



## Terms of Reference

### **Development of Draft Principles and mechanisms to enable Access to Remedy for Vulnerable Migrant Workers**

#### **Background**

There is a growing recognition amongst international brands and retailers about the risks and incidence of forced labour and modern slavery among migrant worker populations in source countries.

Migrant workers face multiple challenges both in their home and destination countries, making them vulnerable to modern slavery. They are often excluded from national labour rights and protections and many end up in debt bondage having paid considerable sums of money to unscrupulous recruiters.

Migrants are vulnerable or subject to egregious violations of internationally agreed labour standards, yet few can access their labour rights. Many of them do not know their rights in the countries in which they work, often do not understand the local language, are fearful and desperate to retain their jobs. They are unlikely to raise grievances and there is often no-one they can trust to raise their concerns and represent their interests. Even where a grievance mechanism is in place in their workplace, they may not trust this as they fear losing their job if they speak up.

Workers on temporary contracts or who are recruited through agents are especially vulnerable as this creates intermediaries as 'proxy' employers. In such circumstances, the company signs a contract with the labour agent, and workers cannot raise issues or negotiate when there is not clear employment contract between a worker and his or her employer.

[The UN Guiding Principles on Business and Human Rights](#) stipulate that workers have a Right to Remedy when they suffer human rights violations as a result of commercial operations. Businesses carry a responsibility to provide remedy to workers in relation to their obligation to Respect human rights, and Governments carry this responsibility with respect to their obligation to Protect human rights.

There are a number of important initiatives that have begun to establish a high-level policy framework to improve the conditions of migrant workers. These include the IHRB's Dhaka Principles and the Leadership Initiative on Responsible Recruitment, the Consumer Goods Forum's Commitments on Forced Labour, amongst others. [The Employer Pays Principle](#) is a unifying commitment that has been adopted by international organisations such as the ILO, IOM, as well as industry bodies, individual companies and multi-stakeholder initiatives. Some large companies (such



as Apple and HP) have taken important steps – such as repaying recruitment fees to workers – although there is as yet no commonly agreed approach.

What is still lacking is a specific focus on ensuring vulnerable migrant workers can access their Right to Remedy when their rights are violated, as well as practical mechanisms and guidance on how this should be implemented.

### **Establishing the Access to Remedy Principle**

As a multistakeholder initiative committed to advancing respect and dignity of all workers in global supply chains, ETI asserts that establishing an Access to Remedy Principle should be a critical part of any strategy to prevent forced labour and modern slavery among migrant workers. This should be accompanied by proposed recommendations on mechanisms that will enable workers to access this right in practice, and for companies to share responsibilities for remediation when their own leverage is limited.

Ensuring that vulnerable migrant workers have access to remedy in practice is complex and challenging. In addition to the challenges set out earlier, context-specific factors and the specific challenges faced by migrant workers will vary, depending on their gender, background, the type of work they do, the nature of their contract, their own personal family circumstances, the terms under which they left their countries or regions of origin, the human resource policies and practices of their employers, and the role of intermediaries – labour brokers, contractors and recruitment agents. The role of governments is also critical in both sending and host countries – the degree to which migrant workers have legal protection by their own or host governments, whether they have access to basic services such as healthcare, their right to leave or choose their employer, the level of oversight and monitoring of working conditions and other factors – vary considerably. A one-size-fits-all approach may neither be desirable nor appropriate.

At the same time, it is important to establish a set of principles and to propose some workable mechanisms that can establish better protection of vulnerable migrant workers, break the cycle of debt bondage, and prevent situations of forced labour and modern slavery in the longer term.

### **ETI Migrant Labour Working Group**

The Ethical Trading Initiative has established a Working Group on Migrant Labour comprising businesses, trade unions and NGOs to address: common corporate policies on migrant workers, collaborative engagement with shared suppliers, engagement with trade unions and migrant worker organisations, collaborative engagement with national and local governments, and specific initiatives.



Members of the Group are undertaking activities in two migration corridors: one on Bangladeshi migrant workers in Mauritius (which ETI and its members have been engaged on for some time) and the other on South Asian (mainly Bangladeshi) migrant workers in Malaysia.

A key reference for this work is [ETI's Human Rights Due Diligence Framework](#) which sets out a clear process for identifying risk and responsibility of businesses as well as remediation, monitoring and lesson-learning on a collaborative basis.

Attached is the draft Roadmap for the Group's activities and outputs over the next three months.

## **Objectives**

ETI is looking for expert research partners and practitioners to assist the Working Group to develop a set of **Draft Principles on Access to Remedy for Vulnerable Migrant Workers**.

In addition, the consultant/s will propose a set of practical recommendations for **collaborative remediation mechanisms** relevant for companies that have shared responsibilities and limited leverage with the same suppliers. Unlike some other joint remediation initiatives, the mechanism should be designed with the interests of vulnerable migrant workers themselves, Migrant workers and their chosen, independent representatives should be involved in the design, monitoring and review of the effectiveness of the mechanism.

The Draft Principles will draw on and be informed by an evaluation of the existing evidence of what has worked (and why), what has worked less well or has not worked. It should include specific contexts and timeframes, and assessments by workers, academics or independent evaluations where there may have been (unintended or otherwise) negative consequences for workers, negative implications for businesses, international bodies, or governments of sending host or third countries.

The Draft Principles should:

- Prioritise and be based on the needs and voices of migrant workers themselves
- Be feasible for businesses to implement
- Be able to get buy-in from a range of stakeholders – including retailers, suppliers, industry associations, worker organisations and governments (if appropriate)
- Contribute to reducing the risks of forced labour and modern slavery among migrant workers in businesses' supply chains
- Include a consideration of practical approaches to the implementation of the principles in practice



## Scope of work

The Scope of Work includes:

1. A review of existing initiatives on access to remedy for vulnerable migrant workers. This will include a literature review (academic research, grey literature and company documents, e.g. websites) as well as interviews with key businesses, trade unions & NGOs. It will cover major case studies such as the Baldia Fire Factory and Kik case and the Australian 7-Eleven wage repayment case, as well as other initiatives such as Issara.
2. A Draft set of Principles on Access to Remedy for Vulnerable Migrant Workers document. This will set out key overarching principles to ensure remedy for those workers.
3. Proposals for collaborative mechanisms and models for the practical implementation of the Principles. This should include the role of different stakeholders (companies, suppliers, trade unions, migrant worker organisations, intermediaries, governments, multi-stakeholder initiatives). It should set out responsibilities, roles and processes for each option, and the advantages and disadvantages of each. This should be based on the review of existing practice.

NOTE: while not in scope, this work will result in a set of consultations and engagement with companies, workers' organisations, NGOs, international organisations and other stakeholders. It is intended that the Draft Principles will be developed into a final document which, over time, could be endorsed by a wider group of stakeholders.

## Methodology and approach

The research will include an examination of the supply chains of a sub-set of participating businesses (most likely members of the ETI Working Group) in order to understand in-depth the kinds of issues that businesses face in enabling access to remedy for vulnerable migrant workers. This will inform the Draft Principles. Particular attention should be paid to existing grievance mechanisms, the nature of the migrant workforce (skills, wages, contract terms, gender considerations), business leverage with their suppliers, and cases where remedy has previously been attempted (such as in the repayment of recruitment fees).

The researchers will conduct interviews with at least:

- 3-5 companies from ETI's Migrant Labour Working Group (e.g. ASOS, Adidas, Whistles, PVH, Princes)



- Trade unions and migrant worker organisations in Bangladesh, Mauritius and Malaysia to understand challenges and possible solutions for migrant worker remediation, especially Bangladeshi workers (e.g. OKUP, ITUC, Tenaganita)
- Experts and key stakeholders, e.g. the ILO, IOM, Anti Slavery International, Institute for Human Rights and Business, academics – e.g. from universities of New South Wales Australia, Coventry, Sheffield, government officials, British High Commissions in Mauritius, Malaysia and Bangladesh, Migrant Workers' Rights Network, GAATW, Migrant Forum Asia, and others, as appropriate.

Resources permitting, the researchers may also conduct interviews with:

- A number of Bangladeshi migrant workers in Mauritius
- 2-3 factory owners / local representatives in key sourcing countries (e.g. Mauritius or Malaysia) and/or relevant industry associations
- Recruitment agencies in Bangladesh, Malaysia and Mauritius

## Outputs

1. Literature review: 5 – 10 pages with Annexes and links to references.
2. Draft Principles on Access to Remedy for Vulnerable Migrant Workers: 2 pages with Annexes, providing criteria, explanations and definitions
3. A draft set of options for practical mechanisms and tools for the application of the Access to Remedy Principle. These should offer potential models for collaborative mechanisms that could be used by companies with shared suppliers and limited leverage where there is a predominance of migrant workers. The mechanisms should be trusted by workers and involve trade unions and migrant worker representatives in their design and monitoring. They should also be feasible to implement, acceptable by responsible brands, retailers and suppliers that will resource and be willing to use them. The role of government – including labour courts, mediation and civil courts should also be considered. The advantages and disadvantages of each option should be spelled out. These draft options should provide the basis for further consultation and development over time.

## Competencies, skills and experience

- Track record of work on access to remedy and access to justice for workers or vulnerable groups whose rights have been violated
- Excellent research skills and proven record of research that involves complex issues associated with migrant workers. This should include a background in different contexts and diverse populations that may include



vulnerable workers, employers, business owners, industry bodies, government officials and international organisations;

- Demonstrated track record of delivering timely, high-quality research reports.
- Excellent written and verbal communication skills - proven track record of delivering high quality reports analysing complex issues communicated clearly, in simple and accessible language for non-specialist audiences.
- At least eight years' experience working in a relevant field of research – such as labour and employment, migration, policy, business and supply chains, gender, child labour, health sector, UN Guiding Principles on Business and Human Rights, human rights due diligence and wider ethical trade issues.

### **Duration and timing of contract**

The contract should commence on **11<sup>th</sup> February 2019**. Research should be carried out and completed by **29<sup>th</sup> March 2019**. Drafts and final reports should be presented to the ETI Working Group (virtually or in person, as appropriate).

### **Fees**

To be agreed – please submit a budget with your application including daily fee rate for senior and junior researchers, and number of days estimated for each type of researcher. Organisational overheads and tax should be included in the total budget.

Travel and accommodation expenses for a short visit to Bangladesh will be negotiated separately, but should be estimated at this stage.

NOTE: ETI has a maximum of £15,000 available for this work (including UK VAT @ 20% for international consultants operating outside the UK). Research consultants should provide a budget outline setting out number of days, consultancy rates (junior and senior researchers). The size and scope of research will need to be tailored to available funds. Further funding will be sought from companies and other donors for the next stage of this work.

### **Expressions of Interest:**

Expressions of interest for this work should be sent to the email addresses below by close of business **18<sup>th</sup> January 2019**.

Expressions of interest should include:

- Prior experience with examples of outputs for similar types of work
- Proposed methodology and approach
- CVs and biographies of researchers, with reference contact details



**Ethical  
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### **Management and reporting**

Cindy Berman, Head of Modern Slavery Strategy, will manage the commissioning of this work. Please submit expressions of interest to: [Cindy.Berman@eti.org.uk](mailto:Cindy.Berman@eti.org.uk) and Owain Johnstone [Owain.Johnstone@eti.org.uk](mailto:Owain.Johnstone@eti.org.uk).

**Additional Background** documents will be provided on request.