

EPISODE 11: Cindy Berman Interviewed by Dr. Tina Davis

TINA:

I am very excited to welcome our next guest, Cindy Berman, who is the head of Modern Slavery Strategy with the Ethical Trading Initiative, based in London. Welcome, Cindy.

CINDY:

Thank you, Tina, lovely to be with you.

TINA:

The topic we will discuss today is the importance of remedy which is one of the three pillars of the United Nations guiding principles on business and human rights. Practically speaking, what does remedy for workers at risk of modern slavery and exploitation look like?

CINDY:

When a migrant worker has paid \$4,000 to secure his or her job in a garment factory abroad. Having been promised a well paid decent job doesn't speak the local language is threatened, expected to work seven days a week, 12 hours a day and slow wages out of which food transport accommodation is deducted. That is a gross violation of their rights and remedy needs to be provided. What that looks like is a repayment of their recruitment fees, an increase in their wages to reduce their working hours. A collective grievance mechanism that can be trusted sources of support and advice in their own language. That's one example. Another example might be a woman working on a farm that is producing vegetables that we buy in the supermarket. She's told she has to have sex with an employer to secure her job or get an increase in wages. She might be raped on her way home in the middle of the night, having been given very little notice that she has to work extra hours there's no public transport, she can't afford to take a taxi back too requires remedy. And what that looks like is that she needs psychological support and services, she needs a safe space to be able to raise the issues to get the perpetrator prosecuted and called to account. She needs support from a local civil society organization. She needs a skilled Human Resources professional in the business. She needs the company to have a proper whistleblowing system and policies that deal with sexual harassment and abuse. The company needs to stop making last minute changes to working hours and ensuring that they protect women. She needs access potentially to to a trade union and a women's committee to be able to process this all and enable other women to benefit from the



space to raise and address these issues. Another scenario might be a child who has to leave school to help their family put bread on the table, doing hazardous work in a small backyard unit in Pakistan to make a surgical instrument that eventually will make its way into one of our public hospitals. Remedy in that case involves understanding the child and their family's situation in a sensitive way, by removing them from hazardous work as soon as possible, getting them into a school offering the same job potentially to an able bodied working age member of the of the family who's an adult, the necessary support to send that child to school. Think about what social protections support they might need for health care and other needs. And remedy at its core needs both government as well as companies to get much more serious about providing remedy in the right way in the right time, in a way that really ideally and fundamentally protects the victims of rights violations.

TINA:

So why is the issue remedy so important, particularly for workers who are at risk of being exploited? Business and government needs to be more serious about it? In what way? Do you think?

CINDY:

Well, very few governments and businesses understand remedy and are adequately addressing that despite the fact that as you say, Tina, the UN guiding principles got international buy in back in 2014. Back there is a recognition that the impact of business actions and government's failure to protect human rights needs the ability of those violated to access remedy. For me, it's the it's the litmus test of whether we accept that governments have responsibilities To protect rights and companies have the responsibility to respect. It's where the rubber hits the road in terms of the laws that we have in place in so many countries that have signed up to international human rights conventions and labor laws. But unless the worker can actually or a person in a community can actually get remedy when their rights are violated, then those laws and policies are largely meaningless. Because there has to be recourse when laws are broken, when rights are violated. That's why it's so important.

TINA:

In your experience, how do companies understand this issue of remedy and what are they doing about it currently?

CINDY:

Companies for a long time have referred to remediation as the actions needed to rectify a non compliance from an audit and not about remedy of workers rights violations. Nowadays, I think some companies are recognizing, for example, that recruitment fees are a major driver of, of

modern slavery, forced labor. And so some of them are starting to repay recruitment fees to workers to free them from debt bondage. But very few are actually paying the cost of recruitment fees. They're actually putting in place policies that say zero recruitment fees. They're often passing the costs and responsibilities down to their suppliers. And so I don't think they shouldering the burden adequately. Some companies have partnered with consultancies and NGOs They've set up hotlines and grievance reporting systems. Some are using tech platforms to inform workers about their rights and do training with workers, including migrant workers even before they migrate. And there are a few companies that are starting to engage with governments to collectively call on them to review, revise or better monitor their own labor laws or their immigration laws. I think that there's a long way to go but some companies are starting to take action. But I would argue that many of them are outsourcing the problem to external actors who of course, need to be part of addressing the problem, but they need to be putting the systems and mechanisms in place internally to address this.

TINA:

I suppose if companies introduced training and the other aspects you mentioned, without monitoring the effects of their efforts, then there's also their problem of not really knowing what impact their actions have. And this also goes for any remedial actions that are outsourced. It's hard to evaluate them and understand the full effectiveness.

CINDY:

Tina, I couldn't agree more. I think that the lack of accountability, transparency and evidence on outcomes and impacts is a huge gap. We are seeing these third parties that are responding to companies concerns to put some kind of remedy in place. They are signing NDA, non disclosure agreements with companies they are bound by those agreements not to share that more widely. In some cases that's in the interests of workers because they shouldn't be exposed to further risk or recrimination. But in other ways, the effectiveness of these systems is barely open to scrutiny because it's all hidden. And so I think we need to see a lot more transparency and openness and independent evaluations that are actually asking workers themselves, how satisfied they are with the outcomes of the remedy provided, and whether or not they were even consulted on the remedy mechanisms that were put in place. I come across so many scenarios where I just asked the simple question, did you ask workers what they want and barely you find scenarios in which that is the case. And so many of these systems are very well meaning and well intentioned, but they lack participatory consultative approach and they absolutely have to if we're looking at effectiveness.

TINA:

Why do you think there is that gap between the workers and the companies in having proper social dialogue in having proper consultation?

CINDY:

It's a complex issue. But I think that the trade unions are under attack. And there is a lot of allergy to trade unions by companies. I think they perceive them as disrupting production and causing trouble, when in fact, in situations when trade unions work well, they provide a much more sustainable and effective way of dealing with grievances in a mature industrial relations system. You've got a structured framework for dialogue and negotiation. Not everybody comes out winning, but it is a negotiation in which workers feel represented. And companies have a way of engaging directly with worker representatives that have been independently democratically elected. Sadly, unions in many places that are the most at risk of situations of forced labor and modern slavery are the unions are weakest they're most under attack. Some of them to be honest, do not adequately represent the most vulnerable workers, whether it's women or migrant workers. Many of them are under siege where trade union leaders are locked up routinely, you're excluded from the workplace. So I think there is a huge challenge around democratic collective representation. And that, for me is the most effective way of addressing remedy. But where that doesn't exist, I think we need to find other systems that involve workers directly and build trust, create safe spaces for dialogue. And that might be facilitated through third parties like multi stakeholder organizations such as ETI, but it might be other trusted parties such as migrant worker organizations are women's workers, organizations that can help workers feel that they've got representation. And they can engage in good faith with companies but that needs to be driven from the top by bias including public buyers, large companies, smaller companies, all the way down the supply chain.

TINA:

What is ETI your organization doing on this issue?

CINDY:

We're doing a number of things. But in one of our programs, which is called access to remedy program, we have drafted on the basis of having done a review of all the remediation systems that are in place a set of draft principles on access to remedy for vulnerable migrant workers. And the idea here is to have a consultation dialogue globally, about what a set of principles would look like that recognize by companies overtly and proactively the right of migrant workers to access remedy, not just that they have the right to remedy but that they can actually access remedy. And that looks like Find companies communicating with their suppliers, about the right of migrant workers to have some kind of collective representation to have a grievance mechanism in place that is understood communicated in their own language in which their rights are respected. And there is an effective, safe way of reporting grievances and getting them addressed by the company without the need for lots of escalation and third parties and long delays. So the principles are one thing and we're well aware of the limitations of a set of principles that sit on the desk of someone or appear in a website saying we've signed up to these

things, but we want to really make sure that they are practiced in action and so what we're doing in Malaysia is we're trying to pilot the use of these principles amongst migrant workers and companies in the rubber sector manufacturing sector. And what that looks like is we're consulting workers about current systems that they might use with a social media platforms, whether the company's own grievance systems, what they would trust and what they would use and what technology might be helpful to them. We're consulting with the managers of those factories to find out what their grievance mechanisms are and how well they think they're working, how much they're used, if they've got a suggestion box or a hotline, how is it used and is it working? And we're working with the buying organizations, both public buyers, as well as international large companies that are selling to the international market, whether in the public or private sector, we're getting them involved to commit to engage in this process, give a recognition of the need for this to be put in place and lend it, therefore, support so that we're not just doing a project on the side, we're trying to demonstrate what this looks like in practice. So we'll be doing consultation meetings in various places around the world over the next six months. And we are in the meantime, testing this process in Malaysia and we'll see in 18 months time, how this has worked out and whether there are lessons we can learn and share more broadly.

TINA:

So I don't know if it's premature to ask this. Now. What is the responses you have been getting from workers when you are doing these consultations?

CINDY:

What we've got so far is that workers really don't trust helplines hotlines. Often there's nobody competent speaking their language at the other end of the phone. They don't have some of these help lines. hotlines don't operate at hours that people can access and they really don't trust that the information they are giving is going to be kept confidential that there won't be reprisals or recrimination that so there's there's very little trust in the system. The other thing we know from evidence is that even where workers have had some degree of rights, awareness training, when they get to their employer and their employer has different ideas. All of that rights training is a little bit useless to them, because there might have rights on paper, but their ability to access those rights is just not feasible. If their visas are tied to a single employer, and they cannot leave that job, that makes it very difficult for them to raise grievances. So there are a number of obstacles in the way to the existing grievance mechanisms. I'm not sure we've got the answers either. But at least we have to be asking the right questions and figuring it out together. But the other thing is just the lack of trust in the system is enormous. So getting companies on board from the public sector from the international companies. If I tell you I've reached out to at least 20 companies and these are companies that know they have risks in their supply chains. Some of them have expressed sort of tenuous interest. And they have been said, actually, thanks very much, but we are going to decline on this one. And very few have stepped forward saying, yes,

we're on board. Let's try this out. Most companies are still resorting to audits, and their same old systems that they know are all flawed, but they're not willing to take the next step and trust direct dialogue between workers and employers.

TINA:

You mentioned earlier, that remedy for you is where the rubber hits the road when it comes to the two other pillars of the UN guiding principles, the state's responsibility to protect them business's responsibility to respect human rights. We think that there is maybe a lack of clear guidance on remedy for businesses who may not fully understand practically, what remedies look like. And I've just had the conversation in Australia today with a colleague who is working on this issue in relation to the Australian modern slavery law. And they say one of the things they constantly hear from business in Australia is that they don't know what remedy looks like when they are trying to do their risk assessments and reporting.

CINDY:

Yes. Well, I think that's true. I think there is a lack of knowledge about what to do. This is why we set about at ETI developing an access to remedy guidance, which was trying to be as practical as possible. We got perspectives from companies from trade unions from NGOs. We looked for case studies and examples that that guidance is available on the ETI's website. I'm not saying it's the answer to everything, but it does take people through a step by step approach on what to put in place, they need to have some policies in place. They need to engage with their suppliers. Ideally, they should not be foisting their own grievance policies on their suppliers but rather working with their suppliers to develop an effective grievance and remedy system within the workplace that has had worker consultation and engagement that is robust and credible. And that a number of the buyers can align behind. You don't want in the same way as we see voluntary codes of practice 15 slightly different codes of practice on the wall, requiring 50 different audits per year. It's a ridiculous waste of everybody's time and effort. But I think if you start getting your strategy and your policies and your engagement right, start building links with local stakeholders, NGOs, trade unions, links with the government figuring out whether the government has an effective and credible helpline that links into the criminal justice system. If there are criminal issues at stake, then I think we start to unpack what the issues are, but first and foremost, you know, I think guidance needs to be appropriate to the organization's size and scale and reach and so each one needs to be adapted. I don't think there is a clear template. Although I think there are some basic rules. There are some principles around effectiveness of remedy that the the Office of the High Commission on Human Rights at the UN has developed. And I've been involved in the process of consultation and I think they are pretty good and effective, and then they need to be translated into something practical.

TINA:

So what would be your top messages to companies, governments and civil society organizations on this issue?

CINDY:

Well, I think each situation has to be taken seriously and addressed immediately. If harm has been inflicted on someone they need initially to be put first as the first priority. Their needs for protection from further harm is the first thing to do, then consult them and engage with them on what they want to happen following harm. And to review the right sort of remediation that needs to be done. And that could take the form of an apology. It could take the form of a repayment of wages if there's been theft of wages for holidays, unpaid overtime, or sickness pay not paid. It can help workers leave a job safely. If they don't have their visas tied or they're not bound into a relationship with their employer, if they if they choose. It could look like having access to representation through a trade union or, or a worker committee. It could look like a restitution of their job if they've been fired for raising a grievance in the first instance or for joining a trade union, they need restitution if that's what they want. It may be that they need support if they want if they're a migrant worker and and wants to return home, they will need support from their embassy or from their employer to return. It may need psychological support, that there are a range of of things that a worker or a person might need. But ideally, one would want to see a situation dealt with immediately directly and not sort of thinking about policies, procedures, etc. When a company hears about this, the first thing they need to do is ask where is the worker now or the group of workers now, what is their situation? And what do we need to do to address them. And they need to take account of the fact that there is a lot of fear and threat at stake for a worker, so trying to find credible stakeholders that the worker will trust, to be able to, to work with them in getting the remedy that they need. I think partner organizations at the local level is fundamental. And finally, both government as well as companies need to get their house in order. They need laws that don't violate people's rights or lead to a violation of rights and protect rights. They need effective enforcement of those laws. And they need systems in place to prevent these situations from ever happening. again. So tackling root causes in the long term is ultimately the way that we need to see remedy moving.

TINA:

Thank you so much, Cindy for these invaluable insights into the significant topic of remedy.

CINDY:

Thank you, Tina.