seek work.¹⁶²

There has been a general shift in the labour market towards work that is more temporary, flexible and insecure, a change that is particularly evident in low skilled and low wage sectors.¹⁶³ This has led to employment becoming more precarious in these sectors.¹⁶⁴ Migrant workers can be vulnerable to exploitation and forced labour in risk sectors such as agriculture, fishing, construction, hospitality, cleaning and car wash, and exploitation occurs on a continuum with decent labour at one end and forced labour at the other, with different degrees of human rights and labour rights violations in between.¹⁶⁵ Research on Finland and Norway show that migrant workers in lower skilled sectors in the Nordics are vulnerable to exploitation, and in some cases also human trafficking for forced labour.¹⁶⁶

3.2 National Action Plans as Governance Tools to Facilitate Change

Since the adoption of the UNGPs in 2011, both Finland and Norway have made policy and legislative developments to implement the guiding principles at the national level and improve the landscape for corporate responsibility.

¹⁵⁹ "Maahanmuuton vuosi 2022: Venäjän hyökkäys Ukrainaankin vaikutti laajasti maahanmuuttoon," Finnish Immigration Service, accessed December 19, 2023, <https://migri.fi/-/maahanmuuton-vuosi-2022-venajan-hyokkays-ukrainaan-vaikutti-laajasti-maahanmuuttoon>.

¹⁶⁰ Statistisk Sentralbyrå. "Innvandringen tilbake på samme nivå som før pandemien." 2022.

¹⁶¹ Arbeidstilsynet. "Arbeidstilsynets risikobilde." Sammendrag. 2024. P. 14. <https://www.arbeidstilsynet.no/globalassets/rapportar/risikobilde/risikobilde-sammendrag.pdf>

¹⁶² P.A.Dyste. "Markedsanalyse for innkvartering av sesongarbeidere i Norge." 2016. Norges miljø-og biovitenskapelige universitet.

¹⁶³ Doellgast and Poulignano. *Reconstructing Solidarity: Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe*. 2018. Oxford: Oxford University Press ; Schoultz, Isabel, Marlene Spanger, Anniina Jokinen, Synnøve Økland Jahnsen, Heraclitos Muhire, and Anna-Greta Pekkarinen. "Constructions of migrant victims of labor exploitation in Nordic court cases." *International Review of Victimology* (2023): 02697580231174912.

¹⁶⁴ Davis, Tina. "Exploitation and forced labour practices of working holiday-makers in the Australian fresh food supply chain: a structural approach." PhD diss., 2016. : <https://ses.library.usyd.edu.au/handle/2123/17850>.

¹⁶⁵ Davis, 2016; Ollus, Natalia. "From forced flexibility to forced labour: The exploitation of migrant workers in Finland." PhD diss., University of Turku, 2016.

¹⁶⁶ Jokinen, Anniina, Natalia Ollus, and Anna-Greta Pekkarinen. *Review of actions against labour trafficking in Finland*. Helsinki European Institute for Crime Prevention and Control, 2023. <https://heuni.fi/-/report-series-99b#:~:text=Finland%20has%20been%20able%20to,the%20enforcement%20of%20criminal%20liability.>; Brunovskis and Ødegård, 2022; Davis, 2023.

Finland's National Action Plan for Business and Human Rights (NAP) was introduced in 2014. Linked to UNGPs pillar III on remedy, the NAP emphasizes that the Finnish constitution provides strong protection of human rights from a legal perspective; that tribunals are autonomous; that legal expenses are low; and that legal aid is accessible for persons with insufficient financial means. The NAP recognizes the need for victims of business related abuse to be aware of their rights, and acknowledges the vital role labour market organizations and NGOs play in disseminating information to workers about their rights and providing counselling in situations where it is needed.¹⁶⁷

The Finnish NAP further highlights the need to support employees in vulnerable positions. The NAP mentions “preventative measures such as early stage consultation and settlement proceedings”¹⁶⁸ as a way for business enterprises to prevent further harm related to their activities, and encourages companies to use non-binding complaint mechanisms, and to collaborate with NGOs. The NAP recognizes the OECD National Contact Point's (NCP) statements as legally non-binding in terms of companies implementing the resolutions.

The NAP has an attachment, a background memorandum, which gives further information on specific human rights and related legislations that are relevant for businesses. The memorandum recognizes that exploitation of migrant workers and immigrants in Finnish households, restaurant, construction, cleaning, metal, transport, gardening and berry picking sectors, may meet the criteria of human trafficking for forced labour.¹⁶⁹

The NAP gives an overview of the Finnish judicial and non-judicial structures, and correctly identifies that rights holders need to be aware of their rights and that labour market organizations and NGOs have been given the task to support vulnerable workers. As such, the NAP is relevant to cases of labour exploitation and other labour law violations taking place in Finland. However, it does not address the barriers that vulnerable workers may experience in practice, such as the majority not being members of trade unions, or the practical and procedural barriers in the judicial system, such as long processes and high evidence threshold. Furthermore, the NAP does not elaborate on any steps Finland should take to ensure access to effective remedy

¹⁶⁷ The Ministry of Employment and the Economy. National Action Plan for the Implementation of the Guiding Principles on Business and Human Rights. 2014. Accessed November 20, 2023. <https://tem.fi/documents/1410877/3084000/National+action+plan+for+the+implementation+of+the+UN+guiding+principles+on+business+and+human+rights/1bc35feb-d35a-438f-af56-aec16adfcbae/National+action+plan+for+the+implementation+of+the+UN+guiding+principles+on+business+and+human+rights.pdf>

¹⁶⁸ The Ministry of Employment and the Economy. National Action Plan for the Implementation of the Guiding Principles on Business and Human Rights. P. 30.

¹⁶⁹ The Ministry of Employment and the Economy. “YK:n yrityksiä ja ihmisoikeuksia koskeva toimeenpanosuunnitelma, liite 1 Taustamuistio”. 2014. p. 50, Accessed November 20, 2023. <https://tem.fi/documents/1410877/3084000/National+action+plan+for+the+implementation+of+the+UN+guiding+principles+on+business+and+human+rights/1bc35feb-d35a-438f-af56-aec16adfcbae/National+action+plan+for+the+implementation+of+the+UN+guiding+principles+on+business+and+human+rights.pdf>

for business-related abuse in its territory and jurisdiction, through judicial, administrative, legislative or other appropriate means, as the UNGP 25 states.¹⁷⁰

In 2015, Norway introduced a NAP to follow up on the UNGPs as a way to make it easier for business enterprises to actualise their human rights obligations. The NAP was informed by a mapping and gap analysis by Mark Taylor, a consultant from Fafo Research Foundation, who states that “Norwegian policy and legislation rests on the fundamental assumption that where business activities cause harm, the state will intervene with various forms of legislation”¹⁷¹ Further, Taylor identifies several national risks, including “violations of workers’ rights through the undermining of wages and working conditions, or through discrimination and social dumping”.¹⁷² However, the NAP has been critiqued for focusing heavily on international matters, such as promoting CSR and protecting human rights abroad, and in doing so, it does not “adequately address the full scope of the State’s jurisdiction as it is heavily skewed towards external concerns”.¹⁷³ Studies on migrant workers and labour exploitation in Norway reveal several types of violations that occur on a continuum of exploitation, such as irregular contracts; wage theft; extreme work hours; bad living conditions; exaggerated costs; and recruitment fees; dependent employment relationships; abuse of power; and, forced labour.¹⁷⁴ This aligns with Taylor’s findings, although the reality of low skilled migrant workers in Norway being at risk of exploitation is not mentioned in the NAP.¹⁷⁵

In response to the 26th principle of the UNGPs on judicial grievance mechanisms, the NAP states that Norway has comprehensive human rights laws as well as relevant laws for responsible business in some areas.¹⁷⁶ The plan also points out that Norway has an efficient judicial system, and that Norwegian compensation law can lead to economic redress or compensation if the criteria are met.¹⁷⁷

On the topic of state based grievance mechanisms outside of the court system, the NAP states that Norway has well-functioning institutions, such as its Labour Inspectorate, Children’s Ombudsman, Consumer Authority, Equality and Discrimination Ombudsman, Environmental Authority, and the Civil Ombudsman as well as several grievance mechanisms linked to

¹⁷⁰ UN Working Group on Business and Human Rights.” The UN Guiding Principles on Business and Human Rights: An Introduction.” OHCHR. Accessed October 26, 2023. https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

¹⁷¹ Taylor, M.B. A Mapping and Gap Analysis. The State’s Duty to Protect. 2013. Fafo. Accessed January 12, 2024. <https://globalnaps.org/wp-content/uploads/2018/08/norway-gap-analysis.pdf>.

¹⁷² Taylor, M.B. “Mapping and Gap Analysis.” 2013. The concept of social dumping is explained on page 11.

¹⁷³ ICAR, ECCJ and Dejusticia. Assessment of the National Action Plan (NAP) on Business and Human Rights of Colombia. 2017. P. 166. https://icar.ngo/wp-content/uploads/2021/04/ICAR_DejusticiaColombianNAPAssessment.pdf

¹⁷⁴ Davis. 2023. P 69.

¹⁷⁵ Taylor, M.B. A Mapping and Gap Analysis. The State’s Duty to Protect. 2013

¹⁷⁶ Norwegian Ministry of Foreign Affairs. “Business and Human Rights. National Action Plan for the implementation of the UN Guiding Principles.” 2015. Accessed January 12, 2024. https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business_hr_b.pdf.

¹⁷⁷ Norwegian Ministry of Foreign Affairs. “BHR NAP.”

employees, children's, women's and men's rights, such as the OECD National Contact Point, whose mandate it is to process cases independently of the government.¹⁷⁸

The plan further sets out directions and criteria for non-state-based grievance mechanisms at the company level in line with the UNGPs effectiveness criteria.¹⁷⁹

Although the drafting process of the NAP was coordinated by the Ministry of Foreign Affairs, each relevant Ministry is meant to be responsible for monitoring and assessing the need for legislative amendments and other measures within its area of expertise.¹⁸⁰ However, a general concern for NAPs that has been set up under single agencies is how the policy is mainstreamed without the establishment of cross-governmental groups that allow for a continuous dialogue on matters related to the NAP beyond the drafting.¹⁸¹ Experience has shown that high-level political buy-in and leadership across government is essential for effective implementation of NAPs.¹⁸²

Rather than anchoring human rights violations related to business activities at home more clearly in the NAP, such as exploitation of migrant workers and mainstreaming this through all relevant Ministries for stronger policy and operational alignment, labour exploitation and forced labour practices are today primarily operationalised through separate government policy agendas under different Ministries. And these agencies' work does not include a focus on business enterprises' responsibilities and role on human rights violations as laid out in the NAP. This raises a general concern related to NAPs, which is that if the plan is placed under a lead agency, such as the Ministry of Foreign Affairs, then it is questionable if it has the needed authority to mainstream the policy across all government agencies. Another pertinent question is what authority the agency has to secure the full achievement of the NAPs goal.¹⁸³

The key stakeholders involved in tackling labour exploitation nationally are primarily different authorities, such as the police, labour inspectorate, tax authorities together with trade unions and some non-governmental organisations.¹⁸⁴ The siloed approach between the business and human rights (BHR) agenda reflected in the NAP that sits under the Ministry of Foreign Affairs on the one hand, and the National Action Plan against Social Dumping and Work Life

¹⁷⁸ Norwegian Ministry of Foreign Affairs. "BHR NAP". Although the state-based mechanisms referenced in the NAP are appropriate to provide access to effective remedy on paper, it is hard to assess to what extent they are substantive in their operational delivery of access to effective remedy without undertaking empirical research to examine their effectiveness.

¹⁷⁹ Norwegian Ministry of Foreign Affairs. "BHR NAP." The criterias include being legitimate, fair, accessible, predictable, reasonable, based on dialogue with and transparency for the involved parties, and that the results and remedies are in accordance with internationally recognized human rights.

¹⁸⁰ Norwegian Ministry of Foreign Affairs. "BHR NAP." <https://globalnaps.org/country/norway/>. The National Action Plan on Social Dumping and Work Life Crime is under the Ministry of Employment, and the National Action Plan Against Human Trafficking is under the Ministry of justice.

¹⁸¹ O'BRIEN, Claire METHVEN, Amol Mehra, Sara Blackwell, and Cathrine Bloch Poulsen-Hansen. "National action plans: Current status and future prospects for a new business and human rights governance tool." *Business and Human Rights Journal* 1, no. 1 (2016): 117-126.

¹⁸² Scottish Human Rights Commission. 2019. P. 9.

¹⁸³ Methven O'Brien et al. 2015.

¹⁸⁴ Brunovskis and Ødegård. "Menneskehandel i arbeidslivet." 2019. Accessed January 12, 2024. <https://www.fao.no/images/pub/2019/20732.pdf>.

Crime and the National Action Plan against Human Trafficking that primarily falls under separate Ministries reveal a siloed approach towards effectively tackling labour exploitation at home.¹⁸⁵ This fragmentation has until now prevented the different stakeholders from speaking the same language when talking about business-related human rights violations affecting migrant workers. Further, it is a missed opportunity to sufficiently engage with business enterprises in several high-risk sectors in Norway where their responsibilities are clearly set out in the UNGPs and NAP, and where they may have direct leverage to influence effective operational change.

Although a state's introduction of a NAP indicates a political commitment to bring laws, policies and practices into alignment with the core norms of the UNGPs,¹⁸⁶ the Norwegian NAP does not fully live up to this promise when it comes to internal labour exploitation. Further, the lack of mainstreaming of the policy across governmental departments exemplifies the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' statement that 'the lack of policy coherence between governmental departments and agencies that shape business practice and the human rights obligations of the State is a significant gap'.¹⁸⁷

At an operational level, the current system does not provide a sufficiently strong multi-stakeholder approach that captures the maximum responsibilities business enterprises have as well as their power to influence change in their national operations and supply chains in line with the responsibilities set out for companies in the NAP. This reflects a concern that NAPs have not done enough thus far to ensure better protection in key policy areas, including in access to remedy.¹⁸⁸

The Finnish and the Norwegian governments have introduced the NAPs, an important governance tool to prevent and address human rights abuses linked to business. However, without political will and a stated commitment to measure and evaluate the NAPs impact based on transparency, the NAPs will remain weak in their implementation of Pillar III of the UNGPs, which will see obtaining effective remedy as an exception rather than the rule.¹⁸⁹ It is also notable that the Finnish NAP acknowledges more explicitly that business related exploitation occurs in Finland, and that migrant workers are a vulnerable group nationally. The Norwegian NAP on the other hand, has a stronger focus on human rights risks and violations that occur

¹⁸⁵ The National Plan against Social Dumping and Work Life Crime sits under the Ministry of Employment, and the National Action Plan against Human trafficking sits under the Ministry of Justice.

¹⁸⁶ Methven O'Brien et al. 2015.

¹⁸⁷ General Assembly, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/73/163 (16 July 2018), para 84(a)

¹⁸⁸ Rivera, Humberto Cantú. "National action plans on business and human rights: Progress or mirage?." *Business and Human Rights Journal* 4, no. 2 (2019): 213-237. <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/national-action-plans-current-status-and-future-prospects-for-a-new-business-and-human-rights-governance-tool/51687C20A72589C0D9A34B13F1790C15>; San Antonio, Silvia Avellaneda. "Role of Human Rights Indicators in National Action Plans on Business and Human Rights: Comparative analysis of Finland and Spain." *The Age of Human Rights Journal* 20 (2023): e7500-e7500. <https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/7500>; ICAR, ECCJ and Dejusticia. 2017.

¹⁸⁹ UN General Assembly, Report of the Working Group on the Issue of Human Rights and transnational Corporations and Other Business Enterprises, A/72/162. 2017

internationally. As a result, there is a disconnect between business related exploitation of migrant workers at home and the national response structures in Norway.

3.3. Do the state-based judicial mechanisms provide remedy for migrant workers?

Access to justice is a vital part of states' duty to protect human rights. Exploitation and forced labour are serious crimes, where victims are entitled to remedy.

Recent research from Finland states that policy measures to tackle labour trafficking and exploitation have been more successful there compared to other Nordic countries.¹⁹⁰ Finland has the largest number of indictments and convictions for trafficking for forced labour in the Nordics.¹⁹¹ Human trafficking for forced labour was added to the Finnish penal code in 2004, at the same time as the extortionate work discrimination law was introduced, which can be applied in cases where an employee is put to an inferior position by exploiting their dependent position.

The first court case of trafficking for forced labour in Finland was in 2007. Since 2005, the labour inspectorate has had specialized inspectors focusing on monitoring the use of migrant workers.¹⁹² Research has been conducted on labour exploitation in Finland, and the independent role of the National Rapporteur on Trafficking in Human Beings has been a driver for developments at policy and practice levels.¹⁹³ Research has also found that forced labour is widely understood in the Finnish court system, which is reflected by for instance the courts having referred to the ILO's forced labour indicators in many of the convictions.¹⁹⁴ Despite some of the positive developments, the threshold for sentencing trafficking for forced labour remains high,¹⁹⁵ which is the case across the Nordic countries.¹⁹⁶

In addition to the criminal court, remedy for labour exploitation can be sought in a civil process, especially concerning different labour law violations, such as unpaid wages. The civil process however includes a high cost risk for the plaintiff, especially if they are not a trade union member. Free legal aid by the state is provided only if a person has insufficient funds, based on a calculation on their income, expenses and wealth.¹⁹⁷ In the civil process, costs for litigation and a

¹⁹⁰ Jokinen, Ollus and Pekkarinen. "Review of actions."

¹⁹¹ In Finland there have been 25 indictments and 9 convictions for trafficking for forced labour between 2000-2020. In Schoultz et al., "Constructions". P. 7.

¹⁹² Jokinen, Ollus and Pekkarinen. "Review of actions." P. 31.

¹⁹³ Jokinen, Ollus and Pekkarinen, Review of actions, 60. Finland is the only country in the Nordics that have a National Rapporteur on Trafficking in Human Beings.

¹⁹⁴ Jokinen, Ollus and Pekkarinen, Review of actions, 60.

¹⁹⁵ Kimpimäki, Minna. "Ulkomaisten työntekijöiden hyväksikäyttö: ihmiskauppaa, kiskonnantapaista työsyrtintää vai alipalkkausta?" 2021. Lakimies 119, no. 5 (2021): 785-811.

¹⁹⁶ Schoultz et al., "Constructions".

¹⁹⁷ "Mitä oikeusapu maksaa," Oikeus.fi. Accessed March 7, 2024 <https://oikeus.fi/oikeusapu/fi/index/hakeminen/mitaoikeusapumaksaa.html#>.

private lawyer can become high, and the plaintiff is responsible for all the expenses, compared to a criminal process where it is the prosecutor who brings the case to court.¹⁹⁸

The state judicial mechanisms related to labour exploitation in Norway have until recently, primarily been the criminal code for human trafficking for forced labour, which was introduced in 2003, and updated in 2015.¹⁹⁹

The legal threshold for sentencing for forced labour differs slightly in the Nordic countries as mentioned above.²⁰⁰ The number of legal cases of trafficking for forced labour is highest in Finland with 25 cases processed by the courts. Norway is second with nine court cases. Experts do, however, find the overall threshold for cases to be high.²⁰¹

The discussion on exploitation in Norway has in recent years been focused around social dumping and work life crime, two policy agendas that have been introduced by separate governments.²⁰² This focus is also reflected in a new national action plan for social dumping and work life crime introduced for the first time in 2022.²⁰³ According to the government, social dumping concerns migrant workers getting significantly worse wages and working conditions than Norwegian employees, which can include excessive work hours and poor living conditions. Work life crime refers to different forms of profit motivated crime in the labour market that happens at the expense of employees working conditions and rights, but also affect the welfare state as a whole.²⁰⁴ In the discussions about severe labour exploitation, the focus on criminal employers has been much stronger than on the remediation of the victims.²⁰⁵ In 2021, Norway was for the first time downgraded to Tier 2 in the yearly Trafficking in Persons (TIP) Report by the US Department of State due to not having met the minimum standards for eliminating trafficking, including prosecuting zero trafficking cases; not providing sufficient funding for victims assistance; charging traffickers for non-trafficking crimes; and not securing trafficking free supply chains in selected sectors.²⁰⁶

A new law against wage theft became effective in Norway in January 2022, which is punishable by up to six years in severe cases. This law could potentially bridge a judicial gap

¹⁹⁸ Kristiina Vainio ja Maija Mustaniemi-Laakso. "Business and human rights - access to remedy. Finland country report", 2019. Accessed November 15, 2023 https://fra.europa.eu/sites/default/files/fra_uploads/fi_country_report.pdf.

¹⁹⁹ Law section §257 and §258 on human trafficking: Brunovskis and Ødegård. "Menneskehandel i arbeidslivet." P. 28.

²⁰⁰ Jokinen, Ollus and Pekkarinen. "Reviews of actions". P 53.

²⁰¹ Jokinen, Ollus and Pekkarinen, Review of actions, 54.

²⁰² Jokinen, Ollus and Pekkarinen. "Review of Actions"; Davis and Pedersen. "Migrantarbeidere i Norske Verdikjeder." P. 13.

²⁰³ There is also a national action plan on human trafficking from 2016 that has no expiry date and lacks alignment with the NAP on Business and Human Rights, which does not mention forced labour in a supply chain context.

²⁰⁴ Regjeringen. "Handlingsplan mot sosial dumping og arbeidslivskriminalitet." 2022. Accessed on February 23rd, 2024. <https://www.regjeringen.no/no/dokumenter/test/id2928944/?ch=1>.

²⁰⁵ Brunovskis, A. and Ødegård, A.M. "Gråsone".

²⁰⁶ DEPARTMENT OF STATE WASHINGTON DC. "Trafficking in persons report." (2021). Norway was still put on Tier 2 in the 2023 TIP Report.

between prosecutions for trafficking for forced labour, which has a very high threshold, and labour law breaches, to address this particular form of labour exploitation more effectively. The first and only conviction for wage theft under the law was given in October 2023.²⁰⁷ Wage theft may be one of the more common forms of labour violations in Norway and represents a direct threat to migrant workers' livelihood and wellbeing.²⁰⁸ Norway does not have national statistics on forced labour, with its principal purpose to inform measures to prevent and eliminate severe exploitation, as well as inform measures to protect persons, and provide access to appropriate and effective remedy.²⁰⁹ This has been criticised by GRETA in their 2017 and 2021 country report, and by the TIP Report.²¹⁰

Similarly, there is no data on the prevalence of wage theft although it is expected to be quite widespread.²¹¹ A recent study based on interviews with migrant workers show that 14 out of 19 workers had experienced wage theft.²¹² Employers use different methods, such as delaying payments until temporary migrant workers can not afford staying in Norway any longer and return home without pay, declare themselves bankrupt, or demand paybacks from workers after having paid the correct wages so that it looks legitimate on paper.²¹³ A key problem since the wage theft law was introduced is that police drop 90% of the cases, primarily because the evidence threshold is very high.²¹⁴ The burden of proof is on the violated worker, who in most cases will struggle to document how many hours they have worked in a way that satisfies the threshold for sending a case to court.²¹⁵ Another problem is that exploited workers do not have

²⁰⁷ Ognedal, O. "Pubeier etter historisk dom: - Aldri mer." 2023. NRK. Accessed January 12, 2024. <https://www.nrk.no/ostfold/eier-av-spisestedet-i-askim-er-den-forste-som-er-domt-for-lonnstyveri-1.16593207>.

²⁰⁸ Ekendahl-Dreyer, A.S. De sårbare arbeiderne. 2020. Dagsavisen. Accessed January 12, 2024. <https://www.dagsavisen.no/debatt/2020/06/18/de-sarbare-arbeidstakerne/>.

²⁰⁹ ILO. "Guidelines concerning the measurement of forced labour." ICLS/20/2018/Guidelines. 2018. Norway has been criticised by GRETA in their 2017 and 2021 country report for not having a comprehensive system for collecting and analysing data on measures to protect and promote the rights of victims of trafficking

²¹⁰ GRETA. "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway." 2017. <https://rm.coe.int/greta-2017-18-fgr-nor-en/1680782abc>; GRETA. "Evaluation Report Norway. Access to justice and effective remedies for victims of trafficking in human beings". 2022. <https://rm.coe.int/greta-third-evaluation-report-on-norway/1680a6ce66>. US Department of State. "2023 Trafficking in Persons Report: Norway. <https://www.state.gov/reports/2023-trafficking-in-persons-report/norway/>.

²¹¹ Günther, J.H et al. "Ber staten hjelpe ofre for lønnstyveri: - Må slå neven i bordet." NRK. Accessed on March 1st, 2024. <https://www.nrk.no/ostfold/hoyre-ber-staten-om-a-hjelpe-ofre-for-lonnstyveri-i-norge-1.16766823#:~:text=NRK%20forklarer&text=Lønnstyveri%20er%20å%20bevisst%20betale,gi%20inntil%206%20års%20fengsel..>

²¹² Davis. Rekruttering av migrantarbeidere. P. 74

²¹³ Aanstad, H. "Flere må straffes for lønnstyveri." 2023. FriFagbevegelse. Accessed January 12, 2024. <https://frifagbevegelse.no/debatt/flere-ma-straffes-for-lonnstyveri-6.490.1007910.ab96b737b5#:~:text=Det%20markerer%20et%20betydelig%20fremskritt,sluppet%20una%20i%20stor%20skala.>

²¹⁴ Günther et al. "Ber staten hjelpe ofre for lønnstyveri: - Må slå neven i bordet."

²¹⁵ We are currently doing interviews for a larger research project on access to remedy, and this is an early finding that several experts bring up.

access to any free legal aid in cases concerning underpayment or wage theft.²¹⁶ Beyond the impact wage theft has on the workers and their families lives, it also creates an uneven playing field for business enterprises who operate responsibly.

Although migrant workers who have been underpaid can seek remedy in the form of recovering wages through the civil courts as mentioned in the NAP, they rely heavily on specialised support, such as civil society organisations, trade unions and pro bono lawyers, to do so.²¹⁷ There are still significant practical barriers, including access to information about the civil remediation avenue; not getting access to free legal aid; having to pay a fee to put forward a complaint; the near impossible scenario of filing a complaint if you do not have support from an NGO, a pro bono lawyer or a trade union;²¹⁸ and, that it can take around two years before a case is settled.²¹⁹ The responsibility for collecting money owed to them from exploiting employers currently falls on the employees who have been underpaid or receive no pay. Once a complaint is filed through the first stages of civil court, a conciliation council, full remediation in terms of repayment of all lost wages is not a given, in which case there has to be an appeal that requires further legal aid and more costs.

In October 2023, the labour inspectorate performed 1800 inspections thus far that year with a particular focus on wage theft and indecent working conditions, and they discovered violations at 630 of the inspected companies.²²⁰ However, even if the labour inspectorate sanctions a company for wage theft or underpayment with a fine, the money goes to the state and not to the violated workers. For temporary migrants who are in the country on time bound seasonal visas or for EU workers who have not been paid, it can be hard to seek redress for wage theft or other forms of exploitation for several reasons, including visa expiry; lack of free legal aid; no money to stay; and long court procedures. And if they leave the country, they may drop out of the system altogether and give up on seeking remedy.²²¹

It has been pointed out that Norway could benefit from introducing a law similar to the Finnish extortionate work discrimination law where exploited migrant workers can seek remedy for labour exploitation that doesn't meet the high threshold of the human trafficking criminal

²¹⁶ Brunovskis, A. and A.M. Ødegård. 'Grov utnytting av utenlandske arbeidstakere. Gråsonen mellom det regulære arbeidslivet og menneskehandel.' Fafo. P. 77. 2022. Accessed on February 23rd, 2024. <https://www.faf.no/images/pub/2022/20817.pdf>.

²¹⁷ Weatherburn, Amy, and Irene Wintermayr. "Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands." (2021). Accessed on March 5th, 2024. https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_783811.pdf.

²¹⁸ The probability of filing complaints without support is low due to for instance language barriers, costs and lack of income. You only have rights to legal support if you are a member of a trade union, and membership is generally low amongst temporary migrant workers in the Nordic countries. The Norwegian Confederation of Trade Unions (LO) offers limited legal aid in a limited number of cases as part of a collaboration with frontline NGOs. LO. "LO-advokatene samarbeider med Caritas, Kirkens Bymisjon, Juss buss m.fl." 2019. Accessed on February 29th, 2024. https://www.lo.no/hva-vi-mener/lo-advokatene/nyheter-fra-lo-advokatene/lo_advokatene_bistar_de_mest_sarbare/.

²¹⁹ Brunovskis and Ødegård. "Menneskehandel i arbeidslivet."

²²⁰ Ognedal, O. "Pubeier etter historisk dom: - Aldri mer". 2023. NRK

²²¹ Schoultz et al. "Constructions".

code..²²² Overall, it is not an easy path to seek redress through criminal cases for labour exploitation in the Nordic countries,²²³ even though Finland has a better track record than Norway.²²⁴ The situation seems to illustrate McDonald's statement that "There is a large population of exploited migrant workers whose cases never come to court, and the cases that do reach court thus represent the tip of the iceberg".²²⁵ Although States are the primary duty bearer for providing remedy according to international law, non-state based grievance mechanisms by business enterprises have the potential to bridge a current accountability gap. It allows rightsholders an alternative route to seek remedy where judicial recourse may present too many obstacles or may not be a viable option.

4. What grievance mechanisms do Finnish and Norwegian business enterprises have, and do they provide access to remedy?

Under Pillar II of the UNGPs, all companies have a duty to respect human rights regardless of size, sector and country of operation, and it is expected that they have processes in place to remediate any harm they have caused directly or indirectly.²²⁶ When it becomes mandatory by law to conduct human rights due diligence processes, companies who have been laggards in responding to Pillar II of the UNGPs have to put proper processes in place to ensure that specific criteria are met with the end goal to prevent human rights violations or activate early interventions to stop and remediate harm. For the purpose of this article, we reviewed human rights due diligence and sustainability statements from a small sample of Finnish and Norwegian companies to assess what the entities disclose about grievance mechanisms and remediation processes in response to Pillar III of the UNGPs. We reviewed six Finnish and six Norwegian company statements based on the required Non-Financial Reporting Directive (NFRD) that Finnish businesses have reported under, and the mandatory HRDD statements Norwegian companies have published under the Transparency Act.²²⁷ We selected companies from the construction sector and food industry as these are known to be high risk sectors for migrant workers. We analysed what the business enterprises disclose on potential and actual risks related to migrant workers in their national operations and supply chains, as well as their operational grievance mechanism structures and remedy strategies and actual cases to better understand if remedy is provided. Although the companies may have reported on human rights in several

²²² Brunovskis and ødegård. 2022. As mentioned earlier, the chances of trying and winning human trafficking cases in court has proven to be slim, especially in recent years.

²²³ Both Norway and Finland are signatories to the 2014 ILO protocol, which states that "Each Member shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedy, such as compensation, and to sanction the perpetrators of forced or compulsory labour".

²²⁴ Brunovskis and Ødegård. *Menneskehandel i arbeidslivet*. P. 43

²²⁵ Schoultz et al. 2023; McDonald, William F. "Explaining the under-performance of the anti-human-trafficking campaign: experience from the United States and Europe." *Crime, Law and Social Change* 61 (2014): 125-138.

²²⁶ Deva, S. 2023.

²²⁷ We only focus on the NFRD and Transparency Act disclosures although the companies assessed may also report under other regulations, i.e the EU Taxonomy.

different places, we have focused on reviewing reporting in their annual reports and sustainability reports from 2023.²²⁸

Overview of companies assessed from Finland and Norway

Company	Sector	No. of employees	Report type	Disclosure on grievance mechanisms	Disclosure on labour exploitation risks for migrant workers	Disclosure on cases of remediation
S Group	Retail, food and other	Ca. 40000	Sustainability report	Yes	Yes	2 cases
Kesko	Retail, food and other	ca. 39000	Sustainability report	Yes	No	No
Valio	Food production	4457	Sustainability report	Yes	Yes	No
Fazer	Food production	6235	Sustainability report	Yes	Yes	No
YIT	Construction	Ca. 5000	Sustainability report	Yes	Yes	No
SRV	Construction	Ca. 1000	Sustainability report	Yes	Yes	No
Coop Norge AS	Retail, food	Ca. 26000	Transparency Act statement	Yes	No	2 cases
NorgesGruppen	Retail, food	44139	Transparency Act statement	No	Yes	1 case
Lerøy Seafood Group ASA	Food production	5972	Transparency Act statement	Yes	No	No

²²⁸ All the HRDD statements by Norwegian companies under the Transparency Act have been analysed from their annual reports for consistency.

Gartnerhallen SA	Food production	Coop of 1000 suppliers	Transparency Act statement	Yes	No	No
Betonmast (part of AF Gruppen)	Construction	600	Transparency Act statement	Yes	Yes	1 case
Skanska Norway	Construction	Ca. 3800	Transparency Act statement	Yes	Yes	No

4.1 Reporting frameworks in Finland and Norway

The Finnish companies have to report under the Non-Financial Reporting Directive (NFRD), which does not set out specific reporting criteria or guidance on grievance mechanisms and remedy.²²⁹ In 2020, the European Commission decided to review the effectiveness of the NFRD through a public consultation, which revealed the directive's implementation shortcomings linked to reliability, comparability and relevance of the information provided.²³⁰ A new regulation was introduced in 2023 on companies' disclosure on sustainability information that includes human rights, the Corporate Sustainability Reporting Directive (CSRD), which will replace the NFRD.²³¹ The new directive, based on the UNGPs,²³² will strengthen the sustainability reporting requirements in accordance with the European Sustainability Reporting Standards (ESRS) for large and listed companies in Europe, and the first reports will be published in 2025 for the reporting year 2024.²³³ The CSRD will be mandatory for larger Finnish companies; it stipulates the due diligence procedures corporations will have to perform and sets out specific guidelines for how to report on remedy.²³⁴

The UNGPs have proven to be influential in shaping policies and laws in the BHR field, and HRDD have become a leading area of development and discourse around how business

²²⁹ The NFRD requires companies to publish a non-financial report on their ESG performance in their annual report.

²³⁰ European Parliament. Briefing. Non-financial Reporting Directive. 2021. Accessed on February 29th. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI\(2021\)654213_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf).

²³¹ Corporate Sustainability Reporting Directive (CSRD): [Corporate sustainability reporting - European Commission \(europa.eu\)](https://european-council.europa.eu/media/e300042f-323d-4f43-b0d3-608c7d1e2469/p1/document/Corporate_sustainability_reporting_-_European_Commission.pdf)

²³² Platform on Sustainable Finance. Final Report on Minimum Safeguards. 2022. P. 15. Accessed on March 1st, 2024. https://finance.ec.europa.eu/system/files/2022-10/221011-sustainable-finance-platform-finance-report-minimum-safeguards_en.pdf.

²³³ European Sustainability Reporting Standards (ESRS) have been developed by EFRAG, independent multi-stakeholder body. The ESRS were adopted by the EU commission in July 2023 to be used by companies under the CSRD.

²³⁴ The Norwegian Government held a hearing in October 2023 as to whether the CSRD should be included in Norwegian law to replace the Non_Financial Reporting Directive, and the decision is still pending.

respect human rights, including HRDD laws at national and European level.²³⁵ HRDD is a process by which corporations can identify, prevent, mitigate and account for their actual and potential adverse human rights impacts.²³⁶ The legal test with the HRDD laws is not whether a human rights violation occurs in an enterprise's operations or supply chains, but what actions companies take to identify risks and breaches, assess its seriousness, and what steps they take to respond.²³⁷ Norway introduced the Transparency Act in 2021, a HRDD law that also includes a focus on decent working conditions and access to information.²³⁸ The law requires companies to conduct due diligence assessments of their own business, supply chains and business partnerships, and publish an account of their assessment. Companies also have a duty to provide information upon request, and take steps towards all workers getting a living wage. The law applies directly to around 9000 companies..²³⁹

The Transparency Act is enforced by the Norwegian Consumer Authority, who can give warnings and economic sanctions if companies do not fulfill the requirements under the law. It also provides guidelines for what needs to be included in a statement. The statements have to meet three criteria: 1) a general description of the business enterprise that includes information about how the company is organised, what products or services it offers, what markets it operates in, how human rights and decent working conditions have been anchored in internal guidelines and routines, and information about grievance mechanisms; 2) the statement needs to include information about actual negative consequences and significant risks that have been identified through the due diligence assessment, and the guidelines highlight the importance for companies to describe what their findings have been and not just state that they have had findings,²⁴⁰ and 3) the statement has to include information about initiatives and results. As a minimum, companies

²³⁵ Deva, Surya. "Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?." Leiden Journal of International Law 36, no. 2 (2023): 389-414. <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/A826E647F5996B9D9EA331D0258129BB/S0922156522000802a.pdf/mandatory-human-rights-due-diligence-laws-in-europe-a-mirage-for-rightsholders.pdf>. HRDD

²³⁶ McCorquodale, Robert, and Justine Nolan. "The effectiveness of human rights due diligence for preventing business human rights abuses." *Netherlands International Law Review* (2021): 1-24. <https://link.springer.com/article/10.1007/s40802-021-00201-x>.

²³⁷ Johnstone, O. and Hesketh, O. "Effectiveness of mandatory human rights and environmental due diligence laws." Modern Slavery Evidence & Policy Centre. Policy Brief. P. 7. 2022. Accessed March 1st, 2024. https://modernslaverypec.org/assets/downloads/mHREDD_briefing_FINAL.pdf.

²³⁸ The HRDD requirement in the Norwegian law is listed in: Krajewski, Markus, Kristel Tonstad, and Franziska Wohltmann. "Mandatory human rights due diligence in Germany and Norway: Stepping, or striding, in the same direction?." *Business and Human Rights Journal* 6, no. 3 (2021): 550-558.

²³⁹ Forbrukertilsynet. "The Transparency Act." 2024. Accessed on March 1st, 2024. <https://www.forbrukertilsynet.no/vi-jobber-med/apenhetsloven/the-transparency-act>. The duty to provide information covers requests for general information and information about a specific product or service. The due diligence assessment must be carried out based on the OECD Guidelines for Multinational Enterprises.

²⁴⁰ The Consumer Authority may have updated information on their website about reporting duties and guidelines after they have assessed the first round of statements published by companies in 2023.

have to communicate what they have done or plan to do, and expected and actual results of these initiatives in reducing risks or remediate actual negative consequences the company has found.²⁴¹

4.2 Company disclosure and acknowledgement of risk

The selected Finnish companies are not under legal obligation to conduct a HRDD under the NFRD, although some of them disclose in their statements that they have done so, while the Norwegian companies are legally bound to do so under the Transparency Act. Reporting based on the UNGPs is a tool for investors, authorities and other stakeholders to assess companies' understanding and management of human rights risks.²⁴² The purpose of using HRDD as a risk assessment tool is for business enterprises to consider risk to people rather than risk to the corporation, in other words to ensure that the risk assessment goes beyond identifying and managing risk to the company itself. It is however argued that in practice, HRDD as a risk management tool is more profit-driven than rights-driven.²⁴³ This can be said to defeat the purpose of the UNGPs as a framework for companies to 'know and show' that they respect human rights.²⁴⁴

The company statements we assessed vary in terms of if and how they mention the risk of migrant worker exploitation linked to their supply chains and operations in Finland and Norway. Of the Finnish company statements, five of six business enterprises show awareness of the potential risk of exploitation that migrant workers are vulnerable to in a national context. However, the depth of disclosure varies. One company mentions human trafficking for forced labour. Two of the companies list internal measures they have implemented, such as having internal guidelines to prevent and identify exploitation, and internal training on prevention and identification of labour exploitation risks in Finland. Four of the companies disclose external measures they have initiated, including partnerships with a local university, hiring survivors of human trafficking, and organising regular anti-grey economy days on construction sites to inform about and tackle socially harmful phenomena, including exploitation.

Of the Norwegian company statements, only three companies mention the potential risk of exploitation for migrant workers at home. One company in the food industry mentions concrete actions they have made to address migrant worker risks, and also disclose about a new supplier dialogue system, which functions as a support to the company's risk assessments. The construction companies overall elaborate more on the risk of migrant worker exploitation within their sector, and give a more in depth account of where in their operations and supply chains this may pose a threat. In doing so, they show a greater awareness of risk to this specific group.

Further, these companies refer to challenges related to human rights, including basic labour rights and work life crime. One company mentions examples linked to informal work and

²⁴¹ Forbrukertilsynet. Redegjørelse. 2024. Accessed on March 1st, 2024. <https://www.forbrukertilsynet.no/vi-jobber-med/apenhetsloven/redegjorelsesplikt#etterpa>

²⁴² Shift. "UN Guiding Principles Reporting Framework." 2023. Accessed on March 1st, 2024. <https://www.ungpreporting.org>.

²⁴³ Deva. "Mandatory Human Rights Due Diligence Laws in Europe". P. 400.

²⁴⁴ Shift. UN Guiding Principles Framework.

migrant workers who are coerced into slavelike working conditions, and discloses that the greatest inherent risk of violations of human rights and decent working conditions are potential situations at their building sites. The other construction company views suppliers of services to their construction sites as partly high risk when it comes to the risk of breaches of human rights and decent working conditions, and highlights how the construction industry in general is known for having high demand for cheap labour and an extensive use of migrant workers within some procurement categories. Further, the company identifies the following procurement categories as high risk areas: painting, bricklaying, cleaning and labour hire companies. Both companies in the construction sector mention measures they have implemented, such as partnering with the industry alliance, EBA for overall risk assessments and Fair Play Bygg.²⁴⁵

One company operating in the food industry disclose that they consider the risk for human rights violations in Norway to be low due to strict labour law regulation, while another company in the same industry disclose that they consider exploitation of migrant workers to be the greatest risk in their supply chains. The latter has entered into a partnership with the Coretta and Martin Luther King Institute for Peace (King Institute) to strengthen migrant workers' rights in Norwegian food supply chains by initiating a project that focuses on improving recruitment processes among their suppliers. Overall, only three of the six Norwegian companies mention measures they have taken to address risks in Norway beyond their own internal systems, which include engaging in industry alliances and collaborating with external civil society partners. The Finnish companies disclose a greater awareness about the potential risk of exploitation for migrant workers in their reporting under the NFRD than the Norwegian companies do in their reporting under the HRDD Transparency Act

4.3 What grievance mechanisms do the companies have?

Grievance mechanisms are an essential way for rights holders and others to identify concerns and raise grievances, and seek remedy in cases where companies have caused harm. A business enterprises' operational level grievance mechanisms should meet the criteria set out in the UNGPs and the NAPs to ensure that they are "legitimate, fair, accessible, predictable, reasonable, based on dialogue with and transparency for the involved parties, and that the results and remedies are in accordance with internationally recognized human rights".²⁴⁶ The grievance mechanisms should also be used as a source of learning for companies. In order to create effective operational level grievance mechanisms that have integrity, companies need to build a systematic approach to remedy that allows affected rights holders to address adverse impacts in a timely way.

²⁴⁵ Fair Play Bygg is established as a collaboration between trade unions and business enterprises. The initiative operates a third party whistleblower channel, and investigates concrete cases of exploitation and work life crime that they report to the authorities.

²⁴⁶ OHCHR. "Guiding Principles on Business and Human Rights." 2011; Norwegian Ministry of Foreign Affairs. "BHR NAP."

However, there are several hindrances in getting access to remedy, and one of them is based on how well the operational level grievance mechanisms are set up.²⁴⁷ Known weaknesses can be a lack of trust in the mechanism by the rights holders, language barriers, fear of reprisals, and lack of ownership of the mechanism.²⁴⁸ Kimotho and Ogot argue that for a grievance mechanism to meet an effective human rights based approach, it needs to seek to reduce power imbalances between a company and the affected rights holder.²⁴⁹ According to the 2023 Corporate Human Rights Benchmark, only 5% of companies disclose evidence of how they ensure the rights holders trust, while only 10% show evidence of how they engage with affected stakeholders for them to feel a sense of ownership by involving them in the development, performance and improvement of the grievance mechanisms.²⁵⁰ Without meaningful engagement with potentially affected rights holders, it will be difficult to ensure that the grievance mechanisms meet the criteria outlined in the UNGPs, such as being predictable, fair, and transparent. Another major barrier that often prevents exploited migrant workers from seeking remedy in the first place is the lack of awareness about the existing grievance mechanism. If a company does not communicate about the grievance mechanisms to the potentially affected groups, the grievance mechanisms have not been made accessible to the rights holders.²⁵¹

Our statement analysis revealed that all the Finnish companies disclose information about their grievance mechanisms, while only four of the six Norwegian companies do so. However, the level of information provided differs. The main grievance mechanism established by the Finnish business enterprises are whistleblower channels that are open to both internal and external complaints that can be used anonymously. All but one of the companies disclose the number of reports of possible misconducts they received in the reporting year, and some specify how many of the complaints came through the whistleblower channel.

One company lists other possible channels to put forward grievances, which include amfori²⁵² and the Board of Trading Practices in Finland while another company disclosed that reports about possible misconducts can also come through their shop stewards. None of the companies disclose about receiving complaints relating to human rights violations in their supply chains through the whistleblower channel. One company disclosed that they have carried out an annual survey for external migrant workers that focuses on terms, wellbeing, and awareness of

²⁴⁷ World Benchmark Alliance. "Access to grievance mechanisms without trust and ownership hinders just remedies". 2023. Accessed on March 4, 2023. <https://www.worldbenchmarkingalliance.org/publication/chrb/findings/access-to-grievance-mechanisms-without-trust-and-ownership-hinders-just-remedies/>.

²⁴⁸ World Benchmark Alliance. "Corporate Human Rights Benchmark 2023."

²⁴⁹ Kimotho, Wangui, and Daniel Ogot. "Exploring the drivers of gendered grievance mechanisms: examples from the agribusiness, extractive and wind power sectors in Kenya." *Impact Assessment and Project Appraisal* 39, no. 3 (2021): 240-250. <https://www.tandfonline.com/doi/pdf/10.1080/14615517.2021.1906020>.

²⁵⁰ World Benchmark Alliance. "Corporate Human Rights Benchmark 2023."

²⁵¹ OHCHR. OHCHR Accountability and Remedy Project: Meeting the UNGP's Effectiveness Criteria". Summary of APR III Guidance. 2021. <https://www.ohchr.org/sites/default/files/2022-01/arp-note-meeting-effectiveness-criteria.pdf>.

²⁵² amfori is a global business association that promotes sustainable trade, supply chains and business.

their rights. They also disclosed about putting up posters about labour exploitation at their sites as a preventative measure to help people identify signs and seek assistance.

The six Norwegian companies that we assessed had to report for the first time under the Transparency Act for the year 2022 in 2023.²⁵³ Of the six companies, two of them do not disclose any information about grievance mechanisms in their Transparency Act statement in their annual reports, although it is likely that they have grievance mechanisms in place.²⁵⁴ The other four business enterprises have established whistleblower channels that are open to external and internal reporting apart from one company that only has a channel for internal reporting by and for their own staff. One company disclosed that they have a policy for whistleblowing, a whistleblowing channel for internal and external complaints, and a notification committee that reports on complaints every quarter, while their subsidiaries report through a 'compliance' certificate, which includes reporting regularly on human rights and decent working conditions and whistleblowing. Another company outline their grievance mechanisms and the process in detail by describing multiple levels within the leadership hierarchy where a complaint can be filed; they disclose contact details of where grievances can be reported, how the complainant is kept informed during the process, and that the company also has a whistle-blowing committee with names of the members listed in the statement. The company also states that they have routines in place to ensure a consistent treatment and protection against reprisals. Another company has established a whistleblower channel in the form of a hotline that is operated by a third party, which is open to internal and external complaints. The Norwegian companies' have also established separate email addresses specifically for questions and complaints linked to the Transparency Act.

Although most of the companies disclose information about their grievance mechanisms, the degree of information differs, and the information seems to overall be more superficial than substantive in nature. The grievance mechanisms are primarily whistleblower channels that cover a broad range of grievances, and none have been specifically designed in a way that is sensitive towards labour exploitation cases. None of the companies who share information about their grievance mechanisms disclose how they communicate about the mechanism to the potentially affected group of migrant workers for it to become accessible, or whether they have engaged with this particular at-risk group in designing and assessing the mechanisms for them to feel a sense of ownership, and view it as a legitimate, fair and transparent channel and process.²⁵⁵ Conducting internal training of staff on human rights risks, including for migrant workers is important, however, the fact that companies receive a very low number of complaints related to possible human rights violations does not necessarily reflect whether exploitation occurs that needs to be remediated. The lack of reported cases can simply be because affected groups do not know about the channel's existence and how they can put forward a grievance in a way that

²⁵³ The Consumer Authority. "Transparency Act." 2023. Accessed January 12, 2024. <https://www.forbrukertilsynet.no/vi-jobber-med/apenhetsloven/the-transparency-act>

²⁵⁴ As mentioned earlier, piecemeal reporting on human rights in different places by companies, including publishing different versions of Transparency Act statements makes it harder to accurately assess the work they disclose doing in this area.

²⁵⁵ The need for solid stakeholder consultation in the development and implementation of remedies is emphasised in the UNGPs.

seems accessible, predictable and trustworthy. Overall, the disclosed information about the company grievance mechanisms can be deemed superficial in nature, and the focus seems to be more on internal processes rather than implementing effective grievance mechanisms for migrant workers who experience harm.²⁵⁶

4.4 Do the companies provide remedy?

Although we have only assessed a small sample of company statements from Finland and Norway, we specifically selected corporate reports from two industries that represent high risk. Furthermore, we reviewed statements of larger business enterprises that are bound to report under the NFRD and the Norwegian Transparency Act.

Overall, both the Finnish and the Norwegian companies disclose very little information about concrete remediation cases and access to remedy in general. Only one of the Finnish companies disclose about a specific case of remediation. A Finnish study on corporate human rights performance found that only a small portion of Finnish companies are publicly committed to remediating adverse impacts that they had caused or contributed to, and that the companies do not have a clear approach to remedy in general.²⁵⁷ This may improve with the CSDR coming into effect in 2023, which has stricter reporting guidelines for larger Finnish companies on ESG.²⁵⁸ Furthermore, when the EU Corporate Sustainability Due Diligence Directive (CSDDD) proposed by the EU Commission will be passed, it will become mandatory for the largest Finnish companies to conduct due diligence and report on the findings.

The Norwegian companies we assessed are all legally bound to conduct due diligence in line with the OECD Guidelines for Multinational Enterprises, which follows the six steps model of the OECD Due Diligence Guidance for Responsible Business Conduct.²⁵⁹ Out of six companies, three reported about specific cases of negative consequences they identified in their supply chains in 2022. Two of the companies have a near identical disclosure of a case concerning berry suppliers. Both companies only write about the case in a couple of sentences although it is disclosed as a case of severe violation of labour and human rights. They do not report about the geographic location, the circumstances and nature of the case, how many people were involved, and what concrete steps the companies' have taken to remediate the situation. One of the companies also disclose about a second case that was flagged in their supply chains, which turned out not to be an actual case of negative consequence. A third company reports

²⁵⁶ Effective worker voice includes workers being informed of their rights, protection from retaliation if they are to speak up, and access to effective mechanisms to file grievances. US Department of Labor Affairs. Worker Voice. 2023.

²⁵⁷ Tran-Nguyen, Elina, Suvi Halttula, Jaana Vormisto, Lotta Aho, Nikodemus Solitander, Sirpa Rautio, and Susan Villa. "Status of Human Rights Performance of Finnish Companies (SIHTI) Project: Report on the status of human rights performance in Finnish companies." (2021).

²⁵⁸ ESG stands for Environmental, Social and Governance.

²⁵⁹ Krajewski, M. et al. "Mandatory Human Rights Due Diligence in Germany and Norway," Accessed on March 7th, 2024. <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/mandatory-human-rights-due-diligence-in-germany-and-norway-stepping-or-striding-in-the-same-direction/85815FE5F1D1F64208B0068B7FBBECF8>.

about a serious case at one of their building sites where they terminated a contract of a sub-contractor for not having paid the wages that a group of migrant workers were due. The company remediated the situation by immediately paying the workers the wages they were owed, and offered them direct employment. Another company only writes about what actual remedy actions it has taken in one sentence.

The Norwegian companies we assessed have to conduct mandatory HRDD. And although they have to provide annual HRDD statements under the Transparency Act, the statements we assessed did not differ noticeably in quality from the statements that the Finnish business enterprises disclosed. One Finnish company reported about a suspected case of human trafficking in Finland of berry pickers from Thailand, which concerned their supply chain. However, the statement provided noticeably more detailed information about the berry case than the Norwegian companies shared in their disclosures. The level of transparency of the actual remediation cases are arguably quite poor.²⁶⁰

Although Norway is ahead of Finland in having a HRDD law, the Transparency Act does not insist on business achieving outcomes. Instead, it focuses more on making the HRDD process mandatory.²⁶¹ Although introducing the Transparency Act is a big step in the right direction for business enterprises to respect human rights, it is important to note that there is a crucial distinction between HRDD as a process to identify human rights violations by business and the outcome it strives to achieve by preventing and mitigating such harm. In order to secure stronger impact for the rights holders, future HRDD laws will benefit from having clearer expectations of outcomes and access to remedy.²⁶² As such, the HRDD laws should be viewed as a vital part of a smart-mix of regulations to tackle business related human rights abuse rather than an end cure in itself.²⁶³

Although ten out of the twelve companies assessed in this article disclose about their grievance mechanisms, which primarily are whistleblower channels, the focus seems to be more on internal processes than on ensuring effective implementation and delivery of remediation. For a grievance mechanism to provide sufficient outcomes, it needs to be responsive to the vulnerabilities of rightsholders.²⁶⁴ As none of the business enterprises reveal if and how they have engaged with and communicated about the mechanisms to the group at risk of exploitation, it is difficult to say if and how the mechanisms are providing remedy. However, from the actual

²⁶⁰ The disclosures on remediation are a contrast to for instance Tesco's previous reporting on a remediation case. Tesco. Modern Slavery Statement 2020/21. 2021. P. 9. Accessed March 8th, 2024. https://www.tesco plc.com/media/757633/tesco-modern-slavery-statement_2021.pdf.

²⁶¹ Deva. "Mandatory Human Rights Due Diligence Laws in Europe". P. 394.

²⁶² The Norwegian Transparency Act will be evaluated after some time to assess its effect and to possibly broaden its scope to include environmental responsibility and Small and Medium-Sized Enterprises(SMEs). A Member of Parliament who at the time was the Minister that put forward the HRDD law suggestion to Parliament, Kjell Ingolf Ropstad, has already submitted a written question in Parliament to the current Minister whose portfolio the law fall under, Kjersti Toppe to ask if she will set a date for the evaluation in 2024. In her response, she does not say no to this, but simply says that a date has not yet been set. It may be too early to evaluate the effectiveness of the law after only one round of company statements.

²⁶³ Deva. "Mandatory Human Rights Due Diligence Laws in Europe". P. 397.

²⁶⁴ Deva. "Mandatory Human Rights Due Diligence Laws in Europe". P. 393.

information disclosed in the statements, there is little evidence that suggests access to effective remedy for affected migrant workers is high up on the priority list of the assessed companies in Finland and Norway.

5. Conclusion

Since the introduction of the UNGPs in 2011, significant improvements have been made in response to Pillar I and Pillar II by states and business enterprises. However, a general criticism has been that the uptake of Pillar III, access to effective remedy, has overall been too slow.

This paper has reviewed grievance mechanisms and access to remedy for exploited migrant workers in Finland and Norway by assessing state-based judicial and business level grievance mechanisms to understand how they align with the criteria in the UNGPs and the NAPs. And it has identified structural and situational factors that can hinder access to remedy for migrant workers, as well as identified possible gaps between policy and practice.

Although Finland's and Norway's introduction of the NAPs show political commitment to embed the core norms of the UNGPs into national laws, policies and practice, neither of the countries' NAPs fully live up to their promise on access to remedy when reviewed against judicial grievance mechanisms and company level grievance mechanisms. Neither of the NAPs sufficiently focus on migrant workers as a potential group at risk of exploitation at home although research findings show otherwise. Further, not mainstreaming the NAP across all relevant governmental agencies for policy coherence creates a gap between policy and practice concerning effective access to remedy for migrant workers who experience business related human rights abuse. Neither Finland nor Norway have expressed expiring deadlines for their NAPs or an intention to update them. Without putting in place a system for monitoring and evaluation, for overseeing implementation, and a clear timeframe, the NAPs will remain a policy tool without much influence beyond an initial step towards a more effective approach to tackle human rights violations.

Both Finland and Norway's NAPs promise effective state-based judicial mechanisms on paper. However, the NAPs does not reflect the actual challenge of accessibility for migrant workers who seek redress through the judicial systems. The threshold for sentencing trafficking for forced labour is very high in both countries. Structural barriers, such as low identification, lack of free legal aid, costs, and a long processing time for cases hinders effective access to remedy through judicial grievance mechanisms for victims of labour exploitation in both countries. This illustrates the limitations of the judicial system in providing access to effective remedy for rightsholders who have experienced business related human rights abuse.

Larger companies are bound to report under the NFRD in Finland, and to conduct HRDD and report under the Transparency Act in Norway. The Transparency Act is an important legal tool to protect human rights, and with a mandatory requirement for larger companies to conduct HRDD, it has created a significant step forward for business enterprises to respect human rights. In our review of a small sample of statements from companies in the construction industry and the food industry, we found that there was not a significant substantive difference between the statements under the less stringent NFRD regime and the mandatory HRDD Transparency Act.

Five out of six Finnish companies show awareness in their statements of migrant workers being a group at risk of exploitation in their sectors, while only three of the six Norwegian companies disclose a similar awareness.

All Finnish companies disclose information about their grievance mechanisms, while only four of the Norwegian companies do so. None of the companies share information about if their grievance mechanisms have been designed in a way that is sensitive towards labour exploitation cases, if they engaged with this group of rights holders in the design process, and how the mechanisms are made accessible to migrant workers. Without a participatory approach, the power imbalances between businesses and affected migrant workers will further exacerbate their vulnerabilities. Although there is a low number of cases related to human rights breaches in operations and supply chains disclosed amongst the companies, it does not necessarily reflect the prevalence of exploitation if information about the grievance mechanisms are not communicated to potentially vulnerable migrant workers in a way that is accessible, predictable, and trustworthy. Otherwise, companies can not really claim that they have a grievance system that provides access to effective remedy. Further, only a few of the companies reported on actual cases of remediation, with minimal information about the cases and the process. Out of one company in Finland and two companies in Norway who have discovered serious human rights cases linked to berries in their supply chains, only the Finnish company goes as far as to disclose about the nature of the case, which concerns human trafficking in Finland.

The berry case shows that adverse human rights impacts by companies that affect migrant workers also occur at home in Nordic countries. Our assessment of the NAPs, the state-based judicial mechanisms, and a small sample of company disclosure on grievance mechanisms and remediation cases do not give a reassuring picture of the situation for exploited migrant workers whose right it is to access effective remedy in the two countries. Clearly, in order to make access to effective remedy a reality for this at-risk group, a much tighter alignment between policy and practice is needed to bridge current gaps. There also needs to be a shift from process oriented implementation of HRDD to a stronger focus on outcomes, and a greater level of transparency in the disclosure of remediation cases by companies. Information about existing grievance mechanisms also needs to reach this at-risk group to make them accessible. This shift requires a more proactive approach from States as duty bearers and regulators of policy commitments to ensure that human rights are equally protected and fulfilled in line with Pillar I and II of the UNGPs.

Although it is important to acknowledge the recent positive improvements in the BHR space, such as the Norwegian Transparency Act and other similar national legislations, and the agreements of the European Commission's Corporate Sustainability Due Diligence Directive and the Forced Labour Import Ban that will further strengthen a smart mix of regulation, it does not in itself ensure access to effective remedy. A legalistic approach alone will not do the job. What is needed is a worker-centred approach to remedy. Access to meaningful information and participation are equally important components as stand-alone grievance mechanisms. Without these, the current power imbalances between corporates and rightsholders will continue to be a barrier for access to effective remedy and remediation of abuse. These components need to be part of a system that empowers and enables workers to seek restoration of their rights. For this to become a reality, companies need to shift from mere compliance with law to a participatory

approach that is equally grounded in business ethics. Only then will Pillar III of the UNGPs turn from a paper promise into a reality for rights holders.

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Understanding Remedy Under the Australian Modern Slavery Act: From Conceptualisation to Provision of Remedy

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Abstract

Drawing on data from a multi-year collaborative research project, this article offers insight into how remedy is conceptualised by business in responding to the reporting requirements set out in the Australian Modern Slavery Act 2018 (Cth). The article considers three key questions regarding the provision of remedy. First, do companies facilitate remediation, or report facilitating remediation? Second, which types of remedy are being provided most frequently, at least on paper? And third, to what degree are key stakeholders consulted in the formulation of remedies? The research indicates that the MSA does not facilitate effective remediation.

Keywords: modern slavery, remedy, business, human rights

1 Introduction: A framework for understanding effective remedy

Access to an effective remedy is an essential component of human rights.²⁶⁵ The third pillar of the United Nations' Guiding Principles on Business and Human Rights (UNGPs) provides that both States and business must offer access to effective remedy.²⁶⁶ However, to date the mechanisms employed to provide remedies vary greatly in their effectiveness and in the Australian context, remediation has been identified as a key gap – both for government, in terms of compliance with international legal obligations,²⁶⁷ and for businesses.²⁶⁸ Concerns about the form, scope, adequacy, and availability of remedy remain central to the business and human rights (BHR) agenda. The provision of remedy to workers experiencing modern slavery or human rights abuses is a foundational aspect of a rights-based approach to addressing modern slavery. This article focuses on emerging practical responses to remedy and uses insights gained from a multi-year collaborative research project that examined the effectiveness of Australia's *Modern Slavery Act* 2018 (MSA) to understand how remedy is being perceived and operationalised by business.²⁶⁹

To foreground our analysis of the practice of remedy – that is how, when, and with what frequency business facilitates access to remedy under the MSA – we first step back and examine the principles that should guide the provision of remedy in BHR.

²⁶⁵ Both international and regional standards note the responsibility on the state to provide access to effective remedies. The right to an effective remedy is present in Article 8 of the Universal Declaration of Human Rights and Article 2(3) of the International Covenant on Civil and Political Rights. Similarly, several regional instruments also guarantee the right to an effective remedy including Article 47 of the Charter of Fundamental Rights of the European Union, Article XVIII of the American Declaration of the Rights and Duties of Man and Article 9 of the Arab Charter on Human Rights.

²⁶⁶ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, HR/PUB/11/04 (New York and Geneva, United Nations, 2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

²⁶⁷ Frances Simmons, Jennifer Burn, and Fiona McLeod, "Modern Slavery and Material Justice: The case for Remedy and Reparation," *University of New South Wales Law Journal* 45, no. 1 (2022), 148-183.

²⁶⁸ Fiona McGaughey, "Behind the Scenes: Reporting Under Australia's Modern Slavery Act," *Australian Journal of Human Rights* 27, no. 1 (2021), 20-30.

²⁶⁹ Amy Sinclair and Freya Dinshaw, *Paper Promises: Evaluating the Early Impact of Australia's Modern Slavery Act* (Melbourne and Sydney: Human Rights Law Centre, 2022), <https://www.hrlc.org.au/reports-news-commentary/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>; Freya Dinshaw et al, *Broken Promises: Two Years of Corporate Reporting under Australia's Modern Slavery Act* (Melbourne and Sydney: Human Rights Law Centre, 2022), <https://www.hrlc.org.au/reports-news-commentary/broken-promises>; Shelley Marshall et al, *Australia's Modern Slavery Act: Is it Fit for Purpose* (Sydney: Australian Human Rights Institute, 2023), <https://www.humanrights.unsw.edu.au/news/new-research-shows-companies-support-stronger-modern-slavery-laws>; "Testing the Effectiveness of Australia's Modern Slavery Act," Australian Human Rights Institute, accessed July 10 2023, <https://www.humanrights.unsw.edu.au/research/testing-effectiveness-Australia-modern-slavery-act>.

At a general level, remedy should “[s]eek to restore the affected person or persons to the situation they would be in had the adverse impact not occurred (where possible)”.²⁷⁰ The UN Working Group on Business and Human Rights (UN BHR Working Group) has acknowledged that “[r]ights holders affected by business-related human rights abuses should be able to seek, obtain, and enforce a ‘bouquet of remedies’ depending upon varied circumstances, including the nature of the abuses and the personal preferences of rights holders.”²⁷¹ The provision of remediation should consider direct and indirect impacts of corporate activity on rights holders. More specifically, the UN BHR Working Group’s report highlights five different forms of remedy relevant to BHR: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁷² Each of these different forms of remedy may have a different purpose or interrelated purposes and may be employed singly or jointly.

However, the UNGPs do not simply refer to the provision of remedy, but rather, reference access to an *effective* remedy that entails both substantive and procedural aspects.²⁷³ The UNGPs outline eight criteria with which to assess the effectiveness of non-judicial grievance mechanisms in the context of discussing remedy. It suggests grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, promote continuous learning, and be based on engagement and dialogue.²⁷⁴ Meeting these criteria is considered best practice in devising remedial responses and it is reflected in the Australian Government’s *Guidance for Reporting Entities*.²⁷⁵

This article begins by providing context for the MSA followed by offering some insights into how remedy is conceptualised by business in responding to the reporting requirements set out in the MSA considering three key questions regarding the provision of remedy. First, do companies facilitate remediation, or report facilitating remediation? Second, which types of remedy are being provided most frequently, at least on paper, including whether any ‘remedies’ companies report offering are, in fact, counterproductive or ineffective? Third, to what degree are stakeholders consulted in the formulation of remedies and what categories of stakeholders are consulted? Our research indicates that the MSA is generating limited engagement by business with respect to remedy, and based on the information available, it appears that the MSA does not facilitate effective remediation.

²⁷⁰ Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Business Conduct*, (Paris, OECD, 2018), <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

²⁷¹ UN General Assembly, Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/72/162, (July 18, 2017), [38], <https://undocs.org/A/72/162>.

²⁷² A/72/162, [42].

²⁷³ A/72/162, [14].

²⁷⁴ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 31.

²⁷⁵ Attorney-General’s Department, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities*, (Canberra: Australian Government, 2023).

2 Methodology

Gathering evidence and overcoming challenges in defining and operationalising remedy is important because if each company has the latitude to define and implement its own version of remedy without reference to an agreed-upon standard, it is unlikely to lead to enhanced access to effective remedy for rights holders. This article leverages evidence gathered as part of a collaborative research project between nine academic and civil society organisations. Various research methodologies were employed to identify and evaluate corporate responses to the MSA, and accordingly the evidence presented is primarily concerned with corporate behaviour more so than other relevant and equally important parties. The methodologies employed throughout the course of the research project and incorporated in this article include: two separate rounds of qualitative analysis of statements submitted to the Modern Slavery Register, an anonymous survey distributed to businesses, and four focus groups conducted with business representatives, civil society and academia. Each of these methodologies are discussed in greater depth below.

2.1 Qualitative analysis of modern slavery statements

The first stage of the research project involved the development of baseline indicators to assess the statements submitted to the Australian Government's Modern Slavery Register.²⁷⁶ As per pt 2 of the MSA, reporting entities (those earning 'at least \$100 million for the reporting period') must submit a statement reporting on key mandatory criteria (s 16) including any modern slavery risks, 'actions taken... to assess and address those risks', 'the effectiveness of such actions', and any consultation with entities the corporation 'owns and controls'.²⁷⁷

The research team developed a set of 66 indicators, covering:

- a. the ability of entities to map their supply chain;
- b. monitoring practices;
- c. remediation;
- d. audit practices;
- e. adoption and implementation of supply chain standards; and
- f. review of performance metrics and frameworks.

A trained team of assessors reviewed 110 modern slavery statements. Following a guide, assessors awarded a score for each indicator of 0, 0.5, or 1. These scores were reviewed by two further assessors for consistency and validation. The research team elected to review statements from four high-risk sectors: Garments from China (30 companies); Horticulture from Australia (30 companies); Seafood from Thailand (25 companies) and Gloves from Malaysia (24 companies). Eight companies were categorised under two sectors and scored separately for each.

²⁷⁶ Australian Government Attorney-General's Department, "Modern Slavery Register," (accessed July 10, 2023), <https://modernslaveryregister.gov.au/>.

²⁷⁷ *Modern Slavery Act 2018* (Cth), Australia, pt 2.

For the second round, the research team reviewed the same modern slavery statements to provide a longitudinal analysis.²⁷⁸ The project team evaluated the existing indicators and made minor refinements. The results of these two rounds of analysis were published in two corresponding reports.²⁷⁹

2.2 Business survey

The findings of the qualitative analysis have been supported by an anonymous business survey which received 82 complete responses. The purpose of the survey was to gauge how reporting entities are responding to the MSA, how they conduct remediation, and how they engage suppliers and stakeholders. The survey asked a series of questions:

- Seven concerning background and demographic information on the participant's company.
- Eight concerning supply chain trust and transparency.
- Four concerning the capability of companies to address modern slavery.
- Twelve concerning company policy and compliance (including questions on reform of the MSA)
- Eight questions specifically examining remediation.

Much of the data derived from the survey is descriptive (i.e. direct percentages reflecting how corporate participants responded to discrete questions). However, detailed quantitative analysis building upon the responses to questions on remediation was also included. Seven key indicators were employed to measure what the authors term 'remediation practice effectiveness'. These indicators – listed in the report *Australia's Modern Slavery Act: Is it Fit for Purpose* – include:

1. The reported presence and form of mechanisms to ensure suppliers provide remediation to workers facing labour violations;
2. The reported presence of policies to handle supplier incidents regarding labour violations;
3. The degree to which survey participants believe those who face labour violations by their suppliers will be better off after the remediation process;
4. The reported resources (budget line, funding, insurance) of survey participants in place to seek restitution for affected workers at their supplier locations;
5. The degree to which survey participants believe staff within their organisation know what to do if incidents of modern slavery are reported;

²⁷⁸ 92 second round statements for reporting entities evaluated were available. The research team contacted the companies with missing statements, and three confirmed they had not submitted a second round statement. Thus, we included 95 companies in our dataset (92 available statements and the three confirmed unsubmitted statements scored nil).

²⁷⁹ Sinclair and Dinshaw, *Paper Promises*; Dinshaw et al, *Broken Promises*.

6. The degree to which survey participants believe staff within their organisation are well supported (through guidance, training, resources) to remedy situations of modern slavery; and
7. The reported external stakeholders involved in the co-design of the remediation process.

These indicators were subsequently analysed through a hierarchical linear regression model, measuring the impact that changes in one reported variable have on another (such as remediation practice effectiveness).

As the methods employed in this study are largely delimited to the perspectives of corporations reporting under the MSA – with the exception of two focus groups conducted with civil society organisations and academia – we do not purport that the following evidence is reflective of workers or their representatives.

2.3 Focus Groups

Finally, throughout the project period, the research team conducted four in-depth focus groups. Two of these sessions involved representatives from corporations and primarily focused on the topic of modern slavery remediation. Another session involved representatives from industry associations and broached the topics of reform and remediation. A final session involved civil society and representatives from unions and also addressed the two aforementioned topics. In total, there were 19 participants and all remain anonymous.

Interviews were conducted in a semi-structured format. Some questions were prepared, but conversation was largely guided by the responses of participants. Subsequently, the interviews were transcribed and qualitatively analysed to identify key themes pertaining to modern slavery reform and remediation. These findings were synthesised with the aforementioned business survey and have been published in a report.

3 Remedy in Practice: business response to Australia's *Modern Slavery Act*

3.1 Legislative context

Australia's MSA is a business reporting, or disclosure law which was introduced in 2018 to tackle modern slavery in Australian businesses and their supply chains. The MSA requires businesses and Commonwealth government entities with an annual turnover of \$100 million or more to publish an annual modern slavery statement.²⁸⁰ Statements must cover their structures, operations and supply chains and what they are doing to assess and address the risks of modern slavery in their operations and supply chains—and those of any entities they own or control (section 16).²⁸¹ This high turnover threshold means that a wide range of medium-to-large-sized

²⁸⁰ *Modern Slavery Act 2018* (Cth), Australia, section 5(1)(a).

²⁸¹ *Modern Slavery Act 2018* (Cth), section 16.

businesses fall outside the scope of the law,²⁸² and it lacks penalties for non-compliance, another key critique of the legislation.²⁸³ Rather, public scrutiny of modern slavery statements is intended as a form of regulation,²⁸⁴ and statements are available on a public, government repository.²⁸⁵ Of interest here with regard to remedy is section 16(1)(d) of the MSA which requires that reporting entities describe actions taken to assess and address modern slavery risks “including due diligence and remediation processes”.²⁸⁶ The Act provided for a three-year statutory review which was completed in May 2023 with a final report making numerous recommendations for improvements to the MSA.²⁸⁷

3.2 Is remedy being provided?

We assessed if companies are facilitating remedy for modern slavery. To do so, we analysed references to remedy in the modern slavery statements submitted under Australia’s MSA, and the extent of information supplied. Our research indicates that references to remedy are being included in modern slavery statements, but the degree to which this is occurring appears to be more superficial than substantive.²⁸⁸ References to remedy are frequent but are often nominal and fail to elaborate in detail what such remedies entail. Although section 16(1)(d) of the MSA requires that modern slavery statements *describe* the actions taken to “assess and address” risks of modern slavery, including “remediation processes”,²⁸⁹ the definitional and enforcement limitations of the law mean there is little to prevent reporting companies from simply reporting they have established remedial processes, without substantiating such claims or providing details of the types of remedy available and the process by which a victim might make

²⁸² Ramona Vijeyarasa, “A Missed Opportunity: How Australia Failed to Make its Modern Slavery Act a Good Practice Global Example,” *Adelaide Law Review* 40, no. 3 (2019): 857-866.

²⁸³ Justine Nolan and Nana Frishling, “Australia’s Modern Slavery Act: Towards Meaningful Compliance,” *Company and Securities Law Journal* 37, no. 2 (2019): 104-126; Ingrid Landau, “Human Rights Due Diligence and the Risk of Cosmetic Compliance,” *Melbourne Journal of International Law* 20, no 1. (2019): 221-248.

²⁸⁴ See, e.g., Paul Redmond, “Regulating Through Reporting: An Anticipatory Assessment of The Australian Modern Slavery Acts,” *Australian Journal of Human Rights* 26, no. 1 (2020): 5-26; Christine Parker and Vibeke Lehmann Nielsen, “Compliance: 14 Questions,” in *Regulatory Theory: Foundations and Applications*, ed. Peter Drahos (Acton: ANU Press, 2017), 217-232.

²⁸⁵ “Modern Slavery Register,” Australian Government Attorney-General’s Department, accessed July 10, 2023, <https://modernslaveryregister.gov.au/>.

²⁸⁶ *Modern Slavery Act 2018* (Cth), section 16(1)(d).

²⁸⁷ John McMillan, *Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years*, (Canberra: Commonwealth of Australia, 2023), <https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth>.

²⁸⁸ Sinclair and Dinshaw, *Paper Promises*, 2.

²⁸⁹ *Modern Slavery Act 2018* (Cth), section 16(1)(d).

a claim for remedy.²⁹⁰ Along similar lines, supply chain scholarship demonstrates that firms report “proposed” remediation practices;²⁹¹ yet, little evidence exists pertaining to what has been accomplished successfully in terms of actual remediation practices.²⁹²

We note from the outset, that business in Australia is not alone in struggling to provide remedy, and that some barriers to remediating modern slavery are beyond the scope of HRDD. Evidence from other countries confirms that, as our research shows, a primary barrier to remedy is the failure to detect modern slavery.²⁹³ This is exacerbated by contractual, geographical, and psychological distance between lead firms and the victim/survivors.²⁹⁴ Grievance handling is beset by difficulties such as insufficient communication about the existence of a grievance mechanism to potentially affected rightsholders and workers. There is a significant “distinction between a mechanism being publicised and being known,” in the sense of workers having confidence about using it.²⁹⁵ And also, even where workers know about the existence of a remedial mechanism, and have the technological means of accessing it (i.e. access to an email account or a mobile phone), many other barriers to use exist such as mistrust of impersonal and remote.²⁹⁶ There is often, also, a failure to engage rights holders or work with existing collective labour relations structures, instead creating new company-based complaints systems that do not complement or engage with local processes and actors.²⁹⁷ Furthermore, combatting modern slavery is at times beyond the scope of company remedial action. For example, Crane et al argue that ‘business models’ or economic systems are behind a great deal of modern slavery.²⁹⁸ These

²⁹⁰ Marcia Narine, “Disclosing Disclosure’s Defects: Addressing Corporate Responsibility for Human Rights Impacts,” *Columbia Law Review* 47, no. 1 (2015): 84-150; Christine Parker and Vibeke Lehmann Nielsen, “Compliance: 14 Questions,” in *Regulatory Theory: Foundations and Applications*, ed. Peter Drahos (Acton: ANU Press, 2017), 217-232; Gabriela Quijano and Carlos Lopez, “Rise of Mandatory Human Rights Due Diligence: A Beacon of Hope or a Double-Edged Sword?,” *Business and Human Rights Journal* 6, no.2 (2021): 241-254.

²⁹¹ Mark Stevenson and Rosanna Cole, “Modern Slavery in Supply Chains: A Secondary Data Analysis of Detection, Remediation and Disclosure,” *Supply Chain Management: An International Journal* 12, no. 3 (2018): 81-99.

²⁹² Amy V. Benstead, Lisa C. Hendry and Mark Stevenson, “Detecting and Remediating Modern Slavery in Supply Chains: A Targeted Audit Approach,” *Production Planning & Control* 32, no. 13 (2020): 1136-1157.

²⁹³ Amy V. Benstead, Lisa C. Hendry and Mark Stevenson, “Detecting and Remediating Modern Slavery in Supply Chains: A Targeted Audit Approach,” *Production Planning & Control* 32, no. 13 (2020): 1136-1157.

²⁹⁴ Danya Simpson et al, “The Role of Psychological Distance in Organizational Responses to Modern Slavery Risk in Supply Chains,” *Journal of Operations Management* 67, no. 8 (2021): 989-1016.

²⁹⁵ Caroline Rees, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned* (Cambridge: Harvard Kennedy School: Corporate Social Responsibility Initiative, 2011), <https://media.business-humanrights.org/media/documents/files/media/documents/ruggie/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf>.

²⁹⁶ The ETI’s vulnerable workers toolkit provides more information as well as practical guidance and tools: Ethical Trade Initiative, *Addressing Worker Vulnerability in Agricultural and Food Supply Chains* (London: Ethical Trade Initiative, 2016), https://www.ethicaltrade.org/sites/default/files/shared_resources/vulnerable_workers_toolkit.pdf.

²⁹⁷ Tim Connor, Annie Delaney and Sarah Rennie, *Non-judicial Mechanisms in Global Footwear and Apparel Supply Chains: Lessons from Workers in Indonesia* (Melbourne: Corporate Accountability Research, 2016), <http://corporateaccountabilityresearch.net/njm-project-publications/#njr-reports>.

²⁹⁸ Andrew Crane et al, “Confronting the Business Models of Modern Slavery,” *Journal of Management Inquiry* 31, no. 3 (2022): 264-285.

business models require more substantial action than remediation to as to prevent ongoing incidences of modern slavery.²⁹⁹

Our longitudinal modern slavery statement analysis revealed that while companies stated they had remedial processes in place, they failed to provide additional detail.³⁰⁰ The relevant indicator used to measure the presence of such processes considered whether the reporting entity disclosed incomplete, informal or inappropriate processes, or whether they provided a robust and detailed outline of their procedures. As foreshadowed, there was a clear disparity between nominal references and deeper consideration of remedial responses in modern slavery statements. A majority of companies in both the first and second rounds of modern slavery reporting under the MSA³⁰¹ disclosed their prospective responses to modern slavery identified in their operations or supply chains.³⁰² However, further elaboration was lacking with only 24% of statements in round 1 and 26% of statements in round 2 providing details of the nature of such a response.³⁰³ This lack of detail may be indicative of a gap between what is being reported and what is being practiced, or it may alternatively suggest the underdevelopment of remedial practices.

In addition, we measured the presence of references to grievance mechanisms and hotlines in reporting entities' operations or supply chains. Our business survey asked respondents to rate the degree to which their corporation utilises grievance mechanisms. 23% 'always used', 28% 'frequently used', 24% 'moderately used', 13% 'rarely used', and 12% 'never used'. Additionally, our hierarchical linear regression model found that among companies identifying more effective remediation practices, grievance mechanisms were the fourth most influential risk management variable.³⁰⁴ This high level of self-reported usage of grievance mechanisms is reflected by our first round of statements analysis. An overwhelming majority of companies (82% in both rounds of review) outlined that they had such mechanisms in place.³⁰⁵ However, in

²⁹⁹ Mohammad J. Uddin et al, "Exploitation in Bangladeshi Ready-made Garments Supply Chain: A Case of Irresponsible Capitalism?," *International Journal of Logistics Management* 34, no. 1 (2023): 164-188.

³⁰⁰ In Round 1 of our statement analysis, 60% of companies mentioned remediation processes. In Round 2 of our statement analysis, 67% of companies mentioned remediation processes.

³⁰¹ As per section 4 of the *Modern Slavery Act 2018* (Cth), a "reporting period, of an entity, means a financial year, or another annual accounting period applicable to the entity, which starts after the commencement of this section". For Round 1 of analysis, this included statements of Australian companies from 1 July 2019 to 30 June 2020, and statements of foreign companies from 1 April 2019 to 31 March 2020. For Round 2 of analysis, this included statements of Australian companies from 1 July 2020 to 30 June 2021, and statements of foreign companies from 1 April 2020 to 31 March 2021.

³⁰² In Round 1 of our statement analysis, 60% of companies mentioned remediation processes. In Round 2 of our statement analysis, 67% of companies mentioned remediation processes.

³⁰³ Sinclair and Dinshaw, *Paper Promises*; Dinshaw et al, *Broken Promises*.

³⁰⁴ Marshall et al, *Fit for Purpose*, 23.

³⁰⁵ Dinshaw et al, *Broken Promises*, 19.

round 2, only 40% of companies provided details about the mechanism,³⁰⁶ and 17% specified how it was available to vulnerable workers.³⁰⁷

Many of the grievance mechanisms referenced in statements appear to deal with a broad range of complaints, including, for example, fraud or corruption, rather than being adapted to receiving complaints regarding modern slavery.³⁰⁸ As reporting an incident of modern slavery is very different in nature to reports of general corporate misconduct³⁰⁹ due to the vulnerability of workers, barriers such as language, fear of reprisal, lack of access to technology,³¹⁰ and lack of privacy, the use of general grievance mechanisms may be less effective in identifying modern slavery. These findings stand in stark contrast to the UNGPs' criteria on non-judicial grievance mechanisms.³¹¹ Given that a minority of companies provide detail about their grievance mechanisms,³¹² this indicates a lack of transparency regarding their operation and does not provide any degree of predictability. Moreover, the very low percentage of statements detailing availability of remedy to vulnerable workers starkly contradicts the UNGP's guidance on grievance mechanisms being accessible and equitable.³¹³

Furthermore, our business survey found a relatively low capacity of business to provide remedy. For example, only approximately half of the survey participants agreed that "their company had an effective approach to providing remedy to victim-survivors of modern slavery in their operations or with direct suppliers" (56%).³¹⁴ Again, this aligns with the percentage of modern slavery statements that made at least a passing reference to established processes for remediating modern slavery (61% in round 1 of our statements analysis).³¹⁵ However, it is noticeably higher than those statements that supplied detail as to how these processes operate

³⁰⁶ Dinshaw et al, *Broken Promises*.

³⁰⁷ Dinshaw et al, *Broken Promises*, 19.

³⁰⁸ Sinclair and Dinshaw, *Paper Promises*, 63.

³⁰⁹ See for example: Mark Stevenson, "Hidden in Plain Sight: The Bystander Effect and the Mobilisation of Modern Slavery Whistleblowing," *Supply Chain Management* 27, no. 1 (2022): 128-139; Stephen John New, "Modern Slavery and the Supply Chain: The Limits of Corporate Social Responsibility," *Supply Chain Management* 20, no. 6 (2015): 697-707; Carly Lightowlers, Rose Broad and David Gadd, "Temporal Measures of Modern Slavery Victimisation," *Criminology and Criminal Justice* (2022): 1-19.

³¹⁰ See for example: Lisa R. Taylor and Elena Shih, "Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains: Examining the Effectiveness of Remediation-oriented and Due-diligence-oriented Technologies in Identifying and Addressing Forced Labour and Human Trafficking," *Journal of the British Academy* 7, no. 1 (2019): 131-165.

³¹¹ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 31.

³¹² Dinshaw et al, *Broken Promises*.

³¹³ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 31(b) and 31(d); Katherine McDonnell, "Epistemic Injustice and Remedy: Can BHR Ever Really 'Centre' Rights Holders?" *Australian Journal of Human Rights*, (2023) available online DOI: [10.1080/1323238X.2023.2221175](https://doi.org/10.1080/1323238X.2023.2221175).

³¹⁴ Marshall et al, *Fit for Purpose*, 17.

³¹⁵ Sinclair and Dinshaw, *Paper Promises*, 58.

(less than a quarter).³¹⁶ This disparity may be because the respondents to our survey were from companies that have high compliance with the MSA, and thus are more likely to have well developed remedial practices compared with the average reporting entity. Alternatively, it may indicate a broader mismatch between what is practiced, on the one hand, and what is reported on the other. Participants from our focus groups revealed that – particularly for suppliers – such a low capacity can arise from being ‘spread too thin’; entities not having the resources necessary to comply with the requirements of the MSA.

A further substantial problem with these remedial processes is that, alongside the apparent lack of capacity to offer remedy, there is an accompanying low detection of modern slavery. Our research demonstrated that companies are indeed failing to acknowledge or identify the presence of modern slavery within their operations or supply chains. Our business survey and particularly our modern slavery statements analysis indicate that most companies are failing to identify modern slavery associated with their business. Only 39% of survey respondents and 14% of round 2 modern slavery statements referenced that they had identified instances of modern slavery in their supply chains or operations.³¹⁷ This low identification rate means that companies are not identifying a need for remedy, and thus perhaps not establishing effective processes to supply remedy. Consequentially, a core aspect of the “bouquet of remedies” – that the remedy provided is reflective of the varied circumstances of the abuse and the rights-holder – is not capable of being satisfied. If companies are failing to identify the abuses that give rise to the need for remedy, let alone the contextual particularities of the abuse or rights-holder, they lack the requisite information to ensure that the remedy is effective in such a context.

Overall, the disparity between “paper promises” and substantive commitments to remedial processes and grievance mechanisms reflects the limitations of the disclosure-centric approach of the MSA.³¹⁸ It points to the ease with which entities can state that they are working to remedy modern slavery without verification or disclosure of the specificities of such approaches. Again, this ambiguity runs contrary to the guidance supplied by the UNGPs. If, under the MSA, companies can state that they have remedial processes in operation without further substantiation or evidence, then the UNGP’s guidance to collect and disclose data on the practical use of remedial mechanisms becomes even more unrealistic. Since the law was introduced, there have been consistent critiques about the design of the MSA;³¹⁹ more specifically, the 2023 independent review of the law noted widespread views that “there is no hard evidence that the *Modern Slavery Act* in its early years had yet caused meaningful change for people living in conditions of modern slavery.”³²⁰ The review went on to state that while “there are occasional scattered instances of modern slavery incidents and victims being

³¹⁶ Sinclair and Dinshaw, *Paper Promises*, 63.

³¹⁷ Marshall et al, *Fit for Purpose*, 13.

³¹⁸ Dinshaw et al, *Broken Promises*, 17.

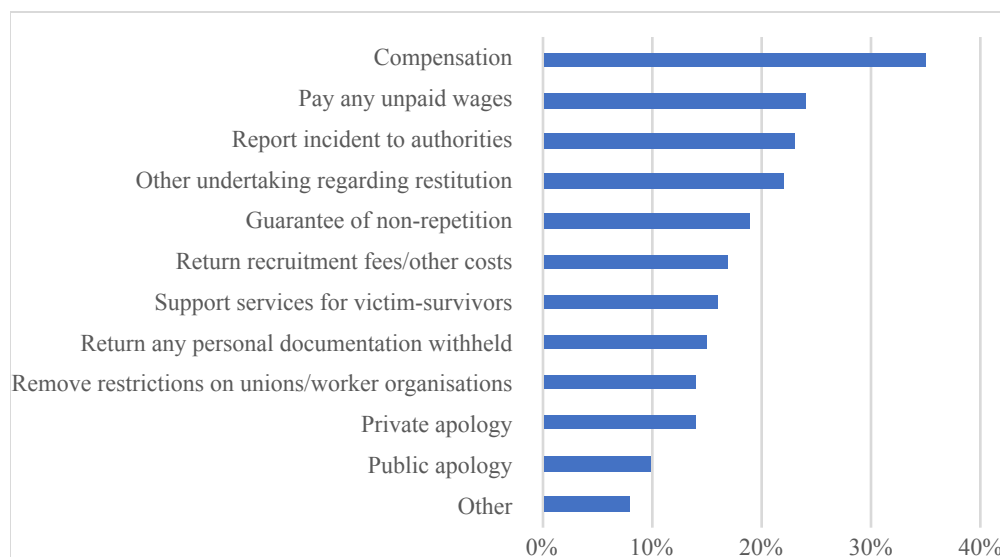
³¹⁹ Ramona Vijeyarasa, “A Missed Opportunity: How Australia Failed to Make its Modern Slavery Act a Good Practice Global Example,” *Adelaide Law Review* 40, no. 3 (2019): 857-866; Fiona McGaughey, Hinrich Voss, Holly Cullen and Matthew Davis, “Corporate Responses to Tackling Modern Slavery: A Comparative Analysis of Australia, France and the United Kingdom” *Business and Human Rights Journal* 7, no.2 (2022): 249-270.

³²⁰ McMillan, *Report of the Statutory Review*, 8.

identified...[there is] no strong storyline that the drivers of modern slavery are being turned around.”³²¹

3.3 What remedies are being provided on paper?

We next examine the types of remedy that are provided, in the rare occasions that companies have reported taking remedial action. As noted above, the UN BHR Working Group highlighted five different forms of remedy applicable in BHR including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Furthermore, the usage of these remedies should be predicated on the nature of the harm suffered and the context of the rights-holder. This is particularly true as grievance mechanisms are often situated within international corporate structures with complex and opaque supply chains. As OECD Due Diligence Guidance explains,³²² corporations must be proactive in identifying whether they caused, contributed or are linked to a harm. Correspondingly, the actions of corporations vary from stopping the cause of harm, to leveraging influence, to mitigating future harm. While in our statements analysis, the companies we analysed referenced a variety of forms of remedy, responses to our survey of businesses were heavily weighted toward compensation. Participants were supplied a non-exhaustive list of remedies and prompted to indicate whether they utilised them in their supply chains.³²³ The results provide insight into the remedies considered as most relevant by business.



³²¹ McMillan, *Report of the Statutory Review*, 8.

³²² Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (Paris: OECD, 2018), <https://www.oecd.org/industry/inv/mne/responsible-supply-chains-textile-garment-sector.htm>.

³²³ Marshall et al, *Fit for Purpose*, 16.

Our evidence shows that most companies conceptualise remedy as a monetary exercise, with compensation and payment of unpaid wages being the most common remedies.³²⁴ However, restitution and compensation account for just two of the remedy options in the ‘bouquet’. As the harm incurred by a rights-holder may be multivariate in nature, its effect may not exclusively involve financial factors.³²⁵ Firstly, these remedies do not ensure that the practices that gave rise to their occurrence are discontinued. According to our survey, guarantees of non-repetition are over 15% less frequently employed than compensation, yet they are just as essential.³²⁶ Additionally, this narrow view of remedy precludes consideration of other forms of harm outside of financial remediation. Remedies that fall under the rehabilitation or satisfaction categories of the UN BHR Working Group report, like support services or apologies,³²⁷ are comparatively under-utilised. This was supported by the focus group participants, as many referenced direct compensation as a critical component of remediation.³²⁸

Despite companies primarily conceptualising of remedy in monetary terms, in our statements analysis, only 7% of total statements in round 2 referred to compensation.³²⁹ This is reflective of both the lack of detail supplied regarding remedy in the majority of modern slavery statements, and the predominance of compensation as the default remedy when any detail is supplied. Remedies that engage more preventative aspects – like removal of restrictions and support services – rank much lower.³³⁰ Therefore, it is evident that companies prioritise one type of remedy within a broader range. The OECD Due Diligence Guidance states that preventative remedies should sit alongside compensatory responses.³³¹ However, it is important to acknowledge that the degree to which any of the above remedies are engaged is already low, with the most widely used remedy reportedly used by only 35% of survey respondents.³³²

Our analysis suggests that companies may engage in activities that they perceive to be remedial in nature but may in fact be counterproductive to providing access to remedy for victims. Notably, our data identified that the approach to remedy of many companies was not grounded in seeking to achieve restoration for victim-survivors, but rather in a formulation of

³²⁴ Marshall et al, *Fit for Purpose*, 16.

³²⁵ For example, see Electronics Watch, *Monitoring Methodology Guidance 1.0* (Amsterdam: Electronics Watch, 2020), https://electronicswatch.org/electronics-watch-monitoring-methodology-guidance-1-0_2577562.pdf.

³²⁶ See, e.g., the Proactive Compliance Deed between the Commonwealth and 7-Eleven Stores Pty Ltd, 6 December 2016, cl. 5 which included a range of preventative measures in response to widespread underpayment of wages, as discussed in Laurie Berg and Bassina Farbenblum, “Remedies for Migrant Worker Exploitation in Australia: Lessons from the 7-Eleven Wage Repayment Program,” *Melbourne University Law Review* 41, no. 3 (2018): 1035-1084.

³²⁷ A/72/162, [39].

³²⁸ Marshall et al, *Fit for Purpose*, 16.

³²⁹ Dinshaw et al, *Broken Promises*, 19.

³³⁰ Marshall et al, *Fit for Purpose*, 16.

³³¹ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*.

³³² Marshall et al, *Fit for Purpose*, 16.

remedy predicated upon purchaser-supplier relationships.³³³ This means that rather than attempting to provide remedy to the individuals directly harmed and prevent recurrence, business is adopting a risk minimisation approach that predicates risk to business above risk to victim-survivors and instituting ineffective practices. For example, a number of statements assessed disclosed that their initial response to identified instances of modern slavery is to terminate the supplier relationship.³³⁴ This is not a remedy. As we noted in the accompanying report: “terminating relationships risks leaving workers in exploitative conditions”.³³⁵ This fault was identified by focus group participants also. Notably, specific participants highlighted that the provision of remediation needs to be “victim or people-centric”, and in the “best interests of the person impacted”.³³⁶ Thus, without a clear understanding of the purpose underlying the provision of remediation, companies risk enacting ineffective or counter-productive remedies.

3.4 Consultation in the design of remedies

The design and implementation of prospective remedies should not be conducted without considering the needs and factors that impact rights-holders in the operations and supply chains of companies. A robust understanding of such needs is achieved through comprehensive stakeholder consultation; an approach emphasised by both the *Guidance to the MSA* and the UNGPs.³³⁷ It is clear that stakeholder engagement is imperative in the provision of remedy, as it is through collaboration and consultation with parties familiar with worker conditions that an appropriate remedy can be identified to suit particular contexts.³³⁸ The UNGPs emphasise that the process of identifying “any actual or potential adverse human rights impacts” should invariably “involve meaningful consultation with potentially affected groups or other relevant stakeholders”.³³⁹ It is due to many companies failing to properly execute stakeholder engagement that so few cases of modern slavery are identified, and correspondingly, remedy is not properly conducted.³⁴⁰ Scholarship provides evidence that when companies are more contractually oriented towards handling modern slavery incidents, they are subsequently less proactive in engaging various stakeholder groups—which in turn leads to a less active discovery process (e.g.

³³³ Sinclair and Dinshaw, *Paper Promises*.

³³⁴ Sinclair and Dinshaw, *Paper Promises*, 58.

³³⁵ Sinclair and Dinshaw, *Paper Promises*, 58.

³³⁶ Marshall et al, *Fit for Purpose*, 16.

³³⁷ Attorney-General’s Department, *Guidance for Reporting Entities*; Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*.

³³⁸ Justine Nolan et al, *Good Practice Toolkit: Strengthening Modern Slavery Responses* (Sydney: Australian Human Rights Institute, 2023), 18, <https://www.humanrights.unsw.edu.au/news/strengthening-modern-slavery-responses-good-practice-toolkit>.

³³⁹ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 18.

³⁴⁰ Marshall et al, *Fit for Purpose*, 13.

regarding human rights violations) alongside suppliers who are fearful to report incidents given the contractual punishments looming over their heads.³⁴¹

This failure to engage rights-holders or their representatives stands in contrast to UNGP 31 – that remedy should be “based on engagement and dialogue”.³⁴² One of the key findings from our survey was that when companies engaged key stakeholders, they correspondingly also reported more effective remediation practices.³⁴³ Furthermore, research has indicated that stakeholder involvement is crucial for developing remediation practices geared towards workers abused at supplier locations,³⁴⁴ proposing community-focused engagement practices to help generate effective targeted solutions. Therefore, stakeholder consultation is imperative to ensure that the remedy is effective and rights-holders’ input is essential in ensuring remedy is reflective of contextual factors.

Beyond simply engaging in the practice of consultation itself, it must also be strategic and involve a range of parties proximate to the interests of the workers. Notably, participants in our focus groups on remediation emphasised that in order to effectively conduct stakeholder engagement, a plurality of stakeholders must be involved.³⁴⁵ Our survey asked businesses to indicate which stakeholders they consulted in the design of their remediation process. The results are as follows:³⁴⁶



³⁴¹ Danya Simpson et al, “The Role of Psychological Distance in Organizational Responses to Modern Slavery Risk in Supply Chains,” *Journal of Operations Management* 67, no. 8 (2021): 989-1016.

³⁴² Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 31(h).

³⁴³ Marshall et al, *Fit for Purpose*, 22.

³⁴⁴ Stefan Gold, Alexander Trautrimms and Zoe Trodd “Modern Slavery Challenges to Supply Chain Management,” *Supply Chain Management: An International Journal* 20, no. 5 (2015): 585-494.

³⁴⁵ Marshall et al, *Fit for Purpose*, 22.

³⁴⁶ Marshall et al, *Fit for Purpose*, 15.

Participants reported most commonly engaging with “consulting and professional services groups” but less frequently engaging with groups more proximate to workers (like unions).³⁴⁷ Evidently, engagement with workers’ rights groups is an outlier to this trend, but the remainder of the top five include legal advisors, consultants, certification bodies and auditors. Mere consultation is not enough to ensure that remedies are effective and beneficial to workers. Rather, stakeholders considered for consultation need to be close to potentially affected workers to act as effective advocates for their needs. Our research findings indicate that reporting entities under the MSA are more concerned with engaging stakeholders with greater expertise on matters of interest to the company (liability; certification), rather than those best positioned to advocate for workers. Correspondingly, the design of remedies is informed by interests distinct from those of at-risk workers and victim-survivors.

4 Connecting policy and practice under the MSA

Considering the UNGPs and the UN BHR Working Group’s guidance on access to effective remedy and emerging practice, we suggest four critical elements that businesses should consider in the design and implementation of remedial mechanisms under the MSA.

First, effective remedy should be available in a *multiplicity of forms*, which may encompass judicial and/or non-judicial mechanisms and may require institutional support from both the State and business. UNGP 1 obliges the State to take “appropriate steps to prevent, investigate, punish, and redress” corporate human rights issues within their jurisdiction and UNGP 25, reminds states to “take appropriate steps to ensure” that those affected by corporate human rights issues within their jurisdiction have access to an effective remedy.³⁴⁸ UNGP 22 notes that for business, remedy should be provided only for adverse impacts which the business ‘caused’ or to which it “contributed” as opposed to those with which the business is directly linked.³⁴⁹ Similarly, the OECD Due Diligence Guidance mirrors the language of the UNGPs and notes that where business has caused or contributed to adverse impacts, a range of remedies should be considered.³⁵⁰ These include “apologies, restitution or rehabilitation (e.g., reinstatement of dismissed workers, recognition of the trade union for the purpose of collective bargaining), financial or non-financial compensation (for example, establishing compensation funds for victims, or for future outreach and educational programmes), punitive sanctions (for example, the dismissals of staff responsible for wrongdoing), taking measures to prevent future adverse impacts.”³⁵¹

³⁴⁷ Marshall et al, *Fit for Purpose*, 15.

³⁴⁸ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 25.

³⁴⁹ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 22.

³⁵⁰ Karin Buhmann “Confronting Challenges to Substantive Remedy for Victims: Opportunities for OECD National Contact Points under a Due Diligence Regime Involving Civil Liability,” *Business and Human Rights Journal*, (2023): 1-24.

³⁵¹ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, Section 6.1(b).

For example, Coles, a leading supermarket, retailer and consumer services company, emphasises a broad approach to remedy that is consistent with the UNGPs. Their 2022 modern slavery statement provides a comprehensive overview of the remedies they utilise and their underlying purpose.³⁵² Notably, the company categorises their remedies as restorative or preventative. The former pertains to “the process of restoring individuals, or groups, that have been harmed to the situation they would have been in if the impact had not occurred”. The latter involves implementing steps “to secure the prevention of similar future harm”.³⁵³ Additionally, these remedies are not constrained to monetary solutions. For example, the ‘Coles Ethical Sourcing – Child Labour Remediation Requirements’ specifies “viable alternative activity” and a safe location when child labour is identified.³⁵⁴ Thus, there are notable examples of reporting entities employing a suite of remedies to address modern slavery; however, our data indicates these are outliers.

Second, *rights holders must be central* to the design and implementation of effective remedies. UNGP 31 notes that remedy should be “based on engagement and dialogue” and if this criterion is met, it is more likely that the remedy will also then be legitimate, accessible, and equitable given it will be driven by rights holders rather than imposed on them.³⁵⁵ Engaging with and ensuring the participation of rights holders in the process will facilitate greater input into the form and substance of the remediation offered and will also enable the safety and security of rights holders to be built into the remedy. Rights holders are an integral part of any process that aims to provide an effective remedy for corporate human rights abuses and “[h]uman rights are best advanced when the ‘experiences, perspectives, interests, and opinions [of the rights holders] deeply inform how remedy mechanisms are created and implemented’”.³⁵⁶ Their participation from the outset may help address some of the predominant barriers that rights holders have in accessing remedial mechanisms, including distance, language barriers, fear of job loss, and retribution. Consultation is distinct from participation, and providing access to effective remedy must incorporate the participation of rights holders in a substantive rather than a symbolic manner.³⁵⁷

An example is the Cleaning Accountability Framework (CAF), which prioritises worker engagement in remediation in the cleaning industry.³⁵⁸ It is a multi-stakeholder initiative to address labour standards non-compliance in the commercial real estate cleaning industry, which

³⁵² Coles Group, “Our Commitment to Human Rights: 2022 Modern Slavery Statement”, Modern Slavery Statements Register, accessed July 10, 2023, 43, <https://modernslaveryregister.gov.au/statements/10100/>.

³⁵³ Coles Group, “2022 Modern Slavery Statement”, 43.

³⁵⁴ Coles Group, “2022 Modern Slavery Statement”, 45.

³⁵⁵ Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, Principle 31.

³⁵⁶ A/72/162, [20] (see n. 7).

³⁵⁷ Robert McCorquodale and Justine Nolan, “The Effectiveness of Human Rights Due Diligence for Preventing Business and Human Rights Abuses,” *Netherlands International Law Review* 68, no. 3 (2021): 455-478.

³⁵⁸ “Cleaning Accountability Framework,” Cleaning Accountability Framework, accessed July 12, 2023, <https://www.cleaningaccountability.org.au/>.

has long suffered from underpayment, poor working conditions, and exploitation.³⁵⁹ CAF brings together building owners, cleaning companies, the union representing cleaners – the United Workers Union, cleaners themselves, and other industry stakeholders. Worker engagement is a key aspect of CAF’s approach, as it seeks to involve cleaning workers in the process of identifying and rectifying labour violations.³⁶⁰ This direct engagement with workers helps to uncover labour violations and ensures that workers have a voice. CAF works closely with the trade union to ensure that workers’ interests are represented in decision-making processes. Cleaners have played a vital role in this process.³⁶¹

Third, cross *collaboration* is key, and business should engage with rights holders, their representatives including unions, suppliers, and independent experts, including civil society in the design and implementation of remedy. Without this collaboration, remedy may produce low levels of trust, awareness, and usage.³⁶² Cross collaboration will likely facilitate greater transparency, which in turn feeds into increased perception of the legitimacy of the process. For example, Electronics Watch is an independent monitoring organisation that uses worker driven monitoring to address labour issues in the electronics sector and has played a key role in advancing understanding of what constitutes effective remediation.³⁶³ In 2019, following three years of worker driven monitoring, Electronics Watch (along with its partner, Migrant Worker Rights Network (MWRN)) was successful in securing full compensation from Cal Comp, an electronics company, for excessive recruitment fees paid by 10,570 migrant workers.³⁶⁴ Working with expert civil society groups, such as MWRN, a membership-based organisation for migrant workers, remediation and monitoring can be designed and implemented with collaborative insights from multiple stakeholders into daily working conditions.

Finally, an effective remedial process will incorporate *ongoing transparent monitoring* of its effectiveness that will promote continuous learning. Data on the practical operation and use of remedial mechanisms by rights holders (such as, for example, the number of claims filed,

³⁵⁹ Jon Davies and Natalia Ollus, “Labour Exploitation as Corporate Crime and Harm: Outsourcing Responsibility in Food Production and Cleaning Services Supply Chains,” *Crime, Law and Social Change* 72, (2019): 87-106; Natalia Ollus, “Forced Flexibility and Exploitation: Experiences of Migrant Workers in the Cleaning Industry,” *Nordic Journal of Working Life Studies* 6, no. 1 (2016): 25-45; Niels van Doorn, “Platform Labor: On the Gendered and Racialized Exploitation of Low-Income Service Work in the ‘On-Demand’ Economy,” *Information, Communication & Society* 20, no. 6 (2017): 898-914.

³⁶⁰ “Modern Slavery in Cleaning Supply Chains,” Cleaning Accountability Framework, accessed July 12, 2023, <https://www.cleaningaccountability.org.au/modern-slavery/#MSS>.

³⁶¹ “Founding Partners,” Cleaning Accountability Framework, accessed July 12, 2023, <https://www.cleaningaccountability.org.au/partners/>.

³⁶² Mark Stevenson, “Hidden in Plain Sight: The Bystander Effect and the Mobilisation of Modern Slavery Whistleblowing,” *Supply Chain Management* 27, no. 1 (2022): 128-139; Fahian A. Huq, Mark Stevenson and Marta Zorzini, “Social Sustainability in Developing Country Suppliers: An Exploratory Study in the Ready Made Garments Industry of Bangladesh,” *International Journal of Operations & Production Management* 34, no. 5 (2014): 610-638; Bin Jiang, “Implementing Supplier Codes of Conduct in Global Supply Chains: Process Explanations from Theoretic and Empirical Perspectives,” *Journal of Business Ethics* 85, (2009): 77-92.

³⁶³ “What We Do,” Electronics Watch, accessed July 12, 2023, https://electronicswatch.org/en/what-we-do_2548040.

³⁶⁴ Justine Nolan et al, *Good Practice Toolkit*, 17.

addressed and resolved at all levels of the supply chain in a grievance mechanism) should be collected and disclosed.³⁶⁵ Ongoing monitoring can drive continuous improvements in the workplace and facilitate increased transparency about the harms that have occurred, and the remedies implemented to address them. For example, Australian retail group, Woolworths utilises extensive risk assessment platforms (like ELEVATE's EiQ platform) and has been progressively incorporating more monitoring information to ensure a robust approach to identifying modern slavery and responding.³⁶⁶ In their 2022 modern slavery statement, Woolworths identified through an audit that supplier employees had "paid excessive recruitment fees to a labour agent", an indicator of forced labour. Subsequently, Woolworths reported that they "used [their] leverage to support [their] supplier to remediate the impact on workers and put systems in place to mitigate and prevent future harm".³⁶⁷

5 Is the MSA facilitating remedy?

The MSA is a crucial piece of legislation to tackle modern slavery. However, it is just a first step and based on the available evidence, it appears that the MSA is not facilitating access to remedy, primarily due to the absence of an explicit requirement for Human Rights Due Diligence (HRDD). In our survey, 61% of participating businesses acknowledged that if they were legally obligated to carry out HRDD across their operations and supply chains, their company's response to modern slavery would likely improve.³⁶⁸ This finding points to a significant gap in the MSA. If the Act had a provision to mandate HRDD, it could foster a more comprehensive and effective approach to tackling modern slavery, significantly enhancing businesses' remedial actions.³⁶⁹

Moreover, focus group participants expressed frustration with the Act's overwhelming emphasis on reporting and disclosure. Some commented that time is spent on superficial compliance and modern slavery statement drafting, rather than on tackling extant issues. They identified this as a significant limitation, highlighting the absence of a robust enforcement

³⁶⁵ Sinclair and Dinshaw, *Paper Promises*, 11.

³⁶⁶ Woolworths Group, "We are Woolworths Group: 2022 Modern Slavery Statement," Modern Slavery Statements Register, accessed July 12, 2023, 22, <https://modernslaveryregister.gov.au/statements/10009/>.

³⁶⁷ Woolworths Group, "2022 Modern Slavery Statement," 22.

³⁶⁸ Marshall et al, *Fit for Purpose*, 11.

³⁶⁹ We do not mean to suggest that mandatory human rights due diligence laws introduced in European countries in recent years are adequately addressing remedy. For example, while the German Supply Chain Due Diligence Act provides strong guidance around the types of steps that companies can take to provide remedy, it precludes civil remedy. The competent authority under the legislation has not yet made decisions based on the two complaints made to it for labour rights breaches. In contrast, the French Due Vigilance law provides a right to civil complaints under tort law. Two cases have been lodged thus far that concern labour rights breaches, but decisions are pending. See Ingrid Landau and Shelley Marshall, "Does Remedy Remain Rare? The Potential of Mandatory Human Rights Due Diligence to Remediate Modern Slavery," in *Modern Slavery and the Governance of Global Value Chains*, eds. Hila Shamir and Tamar Barkay (Cambridge: Cambridge University Press, forthcoming). See also, European Union Agency for Fundamental Rights, *Business and Human Rights - Access to Remedy*, (Vienna: European Union Agency for Fundamental Rights, 2020), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-business-human-rights_en.pdf.

mechanism or penalties for non-compliance.³⁷⁰ This concern underscores that for the MSA to effectively promote remedy, it needs to move beyond a mere reporting-centric focus and demand substantive action.

In our first round of statement analysis, only a minority of companies, one in four - reported undertaking HRDD on new suppliers during the selection stage.³⁷¹ Section 16(1)(d) of the MSA mandates companies to disclose any actions taken to assess and manage risks, including due diligence and remediation processes (but does not *require* these actions – only reporting on them).³⁷² However, we found a significant gap between this provision and actual practice. Even though 60% (in round one of reporting)³⁷³ and 67% (in round two of reporting)³⁷⁴ of the companies in our sample complied with this disclosure requirement, our analysis suggested that company approaches to HRDD were largely cosmetic. This is a worrying trend as it implies a lack effectiveness in their due diligence procedures. Our statement analysis findings shed further light on a related issue: a notable discrepancy between the due diligence performed on suppliers and on companies' own operations. While a significant 84% of businesses claimed to conduct due diligence on their suppliers, only 64% said they performed the same due diligence within their own operations.³⁷⁵ This gap suggests an uneven application of HRDD and further weakens the MSA's effectiveness in ensuring access to remedy.

The MSA, in its current form, requires entities to describe their due diligence systems but does not obligate them to implement and utilise such systems. This lack of requirement represents an elementary weakness in the Act. Based on research over the last three years in examining the effectiveness of the MSA and the 2023 independent review, it is evident that the MSA must require the implementation of HRDD not just reporting on it.³⁷⁶ We suggest government and business each have a critical role to play in facilitating greater access to effective remedy. In terms of policy reform, we recommend that the MSA should be strengthened to impose a duty on companies to not only describe but also implement and employ an effective HRDD system. This should include explicit guidance from government specifying the minimum elements of an effective due diligence system that embodies international best practice.³⁷⁷ By enforcing the implementation of HRDD, the MSA could become more robust in its approach to identifying and addressing modern slavery and, in turn, would allow the MSA to play a more effective role in facilitating access to remedy, bringing it closer to its primary objective - the eradication of modern slavery.

³⁷⁰ Marshall et al, *Fit for Purpose*, 11.

³⁷¹ Dinshaw et al, *Broken Promises*, 2.

³⁷² *Modern Slavery Act 2018* (Cth), s 16(1)(d).

³⁷³ Sinclair and Dinshaw, *Paper Promises*, 54.

³⁷⁴ Dinshaw et al, *Broken Promises*, 16.

³⁷⁵ Sinclair and Dinshaw, *Paper Promises*, 56.

³⁷⁶ McMillan, *Report of the Statutory Review*, 12.

³⁷⁷ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*.

For businesses, we believe it is imperative to understand the breadth of potential remedies and improve key supplier and stakeholder relationships in order to both identify and redress modern slavery. Our data indicates that if “the problem cannot be seen, it cannot be fixed”³⁷⁸ and greater engagement with stakeholders such as unions and civil society who have the trust of workers is a necessary first step in building a more substantive approach to remediation. Businesses are currently under-investing in remediation processes and are largely unprepared for dealing with modern slavery.

It is evident that there is a gap between policy and practice in addressing remediation of modern slavery in the operations and supply chains of Australian companies. The limitations of the MSA which prioritises corporate reporting over action is impacting the provision of remedy under the law. Combined with low rates of identification and a narrow and superficial approach to understanding remedy means that effective remedy under the MSA remains an aspiration rather than the norm.

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³⁷⁸ Marshall et al, *Fit for Purpose*, 24.

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How Import Bans Affect Access to Remedy for Individuals Affected by Forced Labour

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Abstract

Import bans are increasingly used to prevent the import and sale of goods produced by forced labour and modern slavery. The threat or use of these import bans has driven significant changes in corporate and government behaviour in recent years. What is less well understood is the connection between import bans and the provision of remedies to people in conditions of forced labour. This article examines the connection between import bans and access to remedy, through the lens of the US Tariff Act of 1930. The article draws lessons from nine case studies across geographies and sectors.

Keywords: access to remedy, business and human rights, forced labour, modern slavery, import ban

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1. Introduction¹

Import bans, which prohibit products from a particular company or country, are increasingly being used to prevent the sale of goods produced by forced labour and modern slavery.² Import bans are among the strongest legal tools currently available to hold companies

¹ This article is based on an earlier report released by The Remedy Project. For more detailed information on each case study, see the full report by The Remedy Project, accessible [here](#). The article and corresponding report do not seek to identify, nor do they allege, the existence of forced labour or other legal or human rights violations by any company or individual. Nor does it seek to verify, corroborate, or support the conclusions reached by US Customs and Border Protection in any case. Nothing in this article should be construed as legal advice.

accountable for forced labour in their supply chains. They have the potential to impose direct economic costs on those who exploit forced labour and to disrupt value chains that profit from exploitation. An import ban can place significant commercial pressure on companies to address forced labour in their supply chains or risk losing access to valuable export markets such as the United States and Canada. Import bans have also given rise to follow-on civil lawsuits against upstream companies who have been associated with suppliers that are subject to import bans.³ They can also have a powerful deterrent effect.

Given the significant commercial ramifications of an import ban, forced labour and human rights risks have been elevated to a boardroom-level issue in many industries. The threat or risk of an import ban can drive companies and industries to proactively seek to identify indicators of exploitation in their supply chains and implement systemic-level responses to address them.

The threat or use of forced labour import bans has thus driven significant changes in corporate and government behaviour in recent years. What is less well understood is the connection between import bans and the provision of remedies to people in conditions of forced labour. Import bans are often viewed as a punitive measure, rather than a tool for the provision of remedies to affected people. As other jurisdictions, including the European Union, plan to introduce their own trade-based mechanisms to combat forced labour, it is important to consider the potential for import bans as a tool to secure remedies for people in conditions of forced labour.

In short, this article seeks to understand the extent to which corporate responses to import bans have led to access to remedies for people in conditions of forced labour and other affected rights-holders.⁴ More broadly, this article considers the potential for import bans to be leveraged as a tool to secure access to remedies for people in conditions of forced labour. The article specifically examines these aspects through the lens of the US Tariff Act of 1930 (the Tariff Act).⁵ This study analyses nine case studies of instances where a company has sought to lift a forced labour import ban imposed under the Tariff Act – to understand what was done to seek the lifting of the ban, and the extent to which that process led to the provision of remedies for affected people. These case studies cover industries ranging from agriculture, to manufacturing, to distant water fishing, and are drawn from companies across Southeast Asia, Central Asia, East Asia, Southern Africa, and South America.

² This article uses the commonly used term “import ban” to describe the US Tariff Act mechanism of 1930. An “import ban” is a form of quantitative restriction which prohibits goods of a specific origin or type from entering a market. See: Cécile Jacob et al., “Trade-Related Policy Options of a Ban on Forced Labour Products” (European Parliament, November 25, 2022), accessed April 28, 2023, [https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA\(2022\)702570](https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA(2022)702570); “Market Access: Quantitative Restrictions,” World Trade Organization, accessed April 28, 2023, https://www.wto.org/english/tratop_e/markacc_e/qre.htm.

³ See, e.g., Ansell Ltd., “TVpra Lawsuit against Ansell,” Press release, August 11, 2022, <https://www.ansell.com/hk/en/about-us/media-center/press-releases/tvpra-lawsuit-response>.

⁴ This study focuses on import bans imposed on companies in the private sector, as opposed to import bans in respect of state-imposed forced labour.

⁵ 19 US Code Ch.4, Tariff Act of 1930.

Key Concepts

Remedy and Remediation

This article adopts the UN Guiding Principles on Business and Human Rights (UNGPs) definition of ‘remedy’. ‘Remedy’, as defined in the UNGPs, refers to the provision of substantive remedies to people whose human rights have been violated. According to the UNGPs:

“Remediation or remedy refer to both (a) processes of providing remedy for an adverse human rights impact, and (b) the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of different forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”⁶

“Remedy” as defined in the UNGPs is not the same as the concept of “remediation” as understood and applied by US Customs and Border Protection (CBP). As explained more fully below, CBP effectively equates “remediation” with the removal of the presence of any International Labour Organization (ILO) indicators of forced labour.⁷ Unless otherwise stated in this article, the term “remedy” therefore refers to the UNGP definition above. The term “remediation” refers to CBP’s concept of remediation (i.e., the removal of ILO indicators of forced labour).

Stakeholders and Rights-Holders

In line with the UNGPs, a stakeholder is any individual who may affect or be affected by a business’ operations, products, or services.⁸ This broad grouping includes rights-holders, the individuals who may experience human rights impacts due to business activities.

⁶ United Nations Office of the High Commissioner for Human Rights (OHCHR), The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (OHCHR, 2012), 7, https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf.

⁷ ILO Forced Labour Indicators, accessible at https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm

⁸ United Nations Office of the High Commissioner for Human Rights (OHCHR), The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 7.

US Tariff Act of 1930

Section 307 of The Tariff Act empowers US Customs and Border Protection (CBP) to impose an import ban on goods made “wholly or in part by forced labour, convict labour, or indentured labour” (including forced or indentured child labour).⁹

Withhold Release Order (WRO)

As part of a two-stage enforcement mechanism under the Tariff Act, if CBP finds information which reasonably indicates that goods falling within s. 307 of the Tariff Act are being, or are likely being, imported to the US, CBP issues a ‘withhold release order’ in respect of these goods. As the name suggests, a WRO prevents goods covered by the order that are in US ports from being released into the US.¹⁰

Methodology

This article analyses the link between tariff bans and remedy of the ILO indicators of forced labour for affected rights-holders. The research was conducted through the development and analysis of nine in-depth case studies, focusing on instances where a company has sought to lift (i.e., modify or revoke) an import ban imposed under the Tariff Act.

These case studies were selected based on a review of all CBP Findings and WROs which have been modified or revoked as of December 2022. These Findings and WROs were then further analysed to identify information indicating that some proactive action was undertaken to secure the modification or revocation of the WRO. Additional case studies were selected based on the list of active CBP Findings and WROs which have not been modified or revoked, but where there was publicly available information indicating that efforts had been undertaken in response to WRO or Finding to address forced labour issues identified by CBP.

At the suggestion of stakeholders, one case study (fishing nets in Thailand) was selected even though no WRO or Finding was imposed in this case. This case study was selected as a point of contrast as it involved an instance of actions being taken to address alleged state-imposed forced labour following the threat of a WRO.

The case studies have been developed through a combination of desk-based research (current as of February 2023), stakeholder interviews, and interviews with 53 workers in companies directly affected by those import bans. Each case study examines different jurisdictions, industries, cultures, and labour and migration dynamics. As such, it was not possible to apply the exact same methodology in each case study. A list of stakeholders interviewed is set out in Annex 1. Given the highly sensitive subject matter of this study, there was, in some cases, limited available open-source information. In other cases, substantially more information was available in the public domain. The level of detail and specificity able to be provided in each case study therefore varies accordingly.

⁹ Under the Tariff Act, “forced labour” is defined “as work or service which is exacted from any person under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily.” The term includes forced or indentured child labour. See: 19 CFR § 12.42(f).

¹⁰ 19 CFR § 12.42(f).

Workers were interviewed in their own language and each interviewee offered their informed consent to participate. Interviews were conducted in-person individually or in focus groups, depending on the preference of the interviewees. Children (i.e., people below the age of 18) did not form part of focus groups and were not interviewed for the purposes of this report. All record and notes of the interviews and focus group discussions were fully anonymised and no personally identifying information about any interviewee was recorded, retained or shared with The Remedy Project. Interview participants were selected by the researchers and were not nominated or selected by the employers. The interviews with workers were focused on qualitative questions relating to workers' experiences of remediation or changes following a WRO or Finding. The responses recorded are not necessarily indicative of the experiences of workers as a whole.

As part of safety and ethics, fully informed consent to participate was obtained from all focus group participants and interviewees. Participants were explained in a language they understood: (a) the nature and purpose of the interview/focus group; (b) how information that is provided during the interview/focus group will be used; (c) the risks (if any) associated with participating in the interview/focus group; (d) the measures that will be taken to protect the anonymity of the information provided by the interview/ focus group participants; (e) that the participant is free not to take part in the interview/focus group, and that there will be no adverse consequences or repercussions from the researchers towards anyone who decides not to participate; (f) that the informed consent to participate may be withdrawn at any time.

A WRO or Finding can be 'lifted' by means of modification and revocation. CBP states that a WRO or Finding may be modified or suspended from enforcement where the entity subject to the WRO demonstrates to CBP that it has 'remediated' all 11 indicators of forced labour.¹¹ As per CBP, a WRO may be 'revoked' in respect of an entity if CBP determines that the entity in question was not engaged in forced labour.¹² Once a petitioner submits information to CBP seeking the modification or revocation of a WRO, the petitioner and CBP will engage with each other. The guidance from CBP further states that "CBP will not modify or revoke [a WRO] unless all forced labour indicators are remediated."¹³ It is also worth noting that CBP does not generally publicise what remediation was undertaken by the company to secure the modification or revocation.¹⁴ It can therefore be difficult, based on public information alone, to determine what CBP considers adequate remediation to be, in practice.

¹¹ CBP (March 2021) Factsheet: WRO Modification/Revocation Process Overview; ILO Indicators of Forced Labour (1 October 2012)

¹² CBP (October 2021) [How are WRO and/or finding modifications and revocations processed?](#)

¹³ Ibid

¹⁴ See example, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-certain-tobacco-imports-premium>

Figure 1: Geography of case studies

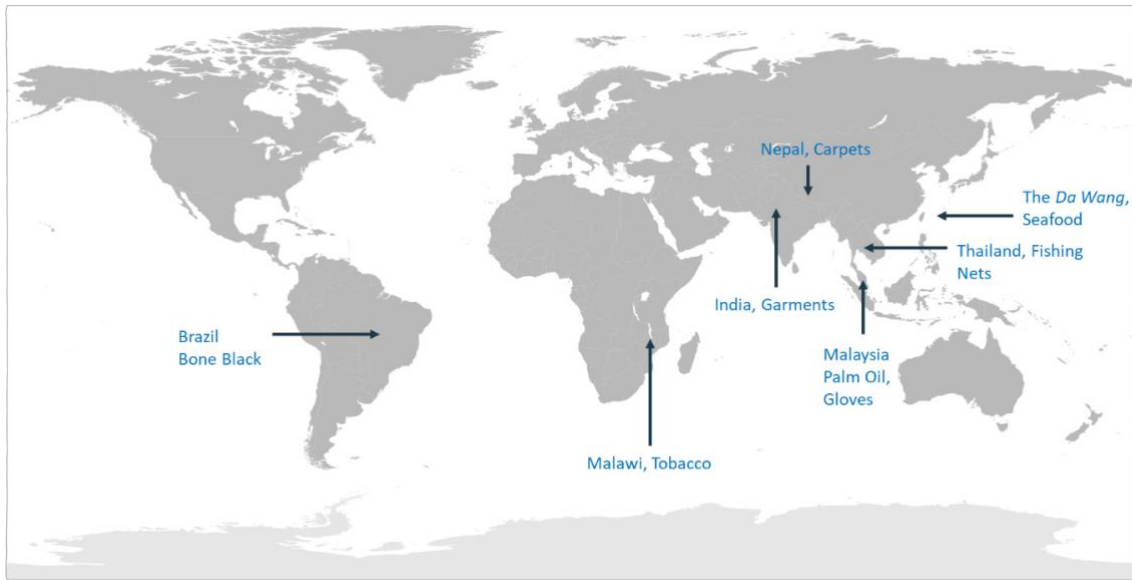


Table 1: Cases analysed in this study

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Brazil	Bone black / bone char	Bonechar Carvão Ativado Do Brasil Ltda ("Bonechar")	WRO issued on 30 September 2019. ¹⁵ WRO modified on 4 December 2020. ¹⁶
India	Garments	Natchi Apparels (P) Ltd.	WRO issued on 29 July 2022. ¹⁷ WRO modified on 7 September 2022. ¹⁸

¹⁵ U.S. Customs and Border Protection, "CBP Issues Detention Orders against Companies Suspected of Using Forced Labor," 1, 2019, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced>.

¹⁶ U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechere Carvão Ativado Do Brasil Ltda," December 7, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-bone-black-bonechar-carv>.

¹⁷ U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.," September 7, 2022, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-natchi-apparel-p-ltd>.

¹⁸ U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd."

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Malaysia	Palm oil	FGV Holdings Bhd	WRO issued on 30 September 2020. ¹⁹
Malaysia	Palm oil	Sime Darby Plantation Bhd	WRO issued on 30 December 2020. ²⁰ Finding issued on 28 January 2022. ²¹ Finding modified on 3 February 2023. ²²
Malaysia	Disposable gloves	Top Glove Corporation Bhd	WRO issued on 15 July 2020. ²³ Finding issued on 23 March 2021. ²⁴ Finding modified on 10 September 2021. ²⁵
Malawi	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	WRO issued on 1 November 2019 in respect of tobacco produced in Malawi and products containing tobacco

¹⁹ U.S. Customs and Border Protection, “CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia,” September 30, 2020, accessed April 28, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-palm-oil-produced-forced-labor-malaysia>.

²⁰ U.S. Customs and Border Protection, “CBP Issues Withhold Release Order on Palm Oil Produced by Forced Labor in Malaysia,” December 30, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-palm-oil-produced-forced-labor>.

²¹ U.S. Customs and Border Protection, “Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307,” Federal Register, January 28, 2022, accessed April 28, 2023, <https://www.federalregister.gov/documents/2022/01/28/2022-01779/notice-of-finding-that-certain-palm-oil-and-derivative-products-made-wholly-or-in-part-with-palm-oil>.

²² U.S. Customs and Border Protection, “CBP Modifies Finding on Sime Darby Plantation Berhad in Malaysia,” February 3, 2023, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-finding-sime-darby-plantation-berhad-malaysia>.

²³ U.S. Customs and Border Protection, “CBP Modifies Forced Labor Finding on Top Glove Corporation BHD,” September 9, 2021, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-forced-labor-finding-top-glove-corporation-bhd>.

²⁴ U.S. Customs and Border Protection, “Notice of Finding That Certain Disposable Gloves Produced in Malaysia With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States,” Federal Register, March 29, 2021, accessed April 28, 2023, <https://www.govinfo.gov/content/pkg/FR-2021-03-29/pdf/2021-06393.pdf>.

²⁵ U.S. Customs and Border Protection, “Determination That Maintenance of Finding of March 29, 2021, Pertaining to Certain Disposable Gloves Produced in Malaysia, Is No Longer Necessary,” Federal Register, September 10, 2021, accessed April 28, 2023, <https://www.federalregister.gov/documents/2021/09/10/2021-19535/determination-that-maintenance-of-finding-of-march-29-2021-pertaining-to-certain-disposable-gloves>.

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
			produced in Malawi. ²⁶ WRO modified in respect of Alliance One International LLC on 3 June 2020. ²⁷ WRO modified in respect of Limbe Leaf Tobacco Company Ltd. on 31 July 2020. ²⁸ WRO modified in respect of Premium Tobacco Malawi Limited on 21 May 2021. ²⁹
Nepal	Carpets, hand-knotted wool products	Kumar Carpet Pvt., Singhe Carpet Pvt., Ltd., Norsang Carpet Industries Pvt., Ltd., Annapurna Carpet, Everest Carpet, Valley Carpet, and K.K. Carpet Industries Kathmandu	WRO issued 21 July 1998. ³⁰ WRO modified in respect of Norsang Carpet Industries Pvt., Ltd., Everest Carpet, and K.K. Carpet Industries on 6 October 1998. WRO modified in respect of Annapurna Carpet on 23 July 2021. ³¹

²⁶ U.S. Customs and Border Protection, “CBP Issues Withhold Release Order on Tobacco from Malawi,” November 1, 2019, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-tobacco-malawi>.

²⁷ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi,” June 3, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-tobacco-malawi>.

²⁸ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Tobacco Imports from Limbe Leaf Tobacco Company Ltd. in Malawi,” August 1, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-tobacco-imports-limbe-leaf>.

²⁹ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Certain Tobacco Imports from Premium Tobacco Malawi Limited,” May 24, 2021, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-certain-tobacco-imports-premium>.

³⁰ U.S. Customs and Border Protection, “Withhold Release Orders and Findings List,” June 21, 2023, accessed July 13, 2023, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

³¹ U.S. Customs and Border Protection, “CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal,” July 26, 2021, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-carpets-and-hand-knotted>.

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Fishing vessel: <i>Da Wang</i>	Distant water fishing	Fishing vessel: <i>Da Wang</i>	WRO issued 18 August 2020. ³² Finding issued 28 January 2022. ³³
Thailand	Fishing nets	Khon Kaen Fishing Net Factory Co., Ltd Dechapanich Fishing Net Factory Ltd.	Petition submitted to CBP on 22 February 2022. ³⁴

2. Remediation via US Import Bans

The US Tariff Act of 1930

Section 307 (s.307) of the Tariff Act states:

“All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited...”³⁵

CBP can exercise its power acting on its own initiative or in response to information contained in a petition submitted by a third party.³⁶

There is a two-stage enforcement mechanism under the Tariff Act. At the first stage, CBP will decide to launch an investigation either on its own initiative or in response to a petition. Following that investigation, if CBP finds information which reasonably indicates that goods falling within s.307 of the Tariff Act are being, or are likely being, imported to the US, CBP will

³² U.S. Customs and Border Protection, “CBP Issues Detention Order on Seafood Harvested with Forced Labor,” August 18, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor-0>.

³³ U.S. Customs and Border Protection, “Notice of Finding That Certain Seafood Harvested by the Taiwanese *Da Wang* Fishing Vessel With the Use of Convict, Forced or Indentured Labor Is Being, or Is Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307,” Federal Register, January 28, 2022, accessed April 28, 2023, <https://www.federalregister.gov/documents/2022/01/28/2022-01778/notice-of-finding-that-certain-seafood-harvested-by-the-taiwanese-da-wang-fishing-vessel-with-the>.

³⁴ International Labor Rights Forum, “Organizations Urge U.S. to Block Imports of Fishing Nets from Thai Companies over Evidence of Forced Prison Labor,” Press release, February 22, 2022, <https://laborrights.org/Organizations-urge-US-block-imports-of-fishing-nets-from-Thailand-over-evidence-forced-labor>.

³⁵ 19 USC 4 §1307

³⁶ 19 CFR § 12.42(a) and (b)

issue a WRO in respect of those goods. Importers of the goods can, however, still re-export those goods out of US ports to other destinations.³⁷

At the second stage, if CBP determines that the goods in question are subject to s.307, CBP will – with the approval of the Secretary of the Treasury – publish a Finding to that effect.³⁸ Goods covered by the Finding will be denied entry into any US ports, their importation to the US will be prohibited, and any such goods in US ports may be seized and forfeited.³⁹ In most cases, CBP does not issue a Finding. As of February 2023, there are 53 active WROs but only nine Findings.⁴⁰

CBP also has the power to impose civil penalties (e.g., fines) on importers who enter or introduce (or attempt to do so) goods into the US market contrary to law – which would include the contravention of a WRO or Finding. As of December 2022, CBP has only issued one such fine against an importer for importing goods covered by a WRO or Finding.⁴¹

Remediation Through the US Tariff Act

The Tariff Act makes no reference to the provision of remedies or access to remedy for people in conditions of forced labour. This does not mean that import bans under the Tariff Act cannot, or do not, lead to the provision of remedies. However, the connection between them is not well understood or articulated.

Modification and revocation are the two means by which a WRO or Finding can be “lifted.” CBP states that a WRO or Finding may be modified (suspended from enforcement) where the entity subject to the WRO demonstrates to CBP that it has “remediated” all 11 ILO indicators of forced labour, listed below. According to CBP, a WRO or Finding may be “revoked” in respect of an entity if CBP determines that the entity in question was not engaged in forced labour.⁴² CBP’s guidance further states that “CBP will not modify or revoke [a WRO]

³⁷ 19 CFR § 12.42(e)

³⁸ 19 CFR § 12.42(f)

³⁹ 19 CFR § 12.42(f); 19 CFR § 12.42(f)

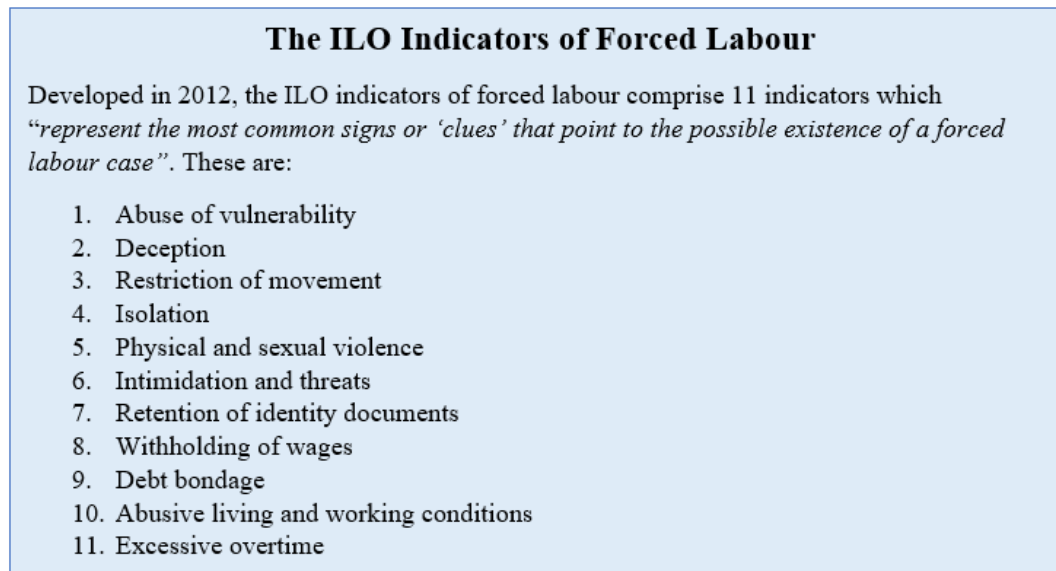
⁴⁰ U.S. Customs and Border Protection, “Withhold Release Orders and Findings List.”

⁴¹ U.S. Customs and Border Protection, “CBP Collects \$575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor,” August 13, 2020, accessed April 28, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>.

⁴² U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview,” March 2021, accessed April 28, 2023, https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/Final_Modification%20Revocation%20Process%5B5%5D.pdf; U.S. Customs and Border Protection, “How Are WRO and/or Finding Modifications and Revocations Processed?,” October 2021, accessed April 28, 2023, https://www.cbp.gov/sites/default/files/assets/documents/2021-Oct/Slicksheet_Forc%20Labor%20How%20are%20WRO%20Finding%20Modifications%20or%20Revocations%20Processed%20508%20Compliant_0.pdf; International Labour Organization, “ILO Indicators of Forced Labour” (International Labour Organization, October 1, 2012), accessed April 28, 2023, https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm.

unless all forced labour indicators are remediated.”⁴³ Companies requesting modification/revocation of a WRO or Finding need to submit evidence to CBP that all ILO indicators of forced labour have been remediated. Notably, CBP does not explicitly require evidence of the provision of remedies to individuals.⁴⁴

Figure 2: ILO indicators of forced labour⁴⁵



Companies and CBP may obtain such evidence of remediation by engaging with stakeholders. CBP’s engagement with stakeholders (e.g., petitioning civil society organisations, and workers or rights-holders) varies depending on the stage of the enforcement process. In some cases, CBP expects independent third-party verification of remediation (e.g., through audits or worker interviews).⁴⁶ Civil society groups have been pushing CBP to avoid relying heavily on audit reports, since third-party audits have often failed to identify forced labour in companies which later received WROs.⁴⁷

Where a WRO or Finding is modified or revoked based on such evidence, CBP does not generally publicise what remediation was undertaken by the company to secure the modification or revocation. CBP may issue press releases briefly giving reasons for the modification or revocation, but they do not usually include CBP’s detailed reasoning and generally do not

⁴³ U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview.”

⁴⁴ U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview.”

⁴⁵ Ibid

⁴⁶ Interview with Martina Vandeberg and Anasuya Syam, Human Trafficking Legal Center

⁴⁷ Interview with Martina Vandeberg and Anasuya Syam, Human Trafficking Legal Center

describe what remediation was undertaken.⁴⁸ It can therefore be difficult, based on public information alone, to determine what CBP considers adequate remediation to be in practice. CBP's jurisdiction focuses on the import and entry of goods and people into the United States. In other words, its jurisdiction "starts and ends at the border."⁴⁹ In this context, remediation becomes a factual determination of whether all forced labour indicators previously identified by CBP are no longer present, rather than a rights-based assessment of whether victims have been made whole and harms made good.⁵⁰

That said, stakeholders report that: "CBP has not modified very many trade enforcement actions. Press reports regarding the conditions at impacted worksites suggest only credible remediation and verification will justify a trade enforcement modification. As a result, this has become one of the most powerful levers to bring about credible remedy for workers."⁵¹

3. Findings from Case Studies⁵²

By analysing the case studies, The Remedy Project found the following:

1. Focus on the removal of indicators of forced labour rather than the provision of remedies to individuals hinders the effectiveness of the Tariff Act as a tool to support access to remedy for people in conditions of forced labour.

When deciding whether to modify or revoke a WRO or Finding, CBP is primarily concerned with whether all 11 ILO indicators of forced labour have been removed or are no longer present in a company's operations. The provision of adequate remedies to workers and affected rights-holders is part of the assessment of whether the indicators of forced labour have been effectively removed, but it is not CBP's primary consideration.

CBP's focus on the removal of indicators of forced labour, rather than the provision of remedies to individual workers, may affect the way that companies respond to import bans. As noted in the table below, company responses to import bans have tended to focus on systems and policy-level changes. Where remedies have been provided to individuals, these have tended to be limited to the reimbursement of recruitment fees. The study identified only one case in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour. For example, in 2020, CBP modified a WRO imposed in respect of two tobacco

⁴⁸ See, e.g., U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Certain Tobacco Imports from Premium Tobacco Malawi Limited."

⁴⁹ Interview with Jen Jahnke, Impactt Limited; Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

⁵⁰ Interview with Jen Jahnke, Impactt Limited; Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

⁵¹ As shared in an Interview with Jen Jahnke, Impactt Limited upon reflection of press releases issued by CBP in regard to modification of trade enforcement actions; Interview with Allison Gill, Forced Labor Director, Global Labor Justice-International Labor Rights Forum

⁵² For detailed description and analysis of each case study, see the full report by The Remedy Project [here](#).

companies in Malawi based on an evaluation of each company's "social compliance programs and efforts to minimise the risks of forced labour from its supply chain."⁵³ According to tobacco workers interviewed for this study, no remedies were provided to workers in response to the import ban.

2. Import bans have resulted in the provision of significant remedies to people in conditions of forced labour. But beyond the reimbursement of recruitment fees, few other forms of direct remedies have been provided.

The study sought to identify the different forms of remedy that were provided to workers and affected rights-holders in response to import bans and the requirement to address removal of forced labour indicators. Table 2 below maps the different remedies identified in each of the case studies examined.⁵⁴

⁵³ U.S. Customs and Border Protection, "CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi."

⁵⁴ The list of remedies is derived from the forms of remedy that were observed to have been provided in the different case studies, as well as the OHCHR interpretive guide to the UNGPs. See: United Nations Office of the High Commissioner for Human Rights (OHCHR) (2012) *The Corporate Responsibility to Respect Human Rights, An Interpretive Guide*, page 7), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 7.

Table 2: Summary of remediation undertaken in response to import bans⁵⁵

Green: Remediation self-reported, and corroborated by worker interviews conducted for this report		Orange: Remediation self-reported, and not corroborated by worker interviews conducted for this report			Yellow: Remediation self-reported, and worker interviews not able to be conducted for this report		
Status	WRO/Finding modified/revoked				WRO/Finding not modified/revoked		No WRO/Finding
Case Study ⁵⁸	Malaysia Rubber Gloves (Top Glove)*	Malawi Tobacco	Nepal Carpets (Annapurna Carpet)*	Malaysia Palm Oil (Sime Darby)	Malaysia Palm Oil (FGV Holdings)	Distant water fishing (the Da Wang)	Thailand Fishing Nets
Apology							
Compensation / damages							
Rehabilitation							
Recruitment fee reimbursement							
Guarantee of non-repetition							
Improved living & working conditions						*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Improved recruitment / employment policies						*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Legal accountability for perpetrators							
Improved grievance channels							

*Worker interviews not conducted for the purposes of this study

⁵⁵ Two case studies – Natchi Apparel and Bonechar – have not been included in the table. In both these cases, the WRO in question was modified by CBP after receiving evidence that there was in fact no forced labour in the companies' respective operations, and hence no remediation was undertaken.

In two cases, the import ban was modified after CBP determined that the companies in question were not engaged in forced labour.⁵⁶ Hence, no remediation was undertaken. Out of the remaining seven case studies:

- In one case, this study did not identify clear evidence that any form of remediation had been undertaken or that remedies had been provided to individual rights-holders in response to the import ban.⁵⁷
- In four cases, there was evidence that remediation had been undertaken by the companies in question to remove indicators of forced labour in response to an import ban. This included through improving company policies and governance systems, investing in improved worker accommodation. But there was no clear evidence that remedies had been provided to individual rights-holders as part of those efforts.⁵⁸
- In two cases, there was evidence that remediation had been undertaken by the relevant companies to remove indicators of forced labour in response to an import ban, and that remedies had been provided to individual rights-holders as part of that process.⁵⁹ In both cases, individual remedies were provided in the form of the reimbursement of recruitment fees. Additionally, in one of these cases, individual remedies were offered in the form of compensation for workers who had been in conditions of forced labour.⁶⁰

Apart from the reimbursement of recruitment fees to migrant workers in Malaysia, few other forms of direct remedy have been provided to affected rights-holders. For example, this study identified only one instance in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour. The Remedy Project was unable to verify whether any such payments were indeed made by the company.

In many cases, companies have responded to import bans by introducing changes to their management, human rights, recruitment, and employment policies and practices. These policy changes can constitute forward-looking prevention, and thus a form of guarantee of non-repetition, since they can help ensure that workers in future will not experience similar forms of harm. For example, companies have reportedly introduced reforms to their recruitment and employment policies and practices (five out of seven case studies) and strengthened worker grievance mechanisms (four out of seven case studies).

However, promised policy reforms did not always translate into improved living and working conditions in the experience of workers interviewed for this study. In at least three of the seven

⁵⁶ Bonechar and Natchi Apparel

⁵⁷ Tobacco, Malawi

⁵⁸ Palm oil, Malaysia (FGV Holdings), carpets, Nepal (Annapurna Carpet), distant water fishing (the *Da Wang*), Thailand, fishing nets

⁵⁹ Malaysia, palm oil (Sime Darby), Malaysia, rubber gloves (Top Glove). In some cases, migrant workers interviewed for this study reported that the recruitment fee reimbursement payment they received was slightly more than the actual recruitment fee that they paid. This surplus may be considered to have some compensatory value for workers, but it is not the same as a payment that is specifically intended to compensate workers for having been subjected to conditions of forced labour.

⁶⁰ Malaysia, rubber gloves (Top Glove)

case studies, there was a discrepancy identified between the remedies that companies reported that they had provided, and the experiences of workers interviewed.

3. Nevertheless, import bans have, in some cases, led to substantial legal, policy, and operational level reforms to address forced labour in supply chains.

Despite the limitations discussed above, import bans under the Tariff Act have had a wide-reaching impact. They have often been a catalyst to prompt rapid changes in industries that have been resistant to reform. In response to actual or threatened CBP enforcement actions, companies in the rubber glove and palm oil industries in Malaysia have committed to repay over USD 115.4 million in recruitment fees to nearly 82,000 migrant workers, new corporate sustainability initiatives such as the Responsible Glove Alliance have been launched, worker grievance mechanisms have been strengthened, and recruitment, corporate governance, and sustainability policies have been reformed.⁶¹

CBP enforcement actions have also given rise to legal actions. In response to import bans follow-on civil lawsuits have been brought in the US and UK against companies alleged to have profited from, or sourced products from companies subject to import bans.⁶² In Taiwan, an import ban has prompted the prosecution of alleged perpetrators of trafficking and forced labour aboard the fishing vessel *Da Wang*, and the owners of the vessel had their license revoked.⁶³

Furthermore, import bans have driven legal and policy changes. In Taiwan, import bans helped spur the adoption of an official Action Plan for Fisheries and Human Rights – which includes a USD 100 increase in the monthly minimum wage for distant water fishing workers.⁶⁴ In Thailand, in response to a threatened import ban, the Royal Thai Government has committed to end the manufacture of fishing nets using prison labour – offering an example of how the creative and targeted use of CBP Petitions against private companies can be an effective tool to address state-imposed forced labour in certain cases.⁶⁵ In Malaysia, the Government has introduced several reforms to labour laws and policies following a series of import bans against glove makers and palm oil companies – including improved protections for migrant workers, and

⁶¹ See paragraphs 6.35, **Error! Reference source not found.** and **Error! Reference source not found.** below

⁶² For example, in 2021 CBP imposed a WRO on Malaysian glovemaker Brightway Group over alleged forced labour at the company. In 2022, a civil lawsuit was filed in the United States under the Trafficking Victims Protection Reauthorization Act against health and safety equipment company Ansell and personal care company Kimberly-Clark over the companies' alleged ties to Brightway. See: Ansell Ltd., "TVPR Lawsuit against Ansell."; International Rights Advocates, "Cases: Kimberly Clark and Ansell," August 20, 2022, accessed April 28, 2023, <https://www.internationalrightsadvocates.org/cases/kimberly-clark-ansell>.

⁶³ Kaohsiung District Prosecutors' Office, "Kaohsiung District Prosecutors' Office Charged 9 People for Exploiting and Abusing Foreign Crew on A Longline Fishing Boat, 'Da Wang', Against Human Trafficking Prevention Act," May 17, 2022, accessed April 28, 2023, <https://www.ksc.moj.gov.tw/296352/296356/296398/960001/post>.

⁶⁴ Council of Agriculture, "Action Plan for Fisheries and Human Rights," Executive Yuan, May 6, 2022, accessed April 28, 2023, <https://english.ey.gov.tw/News3/9E5540D592A5FECD/89bbc610-49c2-4080-85f9-6d2cb98bee96>.

⁶⁵ Department of Corrections (1 March 2021) *Corrections reforms prisoners' labour according to human rights standards*

the creation of a new forced labour criminal offence.⁶⁶ While it is not possible to directly attribute all of these reforms to the impact of import bans, import bans may have catalysed the more rapid adoption of these reforms.

More broadly, stakeholders report that CBP enforcement actions are driving changes in the way that companies approach forced labour in their supply chains – even in companies that are not directly affected by import bans: “Import bans are driving enormous changes in social compliance because of the huge commercial implications... What was acceptable as standard practice, even four years ago, is no longer good practice.”⁶⁷

In some cases, import bans have also elevated forced labour in supply chains to a board-level issue that is taken seriously by the most senior-level management. For example, in response to a WRO, Malaysian palm oil company Sime Darby Plantation (SDP) established a Board Sustainability Committee in July 2021 to monitor and oversee the remediation of forced labour and introduced a new internal ESG scorecard to track and measure its performance on the resolution of labour issues.⁶⁸ Notably, Sime Darby also appointed an independent Expert Stakeholder Human Rights Assessment Commission to advise it on human rights issues in its Malaysian operations. In its announcement, SDP noted the appointment of the Commission was a direct response to the WRO.⁶⁹

In other cases, import bans did not have an observable direct impact in terms of improving working conditions, changing company policies and practices, or legal and policy reform. This was notable in the case of Malawi and Nepal, where stakeholders did not report that import bans had been a driver of changes in working conditions, company practices, or the national legal and policy landscape to address forced labour.

4. In the case studies examined, import bans did not generally result in job losses or other adverse economic impacts for workers.

Where import bans are imposed, there is a risk that workers may lose their jobs or have their wages reduced as a result of the adverse economic impact of the import ban on the affected company or industry (e.g., due to reduced orders or factory closures). Import bans may also encourage international companies to disengage or divest from companies or industries that carry a high risk of forced labour, instead of working to address the root causes of forced labour.⁷⁰ These risks did not materialise in the case studies examined in this article.

⁶⁶ Employment (Amendment) Act 2023

⁶⁷ Interview with Jen Jahnke, Associate Director, Impactt Limited

⁶⁸ Sime Darby Plantation, “Sime Darby Plantation Institutes Sweeping Changes in Governance and Operations,” Press release, February 15, 2022, <https://sime-darby-plantation.com/sime-darby-plantation-institutes-sweeping-changes-in-governance-and-operations/>

⁶⁹ Sime Darby Plantation Bhd (1 March 2021) <https://sime-darby-plantation.com/sime-darby-plantation-establishes-expert-stakeholder-human-rights-assessment-commission/>

⁷⁰ Anti-Slavery International and European Center for Constitutional and Human Rights, “Anti-Slavery International and European Center for Constitutional and Human Rights’ Position on Import Controls to Address Forced Labour in Supply Chains,” Anti-Slavery International, June 2021, accessed April 28, 2023, <https://www.antislavery.org/wp->

Among the case studies examined, this study did not find evidence of substantial job losses, wage reductions, or other adverse impacts for workers arising from import bans. Indeed, in some cases, import bans did not appear to lead to direct reductions in turnover or profit in the affected companies (though these companies did experience other adverse commercial and reputational impacts). This was especially the case among larger companies.⁷¹

In two case studies (Natchi Apparels in India, and Bonechar in Brazil), import bans did give rise to a risk of potential job losses in the affected companies. However, in both cases, the import bans were quickly modified and lifted before those potential adverse impacts could materialise.

The potential for adverse consequences does not mean that import bans should not be used as a tool to combat forced labour. Nor does it mean that the evidential threshold to impose an import ban should be raised. As one stakeholder commented: “Forced labour is a severe human rights violation, so the broad discretion of CBP, the limited procedural options for companies, and the low evidentiary threshold are all legitimate and warranted.”⁷²

However, the potential for adverse effects highlights the need for meaningful consultations with workers, rights-holders, and their credible representatives⁷³ as part of the decision-making process before imposing import bans.⁷⁴

5. Companies and CBP continue to rely heavily on social audits as the primary form of evidence used to demonstrate remediation has been undertaken, despite their deep flaws.

Social audits can play a role in supporting companies to identify, prevent, mitigate, and remedy forced labour risks in their value chains. However extensive research has shown that company-commissioned social audits have limited usefulness in effectively identifying forced

[content/uploads/2021/06/Anti-Slavery-International-ECCHR-Import-Controls-Position-Paper-1.pdf](#), 4; Allie Brudney, “Using the Master’s Tools to Dismantle the Master’s House: 307 Petitions as a Human Rights Tool,” Corporate Accountability Lab (blog), August 31, 2020, accessed April 28, 2023, <https://corpaccountabilitylab.org/calblog/2020/8/28/using-the-masters-tools-to-dismantle-the-masters-house-307-petitions-as-a-human-rights-tool>.

⁷¹ It is possible that the companies’ revenues or profits may have been higher but for the import ban – but it was not possible to quantify this within the scope of this study. It was also not possible to assess, within the scope of this study, why there was no reduction in turnover or profits. For example, the affected companies may have been able to find alternative export destinations for their products outside of the United States. In other cases, companies experienced significant increases in sales as a result of the COVID-19 pandemic (e.g., rubber glove makers) which may have offset the effects of the import ban.

⁷² Interview with Ben Vanpeperstraete, Senior Legal Adviser, European Center for Constitutional and Human Rights (ECCHR)

⁷³ Who can be considered credible representatives of workers will depend on the circumstances. They may include trade unions, but in some contexts workers (and especially migrant workers) may be prevented from forming or leading trade unions. In those circumstances, other forms of credible worker representation may be appropriate.

⁷⁴ Anti-Slavery International and European Center for Constitutional and Human Rights, “Anti-Slavery International and European Center for Constitutional and Human Rights’ Position on Import Controls to Address Forced Labour in Supply Chains.”

labour, and can, in fact, increase human rights risks.⁷⁵ There have been multiple instances of companies having received clean bills of health from social audits, only for these companies to receive import bans under the Tariff Act shortly afterwards due to the presence of forced labour in their value chains.⁷⁶

Many of the companies considered in the study underwent regular social audits or were certified by sustainability bodies before they received import bans. In some cases, these social audits identified forced labour risks before the import ban was imposed. In other cases however, they did not. For example, Malaysian glove maker Top Glove received an “A” rating following a social audit of its factory just eight months before the company was subjected to a WRO.⁷⁷ Following the WRO, the audit was reviewed, and the company’s rating was downgraded from an “A” to a “D” “due to a lack of supporting evidence for the conclusions indicated in the audit report.”⁷⁸

Despite the mixed track record of social auditing, CBP’s guidance calls on companies to submit audit reports to verify that forced labour has been remediated.⁷⁹ CBP’s guidance thus potentially incentivizes companies to develop remediation programs and corrective action plans that are based around social audits – as was evident in many of the case studies considered. This, in turn, risks perpetuating the top-down approach to remediation described above.

The emphasis on social audits also risks excluding other forms of engagement with workers and their credible representatives, trade unions, civil society, and other stakeholders to demonstrate that indicators of forced labour have been remediated. For example, through multi-stakeholder processes, enforceable brand agreements, or worker-led remediation programs.

⁷⁵ See, e.g., Aruna Kashyap, “Obsessed with Audit Tools, Missing the Goal,” Human Rights Watch, November 15, 2022, accessed April 28, 2023, <https://www.hrw.org/report/2022/11/15/obsessed-audit-tools-missing-goal/why-social-audits-cant-fix-labor-rights-abuses>; European Center for Constitutional and Human Rights, *Brot für die Welt*, and MISEREOR, “Human Rights Fitness of the Auditing and Certification Industry?” (European Center for Constitutional and Human Rights, 2021), https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_BfW_MIS_AUDITS_EN.pdf; Transparentem, “Hidden Harm: Audit Deception in Apparel Supply Chains and the Urgent Case for Reform” (Transparentem, 2020), <https://transparentem.org/wp-content/uploads/2021/09/Hidden-Harm-Audit-Deception-in-Apparel-Supply-Chains-and-the-Urgent-Case-for-Reform.pdf>; Clean Clothes Campaign, “Fig Leaf for Fashion. How Social Auditing Protects Brands and Fails Workers,” Clean Clothes Campaign, September 17, 2019, <https://cleanclothes.org/file-repository/figleaf-for-fashion.pdf/view>; Joseph Wilde-Ramsing and Gabriele Quijano, “A Piece, Not a Proxy,” SOMO, November 25, 2022, accessed April 29, 2023, <https://www.somo.nl/a-piece-not-a-proxy/>.

⁷⁶ See, e.g., Tan Siew Mung, “Top Glove Downgraded from A to D in Social Compliance Audit — Report,” The Edge Malaysia, November 2, 2020, accessed April 28, 2023, <https://theedgemalaysia.com/article/top-glove-downgraded-d-social-compliance-audit-%E2%80%94-report>; A. Ananthalakshmi, Liz Lee, and Mei Mei Chu, “Insight: ‘Slavery’ Found at a Malaysian Glove Factory. Why Didn’t the Auditor See It?,” Reuters, May 19, 2021, <https://www.reuters.com/world/asia-pacific/an-audit-gave-all-clear-others-alleged-slavery-2021-05-19/>; Kashyap, “Obsessed with Audit Tools, Missing the Goal.”

⁷⁷ Top Glove, “Top Glove Sets Record Straight on Allegations Made in Video by Chanel 4 News, UK,” Press release, June 18, 2020, <https://www.topglove.com/single-press-release-en?id=109&title=top-glove-sets-record-straight-on-allegations-made-in-video-by-channel-4-news-uk>.

⁷⁸ Siew Mung, “Top Glove Downgraded from A to D in Social Compliance Audit — Report.”

⁷⁹ U.S. Customs and Border Protection, “Factsheet: WRO Modification/Revocation Processes Overview.”

That said, there are signs that CBP is prepared to adopt a more flexible approach. For example, CBP has lifted import bans based on evidence submitted by civil society groups – rather than company-commissioned commercial social audits. This was evident in the Natchi Apparels (in India) and the Annapurna Carpet (in Nepal) cases. In these cases, CBP lifted the import bans on these companies based on evidence submitted by civil society organisations and trade unions – including worker interviews and inspection reports. These cases therefore offer alternative models to the company-commissioned commercial social audit as the main form of evidence used to demonstrate the remediation of forced labour indicators.

6. There is a lack of transparency and effective communication around remediation. This hinders the ability of civil society to hold companies accountable and ensure that effective access to remedies is provided.

Stakeholders report that CBP has made efforts in recent years to improve its level of communication, openness, and transparency. However, the remediation process remains largely opaque. Similarly, beyond brief press releases, CBP does not publicise the detailed and specific reasons for its decisions to modify or revoke WROs and Findings.

Moreover, CBP does not require companies to disclose what actions they have taken to remediate indicators of forced labour in response to a WRO or Finding, or to publish their audit reports and other documents evidencing the remediation of forced labour. While some companies have taken positive steps by making findings of their audit reports and corrective action plans public, many do not.

This lack of transparency from companies and CBP hinders the ability of civil society to effectively monitor the adequacy of companies' remediation and remedy efforts. It also hinders civil society's ability to hold CBP to account for its decisions to modify or revoke WROs and Findings.

Companies could also benefit from greater transparency from CBP. According to stakeholders, companies are often not informed by CBP when an import ban is imposed on them, and CBP does not provide companies with detailed and specific reasons why it has decided to take enforcement action.⁸⁰ While larger companies are likely to be aware of CBP's enforcement decisions, smaller and medium-sized companies may not. If a company is not aware that it is subject to an import ban, then it is unlikely to take any action to remediate indicators of forced labour.⁸¹ This may therefore delay the provision of remedies to affected rights-holders until such time as the company has notice of the import ban.

⁸⁰ Specifically, companies reported that while CBP discloses the indicators of forced labour it identified, CBP does not disclose the basis for the identification of those indicators. For example, CBP might state that it identified indicators of debt bondage in a company's operations but might not say specifically how that debt bondage manifested.

⁸¹ Ibid

Recommendations

The US Tariff Act demonstrates that import bans can be key drivers of corporate action, particularly with regards to removing the ILO indicators of forced labour.⁸² Additionally, they have led to significant legal, policy, and operational-level reforms. Import bans are broadly driving changes in how companies approach forced labour in their supply chains, even among businesses that haven't been subject to an WRO. Companies realize that they may be penalized if forced labour is found; as a result, they are making proactive changes in social compliance to avoid commercial implications. Even so, there are cases (such as Malawi and Nepal) where import bans did not have observable direct impact on working conditions or legal reforms.

Even so, the link between import bans and workers' access to remedy (in line with the UNGPs) is haphazard. In several cases, WROs prompted companies to repay recruitment fees to migrant workers. Some companies reported that they improved working conditions and grievance channels, but these were largely not corroborated by worker interviews (except in one case). This study identified only one instance in which a company publicly committed to pay compensation to workers who had been in conditions of forced labour. In at least three case studies, there was a discrepancy between the remedies that companies reported that they had provided and the experiences of workers interviewed.

These findings suggest that actions can be taken to strengthen the connection between import bans and workers' access to remedy.⁸³

For the Private Sector

1. Meaningfully engage with workers and civil society in the design, development, and implementation of remediation processes.
2. Adopt a rights-based, not a compliance-based, approach to remediation. In other words, companies should seek to identify and understand the harms caused to rights-holders, the causes of such harm, how those affected can be made whole, and the measures needed to guarantee the non-repetition of that harm. Such an approach is more likely to yield a holistic and long-lasting solution. This, in turn, is likely to substantially reduce future forced labour risks. Companies that choose to adopt a "tick box" or compliance-driven approach to remedy may find that they have failed to properly identify and address the root causes of forced labour – leaving them exposed to future enforcement action.
3. International companies, buyers, and brands should be engaged in the remediation process. If a supplier to an international company receives an import ban, the international company should avoid immediately "cutting and running" – especially if the supplier is willing to undertake remediation. Instead, the international company should seek to use its leverage and offer its resources to help the supplier with its remediation efforts.

⁸² Ibid

⁸³ For elaboration on these recommendations, see the full report by The Remedy Project [here](#)

For CBP

1. Publish more detailed guidance on the remediation of forced labour indicators – with a greater emphasis on the provision of remedies to workers and other affected rights-holders. In doing so, require companies to demonstrate (as a precondition to the modification or withdrawal of a WRO or Finding), that they have:
 - a. Provided (not just promised) adequate remedies to workers and other affected rights-holders;
 - b. Meaningfully engaged with workers and other affected rights-holders, workers' credible representatives, trade unions and/or other relevant civil society groups in the design, development, and implementation of the company's remediation efforts; and
 - c. Been open and transparent in relation to the remediation process (e.g., through meaningful stakeholder engagement, and the publication of audit reports and corrective action plans).
2. Reduce the reliance on company-commissioned social audits during CBP's decision-making processes. When deciding whether to modify or revoke a WRO or Finding, CBP should consider diverse information sources that should be given equal – if not greater – weight than social audit reports. Such information may include direct worker testimony and submissions from workers' credible representatives, trade unions, and other civil society organisations.
3. Improve stakeholder engagement and communication. When CBP imposes a WRO or Finding on a company, it should notify that company. CBP should also broaden and increase its proactive engagement with stakeholders during the remediation process. Specifically, when CBP is considering an application by a company to modify or revoke an import ban, CBP should proactively engage with workers, trade unions, workers' credible representatives, and other civil society groups to seek their views on the adequacy of the company's remediation efforts.
4. Consider more flexible enforcement options when necessary to prevent or mitigate potential adverse impacts for workers and other affected rights-holders.

For the European Commission and Other Authorities Considering an Import Ban

In September 2022, the European Commission published its proposal for a regulation (the Proposed Regulation) to prohibit products made with forced labour on the European Union (EU) market.⁸⁴ When doing so, the EU should consider the following:

1. Ensure effective consultation with stakeholders, including workers, workers' credible representatives, trade unions, and civil society, throughout the decision-making process.
2. Reduce the reliance on social audits as the primary form of evidence relied on by Competent Authorities in the decision-making process.

⁸⁴ European Commission, “COM(2022) 453 - Proposal for a Regulation on Prohibiting Products Made with Forced Labour on the Union Market | Internal Market, Industry, Entrepreneurship and SMEs,” Internal Market, Industry, Entrepreneurship and SMEs, September 14, 2022, accessed April 28, 2023, https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e_en.

3. Avoid offering “safe harbour” for Economic Operators based on due diligence alone. Due diligence in the form of company-commissioned social audits is not a reliable tool for effectively identifying the presence of forced labour. Economic Operators should therefore not be offered any form of safe harbour based on self-reports about the effectiveness of their own due diligence mechanisms – especially where this stands in contrast to evidence from workers, workers’ credible representatives, trade unions, and other civil society organisations that indicate the presence of forced labour.
4. Ensure that access to remedies (as defined in the UNGPs) is provided to workers and other rights-holders, as a precondition to the removal of measures against Economic Operators.
5. Prioritise investigations based on the extent to which Economic Operators have caused, contributed to, or profited from, forced labour. While recognising that direct responsibility must first lie with the Economic Operators that subject their workers to conditions of forced labour, companies should not escape accountability simply because they are not the “closest” to forced labour. Exploitation in global value chains is often driven by international companies’ purchasing and sourcing practices, as well as poor governance, due diligence, and oversight, as much as it is by the conduct of their overseas suppliers.

For Governments in Jurisdictions Affected by Import Bans

1. Support the remediation of forced labour in response to import bans by addressing the root causes of forced labour. Such reforms might include:
 - a. Ensuring that forced labour is effectively criminalised under domestic law, and that the legal definition of forced labour is aligned with the 1930 ILO Forced Labour Convention;
 - b. Guaranteeing equal rights for migrant and non-migrant workers, including with respect to freedom of association, collective bargaining, wages, and working conditions;
 - c. Adequately resourcing labour inspectorates and ensuring the effective enforcement of labour laws, policies, and regulations;
 - d. Ensuring that labour and migration policies for migrant workers have safeguards to mitigate the risk of forced labour, trafficking, and exploitation (e.g., a prohibition on the charging of recruitment fees, requirements for the provision of written employment contracts in a language the worker understands, prohibiting passport and document retention by employers, and allowing workers to freely change employers); and
 - e. Ensuring that workers and migrant workers have access to effective grievance mechanisms (including state-based, non-state based, judicial, and non-judicial systems).

For Workers, Workers’ Credible Representatives, Trade Unions, and Civil Society

1. Consult with workers and rights-holders when considering whether to petition CBP for an import ban.

2. Petitions to CBP should include specific recommendations on remedies that should be provided to workers and other affected rights-holders. Consistent with the UNGPs, these remedies may include the provision of financial compensation, the reimbursement of recruitment fees and expenses (where relevant), physical or psychological rehabilitation, apologies, guarantees of non-repetition, and legal accountability for perpetrators of harm.
3. Proactively engage with CBP during the remediation process. Where a company takes steps to remediate indicators of forced labour in response to an import ban, workers and their credible representatives, trade unions, civil society organisations, and other stakeholders should critically assess those efforts and communicate their assessment to CBP.

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19 US Code Ch.4, Tariff Act of 1930.

Annex 1: List of Stakeholders Interviewed⁸⁵

Name	Organisation
Allie Brudney	Corporate Accountability Lab
Allison Gill	Global Labor Justice-International Labor Rights Forum
Kimberly Rogovin	Global Labor Justice-International Labor Rights Forum
Johanna Lee	Global Labor Justice-International Labor Rights Forum
Allison Lee	Yilan Migrant Fishermans' Union
Andrea Giorgetta	International Federation for Human Rights
Andy Shen	United Nations University's Centre for Policy Research, Finance Against Slavery and Trafficking Project
Loria Mae Heywood	United Nations University's Centre for Policy Research, Finance Against Slavery and Trafficking Project
Ben Vanpeperstraete	European Center for Constitutional and Human Rights
Charlene Lorenze	European Center for Constitutional and Human Rights
Dr. Irene Pietropaoli	Modern Slavery Policy Evidence Centre
Jen Jahnke	Impactt Limited
Martina Vandeberg	Human Trafficking Legal Center
Anasuya Syam	Human Trafficking Legal Center
Nandita Shivakumar	Asia Floor Wage Alliance
Nina Smith	GoodWeave
Samjhana Pradhan	GoodWeave
Oliver Holland	Leigh Day
Professor Justine Nolan	University of New South Wales, Sydney
Savitri Restrepo	ELEVATE
Ruhi Mukherji	ELEVATE
Catherine Cheung	ELEVATE
Kumar Bhattarai	CWIN Nepal
Krishna Subedi	Child Development Society
Benu Maya Gurung	Alliance Against Trafficking in Women and Children in Nepal
Kiran Thapa	Nepal GoodWeave Foundation
Shanta Rana	Kin Nepal
Manju Gurung	Pourakhi Nepal
Thulsi Narayanasamy	Workers' Rights Consortium

⁸⁵ An additional ten stakeholders were interviewed on an anonymous basis.

Yuton Lee	Greenpeace East Asia
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Annex 2: Worker and Rights-Holder Interviews⁸⁶

Case Study	Interviewees	Location	Women	Men
Brazil, bone black	Bonechar employees	Paraná, Brazil	-	2
Malawi, tobacco	Tobacco farm workers (tenant farmers)	Northern Region, Malawi	4	6
Malawi, tobacco	Tobacco farm workers (tenant farmers)	Central Region, Malawi	3	7
Malawi, tobacco	Tobacco farm workers (tenant farmers)	Southern Region, Malawi	3	7
Malawi, tobacco	Contract farmers	Northern, Central, and Southern Regions (one per region), Malawi	-	3
Malaysia, palm oil	Indonesian migrant plantation workers (FGV/Felda plantations)	Johor State, Malaysia	-	6
Malaysia, palm oil	Indonesian migrant plantation workers (FGV/Felda plantations)	Pahang, Malaysia	-	1
Malaysia, palm oil	Nepalese and Indian migrant plantation workers (SDP)	Selangor State, Malaysia	-	6
Thailand, fishing nets	Former prisoners	Southern Thailand	-	3
Taiwan, distant water fishing	Former crew members of the Da Wang	Taiwan	-	2

⁸⁶ Specific location not disclosed to protect confidentiality of interviewees. Workers were interviewed in their own language and each interviewee offered their informed consent to participate. Interviews were conducted in-person individually or in focus groups, depending on the preference of the interviewees. No personally identifying information about any interviewee was recorded or retained. Interview participants were selected by the researchers, and were not nominated or selected by their employers.

Annex 3: Full List of Tables and Figures

Figure 1: Geography of case studies

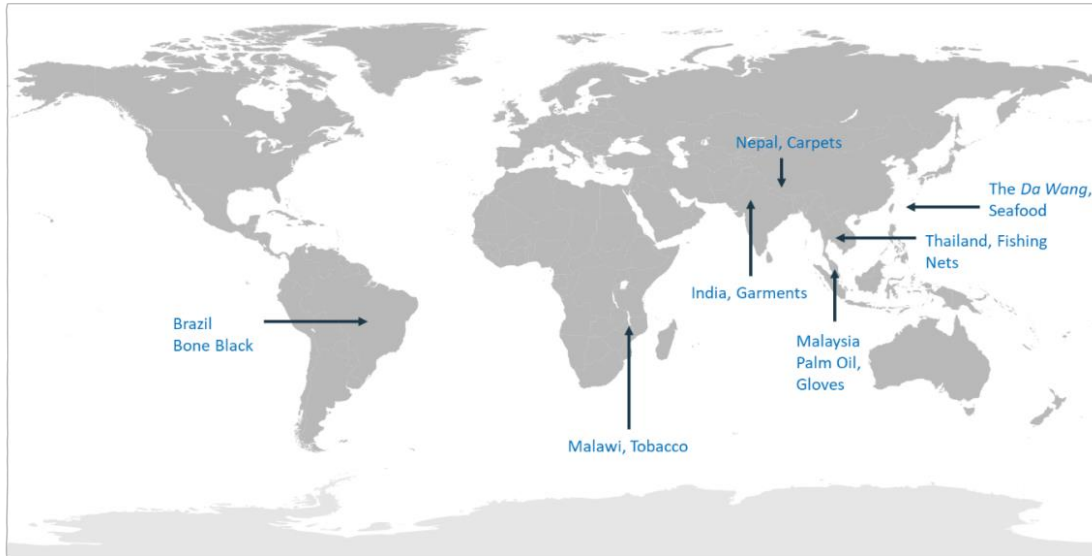


Table 1: Cases analysed in this study

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
Brazil	Bone black / bone char	Bonechar Carvão Ativado Do Brasil Ltda (“ Bonechar ”)	WRO issued on 30 September 2019. ⁸⁷ WRO modified on 4 December 2020. ⁸⁸
India	Garments	Natchi Apparels (P) Ltd.	WRO issued on 29 July 2022. ⁸⁹ WRO modified on 7 September 2022. ⁹⁰
Malaysia	Palm oil	FGV Holdings Bhd	WRO issued on 30 September 2020. ⁹¹
Malaysia	Palm oil	Sime Darby Plantation Bhd	WRO issued on 30 December 2020. ⁹² Finding issued on 28 January 2022. ⁹³

⁸⁷ CBP (1 October 2019) *CBP Issues Detention Orders against Companies Suspected of Using Forced Labor*

⁸⁸ CBP (7 December 2020) *CBP Modifies Withhold Release Order on Imports of Bone Black from Bonechar Carvão Ativado do Brasil Ltda*

⁸⁹ CBP (7 September 2022) *CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.*

⁹⁰ CBP (7 September 2022) *CBP Modifies Withhold Release Order on Natchi Apparel (P) Ltd.*

⁹¹ CBP (30 September 2020) *CBP Issues Detention Order on Palm Oil Produced with Forced Labor in Malaysia*

⁹² CBP (30 December 2020) *CBP Issues Withhold Release Order on Palm Oil Produced by Forced Labor in Malaysia*

⁹³ CBP (28 January 2022) *Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307, 87 FR 4635*

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
			Finding modified on 3 February 2023. ⁹⁴
Malaysia	Disposable gloves	Top Glove Corporation Bhd	WRO issued on 15 July 2020. ⁹⁵ Finding issued on 23 March 2021. ⁹⁶ Finding modified on 10 September 2021. ⁹⁷
Malawi	Tobacco	Tobacco produced in Malawi and products containing tobacco produced in Malawi	WRO issued on 1 November 2019 in respect of tobacco produced in Malawi and products containing tobacco produced in Malawi. ⁹⁸ WRO modified in respect of Alliance One International LLC on 3 June 2020. ⁹⁹ WRO modified in respect of Limbe Leaf Tobacco Company Ltd. on 31 July 2020. ¹⁰⁰ WRO modified in respect of Premium Tobacco Malawi Limited on 21 May 2021. ¹⁰¹
Nepal	Carpets, hand-knotted wool products	Kumar Carpet Pvt., Singhe Carpet Pvt., Ltd., Norsang Carpet Industries Pvt., Ltd., Annapurna Carpet, Everest Carpet, Valley Carpet, and K.K. Carpet	WRO issued 21 July 1998. ¹⁰² WRO modified in respect of Norsang Carpet Industries Pvt., Ltd., Everest Carpet, and K.K. Carpet Industries on 6 October 1998. ¹⁰³ WRO modified in respect of Annapurna Carpet on 23 July 2021. ¹⁰⁴

⁹⁴ CBP (3 February 2023) *CBP Modifies Finding on Sime Darby Berhad in Malaysia*

⁹⁵ CBP (9 September 2021) *CBP Modifies Forced Labor finding on Top Glove Corporation Bhd.*

⁹⁶ CBP (29 March 2021) *Notice of Finding that Certain Disposable Gloves Produced in Malaysia With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely to Be, Imported to the United States*, 86 FR 16380

⁹⁷ CBP (19 September 2021) *Determination That Maintenance of Finding of March 29, 2021, Pertaining to Certain Disposable Gloves Produced in Malaysia, Is No Longer Necessary*, 86 FR 50725

⁹⁸ CBP (1 November 2019) *CBP Issues Withhold Release Order on Tobacco from Malawi*

⁹⁹ CBP (3 June 2020) *CBP Modifies Withhold Release Order on Imports of Tobacco from Malawi*

¹⁰⁰ CBP (1 August 2020) *CBP Modifies Withhold Release Order on Tobacco Imports from Limbe Leaf Tobacco Company Ltd. in Malawi*

¹⁰¹ CBP (24 May 2021) *CBP modifies Withhold Release Order on certain tobacco imports from Premium Tobacco Malawi Limited*

¹⁰² CBP, *Withhold Release Orders and Findings List*

¹⁰³ CBP (26 July 2021) *CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal*

¹⁰⁴ CBP (26 July 2021) *CBP Modifies Withhold Release Order on Imports of Carpets and Hand-Knotted Wool Products from Nepal*

Jurisdiction	Industry	Subject entity or industry	Status of enforcement action
		Industries Kathmandu	
Fishing vessel: <i>Da Wang</i>	Distant water fishing	Fishing vessel: <i>Da Wang</i>	WRO issued 18 August 2020. ¹⁰⁵ Finding issued 28 January 2022. ¹⁰⁶
Thailand	Fishing nets	Khon Kaen Fishing Net Factory Co., Ltd Dechapanich Fishing Net Factory Ltd.	Petition submitted to CBP on 22 February 2022. ¹⁰⁷

Figure 2: ILO indicators of forced labour

The ILO Indicators of Forced Labour

Developed in 2012, the ILO indicators of forced labour comprise 11 indicators which “represent the most common signs or ‘clues’ that point to the possible existence of a forced labour case”. These are:

1. Abuse of vulnerability
2. Deception
3. Restriction of movement
4. Isolation
5. Physical and sexual violence
6. Intimidation and threats
7. Retention of identity documents
8. Withholding of wages
9. Debt bondage
10. Abusive living and working conditions
11. Excessive overtime

¹⁰⁵ CBP (18 August 2020) *CBP Issues Detention Order on Seafood Harvested with Forced Labor*

¹⁰⁶ CBP (28 January 2022) *Notice of Finding That Certain Seafood Harvested by the Taiwanese Da Wang Fishing Vessel With the Use of Convict, Forced or Indentured Labor Is Being, or Is Likely To Be, Imported Into the United States in Violation of 19 U.S.C. i307*, 87 FR 4634

¹⁰⁷ Global Labor Justice-International Labour Rights Forum (22 February 2022) *Organizations urge U.S. to block imports of fishing nets from Thai companies over evidence of forced prison labor*

Table 2: Summary of remediation undertaken in response to import bans¹⁰⁸

Green: Remediation self-reported, and corroborated by worker interviews conducted for this report		Orange: Remediation self-reported, and not corroborated by worker interviews conducted for this report		Yellow: Remediation self-reported, and worker interviews not able to be conducted for this report			
Status	WRO/Finding modified/revoked				WRO/Finding not modified/revoked		No WRO/Finding
Case Study ^{SS}	Malaysia Rubber Gloves (Top Glove)*	Malawi Tobacco	Nepal Carpets (Annapurna Carpet)*	Malaysia Palm Oil (Sime Darby)	Malaysia Palm Oil (FGV Holdings)	Distant water fishing (the Da Wang)	Thailand Fishing Nets
Apology							
Compensation / damages							
Rehabilitation							
Recruitment fee reimbursement							
Guarantee of non-repetition							
Improved living & working conditions						*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Improved recruitment / employment policies						*via Government reforms, not remediation by the company	*via Government reforms, not remediation by the company
Legal accountability for perpetrators							
Improved grievance channels							

*Worker interviews not conducted for the purposes of this study

¹⁰⁸ Two case studies – Natchi Apparel and Bonechar – have not been included in the table. In both these cases, the WRO in question was modified by CBP after receiving evidence that there was in fact no forced labour in the companies' respective operations, and hence no remediation was undertaken

A Case Study in the Mauritian Garment Industry: the Promise and Challenge of Securing Effective Remedy

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Introduction

This article provides a summary of a report issued by Transparentem in December 2023 entitled “‘I Came Here with So Many Dreams’: Labor Rights Abuses and the Need for Change in Mauritius’ Apparel Factories.”¹ Transparentem is a U.S.-based, non-governmental organization whose mission is to transform industries by allying with workers and communities to uncover abuses in global supply chains and drive labor and environmental justice. Transparentem investigates labor and environmental abuses, engages with downstream companies to secure remediation and stronger due diligence systems, and then publishes the results. Transparentem also engages governments to support accountability and sustainability of solutions.

Transparentem undertook an investigation in apparel factories in Mauritius in 2022 after noting numerous reports of exploitation of migrant workers in Mauritius’ manufacturing sector. Local media have reported that migrant workers faced abusive living and working conditions.² A 2019 report of the UN Economic, Social and Cultural Rights Committee expressed concern about forced labor and other labor abuses against migrant workers.³ Manufacturing workers in Mauritius come from Bangladesh and other Asian countries where payment of recruitment fees

¹ Transparentem, “‘I Came Here with So Many Dreams’: Labor Rights Abuses and the Need for Change in Mauritius’ Apparel Factories”, December 2023, https://transparentem.org/wp-content/uploads/2024/01/I-Came-Here-with-So-Many-Dreams_Transparentem-1.pdf.

² Nasseem Ackbarally, “Migrant Labour Fuels Tensions in Mauritius”, *Inter Press Service New Agency*, August 29, 2016, <http://www.ipsnews.net/2016/08/migrant-labour-fuels-tensions-in-mauritius/>; Estelle Bastien, “Trafic humain dans des usines: cas «flagrants» d’exploitation de travailleurs étrangers”, *L’Express*, November 8, 2015, <https://www.lexpress.mu/article/271311/trafic-humain-dans-usines-cas-flagrants-dexploitation-travailleurs-etranagers>; “Maltraitance: Des Bangladais victimes de trafic humain”, *Le Mauricien*, February 3, 2019, https://www.lemauricien.com/article/travailleurs-etranagers-maltraitance-des-bangladais-victimes-de-traffic-humain/?fbclid=IwAR0yDAoH-Opw3VbJgAmDZIM1XzW74Se15MhAoEp-m6aid_hj6c22tNrc2IA; “Trafficked to Mauritius, raped: Migrant worker files case against Indian national, 7 Bangladeshis”, *The Daily Star*, July 11, 2021, <https://www.thedailystar.net/news/bangladesh/crime-justice/news/trafficked-mauritius-raped-migrant-worker-files-case-against-indian-national-7-bangladeshis-2126896>.

³ United Nations Committee on Economic, Social and Cultural Rights, “Concluding observations on the fifth periodic report of Mauritius”, April 2019, <https://www.ohchr.org/en/documents/concluding-observations/ec12musco5-committee-economic-social-and-cultural-rights>.

by migrant workers is common – a vulnerability that Transparentem also uncovered in three prior investigations in Malaysia’s apparel sector.⁴

In November 2022, after completing its investigation, Transparentem began engaging with eighteen companies that had purchased products from Mauritian apparel supply groups, in order to address evidence of indicators of forced labor and other labor abuses that were uncovered in our investigation. By December 2023, three of those buyers committed to repaying more than US\$420,000, which represented a portion of the recruitment fees that workers from Bangladesh said they had paid for access to jobs in one of those factories. Fifteen companies, however, have thus far failed to make and implement a similar commitment. Several of those companies pointed to audits that they said failed to uncover significant worker-paid recruitment fees. In this article, we focused on remedy for such fees, which are a major driver of forced labor.

After companies had more than a year to respond to Transparentem’s findings, we published a detailed report of our investigation along with information about buyers’ and their Mauritian suppliers’ responsive actions, or lack thereof. This article first highlights fundamental challenges and promising signs arising from this case example before describing in more detail the findings, the responses of buyers and suppliers when confronted with these findings, and the response of the Mauritian government.

This article does not discuss in detail more formal accountability mechanisms that are or should be available to support effective remedy. Instead, the article is focused on the results of corporate engagement for voluntary provision of remedy. Some may see the limited positive outcome in this case study as an indictment of voluntary steps by the private sector. The writers urge a more nuanced view that allows space for voluntary progress resulting from public exposure and positive social pressure. Holding this space does not require eschewing the need for accountability mechanisms that have the merit of enforcing greater and more widespread compliance while also bearing the cumbersome and costly hallmarks of government process. Indeed, Transparentem is currently bringing its findings to regulators (and others including investors) who can impose greater accountability on the subset of companies that largely failed to take responsive action.

Fundamental challenges and promising signs

The case study highlights three fundamental and interrelated challenges to implementing access to remedy in the globalized apparel sector, in which both workers and goods cross international borders in service of the industry’s drive to increase speed and reduce production costs:

- **Ineffective exercise of migrant workers’ freedom of association.** Without effective representation of migrant workers by a union or other independent worker association, the reality of unfair recruitment practices remained virtually invisible to downstream companies that otherwise might have been more inclined to participate in remediation. During Transparentem’s investigation, workers

⁴ Transparentem, “Malaysia,” accessed 4 March 2024, <https://transparentem.org/malaysia/>.

reported intimidation and threats and had little recourse to trusted entities that could represent their interests.

- **The limits of social audits when workers are disempowered.** In Mauritius, buyers and suppliers pointed to the lack of specific information about significant recruitment costs – whether from audits or otherwise – as justification for not repaying workers their estimated recruitment costs. In a context that revealed workers were not consistently treated with dignity – apparent from the condition of dormitories, food and other more visible living and working conditions – there is little reasonable basis for relying on audits to reveal more hidden problems like recruitment fees. Effective social audits fundamentally depend on workers feeling safe and secure in telling the truth – rather than being subject to intimidation and threats. It is sobering that fully two-thirds of all the worksites globally where Transparentem has documented labor abuses within the past decade had been previously certified by an organization that purported to address such issues.⁵
- **Employers’ outsourcing of foreign worker recruitment obscures worker-paid recruitment fees that violate employers’ policies.** The adoption of policies prohibiting the payment of recruitment fees by workers was insufficient to prevent such fees. While Mauritian employers and their buyers had such policies in place, there was no system sufficient to prevent foreign recruiters from charging workers while also “double-dipping” by charging employers. Taking recruitment functions fully in-house may be necessary in the absence of sufficient government oversight of and accountability for overseas recruitment processes. Otherwise, disempowered workers themselves ironically have become subject to pressure to show that employers are complying with buyers’ expectations. Mauritian employers ask their workers to sign documents attesting that they have not paid recruitment fees, and in one especially egregious case workers were told that if they had paid recruitment fees they could face termination of employment – an incentive to hide their own exploitation.

Transparentem’s Mauritius investigation and private sector engagement followed on seven years of engagement and three investigations in Malaysia highlighting unethical recruitment of migrant workers in apparel manufacturing. The 2018 investigation resulted in an industry pledge, the AAFA/FLA Apparel & Footwear Industry Commitment to Responsible Recruitment that today has almost 100 signatories.⁶ Companies signing the pledge commit to working with their supply chain partners “to create conditions so that no workers pay for their jobs [and] workers receive a timely refund of fees and costs paid to obtain or maintain their

⁵ Documents on file with Transparentem, March 2024.

⁶ America Apparel & Footwear Association, “AAFA/FLA Apparel & Footwear Industry Commitment to Responsible Recruitment”, https://www.aafaglobal.org/AAFA/Solutions_Pages/Commitment_to_Responsible_Recruitment.

jobs.”⁷ Suppliers and buyers must address the fundamental challenges described above, otherwise such commitments will remain unrealized.

Despite the difficulties described above, the story in Mauritius is also one of promise. Transparentem’s work in Mauritius revealed opportunities for workers and their advocates who push for change and await concrete action from a sector that has voiced its commitment to human rights year after year. Several Mauritian factories, under pressure from their buyers, made important improvements or commitments to improve workers’ living and working conditions and to reform their recruitment processes. Exceptionally, three buyers stepped up to commit to repay recruitment fees – with or without participation from their manufacturing partners. Their commitment reflects two fundamental truths:

- **Buyers are responsible.** Instead of seeing this collective problem as diffusing their individual responsibility, these three companies squarely understood that the collective problem required shouldering the solution together. Brands and retailers, who generally enjoy the highest profit margins in supply chains, rarely draw from those profits to remedy problems in upstream suppliers, who generally operate on much tighter margins. As such, the actions of those three buyers is notable, and should provide a model for other buyers in similar situations.
- **Lack of certain factual evidence is not proof of the counterfactual.** While repayment of recruitment fees is sadly not sufficiently widespread to allow one truly to speak of “best practice,” companies may reasonably hope to repay workers on the basis of documents listing workers’ names and exact or estimated amounts. This case admittedly posed an additional hurdle because social audits reportedly failed to confirm Transparentem’s findings of significant recruitment fees paid by workers. (Transparentem was not provided access to all audit reports.) Additionally, due to its methodology respecting confidentiality and consent, Transparentem itself was unable to disclose specific information about individual workers’ fees. The companies who repaid workers understood that this lack of confirmation was insufficient to overcome several inconvenient truths. First, at the time of Transparentem’s investigation, Bangladeshi workers were widely known by experts to pay significant recruitment fees when migrating to Mauritius. Second, even manufacturers that had policies forbidding worker-paid recruitment fees did not have significant systems in place to prevent that common practice. Third, Transparentem was not made aware of any other plausible explanation for why workers consistently would tell Transparentem investigators – who have no connection to their employers – that they had paid significant recruitment fees if in fact they had not. Reports of intimidation and threats at these factories provided even more support for the conclusion that audits could not be depended on for complete information.

⁷ “Id”

Transparentem's findings in four Mauritian apparel manufacturers

Transparentem interviewed a total of 104 migrant workers employed at four manufacturers over the course of its initial and follow-up investigations in 2022 and 2023. The investigation uncovered evidence of worker-paid recruitment fees and evidence of other labor abuses, including evidence of indicators of forced labor according to the International Labor Organization.⁸ These violations included:

- **Worker-paid recruitment fees.** Workers at three of the four manufacturers reported that they had paid high recruitment fees ranging from US\$1,160 to US\$3,100⁹. These payments resulted in pressure on workers to stay in their jobs in order to make enough money to pay off their debts. As one worker stated: "I have come here by spending so much money. How can I go back?" Another worker reported: "My mental state was severely bad. I just had the tension about when am I going to be free of this debt and go back to my family." Some workers at the fourth manufacturer reported paying slightly lower fees ranging from US\$230 to US\$1,920. Some workers at three of the manufacturers (those with higher recruitment fees) said that recruiters told them to lie if they were asked about paying the recruitment fees, and two workers at one factory said the recruiter even pressured them to produce videos falsely stating they paid no such fees.

At those three manufacturers, Transparentem also found evidence of the following problems:

- **Deception.** Most interviewed workers said recruiting agencies had deceived them about wages and other contractual terms and conditions. One worker reported earning less than half of what he had been promised, in addition to being charged for food and lodging he had been told would be free. "Our life is such that it is so hard that I don't know how to put this in words," he said. "It's extremely painful."
- **Abusive working and/or living conditions.** Most workers reported abusive living conditions. Reported problems included overcrowded hostels, insect infestations, substandard food, and excessive heat.
- **Intimidation and threats.** Some workers at all three factories said that workers faced intimidation and threats including the threat of repatriation. In particular, workers said they faced intimidation and threats for complaining about their conditions and speaking openly to auditors.
- **Inadequate response to grievances.** Most workers said that their employers did not respond to worker complaints or responded slowly or ineffectively. While the factories had worker leaders that were purportedly meant to represent workers' interests, some workers said those worker leaders were selected by factory management.

⁸ International Labour Organization, "ILO Indicators of Forced Labour", October 1, 2012, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

⁹ For currency conversions, Transparentem used the US Treasury Department exchange rates.

- **Audit deception and deficiencies.** Several workers reported issues with audits in general, including company representatives controlling which workers spoke to auditors, remaining present during worker interviews, or coaching workers on what to say.

The first three problems are International Labor Organization (ILO) Indicators of Forced Labor.

The response of buyers and suppliers

While all buyers we approached received full accounts of the problems at Mauritian factories, as reported by workers, not all chose to act in response. Some buyers reported improvements, including to working and living conditions. Three buyers committed to repaying migrant workers for significant recruitment fees and related costs they reported paying. Yet, the promised repayments would only benefit workers at one of the factories investigated, and would not cover the full costs that some workers reported paying for employment. Buyers and suppliers reported that commissioned audits were unable to detect and detail the scope of the problem regarding recruitment fees and related costs. Some migrant workers reported they did not feel safe speaking out to auditors about the truth of their conditions, for fear of reprisals. One factory sent a notice to all workers (and posted it publicly in the factory) that warned them: “If at any stage it is discovered that you have paid any money to the agent or a third party or other persons to secure a job at [this factory], your selection will be disqualified.”

There is both a moral and a business imperative for buyers to act in response to the types of problems that workers reported to Transparentem. The principle of corporate respect for human rights, including processes to remediate adverse human rights impact, is well established.¹⁰ The 18 brands that engaged with Transparentem generally recognized their responsibility to address labor issues at their first-tier suppliers in Mauritius. Labor activists have, on occasion, labeled brands in similar contexts as “principal employers¹¹” – inferring a responsibility to the entire work force involved in producing the goods they market and sell, just as they hold certain legal responsibilities to direct employees. Companies also have a business imperative to protect their brands’ reputation with a public that is increasingly socially conscious and sensitive to the realities facing garment workers.

Transparentem engages primarily with consumer-facing brands for whom this business imperative plays a prominent role. Several positive developments took place due to Transparentem’s engagement with these brands:

Three buyers collectively committed over US\$420,000 to repay workers for recruitment fees and related costs. These three buyers chose to acknowledge that workers had paid significant recruitment fees even though social audits commissioned by buyers reportedly were unable to confirm exact amounts of recruitment fees paid by workers. The buyers based the repayment amount on an estimate that was within the range that Transparentem found.

¹⁰ UN Guiding Principles on Business and Human Rights, 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹¹ Clean Clothes Campaign, “Europe Floor Wage: A living wage benchmark for European garment workers”, <https://cleanclothes.org/campaigns/europe-floor-wage>.

Eleven of the companies engaged in some form of remediation. Buyers came together to form “buyer groups” at each of the factories investigated. They subsequently reported many improvements at the factories, including a new dormitory built at one factory; trainings for workers on the role of the factory workers’ council; ensuring election of members to factory workers’ councils is “formal and democratic;” and trainings on workers’ rights to freedom of association and collective bargaining. Buyer groups also reported policy improvements, such as new factory commitments to better recruitment procedures and training of all supervisors and workers on human rights. Buyers also stated that grievance mechanisms would be improved. Transparentem has not yet been able to verify these improvements.

Suppliers strengthening voluntary commitments to ethical recruitment. The Mauritius Export Association (MEXA) finalized a voluntary code of conduct on the recruitment and employment of migrant workers for employers in export-oriented industries. MEXA is currently developing standards to support the code as well as a certification process, which they expect will be completed this year. All four suppliers investigated by Transparentem committed to adopting the code once the certification process is finalized.

Unfortunately, remediation in Mauritius was not informed by a root cause analysis that would enable all actors to collaboratively sustain improvements, including effective mechanisms for workers to report grievances, transparent and fair recruitment processes, and high standards for working and living conditions for all workers, including migrant workers. While companies may be applauded for making voluntary commitments, the sustainability of remedy requires active, ongoing scrutiny and accountability. In the Mauritius case, remediation has remained incomplete:

Workers report facing intimidation, impeding auditors’ efforts to discover the nature and extent of problems. As one worker reported, “There is always that fear and panic we live with.” Several buyers used audits’ reported lack of findings on significant recruitment fees as their rationale not to repay reported recruitment fees. MEXA has also informed Transparentem that they expect layoffs in the future and they “are telling all the workers that it is because of the Transparentem [sic] report.”¹² (Neither MEXA, Mauritian suppliers nor their buyers have provided any information to support MEXA’s claim that buyers are reducing orders from Mauritius as a result of issues related to Transparentem’s report.) This kind of pushback to worker voice discourages migrant workers from speaking out about problems they are facing, instead of encouraging the suppliers with positive incentives to improve conditions.

Most workers will not receive repayments, and few will receive 100 percent of the recruitment fees and related costs they reported they had paid. Brand commitments to repayment were only from three buyers, who elected to cover a portion of the recruitment fees at one of the four investigated suppliers. The repayment amounts do not take into consideration inflation, interest, currency exchange rates, and opportunity cost, as recommended by guidance from Impactt, a business consultancy that specializes in ethical trade.¹³

¹² Correspondence on file with Transparentem, Feb. 9, 2024.

¹³ Impactt, “Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees and Related Costs”, <https://www.impacttlimited.com/principles-for-repayment-of-recruitment-fees/>.

Issues persist related to working and living conditions. Workers reported persistent issues in their dormitories during follow up interviews in 2023.

Several brands reported that, as of February 2024, they continued to meet regularly in buyer groups and with their suppliers to continue to improve policies and conditions. There are ongoing efforts—and resources expended—to verify Transparentem’s findings on significant worker-paid recruitment fees. Meanwhile, workers have not yet been reimbursed for the significant recruitment fees and related costs that they reported paying. The three buyers that have already committed to repayment should implement that commitment without delay. Transparentem continues to encourage the remaining fifteen buyers to provide repayment on the basis of information provided by Transparentem and corroborated by general information about worker-paid recruitment costs on certain migratory routes. It remains of concern that effort is going toward verifying findings rather than focusing on making Mauritius an ethical production destination.

The response of government

The government of Mauritius has an important role to play in holding Mauritian-based manufacturers accountable for their treatment of workers. The government of Mauritius made important progress in enacting the Private Recruitment Agencies Act in October 2023. The new law recognizes the principle that workers should never pay for their jobs. Unfortunately, the new law fails to clarify that foreign agents cannot charge fees to workers. The law also failed to prohibit deductions from wages for housing and accommodation. In a more positive development though, the government increased the minimum wage for migrant workers in the export industry in January 2024 from 11,575 rupees to 16,500 rupees -- a 42 percent increase.

Still, the lack of oversight of foreign labor recruitment agents in worker “sending” countries leaves workers vulnerable to exploitation. Transparentem and others have recommended concluding binding agreements between Mauritius and the countries where migrant workers originate.¹⁴ The gap in accountability of foreign labor recruitment agents must be addressed urgently by Mauritius and by those sending countries.

Conclusion

Until migrant workers have legitimate, independent bodies to represent their interests and support them when they have grievances, we must expect the problems that occurred in the Mauritius case example to persist in the global apparel sector. And as long as buyers rely on conventional audits in such contexts, significant labor abuses will remain hidden and workers will lack access to full remedy. According to the 2023 KnowTheChain Apparel and Footwear Benchmark Findings Report, companies scored lowest (an average of 7 out of 100) on the theme

¹⁴ See, for example, United Nations Network on Migration, “Guidance on Bilateral Labor Migration Agreements”, February 2022, https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/resources_files/blma_guidance_final.pdf.

of remedy, with an average of only 14 out of 100 on the theme of recruitment.¹⁵ The prospect of new legislation in important markets requiring human rights due diligence and prohibiting the importation of goods produced with forced labor may motivate continued improvement in these areas. Meanwhile, companies' commitments to remedy require other forms of scrutiny and accountability to ensure the commitments are met.

Success in Mauritius would entail important benefits for manufacturers and for the Mauritian export sector. If Mauritius became a model sourcing destination for companies, through responsible recruitment and consistent protection of migrant workers' rights, it would become more attractive to foreign buyers. Most importantly, successful efforts would improve the lives of workers – protecting them from exploitation and offering better opportunities for them and their families.

¹⁵ Know the Chain, “2023 Apparel and Footwear Benchmark Findings Report”, <https://knowthechain.org/wp-content/uploads/KTC-2023-AF-Benchmark-Report-1.pdf>.

Increasing the Prospects of Corporate Accountability, Compensation, and Financial Health for Victims and Survivors of Forced Labour and Human Trafficking

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Abstract

Although billions of dollars in illicit profits are generated each year from human trafficking and forced labour, a paltry amount is usually returned to victims/survivors in the form of compensation. To enable greater compensation for victims and survivors, the Asset Recovery and Restitution Initiative proposes a new strategy, i.e. the combined use of trade and anti-money laundering frameworks and inter-agency and multi-stakeholder cooperation (both domestically and internationally). Financial access/inclusion, and financial literacy/education are other important considerations in the receipt of compensation.

Key words: remedy; compensation; asset recovery; import bans; financial inclusion.

Introduction

The notion of remedy for human rights abuses such as forced labour and human trafficking gives implicit recognition of at least two core realities: the harm committed by at least one party against another, and the obligation of the perpetrator (be it an individual, business or even a State) to extend actions towards restoring the victim/survivor to the status or position that they had before they were harmed. However, victims do not always receive remedy for the harms they suffer. The reality of insufficient remedy for victims and survivors of forced labour and human trafficking raises questions about the measures taken to reduce the disparity between the billions of dollars generated from these crimes³⁹⁴ and the compensation provided to those

³⁹⁴ ILO, *Profits and Poverty: The Economics of Forced Labour* (Geneva: International Labour Office, 2014), 13; Katherine Taken Smith, Hannah Russell, and Murphy Smith, "Human Trafficking: A Global Multi-Billion Dollar Criminal Industry," *International Journal of Public Law and Policy*, 4(3), 2014, 293-308, <http://dx.doi.org/10.2139/ssrn.2316169>.

affected.³⁹⁵ The apparent disconnect between national laws and practices and the requirements and expectations of remedy under international law is due to a number of different factors and challenges. These include the lack of legal and other support for victims/survivors, not recognizing and identifying victims/survivors of human trafficking and forced labour, high judicial thresholds to successfully prosecute cases for human trafficking for the purpose of labour exploitation, inadequate legal frameworks, the lack of effective international legal cooperation, and the inability to trace and seize assets and proceeds generated from these crimes.³⁹⁶ Such gaps are further contextualized and complemented by factors that have created an enabling environment for the sustained trafficking of persons and exploitation of workers across the globe. These factors range from lax labour standards and market failures, to structural and situational inequalities, and low levels of criminal prosecutions for companies.³⁹⁷

While the provision of effective and appropriate remedies is a responsive measure and cannot undo harms caused, it has the *potential* to alleviate the effects of harm, and restore the victim/survivor to at least the state that they were before the harm was committed. The latter would however be undesirable where such restoration would result in a risk of exploitation or other violation of rights. For example, restoring a victim/survivor to a context where human trafficking is prevalent and where viable economic activities do not exist can increase their risk of re-exploitation. Pursuing all measures to provide remedy to victims/survivors and reduce the current gap in the provision of remedy is therefore a form of justice through which perpetrators can be held accountable for their actions and make amends for the loss or harms that they inflict

³⁹⁵ Similar to its detailing in an OSCE Compensation report, compensation is taken to mean, “the overall concept of payment to a person, regardless of the source of payment or the mechanism used or the types of losses to be compensated. Compensation thus includes awards made by state-funded schemes as well as awards made in criminal, civil or labour law proceedings.” [Accessible at: Katy Thompson and Allison Jernow, *Compensation for Trafficked and Exploited Persons in the OSCE Region* (Warsaw, Poland: OSCE, 2008), 15, <https://www.osce.org/files/f/documents/8/e/32023.pdf>.]

³⁹⁶ Anne T Gallagher, “The right to an effective remedy for victims of trafficking in persons: A survey of international law and policy,” (2010), 2-3. Accessible at: https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf; Irene Wintermayr and Amy Weatherburn, *Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands*, (Geneva: ILO, 2021), 8. Accessible at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_783811.pdf; Claire Methven O'Brien and Amy Weatherburn, *Commission Proposal for a Regulation on prohibiting products made with forced labour on the Union market: The issue of remedies*, (Belgium, Brussels: European Parliament: 2023), 5-6. Accessible at: <https://discovery.dundee.ac.uk/en/publications/commission-proposal-for-a-regulation-on-prohibiting-products-made>

³⁹⁷ Liechtenstein Initiative, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking: Final Report of the Liechtenstein Initiative's Financial Sector Commission on Modern Slavery and Human Trafficking* (New York: United Nations University, 2019). Accessible at: <https://www.fastinitiative.org/the-blueprint/download-report>; John R Barner, David Okech, and Meghan A. Camp. 2014. "Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade", *Societies* 4, no. 2: 148-160; Amol Mehra and Katie Shay. “Corporate Responsibility and Accountability for Modern Forms of Slavery”, *Journal of International Criminal Justice*, Volume 14, Issue 2, May 2016, Pages 453–468.

on victims/survivors.³⁹⁸ Following these realities and the potential of compensation to reduce vulnerability to (re)trafficking/(re)victimization,³⁹⁹ a strong case exists for States, multilateral organizations, financial institutions, and civil society organizations to direct their attention and efforts towards the recovery of illicit assets and proceeds derived from human trafficking and forced labour, and the use of such money to compensate victims/survivors. This compensation should be “proportional to the gravity of the violation and the circumstances of each case”.⁴⁰⁰

Within this context, the Asset Recovery and Restitution Initiative (ARRI), established in 2022 following consultations with key partners and stakeholders, proposes a new strategy to close the remedy gap. ARRI is a project under the Finance against Slavery and Trafficking (FAST) Initiative, United Nations University Centre for Policy Research (UNU-CPR), which is funded by the Governments of Australia, Liechtenstein, Luxembourg, the Netherlands, Norway, and private sector and charitable donors. Remedy is a central aim of the FAST Initiative and ARRI explores how the financial sector, through legal and policy reform and capacity-building, can contribute to increased remedy and compensation for victims/survivors of human trafficking and forced labour. It proposes the following combined means through which compensation can be increased: (i) work alongside laws (currently existing in the USA, Canada and Mexico, and proposed in the European Union) that prevent the importation of goods produced by forced labour – a process which currently involves research and investigations on forced labour in global value chains; (ii) the use of the Anti-Money Laundering (AML) framework comprising the freezing, seizure and confiscation of illicit assets and proceeds – in this case applied to proceeds derived from the sale of goods produced by forced labour and/or human trafficking; and (iii) cooperation and collaboration among government agencies, multilateral organizations, financial institutions, and civil society organizations (CSOs) to facilitate and enable compensation for victims/survivors. The government agencies/entities include Customs authorities, Financial Intelligence Units (FIUs), law enforcement, Ministries of Justice, and other competent authorities.

³⁹⁸ Para 20, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* refers to the following gross violations of international human rights law and serious violations of international humanitarian law: physical or mental harm; Lost opportunities, including employment, education and social benefits; Material damages and loss of earnings, including loss of earning potential; Moral damage; Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. [Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>]

³⁹⁹ Ainhua Barrenechea, *Access To Compensation For Victims Of Human Trafficking* (FLEX, 2016). Accessible at: <https://www.antislaverycommissioner.co.uk/media/1066/dwp-compensation-f.pdf>; Fiona David and Jacqueline Joudo Larsen, *Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour* (Geneva: International Organization for Migration, 2019). Accessible at: https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.

⁴⁰⁰ Para 20, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* [Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>]

Remedy and compensation: Legal frameworks and guidelines

Remedy for victims is a human right that is enshrined in international treaties and reflected in soft law. Requirements and recommendations for its provision apply to both States and businesses. Forms of remedy can include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴⁰¹

Art 25(2) of the United Nations Convention Against Transnational Organized Crime provides that States should establish appropriate procedures for access to compensation and restitution for victims of offences under the Convention. Further, Art 14(2) of the Convention focuses on compensation via the return of confiscated proceeds of crime or property to a requesting State Party. A link is made here (and more directly in Principle 16 and Guideline 4.4 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking) between confiscated assets and compensation, demonstrating the potential that exists for the use of anti-money laundering frameworks for the provision of compensation – one of the key features of the Asset Recovery and Restitution Initiative. Gallagher notably observes that, “[w]hile the Organized Crime Convention does not contain any mandatory provisions with respect to disposal of confiscated proceeds or property, States Parties are required to consider specific disposal options. The priority option relates to victim compensation.”⁴⁰²

Compensation specifically to victims of human trafficking is covered under Article 6(6) of the Palermo Protocol,⁴⁰³ which requires States parties to accommodate measures in their domestic legal systems to offer compensation to victims of trafficking for damage suffered. Where forced labour is concerned, Art. 2(3) of the International Covenant on Civil and Political Rights obliges Members that ratified the Convention to provide for an effective remedy for those whose rights and freedoms are violated. Art 1(1) of the Protocol of 2014 to the Forced Labour Convention, 1930 (No 29) provides for access to appropriate and effective remedies, such as compensation for victims, while Art 4(1) makes it clear that a victim’s presence or legal status in the national territory should not have a bearing on their access to such remedies. These international legal instruments codify victims’ right to remedy and compensation and are legally binding on States Parties. They cover the State’s role in enabling and facilitating access to remedy and compensation for victims of trafficking and forced labour, whether through laws, mechanisms or procedures. These international legal instruments are notably complemented by soft law such as the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons (paras. 5, 6, 8, 10, and 12), the Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (paras. 18 and 20), the

⁴⁰¹ Ibid, para18.

⁴⁰² Anne T Gallagher, “The right to an effective remedy for victims of trafficking in persons: A survey of international law and policy,” (2010), 12, Accessible at: https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Bratislava_Background_paper1.pdf.

⁴⁰³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Accessible at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (paras. 19 and 21), and the Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking (Guideline 4, para. 4).

Where businesses are concerned, access to effective remedy for business-related human rights abuses is covered under the UN Guiding Principles on Business and Human Rights (UNGPs). Further, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct provides the recommendation that enterprises should “...provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”⁴⁰⁴ In spite of such business-related guidelines, the duty of States to ensure access to effective remedy is, in these instruments, limited to domestic human rights abuses. However subsequent initiatives such as the UN Working Group on Business and Human Rights, and the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights have advocated for States’ protection of human rights both inside and outside their territory, and ensuring access to effective remedy for human rights abuses wherever they may occur.

Proceeds of crime and compensation

The use of proceeds of crime to compensate victims/survivors is not new.

For example, Section 7 of the UK’s Modern Slavery Act 2015 makes reference to an amendment of the Proceeds of Crime Act 2002 which enables the confiscation of assets in respect of slavery, servitude and forced or compulsory labour. Further Sections 8 to 10 provide coverage on slavery and trafficking reparation orders. Accordingly, under Section 8(1)(b) of this Act,

“The court may make a slavery and trafficking reparation order against a person if -
(a) the person has been convicted of an offence under section 1, 2 or 4, and
(b) a confiscation order is made against the person in respect of the offence.”

As reported by the UK Independent Anti-Slavery Commissioner, there were 206 confiscation orders since 2015. These orders were valued at over £5.8m and were granted in cases where slavery or trafficking were listed as the primary offence. However, of these confiscation orders, only 41 compensation orders and eight reparation orders were granted⁴⁰⁵ which jointly amount to 23.8 percent of confiscation orders. While this example demonstrates that the use of proceeds of crime to compensate survivors is possible, it likewise demonstrates that challenges need to be overcome. In the UK context, these challenges include (but are not

⁴⁰⁴ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Publishing, 2023), 25. Accessible at: <https://doi.org/10.1787/81f92357-en>.

⁴⁰⁵ This information is from data provided by the National Crime Agency’s Proceeds of Crime Centre in February 2022. [Source: Independent Anti-Slavery Commissioner, “IASC policy paper: Access to compensation and reparation for survivors of trafficking”, page 4, https://www.antislaverycommissioner.co.uk/media/1765/iasc-policy-paper_access-to-compensation-and-reparation-for-survivors-of-trafficking_april-2022.pdf]

limited to) the lack of adequate financial investigation support for respective investigations, thereby making it difficult to identify assets for confiscation.⁴⁰⁶ Further based on feedback from investigators, more detailed guidance for investigators on compensation and reparation orders is also desirable.⁴⁰⁷ The inter-agency and multi-stakeholder model championed under ARRI is one of the strategies that can be used to address such challenges. More concretely, ARRI advocates, *inter alia*, for data sharing among customs authorities, FIUs, law enforcement authorities and ministries of justice, for the purpose of investigating potential violations of AML laws (where applicable) as well as identifying, freezing, seizing, and confiscating illicit assets and proceeds to compensate victims/survivors.⁴⁰⁸

In spite of challenges that may exist and arise from the use of proceeds from human trafficking and/or forced labour to compensate survivors, its use can be considered feasible considering the large quantity of illicit profits that are usually derived from such activities. The use of such proceeds can also be considered advantageous for countries that may not have a victim compensation fund or have the capacity for such a fund. Further, as many victims/survivors have experienced lost wages, material and non-material damages, and incurred debt as a consequence of being exploited, the use of proceeds from the source of their exploitation can be considered a form of restorative justice. Compensation also provides a means for victims/survivors to rebuild their lives, and support their economic empowerment and social integration. In light of this context, while research and investigation to prevent future cases or efforts to support law enforcement activities are crucial, supporting the livelihood of victims and reducing their risk of re-exploitation via proceeds of crime should be given priority. As captured in one of the recommendations emerging from the ARRI project, “[a]ll States should always allow for confiscated assets and proceeds to be used for compensation to victims/survivors of forced labour and/or human trafficking, and where generalized compensation funds are used, ensure there are always sufficient funds to compensate all victims/survivors and give priority to them before all other parties.”⁴⁰⁹

The Asset Recovery and Restitution Initiative: Responsibility for remedy, and access to remedy

Beyond the importance of enabling and facilitating the provision of remedy and the existence of legal support for remedy, it is likewise important to give key consideration to

⁴⁰⁶ Ibid, page 5

⁴⁰⁷ Ibid.

⁴⁰⁸ Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023), 62.

⁴⁰⁹ Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023), 63.

responsibility over remedy, and access to remedy. Accordingly, research⁴¹⁰ done under the ARRI project examined important questions concerning who should provide compensation, who should ensure that victims/survivors receive compensation, and challenges in the delivery of compensation. Responses to these and other questions were gathered at a key stage of the ARRI research which involved the collection of data via questionnaires. These questionnaires were distributed among agencies/entities/organizations across Africa, the Asia-Pacific, Europe and North America. Of the 47 questionnaire respondents, 78 per cent of respondents from government agencies and CSOs believed that compensation should be sourced from both individuals/companies in the country where the worker was exploited, and individuals/companies in the country where the goods produced by forced labour and/or victims of human trafficking were sold. Within this context, it should be noted that in efforts to recover assets and proceeds from goods produced by forced labour and/or human trafficking, more attention is currently given to investigating responsible individual(s)/company/ies in the country where the worker was exploited.⁴¹¹ This is largely due to a gap in the anti-money laundering (AML) framework; illicit proceeds that companies in market States derive from the sale of goods produced by forced labour in their value chains are not subject to asset recovery and cannot be used to compensate victims and survivors because such transactions are not considered a predicate offense to money laundering. This reality resulted in the ARRI recommendation for States to consider criminalizing “knowingly benefiting financially from forced labour or human trafficking” and including this in their list of predicate offenses to money laundering. This would enable asset recovery from companies in market States that profit from the sale of goods produced by forced labour or human trafficking and compensation to victims/survivors from the confiscated assets.

Questionnaires for CSOS further made enquiry into who should be responsible for ensuring that victims/survivors *receive* compensation. CSO representatives believed that multiple avenues can be explored: 36 per cent of CSO respondents believed in the responsibility of government agencies in the country of origin, followed by government agencies in the country of exploitation (28 per cent), CSOs representing victims/survivors and/or their families (24 per cent), and government agencies in the market State (12 per cent).

Regarding access to remedy, questionnaire results further revealed that the core challenge experienced by agencies/entities in the delivery of compensation to victims/survivors was their lack of access to an account from a regulated institution other than a bank (for example, mobile money service providers). This was closely followed by the challenge of survivors not having access to a bank account, and that of finding/tracing survivors.⁴¹² Under the auspices of the

⁴¹⁰ Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023).

⁴¹¹ This contrasts with attention given to investigating the profiting individual(s)/ company/ies in the country where the goods produced by forced labour and/or victims/survivors of human trafficking were sold.

⁴¹² Andy Shen and Loria-Mae Heywood, “Asset Recovery and Restitution: Leveraging Interagency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labour and Human Trafficking,” *UNU-CPR Research Report* (New York: United Nations University, 2023).

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Survivor Inclusion Initiative (SII),⁴¹³ FAST has notably provided support to financial institutions (including supervisors and regulators) and survivor support organizations in facilitating access to basic banking services (e.g. checking and savings accounts) for survivors, with due regard being given to simplified customer due diligence (CDD), and adherence to AML and counter-terrorist financing (CFT) safeguards. Such work occurs in a context where survivors have experienced barriers to banking due to, for example, their lack of an official identity document, and their lack a permanent address – common Know Your Customer requirements for opening a bank account.⁴¹⁴ Based on FAST records, as of November 2023, the Survivor Inclusion Initiative (SII) has facilitated access to financial services for almost 3000 survivors in the UK, US and Canada.

Facilitation of access to compensation and financial goods and services for victims/survivors should be accompanied by targeted efforts to support their financial education and literacy.^{415,416} This is necessary to ensure their effective use of the compensation and other resources to which they will have access, and safeguard them against the theft of funds and other circumstances that could increase their risk of exploitation. Such a role can be facilitated and supported by CSOs, financial institutions and other actors and organizations with the capacity to do so. In the ARRI research, the majority of CSO respondents (80 per cent) placed a high level of importance on financial education/literacy (the ability to understand and effectively use various financial skills, including personal financial management, budgeting, and investing) for victims/survivors. Some of the CSOs (in addition to other organizations) also had the experience of providing financial education to victims/survivors who received or were expected to receive compensation.

Anticipated challenges under the Asset Recovery and Restitution Initiative

The combined use of trade regimes (via import bans) and anti-money laundering regimes, with enhanced inter-agency and multi-stakeholder cooperation, is new and could greatly strengthen the recovery of assets and the provision of remedy, including compensation, for

⁴¹³ FAST's SII is a financial access project that was launched in 2019 in the UK, the US, and Canada to remove access barriers to financial services for survivors of modern slavery. *Read more:* "Survivor Inclusion Initiative," <https://www.fastinitiative.org/implementation/survivor-inclusion/>

⁴¹⁴ *Read more:* Finance Against Slavery and Trafficking, *Insight Briefing: Lessons from the Survivor Inclusion Initiative (SII) – the UK, US, and Canada* (New York: United Nations University Centre for Policy Research, 2022); Leona Vaughn and Janina Pescinski, *Insight Briefing: Business banking and start-up support for survivors of modern slavery and human trafficking* (United Nations University, 2022).

⁴¹⁵ David Rothwell, Mohammad Khan, and Katrina Cherney, "Building financial knowledge is not enough: Financial self- efficacy as a mediator in the financial capability of low- income families," *Journal of Community Practice* Vol 24 Issue 4 (2016): 368–388.

⁴¹⁶ David Okech, Claire Bolton, and Elyssa Schroeder, "Financial education in human trafficking interventions: Implications for research, programming and policy," *The Routledge Handbook of Financial Literacy*, eds. Gianni Nicolini and Brenda J. Cude (London & New York: Routledge, 2022).

victims/survivors of human trafficking and forced labour in global value chains.⁴¹⁷ However, the pursuit of this strategy is notwithstanding the need to consider (and address) challenges that may arise in attempts to recover illicit assets and proceeds, including those referenced above as well as those pertaining to data privacy and information-sharing, different levels of understanding regarding money laundering crimes committed via human trafficking offences, and the length of time taken to execute mutual legal assistance requests. Further, one should however bear in mind that there may be varied capacities of States around the globe to provide such compensation. Pursuing training and capacity-building, and creating additional information-sharing arrangements (including via public-private partnerships) are all strategies that can be used in response to such challenges. Further, where the State is unable to enforce compensation orders against perpetrators, States should provide compensation to victims and survivors – a good practice seen in the Netherlands, and one which closely aligns with Art 16 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The Stolen Asset Recovery Initiative, or StAR, a partnership between the World Bank Group and the United Nations Office on Drugs and Crime, has published numerous reports detailing the challenges faced in asset recovery as well as recommendations for overcoming such challenges. While StAR is focused on corruption, some of the experiences in that project can be useful for practitioners focused on human trafficking and forced labour to consider when attempting to address challenges in recovering assets to compensate victims and survivors. For example, the high judicial threshold for securing a criminal conviction for labour trafficking can prevent criminal confiscation in many cases. StAR notes that it may still be possible to recover the proceeds and instrumentalities of crimes like corruption through a private civil action or through non-conviction-based confiscation proceedings which have a lower standard of proof.⁴¹⁸ With regard to the challenge of tracing and seizing assets and proceeds of crimes, StAR's recommendation to "continually assess whether it is possible and practical to adopt provisional measures to seize or restrain assets discovered during tracing efforts"⁴¹⁹ should be considered by practitioners working on human trafficking or forced labour cases. With respect to the broader challenge of the lack of legal support for victims/survivors, StAR notes "using confiscation to obtain restitution for victims will often save them significant fees or expenses...that are usually required for recovery through a private law (civil) case".⁴²⁰

Aside from these technical challenges, the Asset Recovery and Restitution pathway suggested by FAST would likely face political challenges given the fundamental shifts we propose. Some of the legal and policy reforms needed will be easier to achieve than others;

⁴¹⁷ Stringer et al. (2022) provide coverage on global value chain governance within the context of modern slavery in the Thai fishing industry. See further: Christina Stringer, Brent Burmester, and Snejina Michailova. "Modern Slavery and the Governance of Labor Exploitation in the Thai Fishing Industry", *Journal of cleaner production*, Volume 371, 2022, pages 1-11.

⁴¹⁸ Jean-Pierre Brun, Anastasia Sotiropoulou, Larissa Gray, Clive Scott, and Kevin M. Stephenson, "Asset Recovery Handbook: A Guide for Practitioners, second edition," (Washington, DC: World Bank, 2021), 61.

⁴¹⁹ Ibid, 82.

⁴²⁰ Ibid, 211.

survivor access to bank accounts has already increased through FAST's SII, the European Union is considering how to guarantee remedy for victims/survivors of forced labour through an import ban, and the majority of States already allow for confiscated assets and proceeds to be used for victim compensation. However, the FAST recommendation to make "knowingly benefiting financially from forced labour or human trafficking" a predicate offense to money laundering may be more difficult to accomplish. Such a significant reform largely depends on the political will of government leaders and the support of the private sector. While more support from governments, the financial sector, and civil society is needed, the recent updates by the Financial Action Task Force (FATF) to its recommendations on asset recovery may pave the way for some of FAST's recommendations to be adopted by States. Most importantly, the FATF now requires States to establish asset recovery as a priority at the domestic and international levels.⁴²¹ While there are no specific references to human trafficking or forced labour, the general reforms do apply to these crimes and the assets/proceeds generated from them. The strengthened international framework, including measures to improve international cooperation on asset recovery, increases the prospects of asset recovery from Global North companies that financially benefit from forced labour or human trafficking in the Global South if/when FAST's proposal for a new predicate offense is adopted.

Recommended actions for facilitating compensation under the ARRI framework

The Asset Recovery and Restitution Initiative has proposed a series of actions as a means of facilitating compensation for victims/survivors of forced labour/human trafficking. These include previously mentioned recommendations,⁴²² as well as the following:

- i. States with forced labour import bans, and those that adopt such bans in the future, should explicitly require entities subject to detention or seizure orders to provide compensation and other forms of remedy, in consultation with victims/survivors and/or their representatives where possible, **as a condition** of lifting such orders;
- ii. All States should establish clear guidance to the competent authorities⁴²³ on the provision and exchange of information, including detailing the steps and potential actors involved in the process to compensate victims/survivors;
- iii. All States should allow for confiscated assets and proceeds to be used for compensation to victims/survivors of forced labour and/or human trafficking, and where generalized

⁴²¹ FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF (Paris, France), www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html

⁴²² -All States should consider criminalizing "knowingly benefiting financially from forced labour or human trafficking" and including this in their list of predicate offences to money laundering.
-All States should always allow for confiscated assets and proceeds to be used for compensation to victims/survivors of forced labour and/or human trafficking, and where generalized compensation funds are used, ensure there are always sufficient funds to compensate all victims/survivors and give priority to them before all other parties.

⁴²³ Potential actors include both governmental and non-governmental, civil society and private sector actors.

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compensation funds are used, ensure there are sufficient funds to compensate all victim/survivors and give priority to them before all other parties;

- iv. All States should facilitate and enable victims/survivors' access to bank accounts, or accounts from regulated financial institutions other than banks as a part of the restitution process in forced labour and human trafficking cases, to ensure that victims/survivors receive the money to which they are entitled.

Conclusion

Leveraging the combined use of trade and anti-money laundering frameworks and inter-agency and multi-stakeholder cooperation (both domestically and internationally) to enable greater compensation for victims and survivors of forced labour and human trafficking can help close the remedy and compensation gap. It is also critical that the money laundering framework is used to freeze, seize and confiscate illicit assets and proceeds derived from forced labour and human trafficking and from individuals and businesses that knowingly source such goods. Not only would such actions hold businesses accountable, but they can also lead to greater human rights due diligence in value chains and conformity to human rights due diligence legislation where they exist. Making “knowingly benefiting financially from forced labour or human trafficking” a crime and a predicate offence to money laundering is the first step to facilitating such asset recovery from market States.

Finally, in the pursuit of greater compensation for victims and survivors of forced labour and human trafficking, it is critical that the needs of such persons are given priority at all times, including pertaining to protection and legal representation. Consultation with victims/survivors and ensuring that all interventions are survivor-informed, trauma-informed and culturally tailored is necessary. Victims/survivors must be given access to a bank account or account from another regulated financial institution (e.g. mobile money service provider) for the purpose of accessing compensation, facilitating their financial inclusion,⁴²⁴ and safeguarding against their financial exclusion – recognised as a risk multiplier to modern slavery (including forced labour and human trafficking).⁴²⁵ Such access to financial services should likewise be accompanied by access to financial education and literacy.

A strong case exists for the pursuit of increased remedy in the form of compensation for victims/survivors of forced labour and human trafficking and via the combined use of anti-money laundering regimes, trade regimes, and interagency and multi-stakeholder cooperation to achieve such ends. In all such measures, it is imperative that the needs of victims/survivors remain central, including their need for information on remedy, adequate legal assistance and

⁴²⁴ Demirgüç-Kunt, Asli, Leora Klapper, Dorothe Singer, and Saniya Ansar, “The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19.” (World Bank: Washington, DC: World Bank, 2022), <https://doi.org/10.1596/978-1-4648-1897-4>.

⁴²⁵ Liechtenstein Initiative, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking: Final Report of the Liechtenstein Initiative's Financial Sector Commission on Modern Slavery and Human Trafficking* (New York: United Nations University, 2019). Accessible at: <https://www.fastinitiative.org/the-blueprint/download-report>.

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representation, and financial inclusion. A combined focus on the means of recovering assets and victims'/survivors' needs will better assure access to remedy.

Towards Worker-Driven Remedy: Advancing Human and Labour Rights in Global Supply Chains

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Abstract

This article examines the importance of rights-holder-driven remedy in addressing widespread abuse in global supply chains. It exposes the limitations of existing approaches and analyses the development of the Principles of Worker-Driven Remedy by Electronics Watch as a promising advancement. In particular, it emphasises the role of public buyers and public procurement in addressing power imbalances and enabling rights-holders to play a central role in their own remediation process. The practical implementation of the Principles is also discussed, highlighting the need for collaborative efforts to ensure that remedy is truly driven by those who have been harmed by human and labour rights abuse in global supply chains.

Keywords: worker-driven, remedy, global supply chains, human rights, public procurement

1. Introduction

Human and labour rights abuses within global supply chains continue to be a pressing concern, demanding the design and implementation of effective remedial measures which can both address the harm and prevent its reoccurrence. To date, however, most industry approaches to improving situations in global supply chains have only rarely, and often inadequately, provided remedy to workers harmed by business operations. They have been often driven from the top down, and have failed to take account of the needs, expectations and priorities of workers as rights-holders. This article critically examines the limitations of existing practices and highlights a promising emerging trend that emphasises the inclusion of rights-holders in the remedial process. It further distinguishes between initiatives that merely pay lip service to workers' interests and those that genuinely prioritise them. As a case study, the article investigates the practices and experience of Electronics Watch, an organisation that brings together civil society monitors in production regions and public sector organisations in the global north to improve working conditions in electronics supply chains. In particular, it sheds light on a

recent development within Electronics Watch's approach – the formulation of the Principles for Worker-Driven Remedy. These Principles aim to provide a comprehensive framework for remedial efforts, ensuring that workers are actively involved at every stage and assume a leading role in the process. Crucially, the article underscores the indispensable role of various stakeholders in global supply chains, whose collaboration is vital to redress existing power imbalances in favour of employers, which currently hinder effective worker-driven remedy in practice. Through this analysis, the article contributes to the discourse on advancing human and labour rights within global supply chains and offers valuable insights into the evolving landscape of worker-driven remedy practices.

2. The problem: no effective remedy for abuse in global supply chains

There is abundant evidence of human and labour rights abuses in global supply chains. Workers, the main rights-holders in global supply chains on which this article focuses⁴²⁶, are often subject to discrimination, low pay and wage theft, excessive working hours, forced overtime, and health and safety risks. Many workers – particularly migrants – are subject to abusive recruitment practices, including deception about their employment conditions, charging of recruitment fees and confiscation of passports, restricting freedom of movement. The charging of recruitment fees, low pay and wage theft may push workers into higher debts to cover their basic needs and lock them into debt bondage. In certain states, workers are often prevented from creating or joining trade unions or other forms of workers' associations – which are instrumental for workers to enjoy their rights at work and improve their working conditions – and workers and their representatives may be subject to threats, intimidation and violence. The most egregious forms of worker abuse and exploitation amount to situations of forced labour as a process – into and out of which workers may find themselves at different times. At the same time, the long-term impact of abuse to workers is not always immediately apparent or adequately recognised. For example, unsafe working conditions can affect workers' health in the long run, and exposure to toxic chemicals can have severe impact on reproductive health including causing miscarriages and birth defects.⁴²⁷ These human and labour rights abuses have been defined as an endemic part

⁴²⁶ Although we recognise local communities are also impacted by business activities, this article focuses predominantly on workers.

⁴²⁷ E.g. Walk Free 2023, *The Global Slavery Index 2023*, Minderoo Foundation, available at <https://walkfree.org/global-slavery-index> (accessed 28 June 2023); International Labour Organization, 'World Employment and Social Outlook: Trends 2023' (International Labour Office 2023); Electronics Watch, Monitoring reports, available at https://electronicswatch.org/monitoring-reports_2542963 (Accessed 5 December 2023); Bassina Farbenblum and Justine Nolan, 'The Business of Migrant Worker Recruitment: Who Has the Responsibility and Leverage to Protect Rights?' (2017) 52 *Texas International Law Journal* 1; Genevieve LeBaron, 'Wages: An Overlooked Dimension of Business and Human Rights in Global Supply Chains' (2021) *Business and Human Rights Journal* 1.

of contemporary supply chains,⁴²⁸ and the ‘logical’⁴²⁹, ‘pervasive and predictable outcome’⁴³⁰ of the way in which goods production is organised – namely through outsourcing and subcontracting involving a multitude of different actors bound together in complex, multi-tiered networks spanning several different states.⁴³¹

In international human rights law (IHRL), rights-holders who have been harmed have a right to an effective remedy.⁴³² This is also a critical pillar of the UN Guiding Principles on Business and Human Rights (UNGPs).⁴³³ Despite the widespread and systematic nature of abuse in global supply chains, however, remedy for it is often missing. Global supply chains have been described as a ‘remedy-deficient landscape’⁴³⁴, in which achieving corporate accountability as well as remedy for business-related abuse remains elusive and ‘an exception rather than the rule’.⁴³⁵

Where action has been taken to address the harm, it has been primarily dependent on voluntary, corporate-led practices as a result of advocacy efforts by civil society, trade unions,

⁴²⁸ Genevieve LeBaron, ‘The Role of Supply Chains in the Global Business of Forced Labour’ (2021) 57 *Journal of Supply Chain Management* 29, 31.

⁴²⁹ Genevieve LeBaron, ‘Wages’, 4.

⁴³⁰ Mark Anner, Jennifer Bair, and Jeremy Blasi, ‘Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks’, *Comparative Labor Law & Policy Journal* 35, no. 1 (2013): 3.

⁴³¹ See also Genevieve LeBaron, ‘Subcontracting Is Not Illegal, But Is It Unethical? Business Ethics, Forced Labor, and Economic Success’, *The Brown Journal of World Affairs* 20, no. 2 (2014): 243; João Amador and Sónia Cabral, ‘Global Value Chains: A Survey of Drivers and Measures’, *Journal of Economic Surveys* 30, no. 2 (April 2016): 279.

⁴³² E.g., UN General Assembly, ‘International Covenant on Civil and Political Rights’, 16 December 1966, Art. 2(3); Council of Europe, ‘European Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocols Nos. 11 and 14’, 4 November 1950, Art. 13 and 41; UN General Assembly, ‘International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families’, 18 December 1990, Art. 83; See also UN Human Rights Council, ‘Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie. Addendum: State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions’, A/HRC/11/13/Add.1, 15 May 2009.

⁴³³ UN Office of the High Commissioner for Human Rights, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (OHCHR, 2011).

⁴³⁴ Sarah Knuckey and Eleanor Jenkin, ‘Company-Created Remedy Mechanisms for Serious Human Rights Abuses: A Promising New Frontier for the Right to Remedy?’, *The International Journal of Human Rights* 19, no. 6 (2015): 802.

⁴³⁵ UN General Assembly, ‘Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises’, 18 July 2017, para. 83; UN Human Rights Council, ‘Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse. Report of the United Nations High Commissioner for Human Rights’, A/HRC/32/19, 10 May 2016, para. 2.

media stories and public shaming of companies.⁴³⁶ Companies, whether individually or as part of multi-stakeholder initiatives, have approached and tried to address global supply chain issues through the narrow lens of corrective action plans (CAPs), and a growing number of public-facing brands and retailers have put in place grievance mechanisms. However, these tools far too often have had unsatisfactory results, as highlighted by scholars, NGOs, workers and their representatives, and some companies themselves.⁴³⁷ As a consequence, even when remedy has been provided through them – which, as the next paragraph will demonstrate, is not necessarily their aim or approach –, this has overall been considered ‘partial at best’.⁴³⁸

One of the core reasons why these approaches to improving working conditions are often not effective is that they lack meaningful engagement with rights-holders. Corrective Action Plans (CAPs), a tool used in corporate social responsibility (CSR) systems, are not designed to provide remedy to harmed workers, but aim to address non-compliance issues that are identified through social audits. They have the same characteristics of audits and voluntary codes of conduct that establish human and labour rights standards to assess suppliers' performance: they are top-down in approach. Companies, in commissioning social auditors, often perceive risk as relating to their businesses, rather than to rights-holders – i.e. workers. As such, they contract social auditors to produce reports revealing compliance breaches and CAPs recommend solutions to reduce or eliminate that risk. They rarely, if ever, consult with rights-holders to understand what harm has been caused, and what remedy they would seek to address that harm. As a result, what is provided is often not remedy, nor does it address workers' concerns or

⁴³⁶ Jolyon Ford and Justine Nolan, ‘Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains: The Discrepancy between Human Rights Due Diligence and the Social Audit’, *Australian Journal of Human Rights* 26, no. 1 (2 January 2020): 28; Justine Nolan, ‘Chasing the Next Shiny Thing: Can Human Rights Due Diligence Effectively Address Labour Exploitation in Global Fashion Supply Chains?’, *International Journal for Crime, Justice and Social Democracy* 11, no. 2 (3 June 2022): 6.

⁴³⁷ David Vermijs, ‘Overview of Company–Community Grievance Mechanisms’, in *Dispute or Dialogue? Community Perspectives on Company-Led Grievance Mechanisms*, ed. E Wilson and E Blackmore (IIED, 2013), 32; Benjamin Thompson, ‘Determining Criteria to Evaluate Outcomes of Businesses’ Provision of Remedy: Applying a Human Rights-Based Approach’, *Business and Human Rights Journal* 2, no. 1 (2017): 84; Electronics Watch, ‘When Compliance Is Not Enough: Why Victims of Forced Labour Should Be Partners in the Remediation Design’ (Electronics Watch, 2020), 2, 6; Maximilian JL Schormair and Lara M Gerlach, ‘Corporate Remediation of Human Rights Violations: A Restorative Justice Framework’ (2020) 167 *Journal of Business Ethics* 475, 476, 478; Mariëtte van Huijstee and Joseph Wilde-Ramsing, ‘Remedy Is the Reason: Non-Judicial Grievance Mechanisms and Access to Remedy’, in *Research Handbook on Human Rights and Business*, ed. Surya Deva and David Birchall (Edward Elgar, 2020), 488; UN Working Group on Business and Human Rights, ‘UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights. Raising the Ambition - Increasing the Pace’ (United Nations, 2021), 30.

⁴³⁸ UN Human Rights Council, ‘Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse through Non-State-Based Grievance Mechanisms. Report of the United Nations High Commissioner for Human Rights’, 19 May 2020, para. 7.

responds to their needs.⁴³⁹

Non-judicial grievance mechanisms, as envisaged by the Remedy Pillar of the UNGPs, could in theory address this limitation. Tools such as separate channels or hotlines for workers to report abuses and seek redress, in principle, allow rights-holders to raise concerns directly with companies, and can serve as a starting point for interaction, in contrast to the one-sided, top-down approach of audits and CAPs.⁴⁴⁰ In most cases, however, the interaction between rights-holders and these types of grievance mechanisms in global supply chains is limited to submitting a complaint. Rather than being actively involved in the process, rights-holders are merely, and not always, informed of its outcome, with companies unilaterally deciding on how complaints should be resolved – but not necessarily including remedy for harmed workers.⁴⁴¹ Furthermore, when dialogue-based processes do occur, they are often a mere formality, failing to address power imbalances between workers and their employers. Instead of being inclusive of workers as key stakeholders in determining what actions, including remedy, are appropriate and adequate, they adopt 'solutions' that are convenient for themselves but display a patronising approach in relation to impacted workers.⁴⁴² As such, they are also often structurally unable to provide effective remedy for the harm.

As noted above, harmed rights-holders have a right to an effective remedy. To be effective, remedy needs to respond to the needs, priorities and expectations of the rights-holders affected by the harm. This has been recognised and highlighted by human rights bodies as well

⁴³⁹ See, e.g., D Pruett, 'Looking for a Quick Fix - How Weak Social Auditing Is Keeping Workers in Sweatshops' (Clean Clothes Campaign, 2005), 81; Opi Outhwaite and Olga Martin-Ortega, 'Worker-Driven Monitoring – Redefining Supply Chain Monitoring to Improve Labour Rights in Global Supply Chains', *Competition & Change* 23, no. 4 (August 2019): 387; Juliane Reinecke and Jimmy Donaghey, 'Political CSR at the Coalface – The Roles and Contradictions of Multinational Corporations in Developing Workplace Dialogue', *Journal of Management Studies* 58, (2021): 458; Genevieve LeBaron, Jane Lister and Peter Dauvergne, 'Governing Global Supply Chain Sustainability through the Ethical Audit Regime' (2017) 14 *Globalizations* 958, 969; Sarosh Kuruvilla & Chunyun Li (2021) 'Freedom of Association and Collective Bargaining in Global Supply Chains: A Research Agenda' 57 *Journal of Supply Chain Management* 43, 52.

⁴⁴⁰ Caroline Rees, 'Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders' (Corporate Social Responsibility Initiative, John F Kennedy School of Government, Harvard University 2008), 5; Ford and Nolan, 'Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains', 36, 38; Axel Marx, 'Public Procurement and Human Rights: Current Role and Potential of Voluntary Sustainability Standards' in Olga Martin-Ortega and Claire Methven O'Brien (eds), *Public procurement and human rights: opportunities, risks and dilemmas for the state as buyer* (Edward Elgar 2019), 139.

⁴⁴¹ Jessica Champagne, 'From Public Relations to Enforceable Agreements: The Bangladesh Accord as a Model for Supply Chain Accountability' in D Brinks, J Dehm, K Engle and K Taylor (eds) *Power, Participation, and Private Regulatory Initiatives: Human Rights Under Supply Chain Capitalism* (University of Pennsylvania Press 2021), 159; Sabrina Zajak (2017) 'Channels for Workers' Voice in the Transnational Governance of Labour Rights?' 8 *Global Policy* 530, 534.

⁴⁴² These issues have been observed by several scholarly reports, including: Jem Bendell, 'In Whose Name? The Accountability of Corporate Social Responsibility' (2005) 15 *Development in Practice* 3/4; The Human Rights Clinic at Columbia Law School and The International Human Rights Clinic at Harvard Law School, 'Righting Wrongs?: Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned', November 2015, 45; Joanne Bauer et al., 'What Is Remedy for Corporate Human Rights Abuses? Listening to Community Voices: A Field Report' (New York: School of International and Public Affairs Columbia University, December 2015), 4; Schormair and Gerlach, 'Corporate Remediation of Human Rights Violations', 488.

as scholars and practitioners.⁴⁴³ Rights-holders, being those directly affected by the harm, are the most important stakeholders in identifying the most effective means of remedying such harm.⁴⁴⁴ Treating rights-holders as ‘passive recipients’ of remedy and any other actions aiming at an improvement of their working conditions short of remedy, on the other hand, risks perpetuating their lack of control and subordination, and undermines the effectiveness and legitimacy of these efforts.⁴⁴⁵ A system change is therefore needed to ensure that actions to address human and labour rights harm in global supply chains are systematically approached through a remedy lens and the perspective of rights-holders affected by the business harm.

3. Worker-driven models

Meaningfully engaging workers on workplace issues and the decisions that affect their lives, traditionally through democratic and independent trade unions, is crucial to improve labour standards and working conditions. It can also boost performance and contribute to organisational growth.⁴⁴⁶ Employee, or worker voice, is a concept analysed by several different scholarly disciplines, including human resource management, organisational behaviour and industrial relations. Although definitions may vary depending on the field, it can be broadly described ‘the ways and means through which employees attempt to have a say, formally and/or informally, collectively and/or individually, potentially to influence organizational affairs relating to issues

⁴⁴³ See, e.g. Knuckey and Jenkin, ‘Company-Created Remedy Mechanisms for Serious Human Rights Abuses’, 806; Cordula Droege, Sandra Krahenmann, and Livio Zilli, *The Right to a Remedy and Reparation for Gross Human Rights Violations, A Practitioners’ Guide, Revised Edition* (International Commission of Jurists, 2018), 244; Katarina Schwarz and Jing Geng, ‘Reasserting Agency: Procedural Justice, Victim-Centricity, and the Right to Remedy for Survivors of Slavery and Related Exploitation’, *Journal of Modern Slavery*, Research Unchained, 4, no. 2 (1 December 2018): 99-100; UN Human Rights Council, ‘Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse through Non-State-Based Grievance Mechanisms. Report of the United Nations High Commissioner for Human Rights’, para. 11 and Policy Objective 12.2.

⁴⁴⁴ Pruett, ‘Looking for a Quick Fix’, 79; Björn Skorpen Claeson, ‘Making Rights Effective in Public Procurement Supply Chains: Lessons from the Electronics Sector’ in Olga Martin-Ortega and Claire Methven O’Brien (eds), *Public procurement and human rights: opportunities, risks and dilemmas for the state as buyer* (Edward Elgar 2019) 204; Outhwaite and Martin-Ortega, ‘Worker-Driven Monitoring’, 385; Reinecke and Donaghey, ‘Towards Worker-Driven Supply Chain Governance’, 24; Jessica L. Decker Sparks et al., ‘Worker-Less Social Responsibility: How the Proliferation of Voluntary Labour Governance Tools in Seafood Marginalise the Workers They Claim to Protect’, *Marine Policy* 139 (1 May 2022): 8.

⁴⁴⁵ Carlton Mark Waterhouse, ‘The Good, the Bad, and the Ugly: Moral Agency and the Role of Victims in Reparations Programs’, *University of Pennsylvania Journal of International Law* 31, no. 1 (2009): 257–58; Bauer et al., ‘What Is Remedy for Corporate Human Rights Abuses? Listening to Community Voices’, 30.

⁴⁴⁶ See e.g. Mark Anner (2012) ‘Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains’ 40 *Politics & Society* 609, 632; Kelly Pike (2020) ‘Voice in Supply Chains: Does the Better Work Program Lead to Improvements in Labor Standards Compliance?’ 73 *ILR Review* 913, 913; Fabiola Mieres & Siobhán McGrath (2021) ‘Ripe to be heard: Worker voice in the Fair Food Program’ 160 *International Labour Review* 631, 634; Sarosh Kuruvilla & Chunyun Li (2021) ‘Freedom of Association and Collective Bargaining in Global Supply Chains: A Research Agenda’ 57 *Journal of Supply Chain Management* 43, 44, 47; ILO, ‘International Labour Standards on Freedom of association’, available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association/lang--en/index.htm> (accessed 14 December 2023); ILO (2012) ‘Weakening collective bargaining hurts recovery’, available at: www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_189517/lang--en/index.htm (accessed 14 December 2023).

that affect their work, their interests, and the interests of managers and owners'.⁴⁴⁷ Globally, however, freedom of association and collective bargaining – the rights underlying worker voice and worker engagement – are not enforced, or even suppressed, with workers being left with little to no power to exercise their voice.⁴⁴⁸ Instead, as also argued above, CSR tools usually treat workers as 'passive objects of regulation'.⁴⁴⁹

Against the backdrop of flawed and ineffective audits, 'worker voice' tools have proliferated, ranging from technology-enabled surveys to support centres and 'participation committees'. Some of them are aimed at triangulating information from social audits, and some are presented as grievance mechanisms and tools – using third parties to elicit complaints from workers. These tools, implemented alongside more traditional monitoring tools such as social auditing, claim to adopt a 'worker-centred' approach and emphasise the need to include workers' perspectives.⁴⁵⁰ As argued by Kougiannou and Mendonça, however, the existence of similar structures and tools for worker voice does not automatically guarantee their uptake and effectiveness.⁴⁵¹ In fact, it has widely been noticed that these tools are for the most part funded and managed by public-facing brands and multinational. Businesses decide when and to what extent to engage workers and their representatives; they set the scope of the engagement, including which issues are included and which are not (with wages and trade union rights often excluded). They have a high degree of discretion in how to interpret any findings, and the recommendations on actions to take highly dependent on the quality and mandate of those managing these tools.⁴⁵² They do not address the power imbalances that affect global supply chains and harm workers, but, as another top-down approach, are instead often seen as

⁴⁴⁷ Adrian Wilkinson, Tony Dundon, Jimmy Donaghey & Richard B Freeman, 'Employee voice: bridging new terrains and disciplinary boundaries' in A Wilkinson, T Dundon, J Donaghey & RB Freeman (eds) *Handbook of Research on Employee Voice* (Edward Elgar 2020), 5.

⁴⁴⁸ Pike (2020) 'Voice in Supply Chains' 916; Kurivilla & Li (2021) 'Freedom of Association and Collective Bargaining in Global Supply Chains' 47; Mieres & McGrath (2021) 'Ripe to be heard' 635; ITUC, *2023 ITUC Global Rights Index: The world's worst countries for workers*, available at: https://www.ituc-csi.org/IMG/pdf/2023_ituc_global_rights_index_en-v2.pdf (accessed 14 December 2023).

⁴⁴⁹ Niklas Egels-Zandén & Jeroen Merk (2014) 'Private Regulation and Trade Union Rights: Why Codes of Conduct Have Limited Impact on Trade Union Rights' 123 *Journal of Business Ethics* 461, 470.

⁴⁵⁰ Andy Shein, 'Worker Voice Without Worker Agency Fails Seafood Workers', *International Labor Rights Forum* (blog), 4 May 2018, <https://laborrights.org/blog/201805/worker-voice-without-worker-agency-fails-seafood-workers> (accessed 2 July 2023); Penelope Kyritsis, Genevieve LeBaron, and Mark Anner, 'New Buzzword, Same Problem: How "worker Voice" Initiatives Are Perpetuating the Shortcomings of Traditional Social Auditing', *Business & Human Rights Resource Centre* (blog), 12 March 2019, <https://www.business-humanrights.org/en/blog/new-buzzword-same-problem-how-worker-voice-initiatives-are-perpetuating-the-shortcomings-of-traditional-social-auditing/> (accessed 2 July 2023); Kuruvilla & Li (2021) 'Freedom of Association and Collective Bargaining in Global Supply Chains' 53.

⁴⁵¹ Nadia K Kougiannou & Pedro Mendonça (2021) 'Breaking the Managerial Silencing of Worker Voice in Platform Capitalism: The Rise of a Food Courier Network' 32 *British Journal of Management* 744, 746.

⁴⁵² Zajak (2017) 'Channels for Workers' Voice in the Transnational Governance of Labour Rights?' 531, 535-538; Laurie Berg, Bassina Farbenblum & Angela Kintominas (2020) 'Addressing Exploitation in Supply Chains: Is technology a game changer for worker voice?' 14 *Anti-Trafficking Review* 47, 57, 61;

legitimising them further.⁴⁵³

The current landscape, therefore, calls for an approach to improving working conditions that goes beyond superficial tick-boxing, and instead prioritises substantive engagement with workers. This is especially needed in the context of remedy, where meaningful participation of rights-holders is paramount to achieving effective outcomes. As stated by Kyritsis et al, ‘[u]ltimately, any initiative purporting to empower workers through worker voice is only as effective as its ability and willingness to disrupt power relations within global supply chains.’⁴⁵⁴ While several guidance documents on remedy are already available,⁴⁵⁵ however, none fully and systematically reflects the need to put rights-holders at the centre at every step of the way, especially in a manner which acknowledges the power asymmetries that currently favour the interests of company management in global supply chains.

Against this backdrop, emerging initiatives are seeking to promote the role and agency of workers in global supply chains governance overall, as well as remedy in particular, facilitated by trade unions as well as other forms of legitimate worker representation.⁴⁵⁶ The UN Working Group on Business and Human Rights has also highlighted the need for rights-holders to assume a leading role in remedy, and pointed to these initiatives as a solution to the shortcomings of current practices in global supply chains.⁴⁵⁷

4. Electronics Watch

The practice of Electronics Watch provides an example of such initiatives which prioritise worker engagement in the identification and remedy of abuses, while also addressing the power imbalances in global supply chains, needed to make worker-driven remedy a reality. Since its launch in 2015, the organisation has been guided by workers’ rights and priorities to improve

⁴⁵³ Berg, Farbenblum & Kintominas (2020) ‘Addressing Exploitation in Supply Chains’ 62-66; Shein, ‘Worker Voice Without Worker Agency Fails Seafood Workers’; Kyritsis, LeBaron, and Anner, ‘New Buzzword, Same Problem’; For a detailed analysis of the ‘root causes’ of forced labour in global supply chains, see LeBaron, ‘The Role of Supply Chains in the Global Business of Forced Labour’, 29–32; Outhwaite and Martin-Ortega, ‘Worker-Driven Monitoring – Redefining Supply Chain Monitoring to Improve Labour Rights in Global Supply Chains’, 385.

⁴⁵⁴ Kyritsis, LeBaron, and Anner, ‘New Buzzword, Same Problem’.

⁴⁵⁵ E.g. Cindy Berman, Ben Rutledge, and Samir Goswami. Access to remedy - practical guidance for companies, 5 (Ethical Trading Initiative, 2019), https://www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf (accessed 2 July 2023).; Walk Free and the Human Rights Resource and Energy Collaborative. Modern Slavery Response and Remedy Framework, (2022), <https://cdn.walkfree.org/content/uploads/2022/07/12132831/Walk-Free-Response-and-Remedy-Framework-1.pdf> (accessed 2 July 2023).

⁴⁵⁶ E.g. Greg Asbed and Steve Hitov, ‘Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility’, *Wake Forest Law Review* 52 (2017): 497–531; Outhwaite and Martin-Ortega, ‘Worker-Driven Monitoring’, 385; Claeson, ‘Making Rights Effective in Public Procurement Supply Chains; Gerardo Reyes Chavez, ‘Awareness, Analysis and Action: A Rights Holder Perspective on Building the Fair Food Movement and the Way Forward for Worker-Driven Social Responsibility’, *Business and Human Rights Journal*, 2 February 2023, 1–5.

⁴⁵⁷ UN Working Group on Business and Human Rights, ‘UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights. Raising the Ambition - Increasing the Pace’, 31; UN Human Rights Council, ‘Guiding Principles on Business and Human Rights at 10: Taking Stock of the First Decade’, 22 April 2021, para. 94.

working conditions in electronics production regions, where abuse is rife.⁴⁵⁸ What distinguishes Electronics Watch from many other organisations is the fact that it focuses on the 'top-down' leverage that public buyers can exert over private sector suppliers through their purchasing practices, and works 'bottom-up' through local monitoring organisations to support workers when they are harmed by commercial activities.

To do so, it brings together civil society monitors in 14 production countries and more than 1500 public sector organisations in 11 countries in Europe and Australia.⁴⁵⁹ Its impact model is based on three pillars: first, public buyers (that affiliate to Electronics Watch) drive change top-down through their procurement processes, which include tendering, contracting, engaging with their suppliers on disclosure of the supply chain and human rights due diligence. Second, local monitoring partners empower and provide support to workers in the supply chains of public buyers, including in mines and manufacturing factories linked to large electronics brands; and third, Electronics Watch engages with industry on behalf of affiliated public buyers and workers – to provide remedy for abuse where it is found, and bring about improvements.

Crucial for the operations of Electronics Watch is the power of public procurement, namely the process by which a public authority acquires goods, works and services for public use of citizens, using tax-payers' money.⁴⁶⁰ Due to the volume of its purchasing and the length of its contracts, public authorities have been referred to as 'mega consumers' who hold significant leverage over their supply chains.⁴⁶¹ Electronics Watch supports public buyers – who join the organisation as 'affiliates' – to procure goods and services in a way that is in line with their commitments to respect and uphold human and labour rights standards in their supply chains. It facilitates collaboration between public buyers to amplify their leverage and maximise the impact of socially responsible public procurement, for example by holding suppliers accountable in case of violations.⁴⁶² By leveraging the power of public sector buyers, Electronics Watch thus aims to advance more responsive and accountable global supply chains in which workers are recognised as critical stakeholders.⁴⁶³

At the same time, Electronics Watch challenges the widespread top-down approaches to

⁴⁵⁸ Electronics Watch, 'Vision and Mission', https://electronicswatch.org/en/vision-and-mission_2548021 (accessed 16 June 2023).

⁴⁵⁹ Electronics Watch, 'Affiliates', https://electronicswatch.org/en/affiliates_2221327 (accessed 16 June 2023).

⁴⁶⁰ Sue Arrowsmith, John Linarelli, and Don Jr Wallace, 'Introduction', in *Regulating Public Procurement: National and International Perspectives* (Kluwer Law International, 2000), 6; Sue Arrowsmith et al., *Public Procurement Regulation: An Introduction*, ed. Sue Arrowsmith (University of Nottingham, 2011), 1; Claire Methven O'Brien and Olga Martin-Ortega, 'Human Rights and Public Procurement of Goods and Services', in *Research Handbook on Human Rights and Business*, ed. Surya Deva and David Birchall (Edward Elgar, 2020), 247.

⁴⁶¹ Olga Martin-Ortega and Claire Methven O'Brien, 'Advancing respect for labour rights globally through public procurement' 5 *Politics and Governance* 69, 69.

⁴⁶² Martin-Ortega, 'Public Procurement as a Tool for the Protection and Promotion of Human Rights', 84; Claeson, 'Making Rights Effective in Public Procurement Supply Chains: Lessons from the Electronics Sector', 193; Claire Methven O'Brien and Olga Martin-Ortega, 'Human Rights and Public Procurement of Goods and Services', in *Research Handbook on Human Rights and Business*, ed. Surya Deva and David Birchall (Edward Elgar, 2020), 264.

⁴⁶³ Jenny Chan and others, 'After the Foxconn Suicides in China: A Roundtable on Labor, the State and Civil Society in Global Electronics' (2022) 48 *Critical Sociology* 211, 219.

identifying violations such as audits, and has developed a bottom-up, *worker-driven* monitoring methodology instead. This model emphasises the active role of workers, who are present on-site every day, and therefore know about their own working conditions, can identify challenges and how to solve them, as well as verify the implementation and effectiveness of corrective measures. To do so, the organisation works with a network of local workers' rights and civil society organisations in production countries, who have a deep understanding of the context – including country, industry and factory dynamics, local labour laws and industry-wide practices – and who have established trusted relationships with workers and seek to empower them to claim their own rights.⁴⁶⁴ These monitoring partners meet with workers off-site - away from their employers - and spend a long time building trust with workers in order to create a safe space for them to share their concerns and grievances without fear of retribution. They assure workers that the information will be kept confidential and endeavour to ensure that there are no negative consequences for reporting a grievance. Workers will have a choice and can exercise their decision-making authority in determining whether a case should be brought before an employer, and whether a grievance will be investigated further to determine what rights violation has been committed and what remedy will be sought. It sometimes takes months before vulnerable workers feel safe enough to speak openly about their concerns. In this way, Electronics Watch's worker-centred human rights due diligence approach offers specialised insight and access to evidence based on testimonies from workers themselves. This offers a very different approach to most ESG risk-based approaches that are often supported and managed by businesses.

Grievances are independently investigated and corroborated using a range of means, including off-site worker interviews, interviews with factory management and supervisors, and a review of relevant factory documents. Where possible, in consultation with affected workers, reports are drafted that set out the facts (with corroborated evidence) and provide recommendations. The recommendations include a proposed set of corrective actions for factory management and, as necessary, specific proposals for remedy of rights violations. Ideally, the identified violations will be addressed through collaboration between management, workers and their representatives, relevant suppliers and brands. In practice, as already noted for broader global supply chain dynamics, this is rare. Instead, in most cases, Electronics Watch engages with industry on behalf of those workers as well as public buyers, using leverage based on their contracts with suppliers. Wherever possible, Electronics Watch seeks to involve trade unions or other independent, democratically elected workers organisations to improve terms and conditions of work in the long-term. At the same time, Electronics Watch also supports its public buyers affiliates to raise issues with their suppliers from their end of the supply chain, sometimes by facilitating joint meetings between them.⁴⁶⁵

While the process initiated by Electronics Watch through worker-driven monitoring includes a focus on remedy as well as wider worker engagement than the norm, several challenges remain. Overall, practice in the industry has remained top-down, with limited worker participation and limited understanding of what remedy is and what it should entail. This is

⁴⁶⁴ Martin-Ortega, 'Public Procurement as a Tool for the Protection and Promotion of Human Rights', 92; Claeson, 'Making Rights Effective in Public Procurement Supply Chains: Lessons from the Electronics Sector', 193.

⁴⁶⁵ Martin-Ortega, 'Public Procurement as a Tool for the Protection and Promotion of Human Rights' 94.

evident from the following two examples set in South-East Asia – in Indonesia and Malaysia respectively – where a significant proportion of electronics manufacturing takes place.⁴⁶⁶

In 2018, Electronics Watch's monitoring partners identified several issues in a factory where products being procured by affiliated public buyers were manufactured. It took a long time to get workers' approval to report these issues as they feared losing their jobs or being punished for raising concerns. The report by the monitoring partners cited exposure to harmful chemicals, a prevalence of contract/temporary workers, excessive production quotas, verbal abuse and evidence of workers being instructed on how to respond to auditors' questions during social audits – factors that may suggest the existence of modern slavery.⁴⁶⁷ Electronics Watch engaged with the company on these issues between 2018 and 2020. The actions taken by the company following the report demonstrate the clear deficiencies of an approach exclusively based on CAPs. Responding to the issue of occupational health and safety hazards, the company commissioned an audit report that confirmed the presence of a toxic chemical. This was addressed fairly quickly: the chemical was replaced with safer alternative, and the ventilation system was improved. However, the approach by the company remained top-down and did not involve the workers, their legitimate representatives or trade unions at any stage of the process. This, in turn, meant that the needs, priorities and expectations of the workers were not included in the company's response. Importantly, no remedy was provided for harm incurred to the workers, for example medical treatment for workers who had become sick or apologies for the abuse.

A second case exemplifies how, even when some steps towards remedy are taken by companies, this is often partial and insufficient, especially if the views of the concerned workers are not taken into consideration. In a recent – and still ongoing – case, Electronics Watch investigated a case of a migrant worker who, together with other workers, had been charged excessive recruitment fees resulting in debt bondage and had been deceived about their contract terms. While the harm was initially raised by several workers in an informal manner, the worker in question assumed the leadership in raising the grievance, due to their better command of English, and had a verbal altercation with the recruitment agent and the human resources staff of the company. As a consequence for speaking up, their contract was terminated without due process, and they were asked to leave. Since the worker refused to do so, emphasising that they needed the job to pay back the loan incurred for paying recruitment fees, they were forcibly removed by the factory by representatives of the recruitment agency, who also sequestered their phone and collected all their belongings. They were later locked in another location overnight, without access to their phone. The following morning, the worker was deported to their country of origin, with the air fare deducted from their wages, their contract terminated and their visa revoked.

Having been informed of what had happened, Electronics Watch led the engagement with the

⁴⁶⁶ These examples have been provided by Electronics Watch staff. References to the countries of origin of workers as well as other details which may identify them have been removed to preserve confidentiality of the processes and ensure worker safety.

⁴⁶⁷ E.g. International Labour Organization, *ILO Indicators of Forced Labour*, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf (accessed 5 December 2023).

relevant industry body, which agreed to pay off the debt accumulated from the recruitment fees and to compensate the worker for six months of their wages. Following initial resistance, the factory also began cooperating in a corrective action process to address various significant issues identified on site, including the absence of an effective grievance system.

However, several issues are outstanding at the time of writing. The provision of compensation to the worker – the only remedial measure taken to date – was incomplete, with part being deducted because of alleged charges throughout the process, including bank fees. The amount was decided in a top-down manner and, whilst there was consultation as part of the grievance resolution, there was no two-way dialogue with the worker. No action has been taken to provide remedy for the other harms caused to the worker, including any potential trauma as a result of physical and mental abuse. Additionally, the worker does not have the right or ability to reclaim their job – their visa was permanently revoked and the two-year contract they signed is null and void. They are left unemployed, with fewer prospects of finding a job in their country of origin, where job opportunities are scarce, and unable to access a job in the same foreign country, having lost his right to enter legally. If meaningful engagement with the worker had taken place, these issues may have been addressed at the same time as compensation. On the other hand, the other workers also experiencing debt bondage and who had been lied to about their employment have to date received no remedy at all. At this time, Electronics Watch continues engaging with the factory and advocating for remedy for all those harmed, combining buyer pressure with active involvement of workers on the ground.⁴⁶⁸ Since decision-making ultimately sits with the business, achieving effective remedy in the context of great power imbalances requires the involvement and support of several actors in the supply chain, and remains a lengthy, challenging process.

These are but two of the instances where Electronics Watch has faced resistance to the provision of effective remedy for the harm, as well as the related need for meaningful engagement with workers. This experience confirms arguments presented above about global supply chains being characterised by top-down approaches to address human and labour rights abuses, where the main focus is on factory compliance rather than remedy, and workers are marginal to the process. It is unlikely that this approach will change spontaneously – more likely, pressures from other global supply chain stakeholders will be needed.⁴⁶⁹ Industry engagement pursued through this route is showing some limited signs of improvement – such as in the second case above – but more is needed to ensure this is done in a coherent, structured manner. It is precisely here that the Principles for Worker-Driven Remedy fit.

5. Principles for Worker-Driven Remedy

The Principles for Worker-Driven Remedy represent the beginning of a process by Electronics Watch to develop a new, coherent framework to systematically push to change the narrative on remedy from corrective action to rights-based remedy for human rights abuses. They

⁴⁶⁸ More information on this case can be read at Electronics Watch, ‘Annual Report 2022’, p. 10, available at https://electronicswatch.org/electronics-watch-annual-report-2022_2626587.pdf.

⁴⁶⁹ Reinecke and Donaghey, ‘Towards Worker-Driven Supply Chain Governance’.

provide a foundation stone for Electronics Watch's worker-driven remediation methodology, which will complement its worker-driven monitoring methodology.⁴⁷⁰ Electronics Watch will support its public buyer affiliates and monitoring partners in implementing them in their operations.

The Principles are based on a briefing paper on remedy commissioned by Electronics Watch.⁴⁷¹ They have been developed with input from Electronics Watch's key stakeholders – trade unions and worker representatives, labour rights organisations and importantly, public buyers. A series of consultations have ensured that key stakeholders' priorities are adequately reflected and integrated within the Principles. There have been several workshops to inform guidance on how the Principles can be implemented in practice. The Principles will be reviewed annually and revisions made, as needed as new issues arise and best practice emerges. The current version, updated in October 2023, can be found in Annex 1.

The Principles aim to change the current approach to addressing human and labour rights in global supply chains and introduce worker-driven remedy. They do so by critically analysing and addressing three main issues with current practice evidenced by this article: the focus on factory compliance rather than workers that have been harmed, power imbalances that allow a prioritisation of business interests, and the tokenistic inclusion of workers. They do so by approaching abuses and remedy from a human rights perspective, acknowledging and addressing power imbalances with the support of other stakeholders, and ensuring substantive worker engagement and direct agency in remedy.

1) Approaching abuses and remedy from a human rights perspective

The Principles ground remedy in international human rights law (IHRL), where remedy is a right for those that have been harmed, and a duty and responsibility for those who cause, contribute to, or are linked to the abuse – including both states and businesses (Principle 1).⁴⁷² As such, they move away from technical approaches adopted by CSR and tools like CAPs, which predominantly address risks to businesses and factory compliance. Instead, the Principles focus on most important stakeholders: the rights-holders affected by business-related harm, for which remedy is required (Principle 2).

The right to an effective remedy consists of two components, procedural and substantive, which are reflected in the structure of the Principles. Access to remedy requires mechanisms for reporting and deciding on claims of abuse (Principles 6-8). If it is established that abuse has

⁴⁷⁰ Electronics Watch, 'Toward Worker-Driven Remedy', 12 December 2022, https://electronicswatch.org/en/toward-worker-driven-remedy_2618821; Martina Trusgnach and Olga Martin-Ortega, 'Remedy for Human Rights Violations in Global Supply Chains: Essential Elements' (University of Greenwich 2022) BHRE Research Series, Policy Paper No 7.

⁴⁷¹ Martina Trusgnach and Olga Martin-Ortega, 'Remedy for Human Rights Violations in Global Supply Chains: Essential Elements' (BHRE Research Series n.7, July 2022).

⁴⁷² Olga Martin-Ortega et al., 'Towards a Business, Human Rights and the Environment Framework', *Sustainability* 14, no. 11 (27 May 2022): 3; Olga Martin-Ortega, 'Transparency and Human Rights in Global Supply Chains: From Corporate-Led Disclosure to a Right to Know', *Research Handbook on Global Governance, Business and Human Rights*, 15 March 2022, 118.

taken place, reparation measures must be taken to remedy any verified claim of abuse (Principles 9-10).⁴⁷³ Both the procedural access to remedy and substantive reparations are essential for upholding the right to an effective remedy. Viewing remedy through an IHRL lens, therefore, underscores the importance of not only establishing mechanisms for reporting and deciding on abuse allegations, but also ensuring that appropriate measures are taken to provide effective reparations to those harmed. The absence of effective reparations would render the obligation to provide an effective remedy unfulfilled, regardless of the remedial mechanisms in place.⁴⁷⁴ This is especially important in the context of business-related abuse in global supply chains, where, despite a proliferation of grievance mechanisms, little attention has been the outcomes achieved through them.⁴⁷⁵

2) Acknowledging and addressing power imbalances

Already in their Introduction, the Principles acknowledge the power imbalances between company management and workers, which can create significant barriers to worker-driven remedy. As argued earlier in this article, it is unlikely that changes to this status quo will happen on their own. Instead, the Principles recognise the importance of other stakeholders in global supply chains, including public buyers and civil society organisations – to bring about improvements and support the achievement of worker-driven remedy (Introduction, Principle 8). Additionally, workers and their representatives face a number of barriers in participating in and achieving remedy, which exacerbate the power imbalances in favour of companies. Firstly, as previously discussed, the processes adopted by companies, including audits, CAPs and grievance mechanisms, often do not include workers and their representatives, nor do they inform them on their developments. To address this, Principle 5 requires any remedy process and outcomes to be transparent, with all relevant information accessible to the stakeholders involved. Principle 6, on the other hand, covers additional barriers that workers and their representatives may face in accessing remedy, and requires them to be addressed to ensure that their engagement is meaningful.

3) Ensuring substantive worker engagement and direct agency in remedy

The Principles aim to guide the planning, implementation and evaluation of remedy to ensure that it is truly worker-driven, and to prevent the superficial and tokenistic worker engagement that often takes place in global supply chain dynamics. A worker-driven approach to remedy calls for a more systematic and comprehensive inclusion of rights-holders throughout the remedy process, at every stage, with their needs, priorities and expectations given primacy over

⁴⁷³ Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press 2015), 16–17.

⁴⁷⁴ UN Human Rights Committee, ‘General Comment No. 31 [80]. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 16.

⁴⁷⁵ Benjamin Grama, ‘Company-Administered Grievance Processes for External Stakeholders: A Means for Effective Remedy, Community Relations, or Private Power?’, *Wisconsin International Law Journal* 39, no. 1 (21 January 2022): 136.

the interests of company management. It requires systemic changes to the way in which current systems are designed, implemented and enforced – for example by removing the barriers that prevent meaningful worker engagement, ensuring that workers are aware of their rights, are consulted about the remedy they want, and about their levels of satisfaction at the end of the remediation process.⁴⁷⁶ To do so, the Principles set out worker engagement at every step of the way. While recognising that each case is different, context-specific and must be sensitively handled, the Principles should be read as a whole: each is relevant. A 'pick-and-mix' selection should be avoided.

To ensure effective remedy which reflects the needs, expectations and perspectives of those affected by the harm, trade unions, worker representatives and human rights defenders are often crucial. These are reflected throughout the text of the Principles, and explored more in depth in Principle 3, integrating inputs from trade union stakeholders.

While Electronics Watch primarily operates within electronics supply chains, the Principles do not explicitly focus on electronics supply chains. Instead, they are envisioned to have broader applicability across various industries. Consequently, further research will be required to examine whether their implementation varies not only based on country-specific labour laws but also across different industries and sectors. An exploration of the potential industry-specific nuances in applying the Principles will contribute to a more comprehensive understanding of how to effectively address human and labour rights abuses and empower workers in diverse global supply chains.

6. Conclusion

This article sheds light on the pervasive nature of abuse within global supply chains and the shortcomings of existing remedial measures. The Principles for Worker-Driven Remedy emerge as a significant advancement in this context, advocating for a fundamental shift in the conceptualisation and management of supply chain relations, towards a more equitable and empowering approach to remedy. By being based on IHRL, addressing power imbalances and ensuring workers' direct agency in remedy, they provide a promising way to address the systemic issues currently affecting global supply chains.

However, their practical implementation remain a critical next step. It will be necessary to assess their true impact in ensuring that workers, their needs, expectations and perspectives are fully embedded in the remedy process. Operational guidelines must be developed to help public buyers affiliated to Electronics Watch, as well as local monitoring partners in applying them in their daily work.

It will be challenging but important to gather credible evidence of the tangible impact of these Principles on worker empowerment in practice, and how the provision of remedy will change following their use. Sensitive and systematic methods of collecting qualitative feedback from workers and their representatives will be crucial, alongside evidence of tangible outcomes.

The transformative approach adopted by the Principles, if widely adopted, could shift approaches on remedy from case-by-case grievances that take a long time to resolve to more

⁴⁷⁶ Outhwaite and Martin-Ortega, 379.

systemic, sustainable, equitable, and inclusive approaches that prevent the incidence of modern slavery, and put respect for the rights and dignity of all workers at the centre of human rights due diligence. Collaboration with all relevant global supply chain stakeholders, can go a long way to building a future where human and labour rights are respected and protected throughout global supply chains, and fostering a just and sustainable global economy.

8. Annex – Principles for Worker-Driven Remedy

Principles for Worker-Driven Remedy

October 2023



Responsible public
procurement.
Rights of
electronics workers.

Introduction

The Right to an effective remedy is a fundamental international human right, also enshrined in the UN Guiding Principles on Business and Human Rights (UNGPs)⁴⁷⁷, adopted in 2011 (Pillar 3). It received little attention initially, but in the past few years this has started to change. There has been a growing recognition of the importance of rights-holder involvement in remedy. In 2021, the UN Working Group on Business and Human Rights noted the importance of giving rights-holders a leading role in remedy.⁴⁷⁸

We believe that remedy – as well as other practices to identify and address human and labour rights violations in global supply chains – should be *worker-driven*. Because of power imbalances between company management and workers, support by other stakeholders, including public buyers, is often needed to ensure meaningful engagement of workers and prioritisation of their needs, expectations and perspectives.⁴⁷⁹ This is particularly important for vulnerable workers that lack labour law protection, including the right to freedom of association and collective bargaining⁴⁸⁰.

These Principles for Worker-Driven Remedy are based on recent developments in human rights law with reference to the International Labour Organization (ILO) Core Conventions.⁴⁸¹ They have been developed in consultation with trade unions, labour rights organisations, and public buyers.⁴⁸² They aim to provide a guiding framework for public buyers, their suppliers, worker rights organisations and other relevant stakeholders to address harm to workers in supply chains and may be adapted by organisations based on their mandates and key stakeholders. Further explanation about each Principle can be found in Annex I, which offers initial operational considerations.

⁴⁷⁷ [UN Guiding Principles on Business and Human Rights](#)

⁴⁷⁸ UN Working Group on Business and Human Rights, 'UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights. Raising the Ambition - Increasing the Pace' (United Nations 2021) 31; UN Human Rights Council, 'Guiding Principles on Business and Human Rights at 10: Taking Stock of the First Decade' (2021) A/HRC/47/39 para 94.

⁴⁷⁹ This process would include 'meaningful stakeholder engagement', which is a key component of the due diligence process and requires dialogue in good faith, involving input from all key participants before decisions are made. For more information, see "What is 'meaningful stakeholder engagement'?" in [Due Diligence Guidance for Responsible Business Conduct](#) (OECD, 2018).

⁴⁸⁰ See, for example [ILO publication: Migrant workers' rights to freedom of association and collective bargaining](#).

⁴⁸¹ [ILO core labour rights are based on the Declaration of Fundamental Principles and Rights at Work](#).

⁴⁸² The Principles for Worker-Driven Remedy were drafted by the Electronics Watch Working Group on Remedy. They were initially developed at a workshop in Malaysia with a number of stakeholders, and are based on the briefing '[Remedy for Human Rights Violations in Global Supply Chains: Essential Elements](#)' (July 2022) by Martina Trusgnach and Olga Martin-Ortega. They were also developed in the framework of Martina Trusgnach's PhD research at the University of Greenwich. Thanks to IndustriALL, International Trade Union Confederation, International Transport Workers' Federation, UNISON, Center for Development and Integration, Centro de Reflexión y Acción Laboral, Cividep, Periferia Policy and Research Center, Serve the People Association, Tenaganita, and the Electronics Industry Employees Union (Malaysia) for their valuable contributions. These Principles may be used by different stakeholders and will be subject to review and revisions as new insights and lessons emerge.

These Principles do not replace judicial or other civic remedies, nor should they undermine grievance mechanisms contained in collective bargaining agreements (CBAs), although they can be used to assist-trade unions and other legitimate worker representatives in their efforts to strengthen such processes. Engaging in a remedy process and providing reparation in specific cases should not exonerate the businesses responsible for harm from penalties and sanctions as set out in national, regional and international law.

Principles for Worker-Driven Remedy

Worker-driven remedy is based on the following Principles:

- 1. Respect for human rights law**
- 2. Workers at the core**
- 3. Protection and promotion of trade unions, worker representatives and human rights defenders⁴⁸³**
- 4. Timely and urgent action**
- 5. Transparency**
- 6. Removal of barriers to worker participation**
- 7. Worker participation in design and implementation**
- 8. Shared responsibility and meaningful engagement of stakeholders**
- 9. Provision of various reparation measures**
- 10. Inclusion of backward- and forward-looking measures**

Overall, effective remedy requires:

1. Respect for human rights law

Remedy is a right for all those who have suffered harm (rights-holders).⁴⁸⁴ An approach to remedy based on human rights law recognises that it should not be treated as discretionary. Instead, remedy should be provided as an obligation and responsibility by states and businesses that cause, contribute, or are directly linked to the harm (duty bearers) towards rights-holders. Those who buy goods and services from such businesses are also responsible for ensuring remedy for harm caused in the production of goods and provision of services. Remedy comprises two dimensions, namely the process to seek and provide remedy, as well as the substantive reparations that follow – hereinafter referred to as 'remedy processes' and 'remedy outcomes.' Both dimensions need to be satisfied for remedy to be considered effective.

⁴⁸³ Throughout the text, when referring to 'trade unions' these should always be understood as independent, freely chosen and democratic, in line with ILO Conventions 87 and 98. 'Worker representatives' should be understood as freely chosen, democratically elected representatives of independent worker organisations established to represent workers where trade unions cannot represent them.

⁴⁸⁴ The right to an effective remedy is an internationally recognised human right. Among others, it is enshrined in Article 8 of the Universal Declaration of Human Rights and Article 2(3) of the International Covenant on Civil and Political Rights. The legal basis for remedy is summarised in '[Remedy for Human Rights Violations in Global Supply Chains: Essential Elements](#)', University of Greenwich, Business, Human Rights and the Environment Research Group, commissioned by Electronics Watch.

2. Workers at the core

To be effective, remedy should have rights-holders – workers in the supply chain and affected communities – at its core. The determination of appropriate remedy should not be a top-down process. It should be based on the rights of those directly affected by the harm – workers and affected communities – and reflect their needs, expectations, and perspectives. Any decisions about what constitutes appropriate remedy should be facilitated through trade unions and worker representatives, where they exist. Particular attention should be given to vulnerable groups of workers⁴⁸⁵, to ensure their needs, expectations and perspectives, which may be different from those of other workers, are addressed.

3. Protection and promotion of trade unions, worker representatives and human rights defenders

Trade unions are formed by workers to protect and advance their collective rights and interests in the workplace. Independent, freely chosen and democratically elected trade unions, worker representatives and human rights defenders play a crucial role in protecting workers' rights and securing remedy for violations. Specific attention should be given to the harm arising from attacks on them⁴⁸⁶ and remedy should be provided. Dismissals, arrests of worker leaders and union busting⁴⁸⁷ not only violate internationally agreed labour laws, but also make it harder for workers to access remedy and to prevent harm.

4. Timely and urgent action

Remedy should be provided in a timely manner, to ensure it does not escalate and result in further harm. A timeline for remedy should be agreed on by parties involved in the process. Some cases require immediate action to cease the harm, such as those that pose a risk to the life and health of rights-holders (e.g. forced labour, child labour, sexual harassment), as well as attacks against trade unions, worker representatives and human rights defenders.

5. Transparency

Remedy must be transparent. Workers, trade unions, worker representatives and human rights defenders must have access to all relevant information in their own language, in places that are visible, easy to access, and in a format they can understand in order to effectively participate in the remedy process. This includes communication and documentation on how the remedy process is handled and what outcomes are achieved. Relevant information must also be communicated to other stakeholders, including public buyers, to ensure their meaningful engagement where needed.

⁴⁸⁵ Vulnerable workers include migrants, women, racial, ethnic minorities and LGBT+ workers.

⁴⁸⁶ In some cases, threats and harm may also be directed to their family members.

⁴⁸⁷ Union busting is actions taken by employers or states to break and remove a trade union. Such actions may include establishing employer-controlled unions, or 'yellow unions,' in order to secure a non-unionised workforce.

Effective remedy processes require:

6. Removal of barriers to worker participation

Workers, trade unions, worker representatives and human rights defenders face a wide variety of barriers to participating in the process of remedy. Among others, barriers include time and income constraints, fear of retaliation, language, onerous burdens of proof, and the lack of transparency in global supply chains. These barriers must be addressed to ensure that workers, trade unions, worker representatives and human rights defenders can meaningfully participate in the remedy process. They should have access to appropriate advice, expertise, and legal assistance to ensure that they have knowledge of their rights, as well as resources, to participate in remedy. Confidentiality throughout the remedy process should be assured, and where appropriate, the identity of affected workers should not be disclosed. Additional measures should be taken to address added vulnerabilities suffered by workers that are subjected to discrimination on grounds of their identity or status⁴⁸⁸.

7. Worker participation in design and implementation

As appropriate, workers, trade unions, worker representatives and human rights defenders should take part in the design of remedy mechanisms⁴⁸⁹, and may have a formal role in their governance, implementation, and monitoring. Channels must be in place for workers, trade unions, worker representatives and human rights defenders to report on their level of satisfaction with the remedy process and its outcomes. Considerations should be given to scheduling of meetings, particularly for workers and trade union leaders with family or other responsibilities. Where remedy is deemed by them to be unsatisfactory, further actions should be taken to address outstanding issues. Participation of other stakeholders in the design and monitoring of remedy mechanisms should be considered to ensure their meaningful engagement where needed.

8. Shared responsibility and meaningful engagement of stakeholders

All supply chain actors that cause, contribute, or are directly linked to harm are jointly responsible for remedy. These actors include commercial entities and public procurement agencies. Responsibility should not be outsourced to third parties, nor delegated to suppliers. Where human rights abuses occur, each organisation in the supply chain should shoulder an appropriate proportion of responsibility to ensure that remedy is provided. Other stakeholders in global supply chains, such as civil society organisations, governments and investors may also play a valuable role in driving effective remedy. Opportunities for joint action and potential synergies among different stakeholders should be considered, especially where additional leverage is possible.

⁴⁸⁸ See footnote 9.

⁴⁸⁹ Remedy mechanisms based on the UNGPs refer to the various avenues that individuals, groups, and communities affected by business-related human rights abuses can use to seek redress, justice, and reparation. These mechanisms can take various forms, such as judicial and non-judicial mechanisms.

Effective remedy outcomes require:

9. Provision of various reparation measures

The appropriate reparation measures depend on the context and severity of harm. They must be based on the rights and reflect the short and long-term needs, expectations and perspectives of rights holders affected by the harm. They should be co-defined by workers, supported by trade unions, worker representatives and human rights defenders. Reparation measures may include, but are not limited to, compensation, restitution, rehabilitation, satisfaction, including apologies, and guarantees of non-repetition. These should be considered as complementary and cumulative, rather than choices or alternatives to one another.

10. Inclusion of backward-looking and forward-looking measures

Reparation must include both backward-looking and forward-looking measures. These should be defined according to the short and long-term needs, expectations and perspectives of rights holders affected by the harm, supported by trade unions, and worker representatives and human rights defenders. Backward-looking reparations should address immediate harm as well as long-term consequences on workers, including health and safety concerns. Forward-looking reparations should aim to change the conditions or practices that caused the harm to prevent and ensure that similar harms do not arise in the future.

ANNEX I: Further Explanation of the Principles

This Annex details several operational considerations which can support an effective implementation of the Principles.⁴⁹⁰

I. Respect for human rights law

States have obligations to protect human rights. Businesses have the responsibility to respect human rights. Both these duties include providing remedy for harm. As state actors, public buyers also have certain responsibilities towards their supply chain as recognised by the UN Guiding Principles on Business and Human Rights.

All kinds of businesses can cause, contribute, or be directly linked to human rights violations. These include financial organisations and investors, manufacturing businesses, brands, small enterprises, recruitment agencies, and subcontractors.

All rights-holders that are harmed during commercial operations should receive effective remedy. Among others, rights-holders may include workers, their families, and communities, freely chosen worker representatives and trade unionists, and human rights defenders.

Meaningful stakeholder involvement, including by public buyers, is also required to ensure that effective remedy is achieved in practice.

⁴⁹⁰ The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct provides a useful background reference.

2. Workers at the core

Remedy should be driven by the rights-holders affected by the harm. These Principles refer to worker-driven remedy for accessibility of language, and because workers are those most often affected by business-related abuse in global supply chains.

Workers are not homogenous, but may differ based on their age, gender, worker status – including whether they are migrant, temporary, regular, informal, documented or undocumented workers – or because they belong to other vulnerable groups. This necessarily shapes their experiences of harm as well as their needs – both short and long term – expectations and perspectives in terms of remedy. As such, each case and context should be recognised and reflected in remedy efforts.

Particular attention should be given to women workers who are exposed to specific risks and challenges in global supply chains. Gender inequalities and social norms are factors contributing to gender-based violence in the workplace and perpetuating a culture of sexual harassment. Women are also subject to reproductive health harms such as miscarriage and infertility when exposed to toxic chemicals and arduous work when pregnant. Working hours that require women to travel late at night subject women to high risks of sexual abuse, and women with family responsibilities may be subject to dismissal or loss of wages if they cannot take on irregular working shifts or care responsibilities.⁴⁹¹

To tackle these issues and ensure appropriate and tailored remedies, women workers and their representatives should take an active part in the remedy process starting from its design, to establish a safe place and trusted process where women and other vulnerable workers such as those in the LGBT+ community will feel confident to speak up and report gender-based violence, harassment, and other harms.

3. Protection and promotion of trade unions, worker representatives and human rights defenders

Freedom of association and the right to collective bargaining are core 'enabling' labour rights⁴⁹² for workers. Where workers have an independent, trade union, their representatives can raise grievances on behalf of their members and collectively negotiate better terms and conditions, including wages, working hours, health and safety, as well as remedy for rights abuses. Yet in many countries trade unions are not accessible to workers due to strict laws or anti-union policies. Even when unions exist in the country, the ability of workers to join a union or elect representatives could be weakened by union busting or poor labour laws.⁴⁹³ This can particularly affect agency workers, migrant workers and women workers, who are either absent or under-represented in some unions. This under-representation of vulnerable workers must be addressed, as all workers' claims should be treated fairly and equally, in alignment with these Principles. 'Yellow unions', or worker committees established or supported by management,

⁴⁹¹ Care responsibilities may include housework and childcare as well as caring for elderly and disabled family members.

⁴⁹² [ILO core labour rights are based on the Declaration of Fundamental Principles and Rights at Work.](#)

undermine workers' rights. However, where both independent trade unions and genuine worker-organised committees are present, cooperation between the two should be encouraged. Special care should be taken to ensure that worker committees (e.g. established by migrants, women or other groups) do not undermine the functions of recognised unions, where they exist in the same workplace.

4. Timely and urgent action

Abuses are often interconnected and mutually reinforcing. Inadequate wages may lead workers to accept more dangerous tasks or work excessive overtime, and 'minor' harms, when widespread or routinised, may enable 'extreme' ones to take place. For example, exposure to toxic chemicals may not cause illness in the short term but can be life-threatening over an extended period. At the same time, experiences of abuse are not static, and workers may experience different harms at different points in time. For example, contingencies such as illnesses can have a disproportionate effect on workers in already precarious situations and with little to no savings, pushing them into extreme exploitation due to the need to borrow at high interest rates offered by their employers or managers. In this position, managers can gain greater power over the workers, which may lead them to impose even harsher working conditions and lower wages. Businesses sometimes instil fear, weaken resolve, and erode the collective strength of trade unions by dismissing their representatives or leaders. In such cases, where union busting has occurred, remedy measures must include the reinstatement of union leaders as quickly as possible to sustain the investment the union has made in trying to achieve recognition or a collective bargaining agreement.

All harm must be remedied in a timely manner, to ensure it does not escalate and harm workers further. Urgent action is required when there is a risk of gross human rights violations or when unaddressed abuses are likely to severely impact the rights of workers; when violations constitute a criminal offence (e.g., forced labour, child labour, sexual harassment) or when they involve attacks against worker representatives and unions.

A timeline for remedy should be agreed on by all parties involved in the process, which include workers, their freely chosen representatives, including trade unions, and any stakeholder, including public buyers, who is engaged in the process.

5. Transparency

Transparency is necessary to ensure that trade unions or other worker representatives can participate in remedy on equitable terms. It can help ensure accountability by all parties and encourage buyers and employers to resolve issues quickly and satisfactorily before they are escalated, as well as allow external actors to review and scrutinise the remedy process. It will provide other workers with the trust and confidence they need to raise grievances in a timely manner. Relevant information must be communicated to other stakeholders, including public buyers, to ensure their meaningful engagement where needed.

6. Removal of barriers to worker participation

Workers' freely chosen trade unions or other worker representatives can face several different barriers to participation in a remedy process. These must be appropriately addressed to ensure remedy is effective. Below is a non-exhaustive list of measures that should be considered:

- Precautionary measures must be taken to ensure the affected workers are not adversely affected by the remedy process and do not experience further harm, including loss of earnings or time. This includes trade union leaders who work full or part time. Workers and their legitimate representatives must have access to appropriate advice, expertise, and legal assistance free of charge, to ensure that they have knowledge of their rights, capacity and resources to participate in remedy. Access to such advice/assistance should be free-of-charge, with companies / employers / perpetrators bearing the costs (e.g., providing a 'voucher' for independent legal assistance).
- Confidentiality throughout the remedy process should be assured, and where appropriate, the identity of affected workers should not be disclosed. Intimidation and threats of retaliation, including union busting, violence or threats of violence and blacklisting, must be prohibited – for example through non-retaliation policies to cover the entire supply chain – and prohibitions must be enforced. Workers must not be subject to onerous burdens of proof, such as the requirement to provide detailed evidence demonstrating the harm they have suffered, where this is not feasible or will lead to further trauma.
- Safeguarding of women who have suffered sexual harassment and abuse in the workplace, often by their superiors, requires additional measures to keep them safe from further harm, help them deal with trauma and prevent reprisals. Such measures should include psychological support and the provision of safe spaces for women to discuss gender-related rights violations.
- Migrant workers face language barriers, limited knowledge about their rights, and threats arising from their precarious status as immigrants. In many cases they are refused by law the right to form or join an independent trade union, or when they can join, to hold official positions in their chosen trade union. Additional measures must be taken to protect all vulnerable workers that face discrimination and additional risks of abuse and exploitation on grounds of their identity and status, and ensure they have equal access to remedy when they suffer harm.
- Women workers may be subject to more extreme power imbalances due to gender discrimination. They may be subject to verbal and sexual harassment from male managers, threatened and coerced into sex to secure their jobs, hours, or wages. Women are also subject to reproductive health harms such as miscarriage and infertility when exposed to toxic chemicals and arduous work when pregnant. Working hours that require women to travel late at night subject women to high risks of sexual abuse, and women with family responsibilities should not be subject to negative impacts, such as dismissal or loss of wages if they cannot do irregular working shifts.
- Remedy provision should take account of national laws, such as the kafala system and immigration regulations, that result in additional harm to workers, including the criminalisation or forced deportation of workers. Records should be kept to ensure that harmed workers can be traced even when they have returned to their country of origin

or left their workplace, and appropriate measures taken to ensure they receive the remedy to which they are entitled (e.g. in cases of wage theft).

7. Worker participation in design, implementation and follow-up

Workers' freely chosen trade unions or other worker representatives should have a formal role in the entirety of the remedy process, including the design, governance, implementation, and monitoring of remedy mechanisms. They must participate in the negotiations relating to the nature and options for remedy outcomes, to ensure that remedy is based on their rights and reflects their needs, expectations, and perspectives, rather than being predominantly driven by the interests of other stakeholders, such as businesses.

All remedy processes must be monitored independently of the businesses involved in the harm, to verify if effective remedy is implemented in practice, including through social dialogue with trade unions, and take action if the outcomes are unsatisfactory. Trade unions and workers' representatives must have access to the monitoring results and be formally invited to provide their own conclusions and proposals for corrective plans and for future steps.

Grievances may be individual or collective and may affect different groups of workers in different ways. Where collective action is involved for a group of workers, there should be representation of workers that reflect the diversity of the group as described in Principle 2.-

Workers should also have access to a range of grievance mechanisms that are trusted and easily accessible to them.

8. Shared responsibility and meaningful engagement of stakeholders

Global supply chains comprise many different stakeholders, all of which share a responsibility to ensure effective remedy is achieved. This includes those with significant leverage such as buyers (including public buyers), investors and regulators. Poor purchasing practices that squeeze labour costs, lack of accountability and monitoring measures, discriminatory laws and social norms may be directly or indirectly responsible for harm caused. The important role of stakeholders such as civil society organisations and trade unions that represent and seek remedy for vulnerable workers should be recognised.

9. Provision of various reparation measures

In most circumstances, a 'bouquet of remedies' is needed to ensure effective remedy is achieved. The measures necessary in each circumstance will depend on objective as well as subjective factors – the most important of which are the rights, needs, expectations, and perspectives of those affected by the harm.

Any outcome must not be decided on unilaterally by businesses and must be thoroughly justified, reflecting on how it meets the rights, needs, expectations and perspectives of workers affected by the harm. It must not fall below internationally recognised human and labour rights standards.

10. Inclusion of backward- and forward-looking measures

Backward- and forward-looking reparations serve different aims and are both necessary and

mutually reinforcing. Backward-looking measures are often victim-specific measures and are important to acknowledge and minimise the harm suffered. Forward-looking measures include addressing the future needs of those who have already been harmed, as well as preventing future harm. They should aim to promote dialogue and resolution of issues that arise before they escalate, reconciliation between parties involved in the harm. They should prevent future harm, by putting in place necessary policies and systems that ensure compliance and avoid the risk of recurring violations and grievances.

ANNEX 2: Definition of Reparation measures

Restitution entails measures to restore the victim of harm to the state before the violation ('status quo ante') by eliminating the consequences of the violation. This may include, for example, reinstatement of employment or return of property.

Compensation is reparation, often in monetary form, to be provided for a damage which can be economically assessed. It must be fair and proportional to the severity of the violation. Compensation can be awarded not only for physical harm, material damages and loss of earning, but also for lost opportunities (such as employment, education and social benefits), loss of earning potential, and any expense incurred in for assistance (including legal, expert, medical, psychological or social support), and psychological harm. For example, this reparation measure has been awarded for anxiety, distress, isolation, confusion and neglect, abandonment, feelings of injustice, impaired way of life, harassment and humiliation.

Rehabilitation aims to restore the individual's health and reputation after a violation of their human rights. This reparation measure recognises that it may take time for affected rightsholders to recover from the harm suffered, and that medical and psychological care as well as legal and social services may be needed to facilitate such recovery.

Satisfaction can involve a variety of reparative measures to acknowledge the harm that has been done and the role of the perpetrators. For example, measures can include the cessation of the harm, fact finding, public acknowledgement of responsibility, apologies, and sanctions against those responsible. While important, measures of satisfaction are mostly symbolic, and can be perceived as an 'empty gesture' if not accompanied by more concrete actions to actively repair the harm.

Guarantees of non-repetition are structural measures and reforms that aim to change the conditions that led to the violation and prevent it from reoccurring. For example, they can include the promotion and enforcement of codes of conduct and ethical norms, and the reform of laws, institutions and practices which have been instrumental to causing the harm. It should be noted that this list of measures provided by human rights instruments is non-exhaustive, and other measures may be needed to repair a harm, depending on the circumstances of the harm and the needs (both short and long term), expectations and perspectives of affected rights-holders. For example, reparation may be achieved through community-wide socio-economic measures, which aim to promote societal reconciliation after abuse targeting a marginalised social group. These may include the strengthening of infrastructure or the implementation of basic services and social programs, such as the maintenance of roads, sewer systems and water suppliers, the creation of health centres, and the provision of adequate education.