



**The business response to remedying
human rights infringements:
The current and future state of corporate remedy**

Table of contents

- 1. Executive summary 1
- 2. Introduction 2
 - 2.1 About this Report..... 2
- 3. Context..... 3
 - 3.1 The Remedy Challenge..... 3
- 4. Existing frameworks and guidance on the provision of remedy 4
 - 4.1 International Frameworks and Guidance 5
- 5. Legal Context 8
 - 5.2 International examples 10
 - 5.3 Business Responsibilities for Remedy? 12
- 6. Mechanisms for access to remedy..... 13
 - 6.1 Key elements of remedy..... 13
- 7. Access and Investigation 14
 - 7.1 Grievance Mechanisms 14
 - 7.2 Corrective Action Plans 16
 - 7.3 Recommendations 21
- 8. Restoration 22
 - 8.1 Restoration Case Study: Issara Institute and the South-East Asian seafood sector..... 22
 - 8.2 Restoration Case Study: Utilising a NCP to obtain a non-judicial remedy 23
 - 8.3 Restoration for the value chain..... 23
 - 8.4 Recommendations 24
- 9. Empowerment - addressing root causes of vulnerability 25
 - 9.1 Buyer and supplier practices – tackling demand for forced labour..... 25
- 10. A path forward..... 29
 - 10.1 Current State: A lack of communication and accountability for remedy 29
 - 10.2 Recommendations 29

1. Executive summary

This report – the product of extensive desktop and field research – looks at how businesses are remedying the causes and impacts of human rights violations in their supply chains. It was commissioned by the Australian Business Pledge Against Forced Labour, a coalition of leading Australian businesses dissatisfied with the pace and scope of standard approaches to social compliance in the domestic and transnational supply chain.

This research focussed on considering if and how supplier assessments, and the associated corrective action plans, are meaningfully reducing the likelihood of human rights violations recurring, and if not, why not?

The report determined the following:

- Far from avoiding the complexities of addressing the root causes of worker vulnerability, leading retailers are perceiving a role in understanding and remedying the broader drivers of forced labour within regions and beyond suppliers' premises.
- While such initiatives continue to take shape, it is also clear that the mainstream features of responsible sourcing programs, while important in many respects, are not geared to the effective remedy of forced labour drivers in most instances. In particular, the research found that:
 - The capacity of many workers to place and escalate a claim for remedy remains constrained despite the existence of private and public grievance mechanisms. While appropriately resourced grievance mechanisms should remain a key feature of responsible sourcing programs, many workers, including within Australian onshore industries:
 - Lack sufficient knowledge of what constitutes a legitimate grievance
 - Feel too disempowered to raise a claim for remedy
 - Are forced to return to their point of origin long before judicial procedures can commence
 - As is a key theme of this report, many grievance mechanisms ignore the acute imbalances of power that give rise to human rights abuses in the first instance – applying overly simplistic solutions to inherently complex problems
- The social compliance industry, including self-assessment questionnaires, supplier-funded audits and a focus on on-paper compliance is not structured to address the underlying problems of human rights contravention. While the social compliance industry notionally results in corrective action plans being placed on suppliers, in reality these plans are disproportionately focused on closing off technical non-compliances so to achieve an acceptable minimum standard to allow continuity of supply, as opposed to genuinely exploring the root causes of human rights concerns. There are numerous cases of better practice (highlighted within this report) but this remains the overwhelming industry norm.

There are a number of recommendations contained within this report, chief among them is that businesses form commercial alliances with in-country NGO that can effectively monitor the progress of supplier corrective actions via unfiltered communication with workers in their local dialects and outside of supplier premises. This is undoubtedly a major step for many companies, given that the original purpose of contracted production was to outsource, not insource, industrial relations. However the research undertaken for this report, and as supported by others, suggests this step is necessary. If it were once hoped that sustained foreign investment would result in the parallel growth in civil society structures to better support the rights of workers in less developed regions this has not been borne out by experience. Indeed an increasingly vulnerable pool of migrant workers paired with an increasingly competitive landscape means that the inherent risk of forced labour is increasing, not decreasing. If the economic upside of global labour arbitrage is going to continue to feature in the business models of the consumer-facing sector the potential human downsides must be meaningfully addressed for this practice to be sustainable and, indeed, ethical.

We hope this report is useful and we welcome your feedback.

2. Introduction

This report, commissioned by Signatories to the 2015 Australian Business Pledge against Forced Labour ('Pledge Signatories'), aims to contribute to the discourse on what constitutes an appropriate and effective remedy in instances of forced labour.

Forced labour is a component of what is referred to as 'modern slavery', which includes servitude and bonded labour (debt labour). Awareness of the scale of modern slavery as a corporate and policy issue has recently followed reports citing that an estimated 40.6 million people are in modern slavery globally. Of these people, private companies exploit approximately 20 million of them (roughly equivalent to the population of Australia) for profit. Freedom from modern slavery is a subset of the broader principle of 'human rights' as established by the Universal Declaration of Human Rights in 1948. It encompasses the right to freedom of movement, labour rights, safety and freedom from exploitation. This report will at times refer to principles of human rights and freedom from forced labour and modern slavery interchangeably, however the focus is on forced labour and exploitation in the value chain of consumer goods and grocery businesses.

Understanding of modern slavery has grown in recent years as incidents have become more frequently identified and analysed. It is accepted that no region or industry is exempt from the risks and impact of forced labour. Fast moving consumer goods (FMCG) companies acknowledge that the risk of forced labour in their diverse, seasonal and globalised supply chains is particularly high, which is starting to shift the focus from "how can we identify if... forced labour is in our value chain?" to "what do we do when... we identify cases of forced labour".

This report aims to raise minimum standards and expectations, inspire innovative partnerships and encourage engagement on business responses to forced labour within their supply chain by exploring remedy of human rights

The corporate responsibility to protect, respect and remedy human rights, is set out within the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs constitute the most commonly accepted guidance on global business responsibility for remedy, however the nature of the guidance provides little in the way of substantive detail around activities and accountabilities to provide remedy and address the root causes of forced labour.

Human rights remedy encompasses procedural grievance mechanisms, corrective actions and remedial actions including apologies, restitution, rehabilitation, compensation or punitive sanctions. At present (and particularly in an Australian context), attributing accountability and developing mechanisms to remedy human rights abuses is a complex and relatively poorly developed area of human rights policy. As such, there are substantial gaps in the provision of remedy and a lack of consensus on how companies can utilize their leverage to support effective remedy within their supply chain.

In this context, Pledge Signatories are seeking a basis to underpin considerations of their role in supporting effective remedy if instances of forced labour or other human rights abuses are identified within their value chains. This report aims to raise minimum standards and expectations, inspire innovative partnerships and encourage engagement on business responses to forced labour within their supply chain by exploring remedy of human rights issues.

2.1 About this Report

This report was produced following extensive engagement with members of the Pledge against Forced Labour and their stakeholders, including engagement with the Salvation Army, UN Global Compact Australia Network and the Employment Law Centre of WA. This report involved detailed examination of the investigations and responses into forced labour in the Thai fishing industry including engaging with Issara, a leading in-country NGO. This report has also involved assessment of the following to determine the themes and recommendations presented in this report:

- Corporate responses to remedy across the US, Europe and Australia, including case studies of companies perceived to be leading in this area.
- Available tool kits and guidance documentation on human rights due diligence and access to remedy (including industry and commodity specific guidance).
- Relevant national (and internationally comparative) legislation on Modern Slavery and supply chain transparency.
- Australian (and internationally comparative) government frameworks for access to remedy.

3. Context

3.1 The Remedy Challenge

“Access to effective remedy and accountability mechanisms are pre-requisites for realizing human rights and achieving sustainable development.”

Office of the High Commissioner on Human Rights (2017)

Seven years on from the landmark 2011 UN Guiding Principles on Business and Human Rights, of which remedy forms a key pillar, there remains an evident “remedy gap”. There is both an ideological and practical gap in mechanisms to deliver effective remedy. This is arguably brought on by a tension between the State’s duty and capacity to provide a legal framework of recourse for victims, and the perceived fundamental basis of a corporation to limit its liability and responsibility for managing social externalities. The Non-Government Organisations (NGOs), Government and private sector have recognised the gap in providing remedy, with the UN Forum of Business and Human Rights held in 2017 in Geneva focussing solely on the topic of ‘Remedy’. There is now a newly emerging consensus that achieving a sustainable solution requires a collaboration between the three sectors.

In Australia, the Federal Government is constrained in its capacity to identify and remediate victims of modern slavery. The Fair Work Ombudsman is increasingly seeking recourse for individuals under the Fair Work Act, with expanded scope following the Vulnerable Workers Amendment (2017). However, the Ombudsman is still challenged by difficulties in identification and under-reporting of affected persons. Similarly, legal aid representatives experience challenges in identifying the entity responsible for human rights infringements. Where, for example, labour hire companies or agents are the entity most directly responsible for human rights infringements, the individuals behind the operation are often very difficult to trace or hold to account.

Until recently, the Australian Organisation for Economic Co-operation and Development (OECD) National Contact Point (NCP) has been relatively inactive and underutilised as a mechanism of arbitration and holding multi-national enterprises (MNEs) to account. The OECD Guidelines provide guidelines on standards of conduct for MNEs, including upholding human rights of employees and local communities. The NCP is designed to facilitate an arbitration process to address instances of breaches, with an aim to reaching binding agreements that will remedy the situation and prevent reoccurrence.

The complex nature of globalised supply chains and developing use of human rights due diligence procedures means that the identification of human rights violations (at least in the short term) are inevitable. With no overarching mechanism to provide access to remedy, stakeholders within the FMCG value chain need to openly and transparently discuss the problem while working collaboratively towards prevention and providing effective remedy in identified circumstances. It is acknowledged that the FMCG and food and grocery sectors face specific challenges in this regard due to numerous and extensive supply chains. The seasonal nature of a substantial proportion of goods and rapidly changing demands of consumers as well as the relatively recent introduction of online shopping (and same day delivery) puts additional pressure on buyers and suppliers alike.

The challenges continue to grow and evolve with the changes to the workforce and decentralised business models. The ‘gig economy’ creates new challenges of more self-employed workers with limited safe guards on their rights. The legal system will struggle to keep pace with human rights challenges that emerge from business models that are built around more automated, cloud-based and outsourced resources. This generates a need for businesses to take responsibility for protecting, respecting and remedying human rights in the new business models that they create.

Understanding the inevitability of human rights violations supports the business responsibility to address the remedy gap through measures that compliment local socio-economic realities. Further, there is an opportunity to consider the power of companies to actively promote human rights through their actions and operations. This report aims to provide a contribution to the accumulated knowledge and discourse in this area by considering how Pledge Signatories can both individually and collaboratively leverage their roles in the value chain and collective power to actively promote human rights in their operations and supply chains.

4. Existing frameworks and guidance on the provision of remedy

The UN Guiding Principles and supporting documentation use terminology such as state-based, non-state based or judicial and non-judicial (or extra-judicial) to refer to the sources of human rights remedy mechanisms. Figure 1 below illustrates the range of state and non-state based avenues and provides examples of the types of mechanisms that are relied upon to address corporate human rights violations.

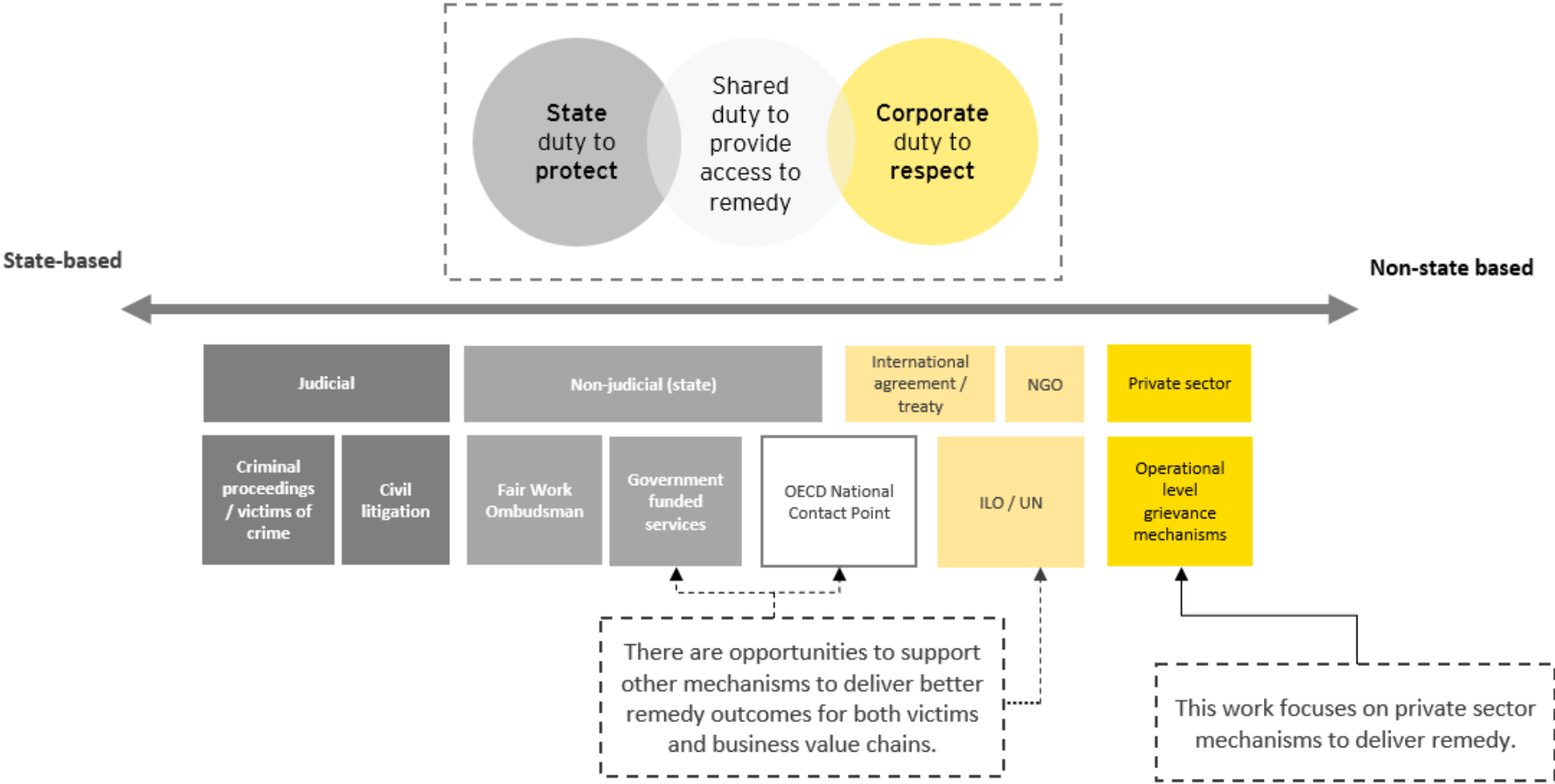


Figure 1: State and non-state based avenues for remedies

While the UNGPs emphasise the primacy of state-based judicial mechanisms, in many jurisdictions, including Australia, state-based judicial and non-judicial mechanisms still face challenges to achieve the results that are needed.

Some jurisdictions are seeing progress through state-based (non-judicial) mechanisms, such as the initiatives of the Home Office and independent Anti-Slavery Commissioner in the UK. However, even well-developed government programs emphasise the critical role that the private sector must play.

4.1 International Frameworks and Guidance

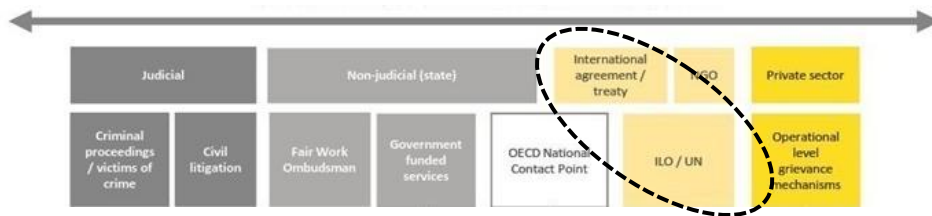


Figure 2: International frameworks as an avenue for remedy

The UNGPs provide practical guidance on how to operationalise the ‘Protect, Respect, Remedy’ framework, as established by Professor John Ruggie. These are considered the authoritative global guidance on corporations’ international human rights responsibilities, and provide a common global platform for action.

- The UNGPs provide guidance on:
- Business responsibility for remedy (GP 22)
- The definition of remedy as “the process of counteracting or making good any human rights harms that have occurred, as well as the prevention of further harm” (GP 25)
- The requirement for businesses to establish or participate in operational-level grievance mechanisms (GP 29)
- Effectiveness criteria for grievance mechanisms (GP 31)

The guiding principles was established through a UN forum with the objective of achieving a global consensus. As such, it was necessary that a baseline and broad principles-based approach be agreed as an achievable first step to obtaining global consistency. The challenge therefore still remains to build on the principles to achieve substantive guidance and recommended activities to support businesses to embed the principles in core activities.



Figure 3: UN Guiding Principles

4.1.1 2017 United Nations Forum on Business and Human Rights

The importance of progress on remedy is reflected in the theme of the 2017 United Nations Forum on Business and Human Rights, “Realizing Access to Effective Remedy”. The aim of the forum was *to address the critical issue of access to remedy by examining systemic flaws and shortcomings in existing efforts and reviewing emerging good practices and innovations, with a view to achieving greater coherence and committed action in the service of human rights and rights-holders.*

Key objectives of the 2017 Forum included:

- Understanding how access to effective remedies interacts with the state duty to protect and the corporate responsibility to respect human rights
- Encouraging states to remove barriers to judicial and non-judicial remedies and improve access to effective remedies
- Increasing the understanding of the current state of implementation of the UNGP remedy pillar including challenges and current practices

- Identifying areas of significant capacity and capability gaps in achieving effective remedy for rights-holders and practical actions to address those gaps¹

At the closure of the 2017 Forum, the Working Group on Business and Human Rights expressed the need for advancements to occur in a range of areas over the next few years. These areas included:

- Commitments to the UNGPs to extend beyond commitments to the implementation of tangible short and long term actions
- Acknowledgement of the importance of community engagement in the effective remediation of victims
- State cooperation in the development of frameworks which facilitate mutual assistance and remove barriers in accessing justice or remedy
- The adoption of ‘a race to the top’ mindset amongst states and businesses, where human rights is incorporated at the core of economic policy frameworks
- States leading to create regulatory frameworks that ensure businesses prevent, mitigate and remedy adverse human rights impacts
- For human rights to be perceived as precursors to equitable, sustainable and inclusive development

The session closed with the reiteration that the Working Group on Business and Human Rights is committed to guaranteeing that more states and businesses seriously regard their human rights obligations and responsibilities under the UNGPs². Overall, the Forum has no doubt progressed conversations and opportunities for action from states and businesses. However, it will require time, collaboration and genuine shifts in economic and development understanding before concrete actions are implemented.

4.1.2 International Frameworks and Guidance Documentation

The table below summarises key frameworks and documents that are accepted globally:

Guidance	Organisation	Significance for Pledge Signatories
The Sustainable Development Goals	United Nations	The Sustainable Development Goals seek to achieve universal human rights of all and include a specific forced labour target: “Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.” Signatory alignment of corporate strategy and associated disclosures would form a foundation for businesses to articulate and further their progress in specific development areas.
OECD Guidelines for Multinational Enterprises	OECD	The OECD Guidelines provide principles and standards for responsible business conduct in a global context that are consistent with applicable laws and internationally recognised standards.
The International Labour Organisation’s Fundamental Conventions	International Labour Organisation	Provide a core set of labour standards that are fundamental to the rights of human beings at work.
Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms	International Federation for Human Rights	The Guide provides a summary and explores the challenges of the OECD Guidelines relevant to the respect and protection of human rights. The Guide also details remedy pathways available for victims, including judicial and non-judicial recourse mechanism.
Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights	SHIFT	Provides examples of practical and innovative methods for companies to meet their responsibilities in the remediation of human rights impacts.
Corporate Human Rights Benchmark	Corporate Human Rights Benchmark	Grounded in the UNGPs, the Benchmark provides annual insight into businesses’ approaches to human rights by comparing policies, processes, and practices and how they respond to serious allegations.

4.1.3 Examples of Industry Initiatives

Initiatives	Organisation	Significance for Pledge Signatories
Strategic Partners Program	Issara Institute	Issara Institute is an independent NGO who partners with global retailers, importers and suppliers to strength global supply chains against forced labour and other human rights. The Issara Institute works to identify and address human rights risks within partner supplies located in Thailand.

¹ <http://www.ohchr.org/Documents/Issues/Business/ForumSession6/ExplainingThemeLaunchingBlog.pdf>

² <http://www.ohchr.org/Documents/Issues/Business/ForumSession6/ClosingSuryaDeva.pdf>

Initiatives	Organisation	Significance for Pledge Signatories
Better Cotton Standard	Better Cotton Initiative	Members of the Initiative are stakeholders within the cotton supply chain and promote sustainable global cotton production by improving the livelihoods and economic development of cotton producing areas (including addressing forced and child labour).
Child Labour Monitoring and Remediation System	International Cocoa Initiative	The Initiative has developed a child labour monitoring and remediation system which aims to identify and remediate cases of child labour in the supply chain of cocoa companies.
Responsible Business Alliance (RBA)	RBA	The RBA involves members companies from the electronic, retail, automotive industry committing to be held accountable to a code of conduct which aims to support the rights of workers and communities within international supply chains. Members also share a range of training and assessment tools which support continuous improvement toward responsible global supply chains. Tier 1 suppliers of the RBA are also required to implement the RBA Code of Conduct. A main component program of the RBA, is the Validated Assessment Process (third-party compliance assessments) which identifies issues and the closure of assessment findings within factories.

4.1.4 Human Rights Reporting Standards

Initiatives	Organisation	Significance for Pledge Signatories
GRI Standards	Global Reporting Initiative	The GRI reporting principles contain provisions for reporting on human rights by organisations such as the Pledge Signatories. For example, <i>HR6</i> is a GRI indicator on forced or compulsory labour (including supply chain).
ISO 20400	ISO	Published in 2017, ISO 20400 establishes guidance for responsible procurement, including meeting human rights objectives and how to measure performance.
UNGP Reporting Framework and Assurance Framework	SHIFT	The UN Guiding Principles Reporting Framework provides guidance for companies on how to report how they respect human rights. It provides a series of questions to prompt companies to look at whether it is focussing its attention in the right areas, and to measure the progress it is making.
SA8000 Standard	Social Accountability International	The Standard is an auditable criteria for Signatories to align their workplaces, suppliers and disclosure on human rights.

5. Legal Context

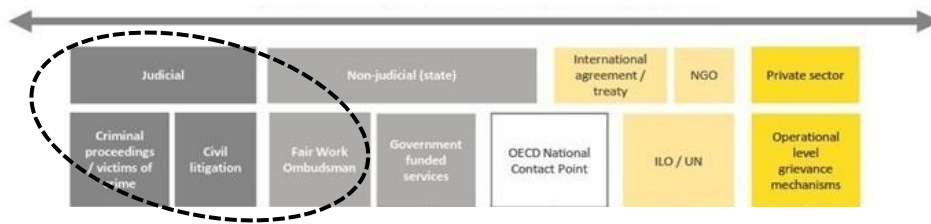


Figure 4: Judicial avenues to obtain remedy

The legal requirement to provide remedy or compensation is reliant on how the relevant jurisdiction has established criminal and civil liability for forced labour in the value chain. Remedy provisions generally only apply where the legal framework places responsibility for forced labour on a particular business entity (usually only the direct employer). Although this area is rapidly evolving in different jurisdictions around the world, the challenges with the current situation (which is particularly true in an Australian context) are characterised in a 2016 paper by the UN High Commissioner for Human Rights which states:

“At present, accountability and remedy [...] is often elusive. Although causing or contributing to severe human rights abuses would amount to a crime in many jurisdictions, business enterprises are seldom the subject of law enforcement and criminal sanctions. Human rights impacts caused by business activities give rise to causes of action in many jurisdictions, yet private claims often fail to proceed to judgment and, where a legal remedy is obtained, it frequently does not meet the international standard of “adequate, effective and prompt reparation for harm suffered”.³

5.1.1 Australian Legal frameworks

Legal Services Remedy Experience

Western Australian legal services have reported common circumstances that limit opportunities for victims to access remedy:

Identification of victims – victims and community members are unaware of indicators of the ‘slippery slope’ that sees migrant workers fall into bonded labour.

Identification of employer – the Australian legal system can currently only hold the direct employer liable for forced labour penalties. In practice, migrant workers are usually employed by contract labour companies (often sham companies) that do not take responsibility for working conditions and can be difficult for the ombudsman and the victims legal support services to hold accountable. Further, even if found liable, the company may not have financial resources to readily available to compensate victims.

Visa status – when victims of modern slavery are reported they may be deported or may avoid utilising the legal system for support due to fear of deportation.

In Australia, workers’ rights are primarily protected by The *Fair Work Act 2009 (The Act)*. The Act aims to protect certain rights, including:

- Workplace rights, such as safe working conditions, minimum pay rate, and maximum hours
- The right to engage in industrial activities
- The right to be free from unlawful discrimination
- The right to be free from undue influence or pressure in negotiating individual arrangements

In circumstances where workers have had these rights infringed, a complaint can be lodged with the Fair Work Ombudsman who will investigate the claims and can order payment of damages to the victim. However, awarding damages to workers who have had their rights infringed is limited by a number of challenges including:

- Requiring victims to know their rights or have a third party to intervene on their behalf
- Requiring victims to have the confidence to seek an alternative to their current situation
- Requiring victims to understand the English language in order to make a complaint, or have the support of another person or non-government organisation (NGO)

³ http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/A_HRC_32_19_AEV.pdf
Human Rights Remedy | June 2018

- Requiring an employer to be identifiable (as an individual or entity) and hold resources to pay compensation, where in reality labour hire companies frequently exist as sham contractors.

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*, implemented changes to the Fair Work Act 2009, including:

- increased penalties for ‘serious contraventions’ of workplace laws
- clarifying that employers can’t ask for ‘cashback’ from employees or prospective employees
- increased penalties for breaches of record-keeping and pay slip obligations
- establishing that certain franchisors and holding companies can now be held responsible if their franchisees or subsidiaries don’t follow workplace laws (if they knew, or should have known, and could have prevented it). This means that companies can be held responsible with serious penalties for underpayment or informal payment of wages in any of their franchised businesses.

In 2017, the Australian Government established the Migrant Workers’ Taskforce, with an aim of protecting vulnerable workers. The Taskforce works to “identify further proposals for improvements in law, law enforcement and investigation, and other practical measures to more quickly identify and rectify any cases of migrant worker exploitation”.⁴ The Taskforce consists of members from government agencies that have functions which impact the treatment of migrant workers. The Taskforce is due to report to the Government by mid-2018. Key improvement areas being considered by the Taskforce include:

- Illegal and exploitative labour hire companies
- Access to justice for migrant workers
- Identification of wage underpayment
- Effectiveness and coordination of compliance and enforcement activities across agencies
- Agriculture industry exploitation of student visa holders and migrant workers
- Accommodation for working holiday and temporary visa holders⁵

Legal Services Victim Identification Experience

Western Australian legal services have reported alleged incidents of migrant agricultural workers living within labour settlements established by contract labour business in Australian country towns. The labour settlements are reported to provide basic and crowded accommodation and include on-site shops and services (also operated by the labour hire business). The workforce is therefore allegedly required to spend wages on over-priced accommodation and provisions that are directed back to the labour hire business. It was reported that the situation of low wages and high shop prices resulted in debts owed to the company and bonded labour scenarios emerging.

Although migrant labour has been used in these areas for decades and are common sites within country towns. Farming business models and thus country communities may be dependent on the cheap migrant labour – which can stall identification and remediation of slavery-like conditions.

5.1.2 The Proposed Australian Modern Slavery Act

An Australian Modern Slavery Act is expected to be introduced to Parliament shortly. The current proposal does not change liabilities or penalties for instances of slavery in supply chains, however it does put an onus on corporations to disclose what steps they are taking to respond to the risks of modern slavery in their supply chains. The Act would require mandatory public disclosure of global supply chain reporting by entities with a proposed revenue of \$100 million or above⁶.

Disclosure will need to be public, such as being available through a link on an entities’ website and will require the equivalent of board approval and director sign off.

“The recommendation to establish a mandatory global supply chain reporting requirement for certain entities operating in Australia would **require entities to take responsibility to ensure that they are not profiting, or gaining a competitive advantage, from modern slavery in their global supply chains**”

⁴ <https://www.jobs.gov.au/migrant-workers-taskforce>

⁵ <https://www.jobs.gov.au/chair-s-public-statement-february-2018-meeting>

⁶ http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf

The proposed Australian modern slavery legislation is expected to reflect the UK Modern Slavery Act. This would join the:

- EU Directive 2014/95/EU
- The Transparency of Supply Chain Act, 2010 (California)
- The Corporate Duty of Vigilance Law, 2017 (France)
- Child Labour Due Diligence Law, Proposed for 2020, (Netherlands)

The current focus on the proposal is for disclosure provisions and although narrow in focus, it represents a shift in accountability and responsibility in Australian business culture.

5.2 International examples

A number of international jurisdictions have made amendments to their corporate and legal platforms to address human rights.

5.2.1 Canadian Ombudsman for Responsible Enterprise

In January 2018, the Canadian Government committed to establishing an Office of the Canadian Ombudsman for Responsible Enterprise (CORE). The purpose of CORE is to investigate allegations of human rights breaches by Canadian companies overseas. The CORE will have the authority to independently investigate allegations of human rights breaches, report, recommend remedy and monitor remedy implementation. The scope of the Ombudsman is expected to expand to all sectors following an initial focus on the mining, oil and gas, and garment sectors. A multi-stakeholder Advisory Body will be created to advise the Canadian Government and the CORE on responsibility for overseas corporate activity.⁷

5.2.2 UK Modern Slavery Legislation and the National Referral Mechanism

The UK Modern Slavery Act includes provisions that explicitly criminalise forced labour and provides penalties for those found to infringe the Act and provide support for victims of forced labour. Section 47 provides for legal services for the victim so that civil claims can be made for damages (constituting judicial remedy).

5.2.2.1 The UK National Referral Mechanism

The National Referral Mechanism (NRM) was initially established by the Home Office to address instances of people trafficking and support potential victims. Following the introduction of the UK Modern Slavery Act and various policy pilots, the scope of the NRM was expanded to include victims of slavery, servitude, or forced or compulsory labour where identified in England or Wales.

The NRM provides a central mechanism to identify, investigate and provide short-medium term support for victims of modern slavery. Reforms to the National Referral Mechanism (NRM) announced in October 2017 have increased the minimum period of support for victims and established 'places of safety' to provide immediate support to potential victims, as well as up to 6 months of 'drop-in' services, developed in partnership with The Salvation Army, for those transitioning out of the NRM.

Frontline Staff Guidance

The Home Office published "Victims of modern slavery – frontline staff guidance", which establishes the following step by step guidance for anyone who suspects a person is a potential victim of modern slavery:

1. Identify the potential victim
2. Arrange emergency medical treatment
3. Refer a potential victim of modern slavery to NRM
4. Arrange accommodation.

Pages 45-62 of the Guidance document expand on the above steps including when to report to the police.

Under the UK framework only frontline staff of public authorities have a mandatory duty report. This does not extend to operational staff of businesses.

⁷ https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringingleadershiptoresponsiblebusinesscond.html
Human Rights Remedy | June 2018
Australian Business Pledge against Forced Labour

5.2.2.2 The UK Anti-Slavery Commissioner

The Independent Anti-Slavery Commissioner is responsible for promoting best practice and improvement in modern slavery and human trafficking both in the UK and international context. The role of the Commissioner was established as part of the UK Modern Slavery Act and is centred on the identification of victims and the prevention, detection, investigation and prosecution of modern slavery and human trafficking crimes.

While the Commissioner does not have regulatory oversight, engagement with the private sector and business leaders on modern slavery is of key priority. As part of this engagement, the Commissioner's role is as an advisor and support for businesses, rather than acting as a policing mechanism. As a result, the Commissioner has directly engaged with leading UK supermarkets to discuss their commitments to respond to the risks of modern slavery in supply chain. In addition, the Commissioner has also worked closely with the Consumer Goods Forum, and endorsed their Social Resolution on Forced Labour, which aims to encourage action of forced labour through global collaboration between retailers and manufacturers.⁸

⁸ <http://www.antislaverycommissioner.co.uk/>
Human Rights Remedy | June 2018
Australian Business Pledge against Forced Labour

5.3 Business Responsibilities for Remedy?

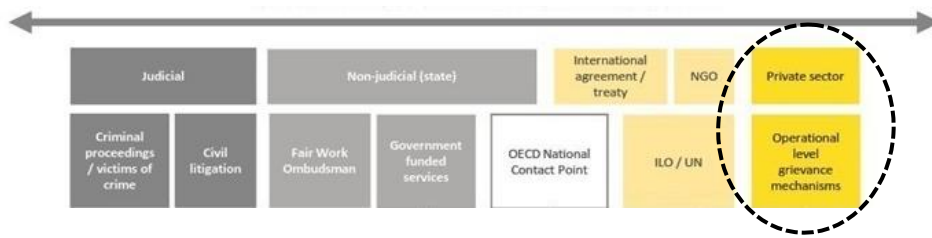


Figure 5: The private sector as an avenue for obtaining remedy

The UNGPs establish the corporate responsibility to provide appropriate remedy. Other than mechanisms for awarding damages or compensation within legal frameworks, there is limited responsibility for remedy prescribed to businesses. In jurisdictions where the government is constrained from providing direct access to remedy through legal mechanisms, we can reasonably expect that there is a larger gap for the private sector to address.

The ‘standard’ for providing remedy can be considered in line with other subjective corporate responsibility standards, that is, ‘what stakeholders would reasonably expect’. The media and NGOs have brought attention to human rights abuses and generated dissent from consumers who learn that products may have been produced or manufactured through slave labour and exploitation.

This initial brand association of shock (and sometimes outrage) has steered public perception of responsibility for human rights towards the well-known brand names (public names targeted by the media) of manufactures or retailers. As a result, there is increasing demand for retailers to provide assurances around responsible sourcing of their products. With this, there is a growing expectation for companies to ‘make good’, where human rights of workers and communities have not been adequately protected or to support their suppliers to improve practices or build resilience.

This has caused a natural movement for businesses to start to step up and pioneer different ways of addressing abuse and vulnerability of workers in their supply chain, to find ways to protect their brand and meet growing consumer expectations. Particularly where businesses are growing and have a need to continually increase their supplier base. More recently a shift has emerged where retailers are acknowledging the limitations in imposing strict standards on suppliers and instead are looking for ways to work with them (including reducing buying pressures) to improve and empower the workforce to avoid exploitation.

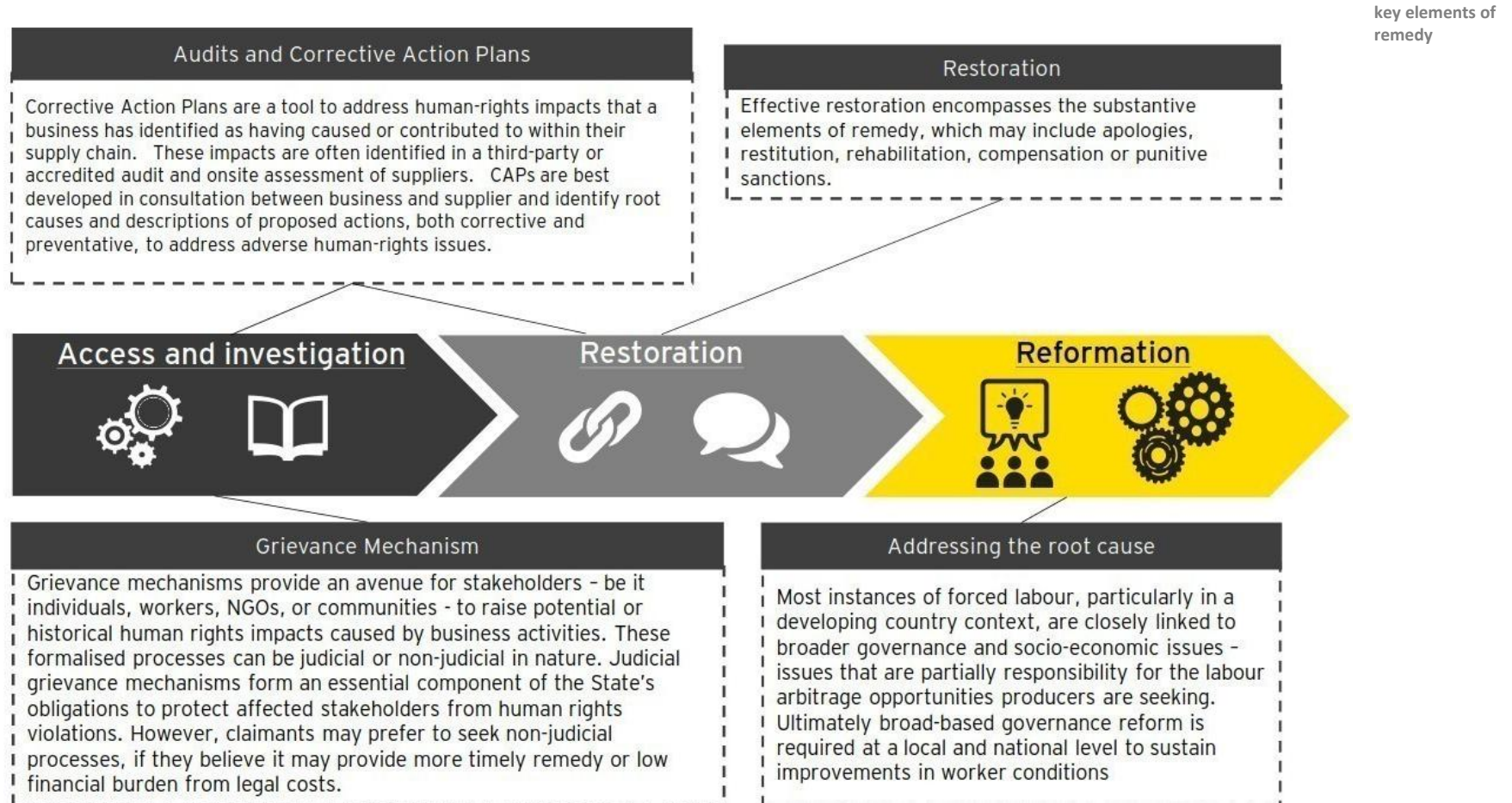
“Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”
UN Guiding Principle 22

6. Mechanisms for access to remedy

6.1 Key elements of remedy

Effective remedy requires activity across a range of areas. This extends from the processes used to identify impacted rights-holders through to effective restoration, and addressing the root causes of human rights breaches. As we move away from identification and further towards restoration and addressing the “root cause”, there is less consensus on ‘what works’.

Figure 6: The effective



7. Access and Investigation

7.1 Grievance Mechanisms

'Grievance mechanisms' are designed as a system where forced labour concerns (risks factors or actual occurrences) can be reported, investigated and resolved through a formal and accountable process. Along with auditing, grievance mechanisms are the primary means of identifying precursors or incidences of forced labour and providing immediate and targeted remedy.


In other jurisdictions such as the UK and the US, State-based grievance mechanisms exist, which provide an alternative, or strengthen existing business-based grievance mechanisms. In contrast, there is not yet any State or inclusive NGO-based grievance mechanism in Australia to raise and address corporate human rights violations, which has put the onus on individual organisations to establish their own.

Commonly in Australia, large organisations host (or outsource) grievance mechanisms such as phone lines and intranet systems for employees to raise concerns (or whistle blow) on health and safety or ethics issues. Mature systems are characterised by automated triage, escalation protocol and response time tracking functions to ensure that concerns are raised with the appropriate accountable person and are addressed and closed off in a timely manner. Many businesses, however, lack confidence that these grievance mechanisms will (a) be used to raise forced labour concerns and (b) that there is adequate functionality and competency within both the system and personnel to resolve the issue and provide appropriate and adequate remedy.

Within the grocery value chain, it is recognised that precursory indicators of forced labour are difficult to identify at the retail and wholesale level. As a result, grievance mechanisms need to be accessible from within supplier organisations, whilst being visible and retaining accountabilities for addressing issues at other points within the value chain.

Depending on the issues identified, achieving closure may require referral to mediation or an arbitration process, which could be hosted internally or by an independent third party. Establishing where the grievance mechanisms sits within the value chain and how it is managed in the value framework will have a substantial impact on outcomes. The UNGPs establish criteria for effective grievance mechanisms.

Effectiveness criteria



- ▶ **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- ▶ **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- ▶ **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- ▶ **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- ▶ **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- ▶ **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- ▶ **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- ▶ **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Figure 7: UNGP criteria for effective grievance mechanisms

Traditional models of grievance mechanisms are based wholly in an entity and therefore operate in isolation within one tier of the value chain. This introduces challenges where some entities may have poorly resourced grievance mechanisms or no access to a grievance mechanism at all. In addition there are no avenues for sharing information, building capability or establishing accountabilities for human rights issues.

A more effective grievance mechanism, includes the role of a third party in sharing information between individual grievance mechanisms (as shown in Figure 9). The flow of information through a third party also allows communication of any identified issues within the supply chain to retailers, increasing their oversight and accountability. An example of the use of an effective grievance mechanism structure is that of a UK Supermarket's grievance framework. The framework includes an initial assessment of the complaint, followed by an internal investigation which may involve an independent third party and consultation and mediation with all parties. The business also actively encourages employees to contact their OECD NCP if they feel they cannot raise a concern with the company directly.

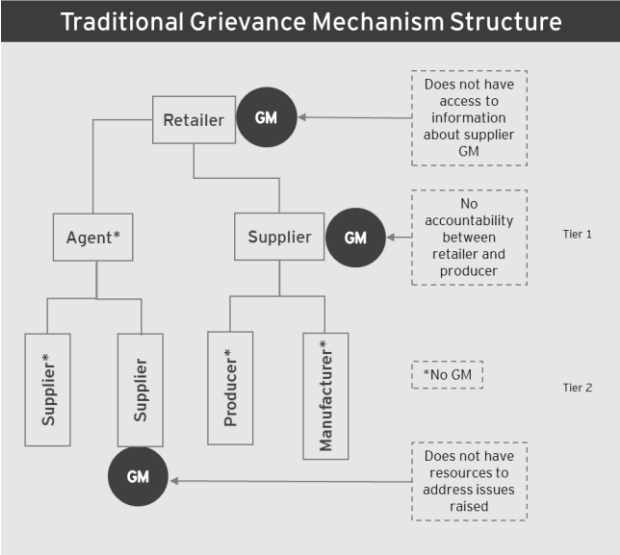


Figure 8a: Grievance Mechanism Structures

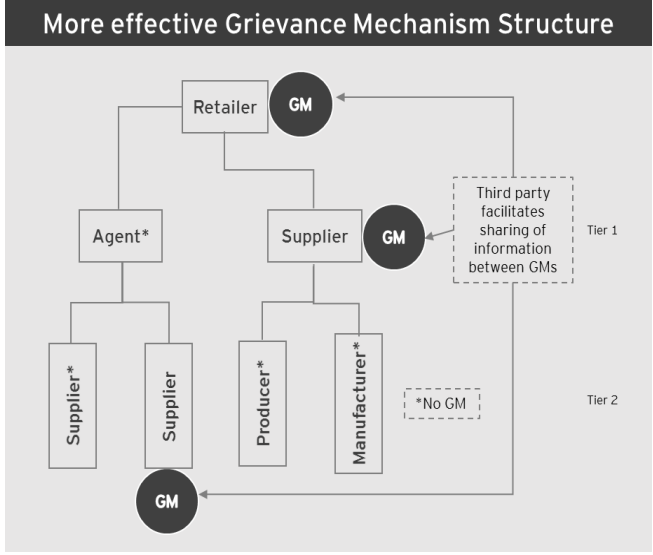
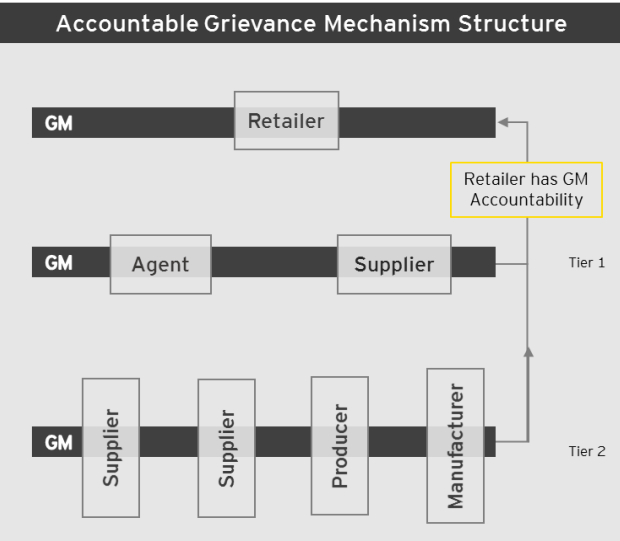


Figure 9b: Grievance Mechanism Structures



An alternate structure, which also has strengths in increased accountabilities is the use of a single grievance mechanism that is embedded through the whole value chain. The grievance mechanism could be owned by an entity within the value chain (usually the entity with the most influence, such as the retailer or wholesaler). In some geographies there are examples where the grievance mechanism is owned by an independent third party, such as an NGO or government entity. With these models, the grievance mechanism owner (if it's a third party) enables effective communication with the entities and facilitates retailer oversight and accountability of issues identified across their supply chain. An example of this type of grievance mechanism has been reported by an international wholesaler, whereby the businesses' suppliers, their workers or contractors may report actual or suspected breaches of the businesses' Responsible Sourcing Policy by phone or online using a bespoke ethics reporting portal.

Although one particular model will not fit every company/value chain (and may depend on supporting government or third party grievance mechanism infrastructure in the geography), the following describes good practice examples for key attributes:

Figure 9c: Grievance Mechanism Structures

- **Third party involvement in the execution of mechanisms:** involving a trusted third party to take an oversight role, perform process audits, and/or participate in governance and review committees. This becomes particularly important when aiming to increase trust in the mechanism and likelihood that victims (and stakeholders) report human right claims.
- **Multi-stakeholder engagement embedded in the design stage of the mechanism:** Multi-stakeholder engagement includes consultation with external experts or engaging with different groups who are part of, or have direct relationships with the ultimate mechanism user base, such engagements with the supplier workforce or NGOs who are associated with the workforce and/or their families.
- **Communication strategies specific to the grievance mechanism:** With the purpose of increasing accessibility to the mechanisms in place, companies incorporate communication-related components in their grievance processes. For example:
 - Selected on-the-ground staff are trained to act as champions and have specific awareness-raising objectives
 - Periodic communication initiatives and advocacy programs are implemented
 - The grievance mechanism is embedded in on-boarding training of employees
 - Suppliers are required to report and/or adhere to specific grievance-related criteria before business relationship can be established (e.g. showing that suppliers’ workforce is aware of the grievance mechanisms available to them)
- **Collaborative approach towards mechanism implementation:** taking an approach that involves a commitment to collaborate with other organisations (e.g. NGOs or coalitions) provides an independent platform for victims to report human rights abuses. The pooling of resources and centralised implementation activities are two key characteristics of this practice leading to efficient use of resources and wider reach of grievance services.

7.1.1.1 Achieving results

A well designed grievance mechanism doesn’t necessarily correlate to operational effectiveness. Incorporating feedback mechanisms and a review process is critical for monitoring that outcomes are achieved.

Overseas Supermarket ⁹	International Clothing Brand
<p>In 2010 the business was involved in a pilot to test the UN Guiding Principles criteria for grievance mechanisms with farmers in the Western Cape, South Africa. The region suffers from structural issues such as power imbalances between workers and employers and low union participation. As such raising grievances and seeking remedy has been challenging.</p> <p>The pilot brought together multiple stakeholder groups who had historically not had open dialogues and was able to produce a help guide for farmworkers on how to raise grievances. As international external participants, the business was able to play a unique role bringing together stakeholder groups that had not been constructively communicating.</p> <p>Having a shared goal acted as a catalyst to trigger dialogue, however the project had narrow scope and was designed with a limited time frame. This resulted in there being no opportunity to address structural issues in the community which ultimately hinder a successful grievance mechanism.</p>	<p>A large overseas outdoor clothing and equipment brand, has taken a collaborative approach towards grievance. The company joined the Fair Wear Foundation in 2010, which includes over 90 major fashion brands among its members.</p> <p>The Fair Wear Foundation (FWF) is a multi-stakeholder initiative that works to improve conditions in garment factories. Membership to FWF enables access for the workers of suppliers to the member company to lodge complaints regarding working conditions or the code of conduct to the FWF. Complaints are investigated if they meet one of the FWF labour standards, which are based on the ILO conventions.</p> <p>Telephone helplines are available to workers to contact a local complaints handler, who will speak the local language and understand the local context. The FWF will then investigate the cases, draft remediation plans and verify whether remedial activities have been carried out. The names of the involved member companies are publicly reported, facilitating its stakeholders to hold them accountable to improvement steps in the future.</p>

7.2 Corrective Action Plans

Supplier audits and the resulting corrective action continue to provide critical opportunities to identify and remediate human rights abuses.

Corrective Action Plans (CAPs) are the primary business mechanism for businesses to address human rights impacts resulting from their operations or supply chain relationships. These impacts are often identified through a third-party or accredited audit and onsite assessment of suppliers or partners. Corrective actions are defined activities to remedy issues that need to be completed within a specified timeframe, often based on criticality of the finding.

⁹ https://sites.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf

The CAP design and implementation process

The parties involved in implementing a corrective action plan (CAP) will vary. While some companies rely on external auditors to provide CAPs as part of the audit, other companies engage with their stakeholders to develop CAPs. For example, Unilever requires its suppliers to design and propose CAPs specific to their respective contexts and operations. Unilever also provides broader support to its suppliers through Supplier Consultation workshops where they are able to share feedback and best practices on CAP implementation¹⁰. CAPs will be subject to secondary audits to verify issues have been remediated. The Coca-Cola Company uses secondary verification incorporating both remote and visual inspections.

A corrective action will likely include:

The determined root cause(s) of the issue

A corrective action to address the root cause(s)

In some cases suggest a preventative action to prevent future reoccurrence

Prioritisation of corrective action and findings, for example distinguishing between critical finding, minor non-conformances and opportunities for improvement

The timeline for expected completion of the corrective action, which may be reflective of the priority of the finding

The owner responsible for the corrective action

While design and implementation of CAPs are very much dependent on specific organisational contexts and relevant stakeholder configurations, an optimal CAP process should involve multiple lines of communication across the stakeholder group. They should allow for participation of external NGOs (or worker-level organisations) whose role is to build trust and provide workers a solid platform for communication without risk of misinterpretations and bias.

Challenges with typical use of CAPs

CAPs have become a staple in many businesses' supplier audit toolbox, particularly among companies who have recognised their responsibility to address human rights and other ESG related issues in their supplier base. However, recent analysis of audit programs has shed light on a key weakness of typical audits: they have been reduced to mere assessments of supplier practices at one particular time and localised on one specific site. CAPs that draw on results from such basic criteria are found to simply provide physical- and time-bound solutions for addressing directly observable malpractices. Consequently, these CAPs can be regarded as a "patching up" exercise, rather than method for contributing to sustainable remediation.

Shortcomings of such typical CAPs include:

- **Corrective actions that are not appropriate for addressing the underlying cause of the issue:** identification of root cause and diagnosis of its triggering factors is left out of their scope
- **Corrective actions that are selected based on ease of implementation rather than effectiveness in addressing the identified problem:** even in cases where the root cause has been properly identified, the whole array of possible corrective actions is pushed through a filter that favours time-efficiency and feasibility over potential to target the underlying issue. This approach to selecting corrective actions oftentimes overlooks the opportunities for achieving efficiencies in the long run that may result from direct correction of root issue instead of multiple short-lived mitigating actions.
- **Corrective actions that are not prioritised objectively:** when a list of actions has been decided and agreed upon, they should then be prioritised for implementation. However, an analysis of typical CAPs has found that such prioritisation is commonly performed subjectively through the lens of one particular stakeholder group. The sensitivity inherent in human rights violations increases the likelihood that CAP prioritisation turns into an exercise for quickly appeasing immediate concerns. As a consequence, a company may risk losing sight of the underlying issue that gave way to the violation in the first place. CAPs have the main objective of contributing to remedy in the long run and as such should be prioritised following an objective methodology, e.g. risk based.
- **Corrective actions that are assigned to the wrong stakeholder:** inappropriate distribution of corrective actions among stakeholders is often associated with weak CAP content design. Assigning responsibilities at the outset of the design process allows for the specific corrective tasks to be defined in such way that

¹⁰ <https://www.unilever.com/sustainable-living/enhancing-livelihoods/fairness-in-the-workplace/advancing-human-rights-with-suppliers/>
Human Rights Remedy | June 2018
Australian Business Pledge against Forced Labour

the proper skills and qualities of the relevant stakeholder are incorporated in the correction action content itself. For example, monitoring of closing out activities should not be assigned to the organisation with the issue, but rather a trusted third party.

- **Corrective actions that are developed in isolation of the broader organisational environment:** while CAPs are interventions in and of themselves, their primary objective is to support a sustainable remedy approach and contribute towards an organisational change. As such, they should be designed to be mindful of and aligned to the particularities of the organisation's context and initiatives that are already underway (relevant to the issue at hand). Too often, CAPs are regarded – and therefore designed – as independent procedures. Failure to consider CAPs as a part of the larger whole, may reduce their effectiveness to create change in the long term.
- **Corrective actions that are not SMART (specific, measurable, achievable, realistic/relevant or timely):** analysis has found that CAPs commonly include actions which are difficult to monitor and therefore their effectiveness cannot be established. Monitoring of CAPs is challenged when actions are too broad, thereby leading to misinterpretation of desired outcomes. A lack of qualitative or quantitative metrics to track progress also creates the risk that CAPs miss the mark while exhausting available resources. Moreover, the tendency to favour overarching CAPs – is often a practice mistaken to increase the scope of influence – results in actions that are discovered to be unrealistic and/or unfeasible given the organisational complexities and particularities of the stakeholders involved.
- **Corrective actions that are not enforceable:** Many companies will include clauses within contracts stating they reserve the right to terminate supplier relationships should critical non-conformances be found or CAPs not completed. However, few companies will formalise this into procedures for contract termination if such conditions are met.

7.2.1 Developing effective CAPs

Despite the common weaknesses of CAPs and typical use of audits, they will, in some form or another, continue to be an important tool to achieving social compliance, identifying human rights risks and providing targeted remedies. As such, it is useful to consider the future of audit frameworks and the use of CAPs to facilitate appropriate remedy.

CAPs are best developed in consultation between business and supplier and identify root causes and descriptions of the proposed actions, both corrective and preventative, to address adverse human rights issues. Root cause analysis requires determining underlying causes (both inside and outside the businesses direct scope of influence) to prevent corrective actions focusing on symptoms rather than the cause. This includes “looking beyond the factory walls”. When seeking to determine how an instance of forced labour occurred in the supply chain of company X, questions to consider could include:

- Do we know the immigration status of our contracted work force?
- Does the nature of our supplier relationship make it compelling for them to genuinely resolve non-compliances?
- Are fees charged by labour hire companies in this instance?
- It can be important to differentiate why the instance of forced labour occurred at all, as opposed to looking at how it occurred with reference to company X. Both lines of questioning and investigation may be useful. Company X may have the ability to influence the forced labour occurring at all (broader environmental factors) rather than just preventing it occurring within its own value chain. Broader forced labour root-cause analysis questions could include:
 - Why are poverty levels so high for harvesting workers in the region?
 - Why is forced labour under-reported?
 - Can highly subcontracted business models be sustainable?

Traditional CAPs limit accountability of human rights issues to the supplier with conversations being between them and the external audit firm that they have engaged. This has prevented conversations from including the retailer and other intermediaries, which would enable more productive dialogue and the sharing of accountability for a positive resolution (as shown in Figure 10). This structure weakens the communication of identified issues to retailers and limits their accountability and oversight of issues in their supply chain. In turn, this lack of communication and accountability limits a retailer's ability to support the remediation process. A lack of awareness also limits how retailers can monitor and share learning across their operations and suppliers or engage collaboratively with industry.



Figure 10: Corrective Action Plans

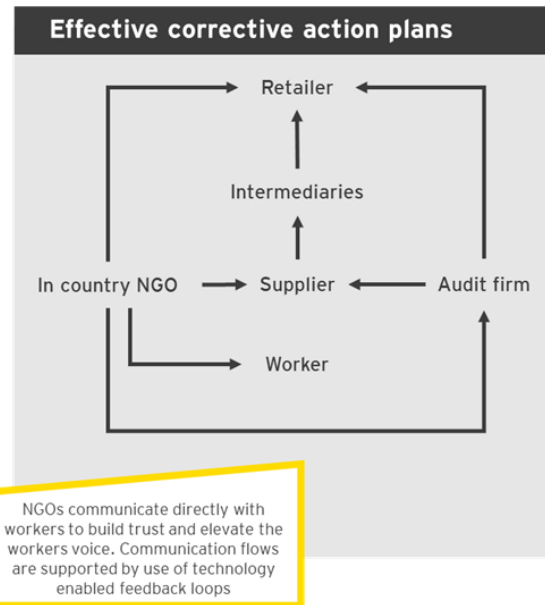


Figure 11: Corrective Action Plans

A more effective structure of corrective action plans engages an in-country NGO to facilitate trust, cooperation and communication between retailers, suppliers and workers (shown in Figure 11). Direct NGO communication with suppliers and their employees enables an understanding and empowerment of worker voices and allows for feedback to reach retailers. NGO communication flows are supported by the use of technology enabled feedback loops, enhancing retailer accountability for remedy of issues identified within their own supply chain. Additionally, constructive communication between suppliers, external auditors and retailers further supports and legitimises findings and insight from NGO involvement.

UK Supermarket approach to remediation plans:

Depending on the output of an investigation or audit, the issue is escalated to an appropriate Director within the business and a clear time-bound action plan is put in place. Plans can involve corrective actions, temporary suspension of supply, collaborative programs to drive improvements and follow-up monitoring. Throughout this process, workers remain central to the response plan. Focus is on working with suppliers to improve conditions for workers involved with the permanent de-listing of suppliers considered the last resort.

7.2.2 A collaborative approach to CAPs in action:

The Accord on Fire and Building Safety in Bangladesh

The Accord on Fire and Building Safety in Bangladesh ('the Accord') is a fire and building safety program that operates within factories of the ready-made garment industry in Bangladesh. The Accord was created in response to the Rana Plaza disaster, where a building collapse led to the deaths of more than 1,100 workers and left thousands more injured. The Accord is a binding, independent multi-stakeholder agreement between global brands and retailers, trade unions and NGOs aimed at improving health and safety conditions.

Supplier factories of Accord signatories are subject to a process of audit inspections, remediation and monitoring. Following qualified inspections, the factory owner, Accord case handlers, technical experts and companies cooperate to develop a Corrective Action Plan (CAP) of mandatory remedial actions with clear timelines and provisions for financial feasibility.

In instances where a factory is required to undertake temporary full or partial closure during remediation

activities, workers are required to be paid their regular income for a period of no more than six months. Failure to comply with worker payments may result in a factory warning notice, and ultimately lead to termination of the business relationship.

H&M is a member of the Accord. A goal of H&M is to reach 100% remediation of existing factories and enrol new factories in the Bangladesh Accord Inspection Programme (improve fire and building safety in the textile industry) by 2018¹¹. All H&M factories underwent safety inspections in Bangladesh in 2014-15 and are in the process of remediating safety issues across criteria set by H&M. Accord findings within H&M supplier factories include issues relating to requirements for fire doors, an addressable fire alarm, smoke detectors, sprinklers and fire hydrants¹². Findings are monitored and remediated by the Accord based on the categorisations of no progress, in design, installation in progress and compliant.

Similarly, as a signatory to the Accord, M&S have supported suppliers to deliver significant remedial actions. M&S have delivered remediation with over 87% of issues raised remediated in Bangladesh.

As of January 2018, there have been 2 arbitrations cases settled under the Accord. The second being a \$2.3 million settlement achieved after a two year arbitration period between a multinational apparel brand and the Bangladeshi textile workers, after accusations of delays in remedying life-threatening hazards at its factories.

The Accord ends in June 2018 and will be replaced by the Transition Accord, of which over 100 global textile and accessories brands are signatories. The Transition Accord will continue current Accord operations and is designed to facilitate the transition of Accord protections and functions to a national regulatory body. The Transition Accord aims to build capacity at the local level and will be in place until 2021¹³.

¹¹ https://sustainability.hm.com/content/dam/hm/about/documents/en/CSR/Report%202016/HM_group_SustainabilityReport_2016_Fair&Equal_en.pdf

¹²

[https://about.hm.com/content/dam/hmgroup/groupsite/documents/masterlanguage/CSR/Others/accord%20Progress%20for%20HM%20com%20\(1%20Dec%202017\).pdf](https://about.hm.com/content/dam/hmgroup/groupsite/documents/masterlanguage/CSR/Others/accord%20Progress%20for%20HM%20com%20(1%20Dec%202017).pdf)

¹³ http://bangladeshaccord.org/wp-content/uploads/ACCORD_FACTSHEET_Apr2018.pdf

7.3 Recommendations

Each company is operating at a different level of maturity with respect to human rights remedy. The company’s relative size and position in the value chain further influences its potential to address the identification of victims and access to remedy. The following diagram outlines the types of activities that companies may aim to embed depending on whether they are looking to achieve an acceptable baseline or strive to be an industry leader.

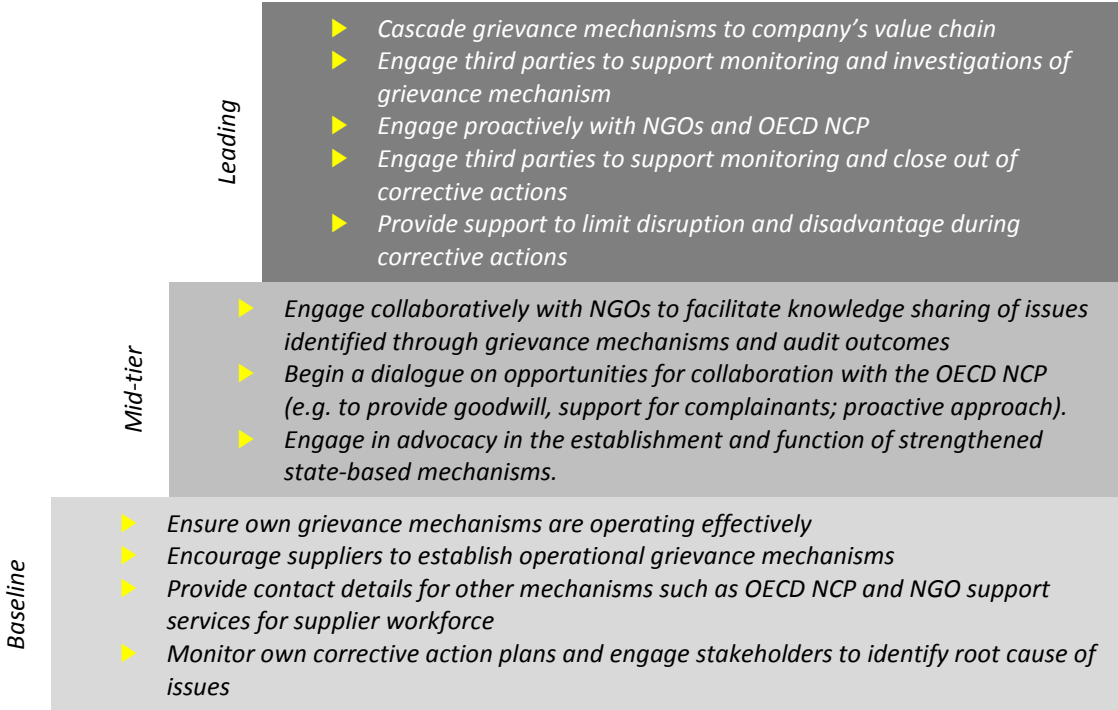


Figure 12: Recommended access and investigation activities for baseline, mid-tier and leading companies

8. Restoration

Effective restoration encompasses the substantive elements of remedy that are required to place the affected person into a position where their rights are no longer infringed upon, or to ‘make good’ the infringement that they experienced. This may include, financial compensation (including repayment of lost wages, which may include apologies, restitution, rehabilitation, compensation or punitive sanctions. Businesses should continually monitor what constitutes effective remedy, and contribute to the development of future norms in this area.

In the absence of clear guidance on financial compensation, the best way to ensure that assistance meets the needs of each individual is to consult with the impacted individual on what would be beneficial for them. However, in practice, there is limited transparency on compensation paid to victims by businesses through mediation processes.

8.1 Restoration Case Study: Issara Institute and the South-East Asian seafood sector

The Issara Institute is an independent not-for-profit corporation established 2014, to address the gap in providing support to global buyers as well as local suppliers aiming to meet new standards for ethical trade and responsible sourcing. The Institute partners with major retailers and seafood importers aiming to facilitate supply chain visibility and collaboration. Issara has worked with Walmart, as well as nine UK retailers and seafood importers to form pilot partnerships aimed at ending slavery in seafood supply chains. These partnerships are reported to have impacted more than 60,000 migrant workers, including over 5,000 of whom were reported to previously be in forced labour conditions and are now in decent work.

The Issara approach to improving working conditions across supply chains is known as Inclusive Labour Monitoring (ILM). As illustrated by Figure 13 below, the ILM utilises the direct engagement with workers (‘workers voice’) of workers, technology, data analytics and partnerships to drive improvements in the supply chain. In addition, the collaborative approach (with the company and workers) as well as ongoing monitoring aids addressing the root cause.



Figure 13: Issara Institute Inclusive Labour Monitoring (ILM)

The aim of the ILM is to enable businesses to have a direct view and understanding of labour conditions across their supply chain. This understanding is considered to support businesses to address gaps in their supply chain to eliminate labour and management risks, which would violate the human rights of individual employees, as well as addressing areas in which those risks have become reality.

8.1.1 The Issara Institute Unconditional Cash Transfer Pilot

Unconditional Cash Transfers (UCTs) are becoming increasingly common within humanitarian, social protection and empowerment spheres. Rather than providing money to an aid organisation to decide how to spend funds on behalf of the beneficiary, UCTs provide the money directly to the individual who has suffered a human rights abuse. This provides that individual with ownership and control over the money, with the flexibility to buy a wide variety of goods and services based on their needs.

The Issara Institute trialed a pilot program involving UCTs, drawing on indications that the provision of UCTs in the right circumstances can support empowerment and provide a sense of dignity and enables people to make informed choices based on their personal circumstances and needs.

In 2015-2016 Issara ran an Unconditional Cash Transfer Pilot¹⁴ for trafficked persons in Thailand and Myanmar. Supported by two donors (Anesvad Foundation and Equitas Foundation), and Issara Institute's global partners, 468

¹⁴ <https://www.issarainstitute.org/empowerment>

victims were direct beneficiaries. The pilot program included legal assistance, healthcare, job placement assistance, and referrals to and information about other social services and benefits. In addition to the package of assistance, 174 of these individuals received UCTs over a consecutive three month period. Staying in contact with the victims enabled Issara to learn the priorities and needs of a trafficked person once given direct control over the resources they were entitled to. For example, the once a month transfer (aligned to the country's minimum wage), was often spent on remaining in the destination country so that the individual could continue working instead of immediately returning home.

After the pilot was completed in 2016, an independent evaluation was commissioned. The final report identified the cash provided people to meet their needs with dignity, "breathing space from the economic pressures felt after trafficking", and overall, beneficiaries felt empowered as they were given the opportunity to think for themselves¹⁵. The UCT, in addition to legal aid and assistance in finding a new job, provided beneficiaries with the confidence to move on with their lives.

Based on this pilot, Issara has recommended that other organisations should take an empowering approach to protection, including offering UCTs and a commitment to measuring the success of their programs by qualitative client feedback.

8.1.1.1 Using the Issara Hotline to uncover, and remediate the abuse of an exploitative recruitment agency¹⁶

Issara delivers a confidential 24-hour migrant worker hotline in Thailand, providing information for workers on labour rights, government registration and process, as well as opportunity for abuse to be reported. This hotline was used to report a Thai recruitment agency. The agency had been used by a variety of seafood factories and feed mills and was alleged to have held over one hundred workers in debt bondage. It was reported that workers were forced to work 16 hour double-shifts while receiving illegal wages (under payment) and subject to physical violence by the agency as a means of establishing control.

The knowledge sharing from the hotline, a prominent Thai company, who utilised this company to recruit and manage workers in their factory removed the exploitative recruitment agency from their supply chain. Further, action plans were established and carried out to support the exploited workers. The recruits who had been brought in through the exploitative company were hired directly through the human resources function of the prominent Thai company, receiving new contracts and documents, with payments and deductions in line with the law. Furthermore, the company developed a new payroll system so that wages were paid directly into employees personal accounts. Extorted fees and costs to the exploited workers were also paid back by the recruitment agency.

8.2 Restoration Case Study: Utilising a National Contact Point to obtain a non-judicial remedy

All governments adhering to the OECD Guidelines have established an independent advisory council known as the National Contact Point (NCP). The NCP in each country is charged with: raising awareness of the OECD Guidelines with businesses, trade unions and non-government, and contributing to the resolution of issues arising from the alleged non-observance of the Guidelines. For instance, the Netherlands NCP produces promotional material on the Guidelines, organises events and provides answers to questions posed from the business community, NGOs or others.

The NCP can resolve disagreements between stakeholders, in which one party believes the other is not adhering to the OECD Guidelines. To avoid escalation or reputational damage, the NCP through a formal or informal process, can assist the stakeholders to find a solution.

8.3 Restoration for the value chain

Providing a remedy to directly address abuse requires consultation with the victim and an understanding on not only the direct loss suffered (typically the test for judicial remedies), but also an understanding of what type of support will have the most substantial long-term positive impact on the individual and their family.

First responders should always be cognisant of primarily safety. Businesses should ensure that their employees who work at the front line (i.e. those with the potential to engage directly with potential victims) are aware of

¹⁵ https://docs.wixstatic.com/ugd/5bf36e_f6df2997d6734cd1a35e74167adf182a.pdf

¹⁶ Issara report – Remedy in Global Supply Chains, 2017
Human Rights Remedy | June 2018
Australian Business Pledge against Forced Labour

procedures to tend first to safety (by contacting emergency services) and then seeking support from NGO/specialist agencies and notifying other authorities if required.

In Australia, direct employers, labour hire companies, manufactures, producers and parent companies have a direct obligation to be aware of conditions for their workers and ensure that they are safe and free from discrimination. Where basic labour rights are not upheld, employers are expected to restore those rights through repaying wages, providing appropriate employment contracts and labour conditions. Where undue hardship has been placed on the families of employees, employers can be expected to provide support, such as healthcare and emergency housing for families.

As established earlier, the responsibility for business further up the supply chain does not stop. Especially where direct employers are ill-equipped to provide the remedy themselves. Some argue that businesses have already broadly accepted this responsibility as evidenced through their due diligence activities to rule out forced labour in their supply chain.

8.3.1 A question of precedent

The question of establishing a precedent, which companies cannot reasonably afford to meet (such as back paying a years' worth of wages for a full factory of employees) is naturally of concern to many businesses. Unfortunately, is not possible to pre-empt what will be suitable and satisfactory in one or all future cases of forced labour. Providing remedy (such as the amount of back pay) will need to be determined on a case by case basis as they emerge. What we do know is that dealing with these issues will require ongoing efforts to build trust and collaborate with other businesses. Utilising forums such as the OECD NCP to help apportion back-payments between suppliers and retailers to the extent that victims receive appropriate remedy and businesses at different tiers of the value chain share responsibility is one option.

Another options is to establish a trust fund for victims of forced labour within a particular industry, whereby members pay-in and an independent third party can authorise drawing on the funds to support victims as needed. The Law Council of Australia has been calling on the Government to establish a fund for victims of forced labour, to address the gap where the states' victims of crimes funds to do apply to victims of federal slavery infringements. However, even if a federal compensation funds were established, it is likely that bureaucracy would limit the breadth and timeliness of funds reaching victims in need.

8.4 Recommendations

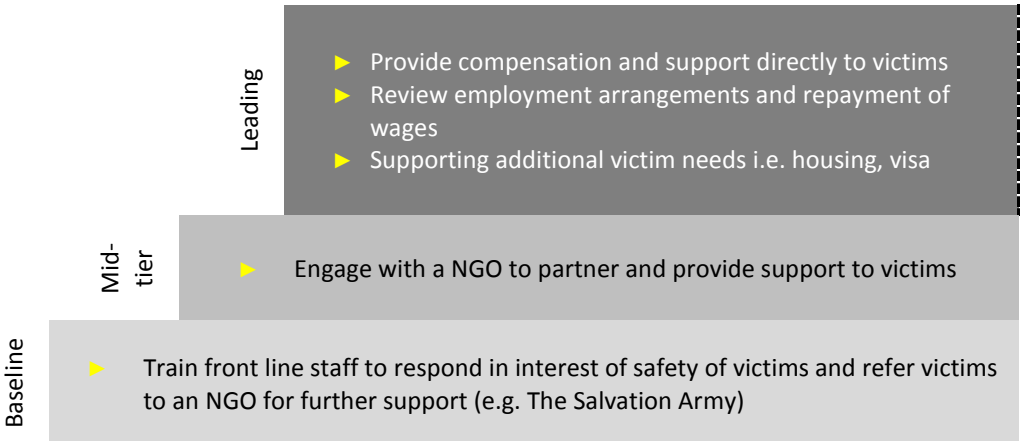


Figure 13: Recommended restoration activities for baseline, mid-tier and leading companies

9. Empowerment - addressing root causes of vulnerability

In light of the interrelation between the three pillars of the UNGPs, any approach to remedy must consider addressing core drivers contributing to labour-related human rights impacts. This requires developing an enhanced understanding of, and response to, the root causes of forced labour within the control and influence of businesses. Moving one step further, in light of the collective reach and impact of business entities in the global economy, there is a genuine opportunity for business enterprises to drive positive change through support of the sustainable development goals.

9.1 Buyer and supplier practices – tackling demand for forced labour

Contemporary business models frequently rely on complex, outsourced supply chains that are expected to be highly responsive and deliver at a low cost. While this need has not necessarily lead to labour-related human rights impacts, in some cases businesses within a supply chain may make choices around the cost and time frames associated with production, which will correlate to unethically or illegal modes of operation. This might include for example underpayment of wages, unpaid overtime, denying employee benefits or failing to meet health and safety standards. The involvement of intermediaries such as brokers and agents, can lead to instances of forced labour and trafficking even where the end employer is not demanding cheap labour or is knowingly complicit in unethical or illegal practices¹⁷.

9.1.1 The issue of third party contractors

Any analysis of forced labour risk and remedy provisions, either here or abroad, needs to take into consideration the role of third party labour providers and the complications this introduces. The use of third party labour aggregators is only increasing with the emergence of new modes of working, such as via the ‘gig economy’, increasing automation and outsourcing both back office and operational activities. Analysis predicts that jobs within major companies will continue to be outsourced to third parties, allowing quicker responses to changing demand of labour skills and labour volumes, but broadening the proportion of the workforce with diminished recourse to the protections of salaried employment.

There are two central risks that the existence of third party labour providers within a supply chain introduces. The first is that more informal payroll structures provide greater opportunity for third party labour providers to deduct illegal recruitment fees from workers (a common source of debt bondage), the second is the real and perceived reduction in accountability between suppliers and workers where an intermediary is involved. While in some seasonal industries the role of third party labour providers is a standard and, indeed, vital component of labour recruitment it is evident that greater intervention by downstream retailers is required to mitigate the forced labour risks that have arisen within this trade practice. There are increasing calls for downstream retailers to insist upon the use of ‘accredited’ third party labour providers within their supply chains to push the industry towards a more robust minimum standard however the challenges in motivating action down multiple tiers of a supply chain is encouraging an increasing number of downstream retailers to vertically integrate those aspects of their supply chain that have not acted on encouragements towards better self-regulation.

At a minimum it is necessary for all responsible downstream entities to acknowledge that the presence of third party labour providers within a value chain does not represent a dilution of direct responsibility, indeed it represents a red flag for a need for greater due diligence.

¹⁷ UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT) 2014, Preventing Trafficking in Persons by Addressing Demand. Available at: https://www.unodc.org/documents/human-trafficking/2014/ICAT_Demand_paper_FINAL.pdf
Human Rights Remedy | June 2018
Australian Business Pledge against Forced Labour

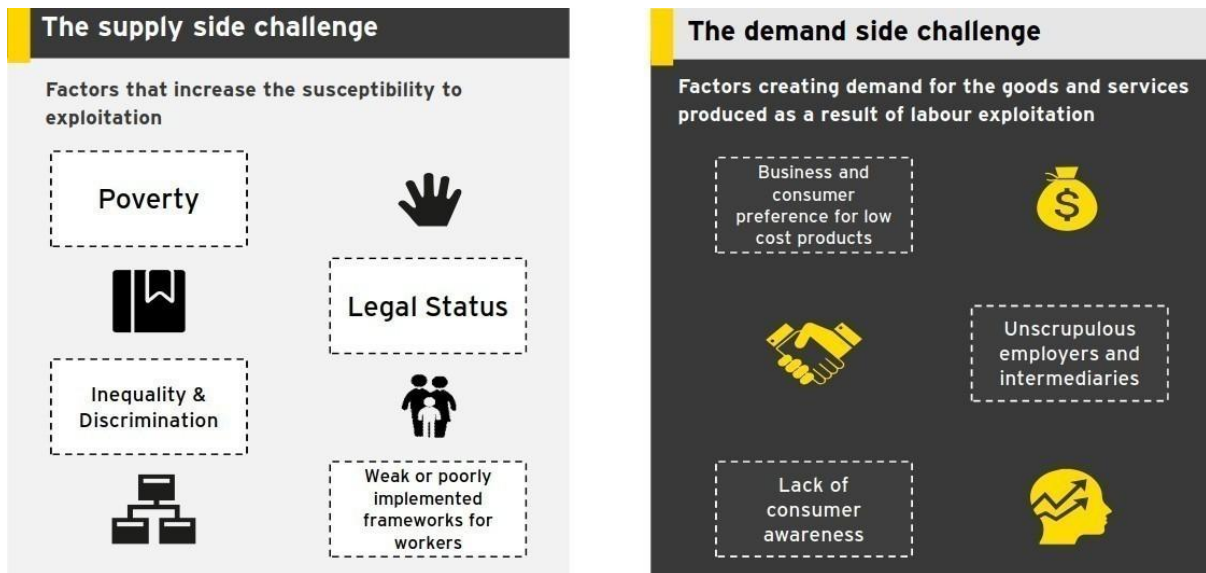


Figure 14: Supply and demand side factors impacting worker exploitation

9.1.2 Taking a stand across all levels of the supply chain

A useful first step is the strengthening of supply chain and supplier transparency. It cannot be taken for granted that all retailers or wholesaler procurement teams are fully aware of where all the goods that they are purchasing come from. This applies to Australian groceries where production is pooled with a processor for packaging and distribution prior to wholesale and resale. The buyer of packaged products may not know anything about farming conditions and historically would not have been expected to know. Similarly, contracts for the supply of fresh fruits and vegetables may be arranged through an agent or broker, with origin information not be passed on to the ultimate buyer or retailer.

This situation only becomes more difficult with products that have additional steps in the manufacturing process and involve multiple components. Especially where primary manufacturing takes place overseas.

Without transparency in supply chains, buyers and consumers lack clear information about the origins of products purchased, including the working conditions under which products were made. Supply chain transparency, which involves tracking and publishing the names, addresses and other information about the factories manufacturing branded products, can provide an important mechanism to support strengthened accountability for labour rights, build trust with consumers and provide confidence to investors that the company is confident in its human rights due diligence processes. Improved transparency allows buyers, workers and supporting institutions including unions and NGOs to call for changes to practices, and better position impacted workers to report human rights impacts and be provided with timely remedy¹⁸.

For many retailers and suppliers, individual leverage might be relatively small. However, even in these situations, leading organisations are increasingly identifying high risk sectors and mapping these in detail to understand exactly where the risks lie. As an example, Nestle, while not a major purchaser of seafood from Thailand has reportedly mapped over 90% of its supply chain in this particular segment in light of the risks in the sector¹⁹.

Moving beyond supply chain transparency, supplier consolidation may increase leverage and impact. Realising impact along extended supply chains will likely require the development of meaningful, long-term relationships with suppliers and offering reward for suppliers that do the right thing. This may require exploring opportunities for supplier consolidation, reducing the number of suppliers and rewarding those companies that do the right thing.

¹⁸ Clean Clothes Campaign, Human Rights Watch, IndustriALL Global Union, the International Corporate Accountability Roundtable, the International Labor Rights Forum, the International Trade Union Confederation, the Maquila Solidarity Network, UNI Global Union, and the Worker Rights Consortium, 2017, Follow the Thread, The Need For Supply Chain Transparency in the Garment and Footwear Industry, available at: https://www.hrw.org/sites/default/files/report_pdf/wrdtransparency0417_brochure_web_spreads_3.pdf

¹⁹ Nestle, 2017, Nestle in Society, Shared Value report, available at: <http://storage.nestle.com/nestle-society-full-2016/index.html>
Human Rights Remedy | June 2018
Australian Business Pledge against Forced Labour

9.1.3 Provision of a “living wage”

A living wage is defined by the International Covenant on Economic, Social and Cultural Rights in terms of providing decent living conditions for the worker and their dependants. In certain contexts, a business may be operating in accordance with national law by paying a minimum wage, however, within the context of some regions, either the lack of an enforceable minimum wage or an exceptionally low minimum wage, does not amount to a living wage. Workers and the families of those who do not earn a living wage are vulnerable to situations including:

- Working excessive overtime
- Bonded or forced labour
- Child labour
- Poor health and education outcomes

Researchers and NGOs²⁰ have produced guidance and thought leadership on providing and calculating the living wage for various regions. However, to-date there is not a single authority to advise or agree on living wages different regions and industries.²¹ As the living wage is still a developing concept, businesses are faced with the following challenges:

- Considerations of the wage of the employees of their suppliers or sub-contractors
- Fragmentation and competition in developing and implementing living wages
- Uncertainty over how long a calculated living wage is valid
- Difficulties associated with implementing differing living wages across industries and sectors, and regional and national contexts

Nonetheless, businesses around the world have started to investigate and implement living wage benchmarks²² for various commodity groups, such as chocolate/cocoa. NGO’s and private sector leaders are encouraging businesses to make commitments to delivering a living wage for their own branded products. Further, members of ISEAL provide guidance on calculating a living wage within their benchmark and partnership reports.

Although a living wage is highly dependent on the variable costs of living in different regions, recent agreement on methodology to calculate living wage and the use of benchmarks²³ indicates that this is a rapidly evolving area. The Anker methodology for living wage²⁴, shown in Figure 15, is an accepted methodology for the estimating the living wage of a worker.

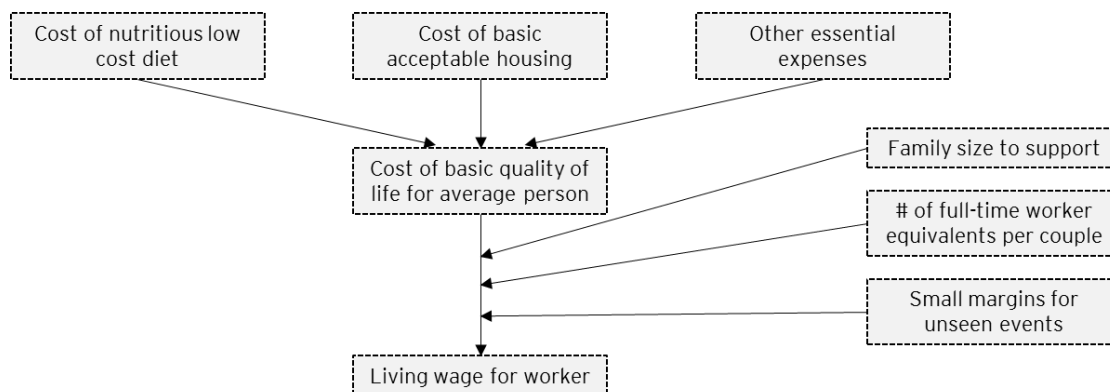


Figure 15: The Anker methodology for living wage

Considerations on the provision of a living wage are complex for companies, particularly when operating in locations without clear guidance of minimum wage standards. In recent benchmarking based on the Anker methodology, the ISEAL Alliance, a membership of sustainability standards organisations (Fairtrade International, Forest Stewardship Council, GoodWeave, Social Accountability International, Sustainable Agriculture Network/Rainforest Alliance, and UTZ Certified), have developed benchmark reports on a living wage for the following:

²⁰ <https://wageindicator.org/main/salary/living-wage/faq-living-wage>

²¹ <https://www.livingwagelab.org/assets/2018/01/Publicatie-2-jaar-Living-Wage-Lab-december-2017.pdf>

²² http://www.accaglobal.com/content/dam/ACCA_Global/Technical/sus/pi-Living-Wage-global-overview.pdf

²³ <https://www.isealliance.org/get-involved/resources/living-wage-benchmark-reports>

²⁴ <http://dx.doi.org/10.4337/9781786431462>

- Rural Malawi (Southern Malawi) and tea growing regions
- Ghana (Lower Volta) and the banana sector
- Rural Kenya (Mount Kenya Area) and the horticulture industry
- Kenya (near Lake Naivasha) and fresh flower farming
- South Africa (Western Cape Province) and wine grape production
- Rural Dominican Republic (Northern Dominican Republic) and banana growing
- Rural India (Bhadohi, Uttar Pradesh) and carpet weaving industry
- Bangladesh (Dhaka and satellite cities) and the garment industry
- Rural Brazil (Southwestern Region) and the coffee growing industry
- Urban Vietnam (Ho Chi Minh city) and the garment industry
- Rural Vietnam (Soc Trang to Thai Binh) and the seafood processing industry
- Pakistan (North Eastern Punjab) and sports ball manufacturing
- Non-Metropolitan Urban Ethiopia (Ziway region) and the horticulture region

Within these benchmark reports, ISEAL considers food costs (including standard diet), housing costs (including standards, rent and utilities) and other costs such as healthcare, education and transport alongside family size, number of full-time workers per family, net pay after tax and deductions and any in-kind benefits received by employees. The benchmarking of living wages is predominantly narrowly focused on the context of a particular industry or sector within a specific geographic region of a country and is commonly developed through stakeholder engagement within these areas²⁵.

Oxfam has also produced guidance documentation for businesses to implement a living wage, including a tool kit for the garment industry²⁶ and a road map for its own Australian operations.²⁷ Published in 2017, *The Oxfam Pathways to Living Wages in Global Garment Supply Chains* explores the importance of implementing living wages and the recommends steps required to develop and implement a living wage. Oxfam’s recommendations consider basic provisions, commitments, developing a road map and implementing a living wage. Based on this report, Oxfam has produced their own *Roadmap towards Implementing a Living Wage in the Oxfam Australia Trading supply chain*. This roadmap addresses the complexities of implementing a living wage by identifying how and in what timeframe Oxfam Australia will implement a living wage with its producers and also includes provisions for addressing related challenges through capacity building.

Provision of a living wage (particularly taking accountability for suppliers’ wages) continue to be a rapidly evolving area. Multi-stakeholder initiatives are proving to be an effective pathway for brands to act together and leverage their influence across their shared supplier marketplace to enable the development and implementation of a living wage within industry and regional contexts²⁸.

Marks & Spencer – Living Wage

In 2016, Marks & Spencer (M&S) revised its sustainability strategy, known as Plan A, to include a specific commitment regarding fair wages. Their commitment reflected stakeholder feedback and lead to the company pledging to tackle social issues more directly. As a result, M&S has committed to “pay a living wage for all [their] direct employees and champion the payment of a living wage in [their] supply chains too”.

The company is currently piloting the initiative in a number of communities and has acknowledged the organisational changes and complexities that may arise in different operating contexts. However, Plan A has set targets and timelines, and it includes an objective to report annually on the company’s progress.

²⁵ <https://www.isealalliance.org/get-involved/resources/living-wage-benchmark-reports>

²⁶ <http://whatshemakes.oxfam.org.au/wp-content/uploads/2017/10/A-Sewing-Kit-for-Living-Wage.pdf>

²⁷ https://shop.oxfam.org.au/media/wysiwyg/lifestyle/living-wages/OxfamAustraliaTrading_Roadmap-PDF.PDF

²⁸ http://www.accaglobal.com/content/dam/ACCA_Global/Technical/sus/pi-Living-Wage-global-overview.pdf

10. A path forward

10.1 Current State – A lack of communication and accountability for remedy in the supply chain

Traditionally, communication and accountability within corrective action plans is limited to the supplier, their workers and an external audit firm undertaking an investigation on behalf of a retailer. This structure restricts timely communication of identified issues with retailers and limits their accountability and oversight of issues in their supply chain. In turn, this lack of communication and accountability limits retailer ability to support the remediation process. A lack of awareness also limits how retailers can monitor and share learning across their operations with their suppliers or engage collaboratively with industry.

Similarly, the traditional use and structure of grievance mechanisms within supply chains are often ineffective and inadequately resourced. Whilst retailers, suppliers or producers may have their own grievance mechanism, they typically operate in isolation and do not facilitate levels of accountability or sharing of information through the supply chain.

10.1.1 Addressing a lack of accountability and communication

An effective structure of corrective action plans engages an in-country NGO to facilitate trust, cooperation and communication across the supply chain to retailers, suppliers and workers. NGO communication flows are supported by the use of technology enabled feedback loops. Direct NGO communication with suppliers and their employees enables understanding and empowerment of worker voices and allows for feedback to reach retailers, enhancing their accountability for remedy of issues identified within their own supply chain. Additional communication between suppliers, external auditors and retailers further supports and legitimises findings and insight from NGOs.

The use of NGOs to share information between individual grievance mechanisms also allows notification of any identified issues within the supply chain to retailers. Within an integrated grievance mechanism structure, a supply-chain wide grievance mechanism, operated by a NGO would enable effective communication with a retailer and facilitate retailer oversight and accountability of issues identified across their supply chain.

10.2 Recommendations

Based on an assessment of global thought leadership and operational leading practice, the following points summarise opportunities for companies and consortiums to address existing corporate gaps in facilitating access to remedy:

- Establish minimum standards in line with the Consumer Goods Forum, and commit to providing a direct remedy if human rights principles are found to be violated in their supply chains. These human rights principles may include but are not limited to:
 - Every worker should have freedom of movement
 - No worker should pay for a job
 - No worker should be indebted or coerced to work
- Establish clear procedures for front line (management staff) to response to incidences of forced labour, which are victim centric and include, as a priority:
 - Place the victims safety and wellbeing as central to any response
 - Collaborate with the value chain to repay wages that have been withheld from the workforce
 - Engage with NGOs that support victims of slavery to develop a response that both address the short term impacts of forced labour and the ultimate root cause of vulnerability
- Take on an advocacy role with the Government and NGO's to develop higher level coordination of remedy mechanisms including a value chain approach to:
 - Developing and monitoring corrective actions.
 - Deploying, escalating, closing out and sharing knowledge through grievance mechanisms.
 - Providing a reliable and equitable approach to financial compensation and re-payment of wages by:
 - Considering a central trust fund administrated by a third party, particularly for use as short term payments

- Design a mechanism to facilitate an agreement between stakeholders (multiple suppliers, wholesalers and retailers) to provide compensation to victims of forced labour
- Raise the profile of The Modern Slavery Act (and associated industry groups) to encourage wider participation from suppliers and retailers to facilitate more powerful collective action by:
 - Consider a radical pilot program to raise visibility and engage with multiple stakeholders at a manageable scale. For example, engage more broadly with other businesses such as property developers and owners to pilot a 'slavery free' shopping centre – where supply chain transparency is sought for all contractors and retailers.
- Tackle transparency by supporting members to make uncomfortable disclosures with the aim of encouraging more companies to air concerns of control weaknesses and risk areas to collaborate on mitigating and remediating activities. Compliment disclosure with educating NGOs about the risk of disclosure and need for an honest and robust space for conversation to improve dialogue and transparency.
- Commit to facilitating a living wage in all own operations and advocating for payment of living wage in the supply chain

