

REMEDY FOR HUMAN RIGHTS VIOLATIONS IN GLOBAL SUPPLY CHAINS: ESSENTIAL ELEMENTS

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Table of contents

Acronyms	2
Executive summary	3
I. Introduction	5
II. Remedy in theory and practice	5
1. International Human Rights Law: setting the legal basis, aims and content	5
2. The Business and Human Rights field	8
3. Global supply chains: corporate-led voluntarism	11
III. Violations in global supply chains: characteristics and consequences for remedy	13
1. The structure of global supply chains	13
2. Affected rights and rightsholders	14
3. The nature of violations	14
IV. Remedying violations in global supply chains: essential elements	15
V. Selected bibliography.....	18
About the BHRE.....	20
About the authors.....	20
BHRE Resources	20
Reports and in-depth studies.....	21
Recent scholarly publications	21

Acronyms

BHR	Business and Human Rights
CAP	Corrective Action Plan
CSR	Corporate Social Responsibility
IHRL	International Human Rights Law
ILO	International Labour Organization
NGO	Non-Governmental Organisation
OGM	Operational-level Grievance Mechanism
UNGPs	United Nations Guiding Principles on Business and Human Rights

Executive summary

All those subject to human rights violations are owed effective remedy. In global supply chains, however, most rightsholders affected by business-related abuse, usually workers, are left without it. Even when provided, remedy is limited, and rarely fulfils the requirements of international human rights law. Driven by top-down, corporate-led voluntary initiatives, such as audits and corrective action plans (CAPs), remedy often lacks meaningful involvement of affected rightsholders and their legitimate representatives, which is crucial for its effectiveness.

A coherent theoretical framework to guide the planning, implementation and evaluation of remedy for business-related abuse in global supply chain is missing and urgently needed. This briefing represents a first move in this direction. After the introduction, Part II delineates what remedy entails under international human rights law and in the business and human rights field, providing a backdrop against which current prevailing practices are evaluated. Part III explores some of the unique challenges in providing remedy for abuses in global supply chains. Part IV identifies some of the elements of remedy, which are essential for providing redress to those rightsholders who have suffered harm due to corporate related activity, and which are often overlooked in practice. They can be found below.

Effective remedy overall should:

- *Adopt a human rights approach and language*
Remedy should be treated as an obligation by duty bearers (states and corporations) towards the rightsholders who have suffered harm. Human rights language should be used to emphasise the fact that remedy should not be of discretionary nature or exclusively dependent on corporate-led due diligence processes.
- *Have rightsholders at its core*
To be effective, remedy should be conceived collaboratively with all those harmed by corporate activity, rather than being imposed in a top-down manner. All affected rightsholders must be ensured effective remedy. This applies regardless of their worker status, or whether they are migrant, temporary or informal workers.
- *Be treated as a matter of urgency*
Violations in global supply chains are often widespread, varied in nature and mutually reinforcing. Duty bearers should aim to provide remedy promptly, as soon as any issue is identified, to ensure it does not escalate and contribute to further exploitation.

Effective remedy mechanisms should:

- *Empower rightsholders and involve them in their design, governance and operation*
The mechanisms used to provide remedy should be trusted by rightsholders, and have their needs and priorities at their core. Ideally, long-term processes should aim to establish new grievance mechanisms with rightsholders involved in their design, governance and operation. In the meanwhile, it is important that available channels for remedy are identified and assessed for their suitability. Rightsholders should be supported in their engagement with these mechanisms,

especially considering that they may not be aware of their rights, or of how to access and achieve remedy.

Any imbalance of power should be addressed through empowerment of rightsholders, for example through education on rights and corresponding remedies, and by exercising leverage over companies involved in abuses.

- *Address barriers to remedy*

Effective mechanisms should take into consideration any potential barriers that may prevent rightsholders from accessing remedy, especially if vulnerable. Protection from intimidation and retaliation must be guaranteed in practice and be made a priority. Removing onerous burden of proof is also essential.

- *Allow for individual and collective claims*

Since violations are often widespread and affect several rightsholders, mechanisms should allow both individual and collective claims. Collective claims are essential for leverage, and may reach a higher number of rightsholders, who may not be able to access remedy on an individual basis.

- *Be transparent*

Remedy processes need to be open and transparent. They should be based on rightsholders' right to know rather than on discretionary decisions by companies to disclose information. Corporate confidentiality cannot be used to obstruct access to remedy. Transparency must be guaranteed for any mechanism which purports to redress violations, including audit reports and CAPS.

Effective reparations should:

- *Be determined through meaningful collaboration with rightsholders*

Rightsholders must define be involved in identifying and defining *what* needs to be remedied and *how*. Reparation measures should be co-defined by rightsholders and their legitimate representatives, rather than being imposed in a top-down manner. Their perspectives must be incorporated into remedy to the maximum extent possible, while acknowledging that the result may not be perfect. Any compromise on rightsholders' needs must be justified, and must not disproportionately affect vulnerable groups. Worker representatives, local organisations and non-governmental organisations (NGOs) will be in the best position to ensure affected rightsholders participate in the reparation process.

- *Not be limited to one measure*

The appropriate reparation measures depend on the context of the harm and the preferences of the rightsholders. Although compensation is often necessary, other measures in addition to it may be needed for remedy to be effective. This would depend on the context and must always be decided in the framework of consultation and engagement with rightsholders.

- *Include backward- as well as forward-looking measures*

Reparation measures should both remedy individual harm and ensure that the harm does not repeat in the future. Backward-looking reparations need to address immediate harm as well as long-term consequences on rightsholders, including health and safety concerns. Forward-looking reparations should explicitly acknowledge that human rights violations have taken place, for example through apologies, and aim to change the conditions or practices that brought about the harm in the first place.

I. Introduction

According to ILO estimates, in 2016, 24.9 million people were in forced labour, of which 16 million under the control of private actors such as employers (ILO 2017). A much greater number of workers is systematically subjected to a wide range of human and labour rights violations, including inadequate wages and extreme working hours. In international human rights law (IHRL), those affected by human rights violations have the right to an effective remedy. However, remedy for business-related abuse is often entirely absent. Even in situations where attempts are made to provide remedy, this is done through a piecemeal approach, which lacks thorough understanding of what remedy should look like in practice, and what its essential elements may be. Human rights abuses in global supply chains are still overwhelmingly addressed through voluntary corporate initiatives (CSR instruments), which overlook the needs of rightsholders and are unsuitable to provide effective remedy which fulfils the requirements of international human rights law.

Global supply chains are characterised by complex asymmetrical relationships between different actors, weak or unenforced national regulatory systems, as well as a wide range of interconnected, changing violations, and a diverse group of rightsholders. These circumstances affect the provision of remedy for business-related violations, often interfering with it.

A coherent theoretical framework to guide the planning, implementation and evaluation of remedy for business-related abuse in global supply chain is missing, and is urgently needed. This remedy framework must put affected rightsholders at its core. This briefing represents a first move in this direction, by exploring what effective remedy should be in the context of global supply chains and highlighting some elements which, although crucial, are often overlooked in practice.

This briefing has been written in the context of the Electronics Watch Remedy Project and subject to consultation through the Electronics Watch monitoring partners network, including at the 'Consultation on Migrant Worker Rights and Remediation of Migrant Worker Recruitment Fees and Related Abuses' (Malaysia and online, 24-25 May 2022).

The briefing proceeds as follows: Part II delineates what remedy entails under international human rights law and in the business and human rights field respectively. The practices currently employed in global supply chains to address any issues are analysed against this backdrop, arguing that they do not meet the requirements to be considered effective remedy. In Part III, the briefing identifies some of the exceptional characteristics of violations in global supply chains, and the consequences they have on remedy. The briefing concludes in Part IV by highlighting the elements which are crucial for remedy and must be considered when implementing it in global supply chains.

II. Remedy in theory and practice

1. International Human Rights Law: setting the legal basis, aims and content

International human rights law clearly establishes obligations for states to respect, protect and fulfil the human rights of all individuals. Protecting human rights requires preventing harm from state

officials and private parties, including corporations, and addressing it when it occurs – by investigating violations, punishing perpetrators if found guilty, and providing adequate remedy for affected rightsholders. If remedy is not provided when rights are violated, rights can ultimately become meaningless.

Remedy is also found as a right on its own in most international and regional human rights treaties, where it is referred to as ‘right to effective remedy’ or ‘right to effective remedy and reparation’. Some scholars have even argued that the right is part of customary international law – and therefore binding on all states independently of whether or not they are party to the treaties which define such right. Importantly, the right represents a fundamental obligation which states must comply with at all times, regardless of the national or international circumstances (UN Human Rights Committee 2001).

The right to effective remedy and reparations is most notably articulated in the 2006 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines). The Basic Principles and Guidelines focus on a particular category of abuse, ‘gross’ human rights violations, which entails severe consequences for abusers through judicial processes. Although there is no full agreement over what constitutes a ‘gross’ violation, it is generally understood to include abuse which is systematic and particularly severe in character. In order to fulfil their international legal obligations, states must investigate gross violations, sanction the perpetrators and provide effective remedy to the affected rightsholders. This can take place at any point in time, regardless of how long has passed since the violations.

Remedy, however, must be provided for all human rights violations, and most of its characteristics found in the Basic Principles and Guidelines have been extended to apply beyond gross violations. Overall, remedy must be ‘adequate, effective, prompt and appropriate’ (Principle 2.c), and is composed of two complementary dimensions, procedural and substantive. Both must be addressed for a remedy to be considered effective. Additionally, the Basic Principles and Guidelines include a third element of remedy for gross abuses, which can be extended to all human rights violations: the right to information concerning the violations and the remedy mechanisms available to rightsholders, or the ‘right to truth’.

Procedural remedy

The procedural aspect of the right to remedy – often referred to as ‘access to remedy’ – indicates the procedures or mechanisms that may be used to report and seek reparations for alleged violations. To fulfil this aspect of the right to effective remedy, states should offer judicial, administrative as well as other mechanisms, according to domestic law. Remedy of judicial nature is essential for gross human rights violations, which entail enhanced responsibility for states and legal consequences for perpetrators.

According to the UN Human Rights Committee (2004), state mechanisms should be ‘accessible and effective.’ They should allow affected rightsholders to claim remedy either individually or in groups, and their design should take into consideration any practical barriers that may prevent rightsholders from accessing justice. This is especially important for individuals experiencing structural

vulnerabilities, such as migration status, indigenous status, disability, economic need, gender or age, which not only increase their exposure to abuse, but may also affect their ability to access remedy. Lastly, rightsholders must be protected from intimidation and retaliation when accessing remedy mechanisms.

Substantive remedy

In its substantive aspect, remedy encompasses the measures taken following a violation of a right, referred to as ‘reparations’. Reparations are an integral part of the right to remedy: without them, the obligation to provide an effective remedy is not fulfilled, regardless of the effectiveness of any measure used to report and investigate violations.

Reparation measures are listed in several international human rights instruments and described in depth in the Basic Principles and Guidelines. They include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- 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, restoration 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, public 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.

Reparation measures must respond to the context in which the harm occurred and is likely to be perpetuated. Therefore, the list provided by human rights instruments is not exhaustive, and reparation may also take other forms, depending on what is deemed necessary to repair the harm. For example, the Inter-American Court of Human Rights has required community-wide socio-

economic measures as reparation for gross human rights violations, including massacres. These encompass the strengthening of infrastructure as well as the implementation of basic services and social programs in the affected communities – including the maintenance of roads, sewer systems and water suppliers, the creation of health centres, and the provision of adequate education.

Overall, reparations can serve **two complementary aims**: to re-establish ‘what has been lost’ through the violation, and to ‘make good’ the harm by improving the ‘present and future living conditions’ of affected rightsholders (Verdon 2021). Accordingly, reparative measures can be described as ‘backward-looking’ or ‘forward-looking’. Backward-looking reparations include restitution, compensation and rehabilitation. These are victim-specific measures aiming to redress the past violations and return the affected rightsholders to the state they were in before they suffered harm. Forward-looking reparations can include satisfaction, guarantees of non-repetition and socioeconomic measures. These measures are mostly transformative: they aim to promote reconciliation and prevent future harm, focusing on rightsholders that may potentially be affected as well as those who already are. The two goals of reparations are equally important, and effective remedy should therefore include both (Roach 2021).

Since the aims can only be achieved through a combination of the above-mentioned reparations, reparation measures should be treated as complementary and mutually reinforcing, rather than exclusive of one another. In fact, international human rights law is not prescriptive about which measures may constitute appropriate and effective reparations: this will depend on the context, such as the type of the violation and the ability of the remedial mechanism to provide specific reparation measures. Most importantly, however, reparations should be responsive to the needs and priorities of affected rightsholders, rather than being defined in a top-down, discretionary manner. This is essential for remedy to be considered effective: without rightsholder participation in determining the appropriate reparation measures, their effectiveness is questionable.

2. The Business and Human Rights field

The international human rights regime was born in response to *state* harm, and therefore created obligations for *states* to protect human rights and provide remedy for their violation. Other actors, however, can also negatively impact people’s enjoyment of rights: nowadays, businesses practices and working models are behind several widespread human rights violations. Although a binding treaty on business and human rights is still in the making, the idea that businesses should respect human rights was consolidated in 2011, when the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs have created ‘non-legal’, normative expectations of business conduct.

The UNGPs articulate the theory underpinning the business and human rights (BHR) field through three Pillars: the State Duty to Protect (I), the Corporate Responsibility to Respect (II), and Access to Remedy (III). Overall, states continue to have the primary responsibility to protect human rights. This includes ensuring accountability for human rights violations and providing effective remedy for affected rightsholders, even if violations are caused by business operations. The UNGPs, however, have also introduced expectations for businesses to provide remedy. According to Principle 19, companies are required to actively engage in remediation if they are directly responsible for or have

contributed to the abuse, by enabling, encouraging, exacerbating or facilitating it. If, instead, the violations are linked to a company through its operations, products or services by a business relationship – including in its supply chain –, the company should at least seek to mitigate the harm through its leverage, and may also participate in remediation efforts.

Pillar III does not refer to IHRL standards directly. Instead, it covers remedy for ‘grievances’ which may not necessarily amount to human rights violations, but that may escalate if left unaddressed (Principle 29). However, Principle 31(f) states that remedy should ‘accord with internationally recognized human rights’, which Pillar II defines as those found in the International Bill of Human Rights and the ILO core conventions (Principle 12). This effectively means that the UNGPs are including the right to effective remedy as part of the corporate responsibility to respect human rights. Pillar III can and should be read with a human rights lens (Drimmer and Laplante 2015). This ensures that remedy is not considered a charitable, voluntary and discretionary act by the abuser, but a *right* for all affected rightsholders, with *related obligations* for duty bearers, namely states and businesses. Since human rights are meaningless without effective remedies, Pillar III becomes crucial in ensuring the UNGPs have teeth.

Overall, the UN Working Group in charge of promoting the dissemination and implementation of the UNGPs (Working group on the issue of human rights and transnational corporations and other business enterprises) has encouraged a view of remedy for business-related abuse that is in line with the requirements of IHRL, using the Basic Principles and Guidelines as a ‘useful reference point’ (2017). To be effective, such remedy needs to be accessible, affordable, adequate and timely. Just as for IHRL, both the procedural and substantive aspects of remedy need to be fulfilled to achieve effectiveness.

Procedural remedy

To address business-related human rights abuse, the UNGPs envision a ‘system of remedy’ composed of several complementary ‘grievance mechanisms’ to provide reparations (Commentary to Principle 25). The mechanisms provided by the state constitute the foundation of this system, reflecting the primary role of states in protecting human rights, in accordance with IHRL. These mechanisms can be judicial, administrative, legislative or other, although judicial processes are needed for gross human rights violations.

In addition to state-based mechanisms, the UNGPs have introduced the possibility of mechanisms operated by other actors, such as businesses or collaborative initiatives (Principles 28-30). So-called ‘operational-level grievance mechanisms’ (OGMs) are especially important in the UNGPs system of remedy. These should be established by companies for workers and communities that may be directly affected by their operations, and should provide ‘early stage recourse and resolution’ (Principles 25 and 29). However, they should not preclude the use of other grievance mechanisms, including judicial ones, or undermine the role of trade unions and collective bargaining processes (commentary to Principle 29).

Non-state-based mechanisms can differ widely depending on their provider, size, scope, resolution method, resources, proximity to and leverage on abusing parties, and relation with other

mechanisms, among others. They can present several benefits in terms of cost, flexibility, speed and ease of use, but can only supplement, rather than replace state-based mechanisms.

Crucially, both state- and non-state-based grievance mechanisms should be effective, to ensure they do not increase the sense of disempowerment and disrespect for rightsholders. According to the UNGPs, to be effective, non-judicial mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue with stakeholders (Principle 31). Overall, the target users should know about the mechanism, trust it and be able to use it. To trust it, it is especially important that retaliation for raising concerns is prohibited, and that this prohibition is enforced in practice. To be able to use it effectively, rightsholders must be informed about their rights, how to report concerns, and what they may reasonably expect in terms of outcomes from each mechanism.

Most importantly, rightsholders should be involved in both the design of non-judicial mechanisms as well as in the resolution of grievances and definition of reparation measures. While the UNGPs only mention engagement and dialogue for OGMs, this criterion should also be considered when designing other non-state-based grievance mechanisms (UN Human Rights Council 2020). Collaboration with rightsholders and their representatives, such as trade unions or civil society organisations, must be meaningful, rather than being done in a paternalistic manner. This, in turn, may require addressing any power imbalances between the rightsholders and the business causing the abuse.

Substantive remedy

Reparations for business-related abuse also aim to ‘counteract or make good’ the harms, encompassing backward-looking as well as forward-looking elements (Commentary to Principle 25). Although not using the term ‘reparations’, the UNGPs provide a list of measures which can be considered as such, and which mirror the ones developed by the Basic Principles and Guidelines: ‘apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanction, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition’ (Commentary to Principle 25).

If remedy is provided at all, compensation is one of the most frequently awarded reparation for business-related harm in global supply chains. When on its own, however, it does not necessarily fulfil effective remedy: multiple reparation measures may be needed to ensure remedy is effective, depending on the context of each case. As also argued by the Working Group, it is a ‘vital precondition’ for effective remedy that affected rightsholders can ‘seek, obtain and enforce a bouquet of remedies’ (2017). This may include restoration of employment for unfairly dismissed workers (restitution) or vocational training for workers in the context of workplace injuries (rehabilitation). Genuine and meaningful public apologies may be a vital complement to compensation for affected rightsholders, and sanctions may be needed against harming businesses, including exclusion from public procurement processes (satisfaction). Compliance plans and long-term human rights due diligence may contribute to ensuring the harm does not repeat in the future (guarantees of non-repetition).

Just as for IHRL, the effectiveness of the reparation measures adopted will depend on the circumstances of each case, including the type of harm and its consequences. Most importantly, as highlighted by the Working Group, the personal preferences of the rightsholders are crucial to determine effectiveness (2017).

Often, non-judicial mechanisms may be able to provide limited remedial measures, therefore achieving only partial remedy, depending on what the circumstances of the abuse and the affected rightsholders require. To ensure remedy is effective, rightsholders should have access to a variety of grievance mechanisms depending on their needs.

3. Global supply chains: corporate-led voluntarism

The advent of the BHR field and the adoption of the UNGPs has changed little for rightsholders – something that has been acknowledged by the Working Group as well (2017). This is especially the case for remedy, which remains ‘an exception rather than the rule’. Even when remedy is provided, this is often ‘partial at best’ (UN Human Rights Council 2020).

Remedy for those affected by business abuse in global supply chains, most usually workers, is still being driven by corporate-led, voluntary practices, which fall under the umbrella of Corporate Social Responsibility (CSR). Rather than being guided by IHRL or the BHR, remedy is heavily reliant on one-sided instruments, such as codes of conduct, social audits and corrective action plans (CAPs). In fact, by offering complementary solutions to predominant CSR practices, BHR has to some extent consolidated them, without challenging or addressing concerning aspects. Therefore, most remedy currently provided cannot and should not be considered compliant with the requirements of IHRL and BHR.

CSR focuses on individual companies taking responsibility for their impact on society through voluntary actions and aspirational commitments. Ultimately, the goal for companies is to act in a way that benefits them in terms of risk management, cost savings and community relations, among others. Protecting human rights is a potential side product, rather than a goal in itself, and CSR therefore does not propose a consistent framework for it (Ramasastry 2015). Likewise, companies are still displaying a patchy approach to remediation for abuses in global supply chains – and therefore not approaching it as an obligation deriving from the UNGPs. This discrepancy can already be noticed in the language used in the context of CSR: while codes of conduct and other voluntary standards often cover internationally recognised human and labour rights, the overall frame is very technical in language. The use of terms such as social audits, CAPs and nonconforming suppliers obscures the fact that the issues identified in factories may be *human rights violations* which *require* effective remedy, not at the discretion of the company. Equally, treating non-corporate actors as stakeholders rather than legitimate *rightsholders* dispossesses them of their central role in the process of remediation.

The CSR tools predominantly used to identify and address issues in global supply chains are social audits and CAPs. Factories are audited against standards which may be found in codes of conduct or other CSR instruments companies have voluntarily signed up to. When nonconformities are identified, CAPs are formulated, usually requiring specific actions (urgent or long-term) from suppliers to improve the factory conditions. Sometimes, instead of developing CAPs, companies may

decide to terminate their business relationship with non-compliant suppliers altogether – which may exacerbate existing human rights violations, rather than providing remedy to affected rightsholders.

Overall, social audits and CAPs have proved ineffective in identifying and addressing human rights violations and in bringing about sustainable, long-term improvements in rightsholders' conditions. Both most often lack a core feature of effective remedy as described in IHRL and BHR: meaningful rightsholder engagement, crucial to identify abuses as well as to design appropriate reparation measures. Instead, they are top-down measures which treat workers as 'passive research objects' (Claeson 2019) or merely stakeholders, ignoring the fact that they are, most importantly, *rightsholders*.

A further challenge is the fact that auditing has become a for-profit industry, which depends for its income on paying clients, usually buyers or suppliers, who may have a business interest in minimising or hiding the violations. The involvement of rightsholders and their representatives is therefore crucial to uncover dangerous working conditions, long-term impacts of working situations on their health, or less visible, recurring or systemic violations, including the payment of fees to recruitment agencies, the confiscation of workers' documents, or the violation of their rights to freedom of association and collective bargaining. Of course, such involvement can only succeed if those impacted by corporate activity understand their rights, trust the mechanism and are protected from retaliation. However, audits have been shown to engage with workers only superficially, and not to provide the necessary safeguards for affected rightsholders to speak out (Claeson 2019, Outhwaite and Martin-Ortega 2019). The ineffectiveness of social audits is most obvious when considering that several deadly accidents took place in factories which were recently audited and seemingly complied with international standards — most notably the collapse in 2013 of the Rana Plaza building in Bangladesh, which killed at least 1,132 people and injured more than 2,500.

CAPs also represent a top-down approach. Usually, they are formulated by auditors, potentially in collaboration with buyers and suppliers, but rarely with the rightsholders directly affected by a company's operations. Workers whose rights are violated, however, are in the best position to identify what reparation measures are needed to remedy the harm and prevent it from reoccurring in the future (Outhwaite and Martin-Ortega 2019, Electronics Watch 2019).

A significant obstacle for remediation is the secrecy and confidentiality which surrounds audits and CAPs, which is in line with the lack of transparency which characterises supply chain operations overall. In cases where the audit reports were made public, positive improvements have been noticed in the working conditions of non-compliant factories as well as in the practices of the suppliers overall (Göthberg 2019). However, audit reports and CAPs are rarely shared with the public. This lack of transparency violates the workers' right to know about those issues which directly concern them, clearly including reports on the conditions of the factories in which they work (González, Overeem and Martin-Ortega 2020). Such secrecy also impacts the effectiveness of remedy: if reports are not publicly disclosed, rightsholders whose rights are being violated are not able to verify their accuracy, nor can companies be held accountable to actually remedy the issues.

Even though its theoretical foundations are rooted in IHRL, the BHR field has not questioned the underlying assumptions of social auditing and CAPs, but consolidated them instead. In fact, the procedural aspect of remedy found in Pillar III, which includes non-judicial grievance mechanisms,

has been merely introduced as a complement to CSR practices, to address the limitations of the prevailing paradigm rather than questioning the paradigm itself (Ford and Nolan 2020). This has been reflected, for example, in companies providing hotlines as separate ‘channels’ for workers to report abuses. Similar approaches do not challenge the top-down nature of voluntary corporate led social responsibility mechanisms, but merely reproduce them. Engagement of affected rightsholders is limited, and can therefore appear as an afterthought, rather than being central to the definition of remedy. Overall, rightsholders are still treated as passive recipients of reparation measures, and are not involved in determining what reparative actions may most be appropriate. Instead, they are just informed of the outcome of their reports at most. Different reparation measures are not considered thoroughly, and, if any remedy is provided at all, compensation is most often awarded alone. This, in turn, can lead to worker dissatisfaction with the remedy provided, as it may fall short of their needs and expectations (Electronics Watch 2020).

This corporate-led approach both to identify and address abuse is coming under increased scrutiny. Scholars and NGOs have put forward alternative, bottom-up approaches, relying on ‘worker-driven monitoring’. This should not stop at the identification of abuse: workers whose rights have been violated should be meaningfully involved in the remediation process as well, to ensure its effectiveness (Claeson 2019, Outhwaite and Martin-Ortega 2019). By drawing on IHRL as well as the BHR field, it is possible to define the essential elements of remedy for business-related human rights violations in global supply chains – with meaningful rightsholder participation at the forefront.

III. Violations in global supply chains: characteristics and consequences for remedy

Business-related human rights violations in global supply chains present several characteristics which set them apart from other human rights violations, and which have several consequences for how remedy can and should be approached.

1. The structure of global supply chains

The production of goods in global supply chains is highly fragmented, and composed of several stages, from the extraction of raw materials, through to the manufacture, assembly and packaging of a finished product, spanning several countries, industries and institutional settings (Berliner and others 2015). A single country will not be able to regulate the entirety of a production process because of issues concerning its jurisdiction. At the same time, some production activities may take place in countries where human and labour rights protections are absent, weak or not enforced (Martin-Ortega, Outhwaite and Rook 2015). As a consequence, global supply chains are affected by a ‘regulatory void’ or ‘governance gap’, which has negatively affected how human and labour rights are implemented, monitored and enforced (LeBaron, Lister and Dauvergne 2017; LeBaron 2021).

This is accompanied by complex relationships between a great multitude of actors and stakeholders, such as suppliers, labour contractors, global brands and purchasers, both public and private (Berliner and others 2015). The corporate brands or lead firms are usually far removed from the workers involved in the production and the people who are directly impacted by their commercial activities.

No contractual relationship exists between the employees at the bottom of a supply chain and the lead firm at the top (Martin-Ortega, Outhwaite and Rook 2015). While remedy should be provided by those responsible for the violation, establishing legal responsibility for violations and their remediation in this context is therefore challenging.

These structural challenges make remediation an elusive reality in supply chains.

2. Affected rights and rightsholders

Human and labour rights violations in global supply chains are complex and varied in nature. Workers often face discrimination, health and safety risks, inadequate or absent wages, extreme working hours, inadequate accommodation, or the inability to create or join trade unions or other forms of worker association. Violations are often widespread, covering a great number of affected rightsholders. They occur in jurisdictions which in most cases lack capacity, or political will, to undertake labour inspections, investigate working conditions and violations, and prosecute perpetrators, individually or through group actions. All these factors make providing individual remedy to each rightsholder through the judiciary a difficult task. Instead, collective reparation programs may be needed to ensure rightsholders receive at least some kind of reparation (Laplante 2012). In such cases, the easiest, and most often adopted option is for companies to hand affected rightsholders lump sums of money. However, because of the great variety of offences, compensation alone is insufficient and does not take into account both individual and collective needs. In fact, no single reparative measure will on its own be sufficient for remedy to be considered effective.

At the same time, affected rightsholders in global supply chains do not fit in a single category, even when they work in the same factory. Workers may differ based on gender, age, type of employment (including migrant, informal or temporary workers) or other characteristics (González, Overeem and Martin-Ortega 2020). It may even be hard to identify some rightsholders, especially when they are migrant workers and they have returned to their country of origin or migrated to a different country. Their demographic, in turn, will necessarily affect their experiences of harm. As previously mentioned, for example, migration status, gender or age may increase exposure to abuse and compound harm.

Given the wide range and great number of both violations and experiences, affected rightsholders' needs and expectations for remedy are not homogenous. Therefore, no reparation program will be able to satisfy every rightsholder's needs and expectations. Instead, remedy will most often have to be the result of a compromise (Laplante 2012). However, such compromise in the design and implementation of specific measures must include rightsholders and their representatives and redress imbalances of power to prevent companies from taking advantage of the situation.

3. The nature of violations

Abuse in global supply chains is not only varied, but also takes place on a 'continuum of exploitation', ranging from minor violations to extreme ones, such as forced labour (Skrivankova 2010). Violations are often interconnected and mutually reinforcing; for example, inadequate wages may push workers to further exposure to exploitation, because workers may have to work longer

hours or pick up other jobs to support their income (Martin-Ortega, Outhwaite and Rook 2015, LeBaron 2021). As a consequence, ‘minor’ violations, such as inadequate pay or working hours, may enable ‘extreme’ ones to take place, including forced labour, if they are widespread or routinised. Sometimes, violations are accompanied by other types of abuse, such as confiscation of workers’ passports and high debt caused by initial recruitment fees, which may prevent workers from leaving exploitative situations. This is complicated by the fact that workers’ situations are not static, and the violations they are subject to may change over time. Therefore, it is often difficult to clearly demarcate boundaries between different forms of violations, and between ‘free’ and ‘un-free’ labour (Skrivankova 2010). Forced labour is a ‘porous and fluid’ category, rather than one which can be rigidly identified (LeBaron 2021).

As analysed in Part I, if abuse is systematic and particularly severe in character, it can rise to the level of ‘gross’ human right violation. In the past, slavery has been characterised as gross violation (Bassiouni 2006). Forced labour, in turn, is included within the definition of ‘modern slavery’, an umbrella term which covers a number of practices also including debt bondage and serfdom (UN Human Rights Council 2017). It is not excluded, therefore, that some practices in global supply chains may amount to gross human rights violations. Under the UNGPs, grievance mechanisms should function as early warning mechanisms to prevent ‘harms from compounding and grievances from escalating’ (Principle 29 Commentary). Arguably, therefore, it is even more important to ensure that duty bearers are obliged to provide remedy to already identified human and labour rights violations, to prevent them from escalating further and potentially reaching unacceptable levels of exploitation.

IV. Remediating violations in global supply chains: essential elements

There is no ‘one size fits all’ approach to remedy; its characteristics are highly dependent on the unique demands and challenges of each context. Current practices in global supply chains fall short of what may be deemed ‘effective remedy’ under international human rights law and the business and human rights field. Any framework designed to guide the planning, implementation and evaluation of remedy for business-related abuses in global supply chain must address the limits of current approaches. For this purpose, it is important to identify what may be some of the ‘essential’ elements needed for remedy to be effective, and which current practices often overlook.

Effective remedy overall should:

- *Adopt a human rights approach and language*
Remedy should be treated as an obligation by duty bearers (states and corporations) towards the rightsholders who have suffered harm. Human rights language should be used to emphasise the fact that remedy should not be of discretionary nature or exclusively dependent on corporate-led due diligence processes.
- *Have rightsholders at its core*
To be effective, remedy should be conceived collaboratively with all those harmed by corporate activity, rather than being imposed in a top-down manner. All affected rightsholders must be

ensured effective remedy. This applies regardless of their worker status, or whether they are migrant, temporary or informal workers.

- *Be treated as a matter of urgency*
Violations in global supply chains are often widespread, varied in nature and mutually reinforcing. Duty bearers should aim to provide remedy promptly, as soon as any issue is identified, to ensure it does not escalate and contribute to further exploitation.

Effective remedy mechanisms should:

- *Empower rightsholders and involve them in their design, governance and operation*
The mechanisms used to provide remedy should be trusted by rightsholders, and have their needs and priorities at their core. Ideally, long-term processes should aim to establish new grievance mechanisms with rightsholders involved in their design, governance and operation. In the meanwhile, it is important that available channels for remedy are identified and assessed for their suitability. Rightsholders should be supported in their engagement with these mechanisms, especially considering that they may not be aware of their rights, or of how to access and achieve remedy.
Any imbalance of power should be addressed through empowerment of rightsholders, for example through education on rights and corresponding remedies, and by exercising leverage over companies involved in abuses.
- *Address barriers to remedy*
Effective mechanisms should take into consideration any potential barriers that may prevent rightsholders from accessing remedy, especially if vulnerable. Protection from intimidation and retaliation must be guaranteed in practice and be made a priority. Removing onerous burden of proof is also essential.
- *Allow for individual and collective claims*
Since violations are often widespread and affect several rightsholders, mechanisms should allow both individual and collective claims. Collective claims are essential for leverage, and may reach a higher number of rightsholders, who may not be able to access remedy on an individual basis.
- *Be transparent*
Remedy processes need to be open and transparent. They should be based on rightsholders' right to know rather than on discretionary decisions by companies to disclose information. Corporate confidentiality cannot be used to obstruct access to remedy. Transparency must be guaranteed for any mechanism which purports to redress violations, including audit reports and CAPS.

Effective reparations should:

- *Be determined through meaningful collaboration with rightsholders*
Rightsholders must define be involved in identifying and defining *what* needs to be remedied and *how*. Reparation measures should be co-defined by rightsholders and their legitimate representatives, rather than being imposed in a top-down manner. Their perspectives must be incorporated into remedy to the maximum extent possible, while acknowledging that the result may not be perfect. Any compromise on rightsholders' needs must be justified, and must not disproportionately affect vulnerable groups. Worker representatives, local organisations and

NGOs will be in the best position to ensure affected rightsholders participate in the reparation process.

- *Not be limited to one measure*

The appropriate reparation measures depend on the context of the harm and the preferences of the rightsholders. Although compensation is often necessary, other measures in addition to it may be needed for remedy to be effective. This would depend on the context and must always be decided in the framework of consultation and engagement with rightsholders.

- *Include backward- as well as forward-looking measures*

Reparation measures should both remedy individual harm and ensure that the harm does not repeat in the future. Backward-looking reparations need to address immediate harm as well as long-term consequences on rightsholders, including health and safety concerns. Forward-looking reparations should explicitly acknowledge that human rights violations have taken place, for example through apologies, and aim to change the conditions or practices that brought about the harm in the first place.

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