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A Multidisciplinary Exploration of Human Trafficking Solutions

Call for Submissions

Access to remedy for survivors of all forms of slavery, trafficking and forced labour

Guest editors: Heather Moore, RMIT University Business and Human Rights Centre; Neha Misra, Global Lead - Migration & Human Trafficking, Solidarity Centre; and Sumitha Shaanthinni Kishna, Director, Our Journey

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Introduction

Access to remedy has recently come to the fore of public debates linked to exploitation, primarily in the context of business responses to modern slavery and forced labour in global supply chains. As due diligence and transparency laws become increasingly normalised around the world, organizations are rightly turning their attention to how to respond to and remediate detected cases.

But what does ‘remedy’ actually mean in practical terms? How do we ensure that ‘remedy’ does not just become another catch word in supply chain vernacular? What does effective remediation practice look like? How do we understand and apply remedy across multiple contexts, including criminal justice, government, business, and community responses to forced labour, human trafficking and modern slavery? And most importantly, how do we ensure that determining and implementing remedy is also shaped by workers who are vulnerable to labour exploitation and victim-survivors with lived experience?

Principles for remedy

Access to remedy is a key component in all of the primary international frameworks concerned with the rights of workers, including migrant workers and victim-survivors of modern slavery and forced labour, as per the United Nations Guiding Principles (UNGPs) on Business and Human Rights¹, the OECD Due Diligence Guidance on Responsible Business Conduct (OECD Guidance)², the UN Office of the High Commissioner for Human Rights’ Recommended Principles and Guidelines on Human Rights and Human Trafficking³ [Recommended Principles] and the Dhaka Principles. When considered together, these frameworks provide a robust and holistic expression of minimum standards for remedy and highlight the importance of placing victim-survivors, rights-holders and those impacted by harm at the centre of determining appropriate forms of remediation. They also set out the vital role of the State and speak to how different stakeholders—and the systems in which they operate—should work together to facilitate access to appropriate and timely remedy.

¹ John Ruggie. United Nations Guiding Principles on Business and Human Rights. (Geneva: United Nations, 2011): 10. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

² OECD. OECD Due Diligence Guidance on Responsible Business Conduct. (OECD, 2018). <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

³ UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, (Geneva: United Nations, 2002) (E/2002/68/Add.1). <https://www.ohchr.org/documents/publications/traffickingen.pdf>.

For example, the UNGPs assert that business has a responsibility to ‘counteract or make good’ those human rights violations to which they contribute or which they cause directly. Here, remedy may involve a range of actions from a formal apology, restitution and rehabilitation to management-level changes, financial compensation and preventative measures.⁴

Similarly, the OECD Guidance stipulates that the provision of remedy is a critical process that 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.

The 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 organizations, should consider ensuring that victims of trafficking have an enforceable right to fair and adequate remedies; providing information as well as legal and other assistance to enable trafficked persons to access remedies; and 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 proceedings. Further, 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.

Guidance for remedy

There is a growing body of academic and grey literature on remedy. In recent years, organisations such as the Ethical Trading Initiative (ETI) and Walk Free Foundation (with partners) have published guidance to help firms respond to instances of forced labour and other forms of exploitation in supply chains.⁵ Systemic wage theft and illegal recruitment fees in rubber gloves manufacturing, electronics and construction for the World Cup in Qatar have yielded further advice from organisations like Antislavery International, the International Organisation for Migration (IOM) and IMPACCT.⁶

⁴ Ruggie, 27.

⁵ Cindy Berman, Ben Rutledge, and Samir Goswami. Access to remedy - practical guidance for companies, (Ethical Trading Initiative, 2019), https://www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf; 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>.

⁶ International Organization for Migration. Operational guidelines for businesses on remediation of migrant worker grievances, (IOM, 2021). <https://publications.iom.int/books/operational-guidelines-businesses-remediation-migrant-worker-grievances>. Antislavery International. Migrant workers’ access to remedy A briefing paper for business. (Antislavery International, 2022). https://www.antislavery.org/wp-content/uploads/2022/02/ASI_AccessToRemedy_Report.pdf; IMPACCT. Principles and Guidelines for the Repayment of Migrant Worker Recruitment Fees and Related Costs, <https://impactlimited.com/principles-for-repayment-of-recruitment-fees/>.

Studies⁷ that have interviewed workers and survivors to understand their experiences in engaging with grievance mechanisms, with criminal justice systems, and with social support programs provide unique insights when designing and delivering remedy, but it is less clear to what extent and how these insights are being applied.

Action in remedy

Despite sound principles and a growing body of guidance in terms of remedy and access to justice, there is little publicly-available information about the specifics of how remedy is conceptualised, implemented and evaluated for effectiveness. For example, the emerging supply chains literature that explores remediation of forced labour and modern slavery generally conceptualises and studies firms' remediation through commercial relationships. With the exception of such cases as Tesco's publically shared experience of repayment of recruitment fees, there are few documented case studies of successful corporate detection and survivor- and worker-focused remediation of forced labour to inform future practices.

Similarly, the particulars of successful remedy for participants in the criminal justice process, including access to victim compensation, reparation orders, and exercising the rights afforded under the Recommended Principles are difficult to come by.

This special issue is intended to fill this gap by examining remediation from a range of fields and perspectives. We seek to include perspectives from researchers, practitioners and workers, which also includes examining co-design of remedy by migrant workers with lived experience and victim-survivors at different stages of the response.

Suggested themes include, but are not limited to:

- Examples of emerging practices of delivering remedy to migrant workers and survivors across different contexts.
- How is the third pillar of the UNGPs on remedy interpreted thus far, and what untapped potential does pillar three hold in further driving and shaping the area of remedy?
- Examples of successful collaboration in the design and implementation of remedy across contexts.
 - How are organizations making decisions about what constitutes 'effective' remedy?
 - With whom are they consulting to make these decisions?
- How are businesses applying the UNGPs in practice to determine what is the appropriate remedy in a particular situation?
 - How are they determining to whom the responsibility of remedy should fall?
 - To what extent are workers and survivors involved in deciding and monitoring delivery of remedy? How can we increase the inclusion of workers' voice and survivor leadership in this space?

⁷ Lilly Yu, Jeanette Hussemann, Hanna Love, Evelyn F. McCoy, and Colleen Owens, *Alternative Forms of Justice*, (Urban Institute, 2018), <https://www.urban.org/research/publication/alternative-forms-justice-human-trafficking-survivors>; 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, no. 1 (2019):131, <https://www.thebritishacademy.ac.uk/documents/944/JBA-7s1-06-Rende-Taylor-Shih.pdf>.

- The intersection between remedy and access to various forms of justice for workers and survivors, and obstacles that may hinder this.
- How are laws driving remedy and/or could laws be used more effectively to secure more effective remediation?
 - What role can litigation play in driving remedy practices?
 - Structural gaps linked to implementation of laws to access remedy (i.e. wage theft), such as access to free legal support for workers.
- Social support and/or legal advocacy as a form of remedy.
- Practices of repayment of recruitment fees
 - What are the short term, mid-term and long-term solutions to workers' payment of recruitment fees?
- Case studies are particularly encouraged.

Key dates

- Submissions due 15 July 2023
- Publication date is planned for October 2023

Articles should be 4,000-10,000 words, including abstract, footnotes, and author/s bio/s.

For full submission guidelines: <https://journalofmodernslavery.scholasticahq.com/for-authors>.

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