

The background of the cover features silhouettes of five people in various poses of freedom and joy against a sunset background. One person on the left has their arms raised in a 'V' shape. Another person in the center is captured mid-jump with one leg bent and arms outstretched. To the right, another person stands with one arm raised high, holding a piece of fabric. The silhouettes are reflected in the water in the foreground.

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

**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 focuses¹, 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.² These human and labour rights abuses have been defined as an endemic part of contemporary supply chains,³ and the 'logical'⁴, 'pervasive and predictable outcome'⁵ of the way in which goods production is organised – namely through outsourcing and subcontracting involving a

¹ Although we recognise local communities are also impacted by business activities, this article focuses predominantly on workers.

² 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.

³ Genevieve LeBaron, 'The Role of Supply Chains in the Global Business of Forced Labour' (2021) 57 *Journal of Supply Chain Management* 29, 31.

⁴ Genevieve LeBaron, 'Wages', 4.

⁵ 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.

multitude of different actors bound together in complex, multi-tiered networks spanning several different states.⁶

In international human rights law (IHRL), rights-holders who have been harmed have a right to an effective remedy.⁷ This is also a critical pillar of the UN Guiding Principles on Business and Human Rights (UNGPs).⁸ 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’⁹, in which achieving corporate accountability as well as remedy for business-related abuse remains elusive and ‘an exception rather than the rule’.¹⁰

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, media stories and public shaming of companies.¹¹ 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

⁶ 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.

⁷ 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.

⁸ 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).

⁹ 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.

¹⁰ 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.

¹¹ 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.

highlighted by scholars, NGOs, workers and their representatives, and some companies themselves.¹² 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’.¹³

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 responds to their needs.¹⁴

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

¹² 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, ‘UNGP 10+: A Roadmap for the Next Decade of Business and Human Rights. Raising the Ambition - Increasing the Pace’ (United Nations, 2021), 30.

¹³ 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.

¹⁴ See, e.g., D Pruet, ‘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.

CAPs.¹⁵ 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.¹⁶ 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.¹⁷ 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 as scholars and practitioners.¹⁸ Rights-holders, being those directly affected by the harm, are the most important stakeholders in identifying the most effective means of remedying such harm.¹⁹ Treating rights-holders as 'passive recipients' of remedy and any other actions aiming at an improvement of their working

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ Pruett, 'Looking for a Quick Fix', 79; Björn Skorpén 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.

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.²⁰ 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.²¹ 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 that affect their work, their interests, and the interests of managers and owners’.²² 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.²³ Instead, as also argued above, CSR tools usually treat workers as ‘passive objects of regulation’.²⁴

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

²⁰ 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.

²¹ 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).

²² 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.

²³ Pike (2020) ‘Voice in Supply Chains’ 916; Kuruvilla & 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).

²⁴ 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.

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.²⁵ 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.²⁶ 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.²⁷ 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 legitimising them further.²⁸ 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.’²⁹ While several guidance documents on remedy are already available,³⁰ 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.

²⁵ 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.

²⁶ 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.

²⁷ 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;

²⁸ 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.

²⁹ Kyritsis, LeBaron, and Anner, ‘New Buzzword, Same Problem’.

³⁰ 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).

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.³¹ 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.³²

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 working conditions in electronics production regions, where abuse is rife.³³ 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.³⁴ 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

³¹ 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.

³² 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.

³³ Electronics Watch, 'Vision and Mission', https://electronicswatch.org/en/vision-and-mission_2548021 (accessed 16 June 2023).

³⁴ Electronics Watch, 'Affiliates', https://electronicswatch.org/en/affiliates_2221327 (accessed 16 June 2023).

tax-payers' money.³⁵ 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.³⁶ 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.³⁷ 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.³⁸

At the same time, Electronics Watch challenges the widespread top-down approaches to 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.³⁹ 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

³⁵ 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.

³⁶ Olga Martin-Ortega and Claire Methven O'Brien, 'Advancing respect for labour rights globally through public procurement' 5 *Politics and Governance* 69, 69.

³⁷ 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.

³⁸ 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.

³⁹ 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.

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.⁴⁰

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 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.⁴¹

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.⁴² 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

⁴⁰ Martin-Ortega, 'Public Procurement as a Tool for the Protection and Promotion of Human Rights' 94.

⁴¹ 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.

⁴² 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).

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 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.⁴³ 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.

⁴³ 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.

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.⁴⁴ 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 provide a foundation stone for Electronics Watch’s worker-driven remediation methodology, which will complement its worker-driven monitoring methodology.⁴⁵ 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.⁴⁶ 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*

⁴⁴ Reinecke and Donaghey, ‘Towards Worker-Driven Supply Chain Governance’.

⁴⁵ 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.

⁴⁶ Martina Trusgnach and Olga Martin-Ortega, ‘Remedy for Human Rights Violations in Global Supply Chains: Essential Elements’ (BHRE Research Series n.7, July 2022).

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).⁴⁷ 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 taken place, reparation measures must be taken to remedy any verified claim of abuse (Principles 9-10).⁴⁸ 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.⁴⁹ 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.⁵⁰

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

⁴⁷ 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.

⁴⁸ Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press 2015), 16–17.

⁴⁹ 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.

⁵⁰ 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.

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 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.⁵¹ 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

⁵¹ Outhwaite and Martin-Ortega, 379.

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 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

