



Access to Remedy

For Vulnerable Female Migrant Workers

Background

ETI's Access to Remedy Principles

which have been developed with the aim of supporting businesses and other stakeholders to collaboratively establish Operational Grievance Mechanisms (OGMs) that provide access to remedy for migrant workers. They are an explicit acknowledgement that recognising rights is not enough – businesses and other stakeholders must actively work to enable workers in their operations and supply chains to access those rights in meaningful ways.

This brief highlights the risks and vulnerabilities faced by female migrant workers and the need to tailor responses and access to remedy for this particular group. It also puts a gender lens on a selected number of the Access to Remedy Principles, to highlight how they apply to female migrant workers.

For the full version of the Access to Remedy Principles, please visit migrantworkerremedy.org



The female migrant worker

Workers all over the world are subject to varying degrees of vulnerability. Migrant workers, by virtue of the way they are often recruited, are subject to particular vulnerabilities. When we factor in the sex of workers, this adds another layer of risk that requires further understanding and remedial action.

Globally, women make up 41.6 per cent of the world's 164 million migrant workers.¹ In the Association of Southeast Asian Nations (ASEAN) region for example, almost half of the 10 million migrant workers in the region are women.² Migration in order to secure employment is an important aspect of women's economic empowerment, as women migrants are able to earn an income with which they can support their families and communities in their countries of origin. However, from the recruitment stage right through to return, women workers are more likely to have their rights violated compared to men. This can be largely attributed to deep-rooted societal norms, perceptions of women's roles and mobility restrictions, causing women to use riskier and more dangerous migration routes. They typically end up working in the lowest paid and most precarious parts of the supply chain and as a result, they face greater risks of violence, harassment, trafficking, and forced labour.³ Women migrant workers are also subject to systemic discrimination whilst on the job and this becomes heightened when the intersectionality of race, ethnicity, caste and age are factored.



Amongst the various categories of female migrant workers, the case of domestic workers has been widely documented by human rights organisations. This category of women workers typically fall victim to labour recruiters who charge excessive recruitment fees and promise them high wages, job security and essentially a means to lift themselves and their families out of poverty. But the reality is abuse at the hands of their employers, confiscation of their passports, withheld wages, excessive working hours and generally poor living conditions.⁵ By virtue of their employment status, these workers are often not covered by labour laws thus making them more vulnerable to exploitation and abuse. They frequently face language and cultural barriers in accessing information on labour legislation in the country of destination and can be excluded from joining or forming unions, or holding positions within them. Studies have shown these women to lack access to communication devices such as phones or internet, all of which further restricts their ability to seek justice or access support services when their rights have been violated.⁶

In sum, female migrant workers are often exposed to 'triple discrimination' - as women, as unprotected workers and as migrants.⁷ For businesses who employ these women in their supply chains, it is imperative that they understand these specific vulnerabilities and put in place appropriate policies and programmes to address the risks and provide remedy where necessary.



Access to Remedy Principles

with a gender lens





Under the UN Guiding Principles for Business and Human Rights (UNGPs), businesses have a responsibility to ensure respect for human rights throughout their supply chain, and to provide effective remedy where workers may have suffered adverse impacts.

The recent [Gender Guidance of the UNGPs](#) goes further to employ businesses to *'provide for or cooperate in the provision of gender-transformative remedies, in cases where they may have caused or contributed to adverse human rights impacts'*.⁸ There is thus an explicit recognition that a gendered approach should be taken by businesses not only in conducting the necessary due diligence within their supply chains, but also in providing remedy for affected workers, given the additional barriers women face in accessing grievance mechanisms compared to men.⁹

In view of the above, this section puts a gender lens on a select number of the Access to Remedy Principles and seeks to highlight where attention should be paid to ensure the Principles reflect the realities for vulnerable female migrant workers.



PRINCIPLE	IMPLICATIONS FROM A GENDER LENS
 FOUNDATION PRINCIPLES	
<div data-bbox="197 459 271 536"># 2</div> <div data-bbox="271 459 483 499">PRINCIPLE 2</div> <p data-bbox="344 624 963 711">Vulnerable workers (including migrants) should be protected from abuse or exploitation regardless of their contract or immigration status.</p>	<p data-bbox="1189 491 1977 842">The research and evidence on female workers in general has shown them to be more vulnerable to abuse and exploitation compared to men. Female migrant workers face an even greater myriad of risks therefore this foundation principle sets the tone for all parties (states, businesses, suppliers, recruiters etc.) to pay particular attention to this group. Businesses should ensure they know where this category of women are found within their supply chains by conducting the necessary supply chain mapping and vulnerability assessments. This includes disaggregating data by sex, identifying roles and responsibilities of men and women migrant workers, and possible policies and practices that may discriminate against women migrant workers at recruitment or employment.¹⁰</p>
<div data-bbox="197 885 271 962"># 3</div> <div data-bbox="271 885 483 925">PRINCIPLE 3</div> <p data-bbox="344 991 963 1193">All workers should be supported and encouraged to raise grievances. Special consideration should be given to intersectional vulnerabilities, such as women migrant workers who have enhanced vulnerability to sexual abuse and can be subject to gender-based discrimination which may discourage them from raising a grievance.</p>	<p data-bbox="1189 932 1977 1251">Out of fear of losing their jobs, female migrant workers are less likely to raise grievances in situations where their rights may have been violated. This, coupled with additional barriers such as language and culture, means more effort should be made to encourage women to raise grievances, through establishing mechanisms that have been developed in consultation with them, as well as communication in manner which they will understand. The UNGPs further recommend that compensation settlements should include access to both judicial and non-judicial mechanisms, and non-disclosure agreements should not be used unless requested by affected women.¹¹</p>

PRINCIPLE		IMPLICATIONS FROM A GENDER LENS
 COMPANIES ROLES AND RESPONSIBILITIES		
# 8	PRINCIPLE 8 <p>Safeguarding of workers who are victims of rights violations should be the first consideration in any remediation process. Safeguarding of women who have suffered sexual harassment and abuse in the workplace, often by their superiors, requires particular attention in order to protect them from potential reprisal.</p>	<p>For women workers who have suffered sexual harassment or abuse, safeguarding them may require additional resources to be deployed for example, the creation of safe spaces for victims and training of staff to handle such rights violations, given the sensitive nature of the issues.</p>
# 10	PRINCIPLE 10 <p>Employment policies and procedures should include robust grievance and remedy mechanisms. These should be communicated to all workers in a language they understand and in a medium they can access.</p>	<p>Given the communication barriers that women migrant workers face, it is important to pay attention to the types of communication methods being used. Traditional communication methods may not be as impactful and companies may need to use alternative means. For example, this could include using third party or non-governmental organisations to reach these workers or working with trusted, credible recruiters to impart knowledge on their rights at the recruitment stage.</p>
# 15	PRINCIPLE 15 <p>Companies should encourage workers to report issues and protect workers from suffering negative consequences as a result of raising a grievance or whistleblowing.</p>	<p>Women workers need to feel safe and comfortable enough to report any issues they may face in the workplace. This is particularly important when the issue emanates from a situation where there is a power imbalance in that the perpetrator of the rights violation is a male in a supervisory role and the victim is a female, low-skilled migrant employee. Companies need to put in place additional measures to ensure women can submit complaints in a confidential manner without fear of intimidation or reprisals, for example through anonymous mechanisms. The staff who are responsible for handling the grievances should be trained on the possible issues that migrant women may face.¹²</p>

PRINCIPLE

IMPLICATIONS FROM A GENDER LENS



GOVERNMENT ROLES AND RESPONSIBILITIES

21a

PRINCIPLE 21a


Every government that sends or hosts migrant workers should establish a bilateral Memorandum of Understanding (MOU) between the relevant sending and host country that includes the protection of the rights of migrant workers and prevents debt bondage through the payment of recruitment fees by migrants.


21b

PRINCIPLE 21b

Bilateral MOUs between migrant host and sending countries should be communicated to employers and workers. Governments should be held accountable for implementing and monitoring these agreements.

In addition to establishing MoUs, host governments are encouraged to deliver training programmes for women migrants prior to departure to raise their awareness of potential exploitation, reliable recruitment agents, labour contracts, legal rights and entitlements, how to access remedy and so on.¹³ [The Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\) General Recommendation 26](#) on migrant workers provides ample guidance for states on how to respect, protect and fulfil the human rights of women migrant workers.

PRINCIPLE	IMPLICATIONS FROM A GENDER LENS
 WORKERS RIGHTS AND RESPONSIBILITIES	
<div data-bbox="197 459 271 536"># 24</div> <div data-bbox="271 459 510 496">PRINCIPLE 24</div> <p data-bbox="344 624 958 711">Workers should be consulted (ideally through trade union representatives) on the design and ongoing monitoring of grievance systems.</p>	<p data-bbox="1189 491 1977 903">Although women have become increasingly active in trade unions, there is still progress to be made in addressing the concerns of women workers through such mechanisms. In some cases where union leadership is male dominated, trade unions may be less engaged with the specific interests of women workers. Even when women workers do join trade unions, they can face significant barriers to participation or to taking on leadership positions.¹⁴ For women migrant workers, their migrant status already presents a barrier to joining a trade union. Therefore, workers in this category are usually unable to have their rights represented by trade unions, and other means should be explored to obtain their views. The UNGPs recommend that potentially affected women, women's organisations and women human rights defenders participate in the design of OGMs, thus ensuring their voices are heard.¹⁵</p>
<div data-bbox="197 949 271 1026"># 25</div> <div data-bbox="271 949 510 986">PRINCIPLE 25</div> <p data-bbox="344 1082 853 1169">Affected workers should be consulted on the effectiveness and suitability of remediation outcomes.</p>	<p data-bbox="1189 1066 1977 1185">A concerted effort should be made to ensure gender balance when consulting affected workers on the effectiveness of remediation outcomes, particularly on sensitive issues such as gender-based violence.</p>

PRINCIPLE		IMPLICATIONS FROM A GENDER LENS	
<div> THIRD PARTIES</div>			
# 27	PRINCIPLE 27		
<p>Companies and workers should seek mutually trusted independent third parties to help resolve grievances and agree acceptable remediation, where direct negotiation between trade unions and employers is not feasible.</p>		<p>When grievances affect women workers, companies should endeavour to include women's' organisations in investigations who have knowledge and experience in dealing with issues that affect women in the workplace. When the grievance involves migrant workers, it is important that third party organisations who are able to communicate in the language of the workers are consulted, as this will build trust and contribute to a meaningful resolution. Where appropriate they should be experienced in handling sensitive issues such as sexual harassment and abuse.</p>	

References

- ¹ CREST/IOM, Addressing women migrant worker vulnerabilities in international supply chains, available at <https://crest.iom.int/sites/crest/files/document/addressing.pdf> accessed 21.06.21
- ² https://www.ilo.org/asia/projects/WCMS_632458/lang--en/index.htm accessed 21.06.21
- ³ CREST/IOM, Addressing women migrant worker vulnerabilities in international supply chains, available at <https://crest.iom.int/sites/crest/files/document/addressing.pdf> accessed 21.06.21
- ⁴ https://crest.iom.int/sites/crest/files/document/1-pager_gender_brief_final.pdf accessed 22.06.21
- ⁵ <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers>
- ⁶ Decent work for migrant domestic workers: Moving the agenda forward / Marie-José Tayah International Labour Office, Conditions of Work and Equality Department. – Geneva: ILO, 2016.
- ⁷ Ibid
- ⁸ <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>
- ⁹ CREST/IOM Addressing women migrant worker vulnerabilities in international supply chains available at <https://crest.iom.int/sites/crest/files/document/addressing.pdf> accessed 21.06.21
- ¹⁰ Ibid
- ¹¹ <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf> accessed 22.06.21
- ¹² CREST/IOM Addressing women migrant worker vulnerabilities in international supply chains, available at <https://crest.iom.int/sites/crest/files/document/addressing.pdf> accessed 21.06.21
- ¹³ https://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf accessed 23.06.21
- ¹⁴ https://www.ethicaltrade.org/sites/default/files/shared_resources/Base%20code%20guidance%2C%20gender%20equality%2C%20Part%20A.pdf
- ¹⁵ <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf> accessed 22.06.21

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