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Principles of Worker-Driven Remedy

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Introduction

Everyone who suffers rights violations has a right to an effective remedy. However, workers in global supply chains who suffer business-related human and labour rights abuses often receive no remedy. Even when they do, the process of defining the remedy is usually led by companies who are connected to the harm through their supply chains and driven by their interests and priorities. Instead, to be effective, remedy should be provided as a right, based on international human rights law and international labour standards and have workers at its core.

The importance of rights-holder involvement in remedy has been recognised widely. In 2021, the UN Working Group on Business and Human Rights noted that giving rights-holders a leading role in remedy can address some of the issues that currently affect remedy practices in global supply chains, including the power imbalances between company management and workers.¹ Electronics Watch believes 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.²

These Principles define the approach of Electronics Watch to worker-driven remedy. They have been developed in consultation with trade unions, labour rights organisations, and public buyers.³ 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. Electronics Watch will provide support for public buyer affiliates to implement the Principles in their supply chains. Further explanation about each Principle can be found in Annex 1, which offers some operational considerations.

These Principles do not replace judicial or other civic remedies, nor should they undermine grievance mechanisms contained in collective bargaining agreements. 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.

1 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.

2 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).

3 The Electronics Watch Principles of Worker-Driven Remedy were drafted by the Electronics Watch Working Group on Remedy. They 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 and were 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, CEREAL, Civedep, Periféria Policy and Research Center, Serve the People Association, and Tenaganita, and for their valuable contributions. Electronics Watch remains solely responsible for the content and welcomes further comments on the working draft.

Principles of 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 of legitimate trade unions, worker representatives and human rights defenders⁴**
- 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). An approach to remedy based on human rights law⁵ 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 (including public buyers) 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 (outcomes) – hereinafter referred to as ‘remedy processes’ and ‘remedy outcomes’. Both dimensions need to be satisfied for remedy to be considered effective.

⁴ Throughout the text, when referring to ‘legitimate’ trade unions and worker representatives, these should always be understood as independent, freely chosen and democratically elected.

⁵ The legal basis for remedy is summarised in ‘[Remedy for Human Rights Violations in Global Supply Chains: Essential Elements](#)’, University of Greenwich, BHRE, 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 legitimate trade unions and worker representatives, where they exist. Particular attention should be given to vulnerable groups of workers, including migrants, women and ethnic minorities, to ensure their needs, expectations and perspectives, which may be different from those of other workers, are addressed.

3. Protection of legitimate trade unions, worker representatives and human rights defenders

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 them.⁶ Dismissals, arrests of worker leaders and union busting not only violate internationally agreed labour laws, but also directly impede the ability of workers to access remedy.

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 legitimate trade unions, worker representatives and human rights defenders.

5. Transparency

Remedy must be transparent. Workers, legitimate trade unions, worker representatives and human rights defenders must have access to all relevant information in their own language 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.

⁶ In some cases, threats and harm may also be directed to their family members.

Effective remedy processes require:

6. Removal of barriers to worker participation

Workers, legitimate 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, legitimate trade unions, worker representatives and human rights defenders can meaningfully participate in the remedy process. Workers 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 migrant workers, women, and other discriminated groups, and ensure they have equal access to remedy, regardless of their sex, immigration status or background.

7. Worker participation in design and implementation

As appropriate, workers, legitimate trade unions, worker representatives and human rights defenders should take part in the design of remedy mechanisms⁷, and may have a formal role in their governance, implementation and monitoring. Channels must be in place for workers, legitimate 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 with family 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, including public buyers, should be considered to ensure their meaningful engagement where needed.

8. Shared responsibility and meaningful engagement of stakeholders

States remain the primary duty bearers for human rights and are jointly responsible for remedy together with businesses who cause, contribute or are directly linked to the harm. Other stakeholders in global supply chains, such as public buyers, 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.

⁷ 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 workers affected by the harm. They should be co-defined by workers, supported by legitimate 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 workers affected by the harm, supported by legitimate trade unions, 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 1:

Further Explanation of the Principles

This Annex details several operational considerations which can support an effective implementation of the Principles.

1. Respect for human rights law

States have obligations to protect human rights. Business have the responsibility to respect human rights. Both these duties include providing remedy for harm. 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 business 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.

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.

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 will feel confident to speak up and report gender-based violence, harassment and other harms.

3. Protection of legitimate trade unions, worker representatives and human rights defenders

In many countries trade unions are not available for workers to join; not all workers may have access or want to join a union either. This may be the case for agency and migrant workers and women workers who are either absent or under-represented in some unions. This must be recognised as all workers' claims should be treated fairly and equally, in alignment with these Principles. Where both freely chosen representatives, including independent trade union representatives are present, the former should not be used to undermine the existence of the latter, and cooperation should be encouraged.

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 of time. 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.

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 workers, their freely chosen representatives and trade unions 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 allowing 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, their freely chosen representatives and trade unions 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. Workers 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, 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 the right to join an independent 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 are often 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, their freely chosen representatives and trade unions should have a formal role in the entirety of the remedy process, including the design, governance, implementation and monitoring of remedy mechanisms.

In particular, 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, and take action if the outcomes are unsatisfactory. Worker representatives and trade unions 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 grievances mechanisms that are trusted and easily accessible to them.

8. Shared responsibility and meaningful engagement of stakeholders

Global supply chains comprise of several 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 by each individual.

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: Definitions of Substantive Remedies

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.