

OPERATIONAL
GUIDELINES
FOR BUSINESSES
ON REMEDIATION OF
MIGRANT-WORKER
GRIEVANCES

The opinions expressed in this Guidance are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM). The designations employed and the presentation of material throughout the document do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

This Guidance was produced in partnership between IOM Corporate Responsibility in Eliminate Slavery and Trafficking (CREST) and The Remedy Project. CREST is supported by Sweden through the Strategy for Regional Development Cooperation in Asia and the Pacific Region. The views expressed herein can in no way be taken to reflect the official opinion of IOM. IOM gratefully acknowledges the support of Archana Kotecha, founder of The Remedy Project and the lead author. IOM also thanks Peppi Kiviniemi-Siddiq, Maximillian Pottler, Tara Dermott, Joanne Chua, Alexandra Chan, the regional team of CREST and valued private and public sector partners for providing useful feedback on the guidelines, including Ropes & Gray LLP who supported this project pro bono.

Publisher International Organization for Migration
17 route des Morillons
P.O. Box 17
1211 Geneva 19
Switzerland
Tel.: +41 22 717 9111
Fax: +41 22 798 6150
Email: hq@iom.int
Website: www.iom.int

Cover Sunset in Kuala Lumpur, Malaysia. © Unsplash 2020 / Esmonde Yong

This publication has been edited without formal editing by IOM.

Required Citation: International Organization for Migration (IOM), 2021. Operational Guidelines for Businesses on Remediation of Migrant-Workers Grievances. IOM, Geneva.

© IOM 2021



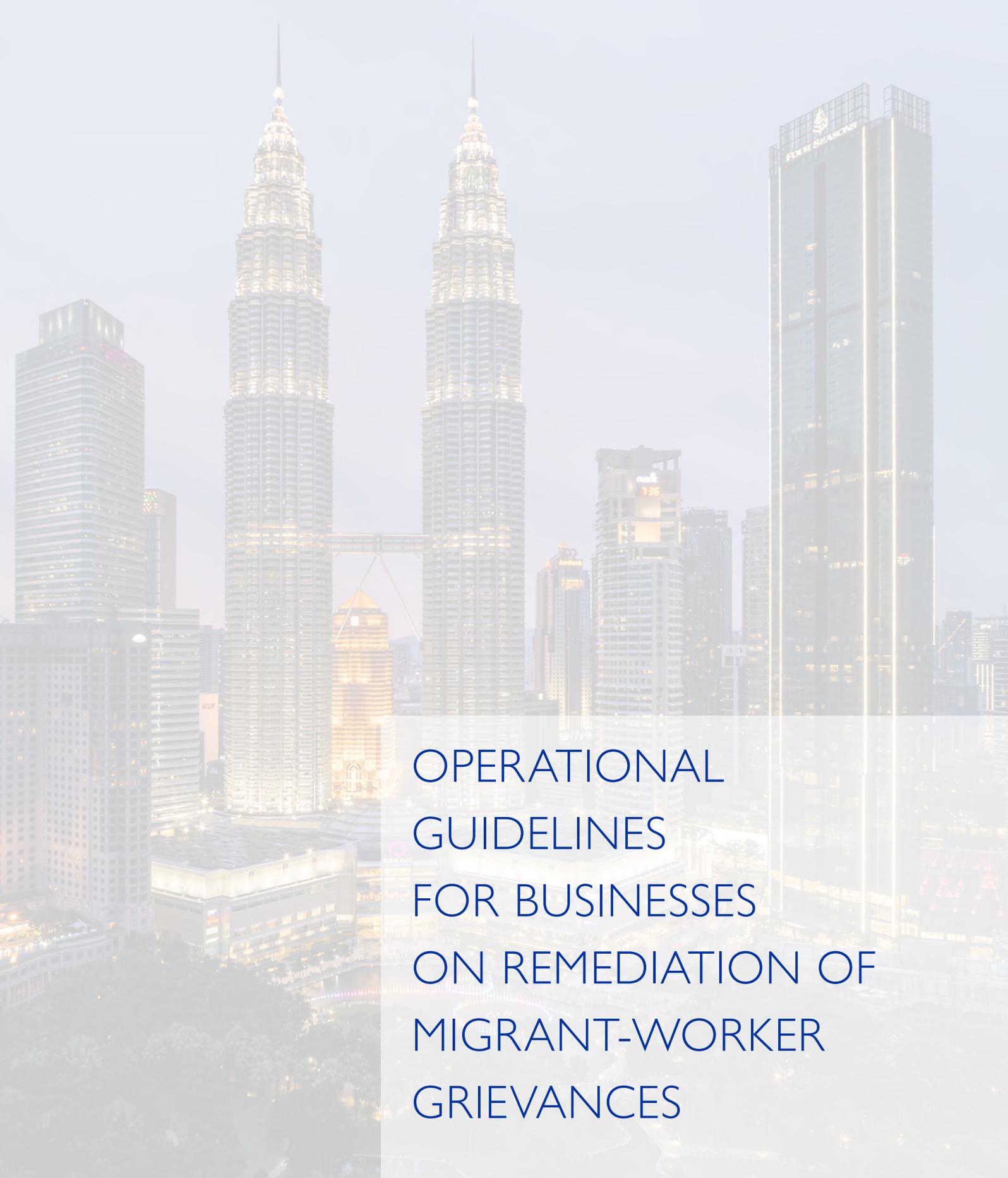
Some rights reserved. This work is made available under the [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 IGO License](https://creativecommons.org/licenses/by-nc-nd/3.0/igo/legalcode) (CC BY-NC-ND 3.0 IGO).*

For further specifications please see the [Copyright and Terms of Use](#).

This publication should not be used, published or redistributed for purposes primarily intended for or directed towards commercial advantage or monetary compensation, with the exception of educational purposes e.g. to be included in textbooks.

Permissions: Requests for commercial use or further rights and licensing should be submitted to publications@iom.int.

* <https://creativecommons.org/licenses/by-nc-nd/3.0/igo/legalcode>



OPERATIONAL
GUIDELINES
FOR BUSINESSES
ON REMEDIATION OF
MIGRANT-WORKER
GRIEVANCES

These operational guidelines have been created primarily to help companies and industry groups develop voluntary programmes to remediate worker grievances, especially with regard to addressing the human rights concerns of migrant workers in international supply chains. Given the number of stakeholders involved in any particular industry or region, the guidelines are also relevant to the work of other interested third parties, including international organizations, non-governmental organizations (NGOs), community-based organizations (CBOs), civil society organizations (CSOs) and worker groups.

Remediation programmes strengthen a company's or industry's human rights profile by engaging with workers to identify and resolve human rights grievances. Remediation programmes also provide feedback on existing human rights programmes such as compliance, due diligence, and environmental, social and governance policies.

The recommendations provided by these guidelines are grounded in industry and international best practices for compliance and for the advancement of human rights, including the United Nations' Guiding Principles on Business and Human Rights (UNGPs). According to the UNGPs, all types of businesses can advance and support the human rights of their workers by establishing or participating in a remediation programme that offers remedies and resolution to affected workers.

In their most effective form, remediation programmes are grounded in a worker-centred framework that allow companies, CSOs, and industry groups to interact with workers directly to address human rights issues, systematically investigate those issues, and then provide an appropriate resolution that remedies any harm suffered. Remediation programmes can then continue to monitor, evaluate, and analyse the issues that have been raised and the resolutions provided. This allows a company to adjust its systems of risk management, corporate policies, as well as due diligence and compliance programmes to better respond to the realities on the ground. Any remediation programme is intended to operate alongside State-based systems and offer a complementary source of relief. Certain grievances, particularly criminal offenses such as trafficking, should still be reported to the appropriate State agency.

The guidelines also recognize that migrant workers, women and members of other vulnerable groups often face individual or group-specific barriers that prevent them from accessing an effective remedy. These barriers include, for example, retaliation, risks of deportation, and lack of recognition under the legal system. Therefore, the guidance encourages practices that take into account contributions from a diverse panel of stakeholders, from design through implementation.

THE POTENTIAL BENEFITS OF AN EFFECTIVE REMEDATION PROGRAMME ARE FAR REACHING

- **For workers:** increased awareness of worker rights, a transparent and accountable system to raise concerns, equal access to fair resolutions and better employment conditions.
- **For companies:** early detection of human rights issues, better mitigation of risks, improved labour relations, talent retention, more inclusive supply chains, and enhanced brand reputation and legal compliance.
- **For industries:** improved industry standards, reductions in the systemic causes of exploitation (such as recruitment fees), and better retention of employee population.

Preface	IV
Introduction	1
Purpose of the guidelines	2
Remediation programmes: Definition and goals	3
Criteria for effective remediation monitoring	7
Guiding Principles on Business and Human Rights	
Practical guidance for effective remediation programmes	8
Step 0: Building trust	9
Step 1: Submitting and receiving the grievance	14
Step 2: Verifying the grievance	18
Step 3: Investigating the grievance and determining response	21
Step 4: Redressing the grievance (Design remediation action plan)	24
Step 5: Implementing and monitoring the remediation	26
Step 6: Closing the incident	28
Step 7: Incorporating feedback and evaluating results	29
Key Policies for effective remediation programmes	32
Conclusion	35
Appendix I: Applicable Malaysian law	36
Malaysian law: Guidance for remediation and monitoring	36
a. ATIPSOM	36
b. The Federal Constitution of Malaysia	37
c. Penal Code (Act 574) and Criminal Procedure Code (Act 593)	38
d. Other relevant legislation	38
Malaysian State-based systems	40
Appendix II: Migrant workers in Malaysia	44
Demographic of migrant workers	44
Forced labour in Malaysia	44
Appendix III: Migrant workers and the palm oil industry in Malaysia	46
Considerations for remediation programmes in Malaysia's palm oil industry	47
Appendix IV: Migrant workers and the electronics industry in Malaysia	48
Considerations for remediation programmes in Malaysia's electronics industry	49
Additional resources: Selected bibliography	50
Key resources	50
Remediation and monitoring case studies	51
Gender-specific guidance	52
References	52

Strategies and policies for supporting workers' rights and local communities are becoming increasingly important to businesses and industries because they can enhance legal compliance, minimize risk, and strengthen brand reputation. In addition to supporting human rights due diligence and broader environmental, social and corporate governance (ESG) policies, remediation programmes can be an effective way to strengthen a company's or industry's human rights profile through its two key functions:

1. Early detection and resolution. Remediation uses a dispute resolution mechanism that engages with workers to identify, investigate, and resolve human rights issues. By directly engaging with workers, remediation and monitoring allows for the early detection and resolution of an issue before it escalates.

2. Consistent feedback. While each step of the remediation process will generate important feedback to the worker and company, the continued monitoring and evaluation of the issues raised by workers and the resolutions provided is vital. This provides a consistent source of feedback that can be analysed to inform – and strengthen – existing human rights compliance and due diligence programmes, as well as broader ESG policies.

Effective remediation programmes also enable companies to stay one step ahead of the evolving landscape of State regulations and public pressure regarding compliance with human rights standards and responsible business practices more generally. For example, the home jurisdictions of multinational companies are increasingly requiring compliance with human rights standards across their supply chains and investments, including through stricter reporting and greater transparency obligations. This includes G20 countries enacting modern slavery laws across supply chains (Walk Free Foundation, 2018: vii). These laws have a particularly strong impact on industries with high populations of migrant workers. While migrant workers make up less than 5 per cent of the global workforce, they represent 25 per cent of global instances of forced labour (ILO, 2018: ix; Alliance 8.7, 2017: 5).

Additionally, investors are increasingly conducting due diligence investigations on the ESG practices of companies before investing. Consumers are also becoming more concerned about whether the human rights of workers are being respected along the full supply chain for products they purchase. As a result, there is an increasing need for all businesses and industries to develop better strategies and programmes to proactively identify, investigate, address, and ultimately prevent human rights issues among their workforces.

PURPOSE OF THE GUIDELINES

These guidelines provide a framework for designing and implementing a remediation programme in a manner that emphasizes engaging with workers, including migrant and minority populations. This includes involving workers in the design and operation of a remediation programme and in the resolution of any grievance. The guidelines apply to single companies implementing a remediation programme, as well as to multi-stakeholder collaborations (such as NGOs and within industry sectors) implementing a remediation programme across an entire supply chain or industry. The guidelines do not intend to suggest abandoning or replacing effective mechanisms that might already be in place, including collective bargaining groups, efforts at unionization, or company-led initiatives to support workers. Additionally, the guidelines do not replace State-based relief or operate independently from formal judicial processes. It is important that criminal justice actors are engaged when appropriate and that all workers understand their right to access the justice system and any other State-based relief.

THE GUIDELINES ANSWER THE FOLLOWING QUESTIONS



What is a remediation programme?

What are the criteria for effective remediation programmes?

What are the best practices for effective remediation programmes?

What policies should be in place for effective remediation programmes and how do you implement them?

What additional resources to assist stakeholders are available?

REMEDATION PROGRAMMES: DEFINITION AND GOALS

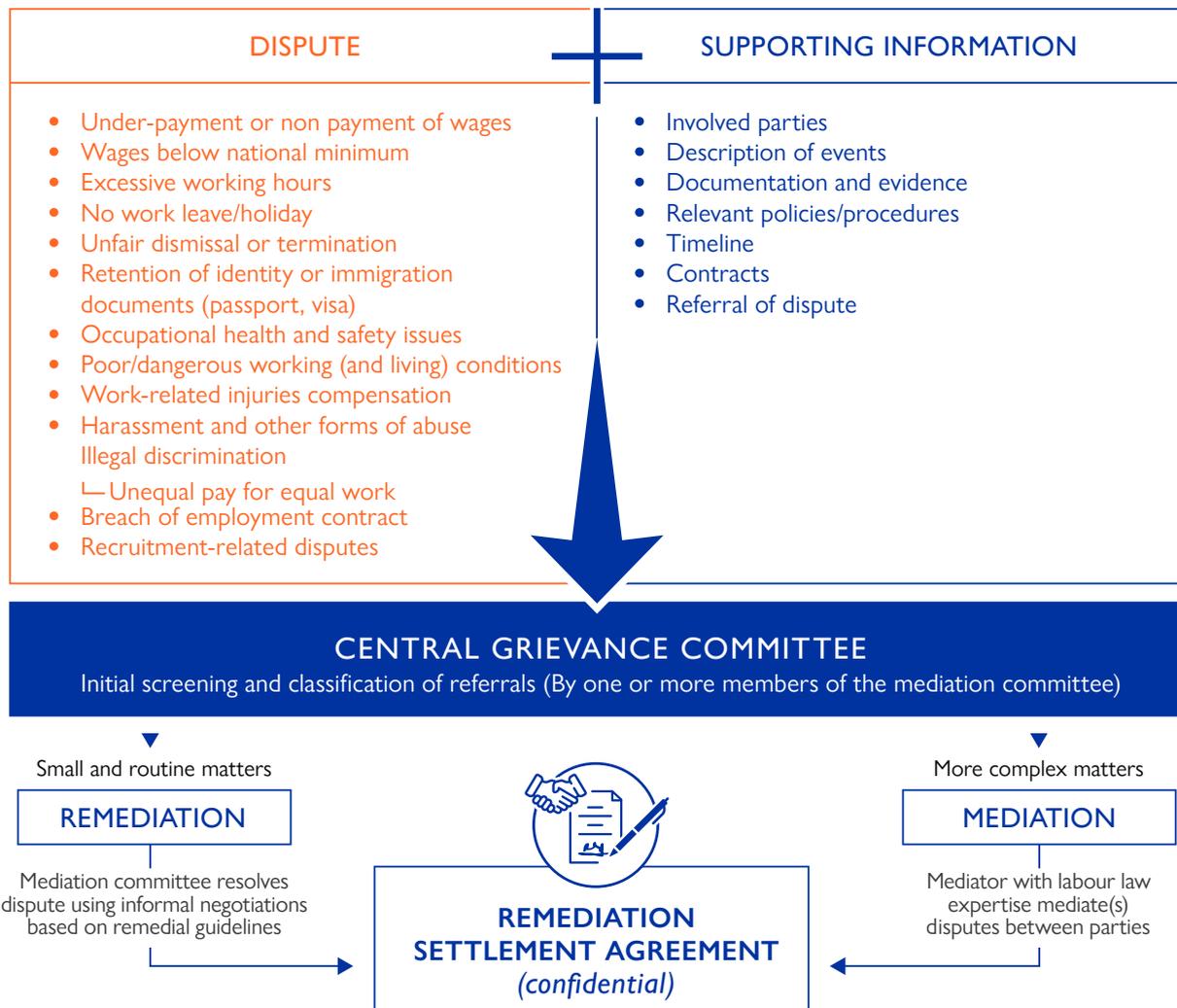
Remediation is the process by which a harm is appropriately and effectively redressed. Remediation programmes have two primary goals:

- (1) to provide proper redress for any grievance or harm experienced by a worker; and
- (2) to provide its operator – such as a company, supply chain partners, or industry – with ongoing information and feedback to assess and strengthen its human rights programmes.

The first goal, providing redress, involves using an alternative dispute resolution mechanism to resolve worker-raised grievances. This process starts when a worker submits or files a grievance, and continues with verifying, investigating, and resolving grievances as appropriate. Key to resolution is providing a fair and effective remedy for any harm suffered.

EXAMPLE OF A DISPUTE RESOLUTION MECHANISM

Figure 1. An example of a mediation/remediation flowchart



Any dispute resolution process and structure will likely vary from company to company, industry to industry, country to country, and worker group to worker group. These guidelines anticipate (a) using a central grievance committee that comprises neutral individuals with the experience, knowledge and skills in mediation and labour law to verify a grievance and to determine its complexity; (b) resolving small or routine issues directly through remediation and resolving more complex matters through mediation and the use of a mediator; and (c) finalizing the resolution through the provision of a remedy and settlement agreement.

ACCORDING TO THE UNGPS, EXAMPLES OF THE TYPES OF REMEDIES AVAILABLE INCLUDE THE FOLLOWING

Restitution

Restoring the aggrieved party to his/her original situation (before the violation of rights).

Compensation and financial assistance

Paying an aggrieved party to fairly remedy any damage suffered. Financial assistance may be particularly important when the aggrieved party has not received any payment and/or has incurred debts to secure their job, for instance, to pay recruitment fees.

Rehabilitation and recovery

Providing medical and psychological care, legal and social services, as well as assistance for the aggrieved party's voluntary return and reintegration into their home community.

Satisfaction

Verifying and acknowledging the violation of the aggrieved party's rights and ensuring the violation stops.

Undertakings of non-repetition

Implementing comprehensive measures to prevent future violations.

Shelter and accommodation

Providing short-term emergency shelter and longer-term accommodation. Government agencies, United Nations agencies, NGOs, family or community networks, or private individuals can provide this through hosting or rental accommodation.

Medical and health-care services and counselling

(including mental health and psychosocial support)

Providing aggrieved parties full access to comprehensive health care. Such health care should be based on informed consent and should be culturally appropriate.

Legal assistance

Informing aggrieved parties of legal options, including participation in civil and criminal legal proceedings, if appropriate, and action to address an aggrieved party's immediate needs. Aggrieved parties need to be informed of the possibility of cooperating with law enforcement agencies, the possibility of acting as witnesses in criminal proceedings and the legal options available for their protection if they act as witnesses. Aggrieved parties should also be informed about

possible civil proceedings, including for the restitution of their belongings and compensation for harm and injury suffered. Aggrieved parties may also need support to determine and/or regularize their immigration and labour status.

Return assistance

Supporting the voluntary and safe return of aggrieved parties to their communities of origin.

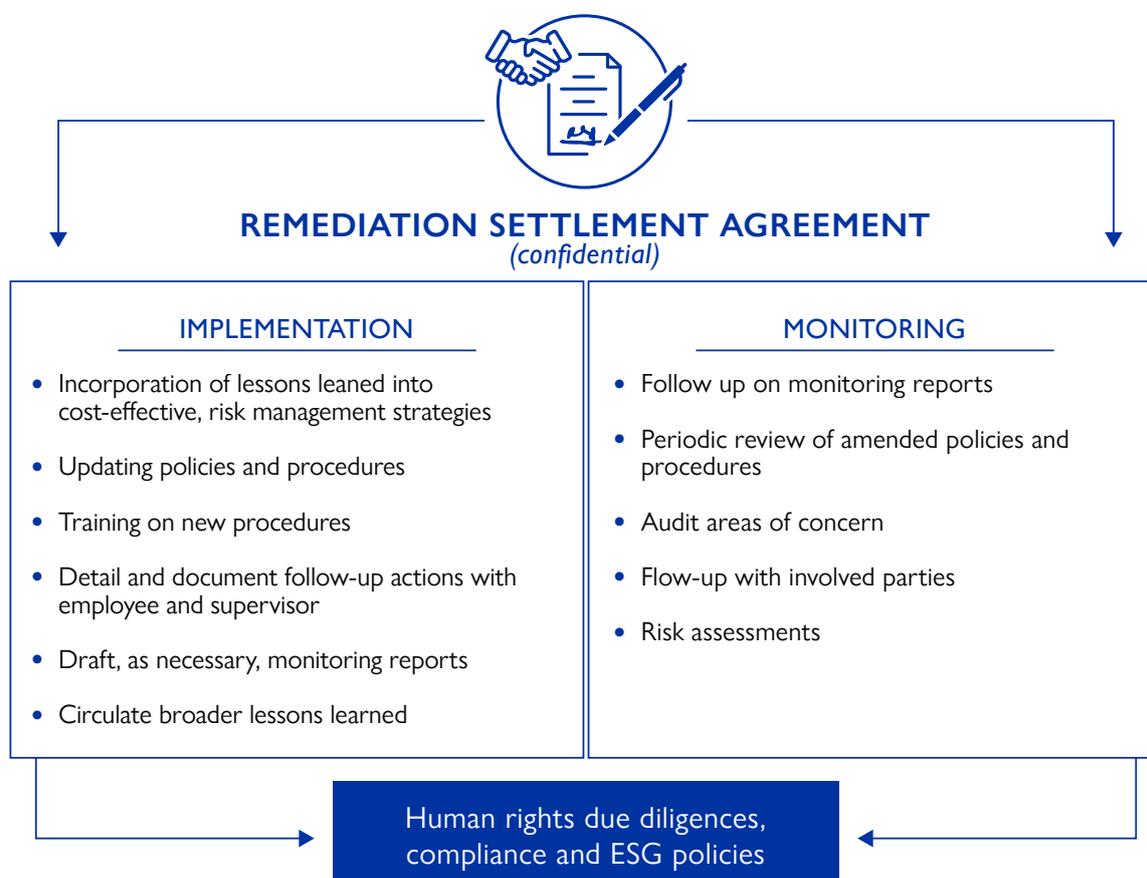
Reintegration services.

Assisting reintegration. Upon return, aggrieved parties should be able to access various forms of reintegration assistance (for example, reinsertion into the educational system, vocational training, microenterprise development, health care and counselling).

The second goal, internal feedback, is achieved through a remediation programme’s ongoing monitoring function. This involves documenting each grievance and its resolution and then assessing this information for purposes of (a) identifying any trends (including trends in grievances or trends in successful resolution); (b) adapting company policies or procedures to better manage risk, improve compliance, and/or strengthen internal goals; and (c) reporting on progress.

As illustrated below, through this process, a robust remediation programme integrates with and strengthens existing human rights policies.

Figure 2. The feedback process



**TO ACCOMPLISH BOTH GOALS, THE GUIDELINES DRAW
FROM INTERNATIONAL STANDARDS, INCLUDING THE UNGPs,
AND APPLY THE FOLLOWING PRINCIPLES**

Worker engagement

Involve and engage with workers (and their representatives) and external stakeholders in the design, operation, and resolution of grievances.

Technology and reporting

Leverage available technology to allow workers to easily raise grievances, to facilitate tracking and monitoring of grievances, and to analyse the information resulting from the full process of remediation.

Non-retaliation

Non-retaliation against workers for raising grievances; this should be communicated expressly to workers and to personnel within the company. Non-retaliation should be monitored.

Confidentiality and anonymity

All affected individuals must be guaranteed the option of confidentiality and anonymity throughout the process.

No waivers

Workers must not be required to waive any other remedy as a prerequisite for receiving a remedy.

Access to State remedies

Workers should be educated about State-based sources for relief, including, for example, court-based solutions. Companies should also be aware of State agencies that can be called upon in cases of serious grievances.

Legal representation

Where possible, workers should be given access to legal counsel to guide them through the process and remind them of their rights.

Whistle-blowing

Offer ability for workers and personnel to blow the whistle on illicit activities as issues arise.

Non-discrimination

Assess and investigate all grievances fairly and equally for all categories and demographics of workers, including migrant workers and women, and provide effective remedies in all cases, including, for example, through enacting policies of gender sensitivity, informed consent, and individual assistance.

CRITERIA FOR EFFECTIVE REMEDATION MONITORING: GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

THE UNGPs ARE THE AUTHORITATIVE SOURCE ON BUSINESS AND HUMAN RIGHTS. PRINCIPLE 31 PROVIDES EIGHT CRITERIA FOR EFFECTIVE REMEDIATION PROGRAMMES (UNITED NATIONS, 2011A)

Legitimate

Enabling trust and accountability.

Accessible

Being known to all and offering adequate assistance.

Predictable

Providing clarity on the types of process and outcomes.

Equitable

Offering reasonable access to sources of information, advice and expertise.

Transparent

Keeping parties informed about the progress of the mechanism.

Rights-compatible

Promoting the credibility of the mechanism and positive employment relationships.

Source of continuous learning

Reviewing grievance outcomes and recommending potential changes to the mechanism.

Based on engagement and dialogue with stakeholders

Encouraging open communications and incorporating the preferences of its stakeholders, including, workers.

These guidelines outline how to practically apply these principles at each stage of a remediation programme.

PRACTICAL GUIDANCE FOR EFFECTIVE REMEDIATION PROGRAMMES

REMEDATION PROGRAMMES ARE MOST EFFECTIVE WHEN THEY ARE TAILORED TO:

- The characteristics of the company or industry group implementing the programme;
- The specific circumstances, risks, and realities of the particular region and industry;
- The needs, concerns and vulnerabilities of the workers.

As a result, remediation programmes will vary across companies, regions and industries.

In order to discuss how to effectively implement a remediation programme, regardless of the unique circumstances, the guidelines divide a programme into eight separate procedural steps. Each step is addressed separately in this section.

Figure 3. The stages of a remediation process



STEP

BUILDING TRUST



Foundational to developing an effective remediation programme is establishing a relationship of trust with workers (United Nations, 2011b: 7). Engaging workers:

... is essential in order to know how these groups would wish to register their grievances; what modes of handling grievances they consider culturally appropriate; whether they trust a mechanism enough to use it and what would make them do so; what levels of knowledge and understanding of their rights and other relevant issues they have; and what kinds of support they may need to engage in the mechanism on a fair basis. (United Nations, 2011b: 25).



CAMBODIAN MIGRANT WORKERS IN THAILAND PRACTICING AERATED BRICK WALLING DURING A CONSTRUCTION TRAINING PROVIDED BY IOM AND FIXZY UNDER THE PROMISE PROGRAMME. © IOM 2021 / JAVIER VIDAL

Workers, trade union representatives, and worker advocates should be involved throughout the creation of the programme so their viewpoints on these issues are considered. Particular care should be taken to ensure adequate representation and participation from women and representatives of diverse migrant worker populations.

In order to effectively engage with workers, a company should first identify the full scope – including the different demographics, cultures, genders, ages and languages – of its workers. Though resources might be limited, external stakeholders such as NGOs, CBOs, trade unions, worker groups and industry groups can be effective partners in facilitating dialogue with workers and advising on specific characteristics or circumstances that should be considered.

Additionally, it is important to educate workers about their rights and the grievance mechanism. This provides workers with the skills and information necessary to use the remediation programme properly and meaningfully. Workers gain the ability to advocate for and receive a meaningful remedy, which in turn builds trust in the grievance

mechanism and promotes its use (United Nations, 2011b). In the absence of worker education, the company has a significant informational and power advantage over workers. This imbalance can result in transforming the process of adjudicating grievances – which is intended to assess and remedy harm – into a private negotiation where workers are ill equipped to advocate for their rights and remedy (Reisch, 2020: 265).

KEY PRACTICE
Understand
the needs and
concerns of
workers

Consult and interview the workers, worker representatives, and external stakeholders to understand their needs and concerns.

- Work with external stakeholders to interview workers in a language comfortable to them and to consult on design. This presents an opportune time to enlist the support of existing worker representatives, trade unions or CBOs to both consult with workers as well as to build a productive relationship between workplace management and CBOs.
- Consider using app-based or other technological solutions to remotely collect information.

Additional options

- Create a questionnaire for workers to complete.
- Perform an analysis of workers' knowledge of their rights, in order to determine what rights-based training and education is necessary (United Nations, 2011b: 20).
- Create workshops that bring together workers, external stakeholders and company leaders to discuss the issues facing workers and the goals of remediation and monitoring.
- Depending on the size and diversity of the workforce, workplace management may want to adopt a training of trainers (TOT) approach. This would facilitate the roll-out of tailored engagements, and would also create a network of resource persons for workers, consisting of either workers or external stakeholders.

KEY PRACTICE
Communicate
with workers
effectively

Communicate with workers in the language they speak and in their preferred manner (for example, in person) and location (for example, in their community or at work).

- If company personnel do not speak the preferred languages of workers, leverage workers or external stakeholders. Note that many migrant workers may not speak the local language (Raghu, 2014; Accenture for Humanity Limited, 2013: 20; ACCESS Facility, 2014: 6; ETI, 2019a; Verité, 2014; Salleh et al., 2012: 98; FLA, 2018: 10). For example, migrant workers from Indonesia might speak Bahasa, migrant workers from other locations likely will not.

Additional option

- Retain staff and personnel who speak the languages of workers and train them to participate in the remediation programme.

KEY PRACTICE
Educate
workers about
substantive
rights

Educate workers about their substantive legal rights as well as their rights under company policies, including protection against forced labour (for example, recruitment fees and related costs, forced labour and unsafe/unsanitary working conditions).

- Educate workers on their rights at the start of employment.
 - For migrant workers, information must be a compulsory part of pre-departure training in their respective countries of origin and emphasized on arrival in the country of destination. Post-arrival training of migrant workers is also considered best practice.
- Provide information on other remediation processes as well as State-based processes.
- Provide information in a time, place, and manner that is helpful for the workers, including through app-based technology.
 - Partner with external stakeholders to conduct training.
 - Provide information in the language of the workers and in accordance with their preference for oral or written communication.
 - Break down any cultural barriers that may hamper reporting grievances.¹
 - Provide concrete factual scenario examples, applicable to various demographics of workers (including migrant workers), that illustrate the company's commitment to non-retaliation and to minimizing barriers to engaging in remediation.

Additional options

- Develop a committee of workers and personnel who are trained to conduct these sessions.
- For companies with high turnover in workers, continually teaching workers may not be feasible. In this scenario, consider also providing written information and/or integrating information about the remediation programme into existing workplace orientations and trainings.
- Provide information for workers in a “permanent” manner in commonly used locations such as online resources, break rooms, lunchrooms, and transportation.

¹ For example, migrant workers may feel that raising a complaint means they will be identified as a “troublemaker” and, therefore, they will be unwilling to make a complaint or raise a concern.

KEY PRACTICE
Educate
workers
about the
remediation
programme

Teach workers about the remediation programme, including the full process for submitting, investigating, and resolving grievances, and other resources for obtaining relief.

- In addition to knowledge about the procedure, this training should highlight:
 - Non-retaliation policy. There will be no retaliation for reporting an issue. For instance, permits will not be confiscated for reporting a concern.
 - Confidentiality and anonymity. Workers have the right for the grievance and resolution to be confidential, and for the workers themselves to remain anonymous.
 - Non-waiver of other remedies. Workers have a right to access-based mechanisms as well.

Additional options

- Develop a committee of workers and personnel who are trained to conduct these sessions.
- Partner with external stakeholders to conduct training, instead of training being conducted only by company personnel.
- Advertise and publicize the existence of the remediation programme and the resolution of grievances in a manner that resonates with workers.

KEY PRACTICE
Train
company
personnel

Train personnel about workers' rights and how to identify violations or grievances.

- Work with external stakeholders to conduct training.
- Ensure that personnel are trained to identify serious violations (such as physical abuse and other forms of physical or psychological coercion) that need to be raised to State authorities.
- In the case of supply chains, engage with organizations across the supply chain to train them to identify grievances for which their workers are specifically at risk.
- In the case of migrant workers, engage with any recruitment agencies, as grievances may first be reported to these agencies.
- Emphasize that certain groups – such as women and migrant workers – are more vulnerable to human rights abuses and may be less inclined to seek help.

Additional option

- Have a dedicated resource for ongoing training.

CASE STUDY EXAMPLE*Tesco fruit supply chain in South Africa*

In developing a system of remediation and monitoring for its network of small farms in South Africa, Tesco created an oversight stakeholder body with representatives from trade unions, civil society and government. Tesco allowed this body to drive the design and implementation of the grievance mechanism. In this way, the company acted as a “sponsor” of remediation and monitoring rather than the “driver” of the mechanism (United Nations 2011b: 14).

CASE STUDY EXAMPLE*The Coalition of Immokalee Workers in Florida Fair Food Programme*

To ensure workers understand their rights, the Coalition of Immokalee Workers (CIW) conducts worker-to-worker education sessions, held on the farm and on the clock (that is, paid), on the new labour standards set forth and developed by a third-party monitor. Additionally, when hired, workers receive a CIW handbook, Know your rights and responsibilities, available in multiple languages and as an audio recording. All supervisors of participating growers are also educated on standards and rules (Fair Food Standards Council, 2018).



STEP

1

SUBMITTING AND RECEIVING THE GRIEVANCE

As outlined in Step 0, for workers to submit a grievance, they must both trust the remediation programme and be able to access it. In line with the UNGPs, building trust requires that the grievance mechanism be transparent, predictable and independent. Making the system accessible requires removing various logistical and cultural barriers to use.



KEY PRACTICE
**Make it easy
 for workers
 to make
 complaints**

Provide multiple channels for workers to submit grievances

- Allow workers to submit grievances confidentially and anonymously.
- Have individuals who can receive complaints in the language of the workers.
- Create multiple “collection points” for workers to submit grievances. This can include physical and electronic collection points such as helplines, text-based reporting capabilities, worker apps and anonymous collection boxes.
- Clearly identify the individuals or groups (including trade unions) that can assist in submitting a grievance.
 - Ensure gender diversity to allow women the ability to submit a grievance to another woman.
- Consider alternative pathways for a worker to escalate particular types of complaints. Such alternatives might include, for example, an informal process, a formal company-led process, a supervisor-led process, or a third-party-mediated process (United Nations, 2011b: 14).
 - Multiple pathways can allow for a more targeted and tailored response.
 - Workers should be educated on how to appropriately use the various channels.
- For migrant workers, who may have already experienced some form of exploitation during their recruitment process, it is important that they have an opportunity early in their employment to raise any issues that they may have faced with regard to contract substitution or payment of fraudulent fees and the like. Consider:
 - Conducting pre-departure and post-arrival trainings specifically for migrant workers.
 - Providing information about the remediation programme in workplace orientation or upon arrival.
 - Preparing a worker survey post-arrival.

Additional options

- Utilize electronic and telephonic systems for raising complaints.
- Allow external complaints. For instance, where the company has labour standards agreements with other supplier companies, allow worker grievances with those suppliers.
- In instances where a physical grievance mechanism is employed (such as a complaints or suggestion box), ensure that it is in a discreet location where workers feel that they can submit complaints anonymously.
- External stakeholders or external partners could be engaged to monitor newly recruited migrant worker populations, to collect grievances associated with their recruitment process.

CASE STUDY EXAMPLE*International Transport Workers' Federation*

In situations where shipowners are abandoning vessels and their crews, crews have often been reluctant to raise grievances due to fears regarding their physical status, their future employment and the ability to return home as well as the prospect of not being paid.

The International Transport Workers' Federation (ITF) recently assisted seafarers to overcome the potential power imbalance, and obtained recovery of unpaid wages and repatriation of the workers.

(ITF Seafarers, 2020)

KEY PRACTICE
Create
a predictable
and
transparent
submission
process

Provide a clear and known procedure for raising and addressing grievances.

- Create safeguards to ensure the process maintains the confidentiality and anonymity of the workers where required by them.
- In addition to educating workers about this process upon hiring, ensure that this information remains available and accessible. In the case of migrant workers, this information could be provided during a pre-departure training.
- Create complaints forms that help guide the worker to describe the issue through specific questions or check-the-box items.
- Establish deadlines and track the grievances and data to ensure that stated deadlines are met (United Nations, 2011b: 18).

Design upward oversight to ensure accountability and promote trust.

- Ensure personnel involved in the submission of grievances are qualified, educated in the rights of workers, and have no conflicts of interest.
- Ensure that personnel are diverse and include women and minorities.
- Provide data on the types of grievances referred, the number of completed grievance processes, anonymized data about the aggrieved workers, and the outcomes.
- Ensure policies, procedures and remedies do not discriminate against any workers including migrant workers.

Additional option

- Include updates about the remediation programme in periodic town halls or all staff meetings to contribute to a workplace culture of acceptance and inclusion.

CASE STUDY EXAMPLE*The Coalition of Immokalee Workers in Florida Fair Food Programme*

The Coalition of Immokalee Workers (CIW), a worker-based human rights organization, maintains a 24-hour, multilingual complaint hotline, which connects workers directly to investigators (Fair Food Standards Council, 2019).

CASE STUDY EXAMPLE*Adidas*

Adidas engaged local labour NGOs to spur its worker outreach and encourage worker participation. In Bangladesh, where gender-based discrimination is particularly common in garment factories, Adidas engaged an all women NGO to interact with workers to enable them to raise issues that they may have otherwise felt uncomfortable raising (Curtze and Gibbons, 2017).

CASE STUDY EXAMPLE*Carbones del Cerrejon in Colombia*

Carbones del Cerrejon had operations that extended along a 150km road and affected indigenous communities. To facilitate reporting grievances, the company created multiple access points for contractors, employees, and communities to raise complaints by phone, by email, or in person and also trained staff to receive complaints. Additionally, the company engaged Wayu'u advisers to communicate with indigenous communities in their language and in person, which was their preferred method of interaction (United Nations, 2011b: 16).



STEP

2

VERIFYING THE GRIEVANCE

Once a grievance is submitted, it should be screened to determine the correct response, including further investigation or dismissal. Employers should have clear internal procedures to review grievances and/or allegations of exploitation to determine follow-up actions for credible and actionable allegations. Depending on the grievance, the employer may need to engage State officials or report a risk to other stakeholders. The nature of the grievance and the identity of the workers involved should remain confidential during this process. It is also critical that the process for screening is premised on non-discrimination.



© UNSPLASH 2016 / SCOTT GRAHAM

**A CREDIBLE ALLEGATION MIGHT POSSESS ONE OR MORE OF THE
FOLLOWING CHARACTERISTICS:**

- ✓ Reported by a trustworthy source.
- ✓ Readily verifiable through information available from company monitoring or records (for example, working hours, non-payment).
- ✓ Sufficient information reported to provide reasonable grounds to believe that a violation may have taken place. This might include:
 - Corroboration from another individual or from prior allegations.
 - Specific detail.
 - Physical evidence.

Meeting these criteria does not mean that the allegation is true; however, these criteria are strong indicators for the need for review and further investigation. It is important to remember, though, that evidence is almost always going to be incomplete or limited, and screenings should take this into account before making a decision to dismiss an allegations as unfounded.

KEY PRACTICE
Establish a
body to screen
grievances

Have a trained group of individuals to review submitted grievances.

- Include trade union or worker network representatives, if they are active at the workplace, to ensure that the group represents the diverse interests of the workers, the company, and the industry.
- Train the individuals on review of grievances, common types of grievances, and legal and policy standards.
- Train the members of the body to identify serious allegations that must be raised to State agencies.
- Ensure that workplace management and relevant departments are briefed to cooperate fully.

Prepare written materials that provide a consistent and neutral guidance on screening and verifying claims.

- The written materials should protect against discrimination against types of workers and types of complaints.
- The evidentiary standards used to verify a complaint should not be burdensome and should recognize verbal testimony as valid.
- Consult with workers or worker representatives to understand:
 - How workers tend to communicate or describe grievances.
 - Any cultural differences in minimizing a grievance.
 - Any cultural differences in presenting evidence.

Additional options

- Include workers on the body so that their perspective is included in each assessment.
- To reduce strain on company resources, partner with an external stakeholder or agency – such as an NGO or CBO – to run the screening process.
- Allow the body to receive and review grievances that are raised across a supply chain or an industry, rather than only within a single entity.
- Develop guidance for ensuring resolution and compliance across the supply chain or industry.²

KEY PRACTICE
Provide
multiple
options for
investigating
and resolving
grievances

Have separate procedures for small/routine grievances and more complex grievances.

Additional option

- To reduce the burden on company resources, consider partnering with external groups, with the caveat that while companies may work collectively to monitor and follow up on allegations through industry, multi-stakeholder or other collaborative initiatives, this does not replace the role of continuing due diligence and monitoring in individual supply chains.

² This would also include operations of the relevant business partners, such as recruiters, subcontractors (janitorial, cleaning), dormitory management and transportation.

KEY PRACTICE
Document
and store the
decision

Document the decisions and rationale of whether a grievance should be investigated.

- These should be stored and made available for later review.
- All allegations – even those found not to be credible – should be documented and recorded.

KEY PRACTICE
Communicate
the decision
to the relevant
parties and
workers

Regardless of whether the grievance will advance to the investigation stage, the worker and any other individuals involved must be notified of the body's decision.

- Workers must be reassured of their confidentiality.
- Workers must explicitly be told that they can resubmit the grievance with additional information immediately or in the future.

Provide resources for the worker.

- In the event the grievance will be investigated, consider access to legal support for workers.
- In all events, workers should be provided with information about other avenues for relief, including State-based mechanisms or industry mechanisms.
- Additional information about where to access other forms of support – such as legal or counselling – should be provided to the worker.

Additional options

- Allow for an independent review of the screening decision to enhance accountability and fairness.
 - Consider potential independent review of the body's screening decision.
 - Consider review of all or a portion of the screening decisions, regardless of whether it is requested by a worker.
- Have an individual available to discuss the outcome – including the decision not to investigate a grievance – with the worker.
- Use an app to more quickly update the worker on the outcome.
- Share results of any independent studies of the intended/unintended outcomes from the body's decisions with workers to identify unfairness.

STEP

3

INVESTIGATING THE GRIEVANCE AND DETERMINING RESPONSE

After the grievance has been verified, it will be investigated. In this process, it is important that the workers be kept appropriately informed of the progress of the investigation, and that the investigation process is designed to ensure non-discrimination.



IOM BANGLADESH'S TRANSITION AND RECOVERY DIVISION, ALONG WITH PARTNER ORGANIZATIONS, ARE MANUFACTURING CLOTH-MADE WASHABLE MASKS AND DISTRIBUTING THOSE TO LOCAL GOVERNMENT, LAW ENFORCEMENT AND OTHER COMMUNITY PERSONNEL WHO ARE DELIVERING ESSENTIAL SERVICES TO THE PUBLIC DURING COVID-19. © IOM 2020 / ABDULLAH AL MASHRIF

KEY PRACTICE
Designate, identify, and train personnel involved in investigations

Have a diverse set of individuals trained to investigate grievances. For example, it is important that women are involved in investigations, particularly when the aggrieved worker is a woman. Similarly, it is important that individuals who can communicate natively with migrant workers and who know the migrants' cultures are involved in investigations involving migrant workers.

KEY PRACTICE
Have written guidance on the investigation process

To help ensure a neutral, consistent, and non-discriminatory process, there should be written guidance concerning all aspects of the investigation, including:

- Collection and assessment of evidence.
- Engagement with the relevant workers.
- Proper and respectful interaction with workers, including women and migrant workers.
- Procedures for confidentiality.

Evidentiary standards should take into account the following:

- The possibility that a grievance may have caused trauma.
- Cultural barriers to raising or defending grievances.
- Lack of “hard” evidence.

Consider that serious issues – such as abuse and unlawful practices more generally – should be taken to the applicable State authorities.

Consult with workers or external groups in developing this internal guidance.

KEY PRACTICE
Involve workers and external stakeholders in the investigation

Inform the worker of the process and stage of the investigation, including, for example, via an app.

Provide the worker with the opportunity to raise questions and concerns about the investigation, including, for example, via an app.

Consider having legal counsel available for the worker.

Additional options

- Have an external independent body, such as external counsel, conduct the investigation or assist in the investigation.
- If the investigation is being performed through an industry-wide or supply-chain-wide mechanism, ensure there are sufficient resources on the ground for the worker.

KEY PRACTICE
Have clear guidance for early triage of grievances and allegations

Consider the complexity, time lapse between incident and reporting, severity and urgency of the grievance and allegations when determining the response.

A remediation response can include actions at two levels:

- **Level 1.** Addressing active cases of exploitation requiring immediate response. This requires identifying the individual needs of the victim(s), the services needed, and then implementing and monitoring assistance provided. This may include engaging with third-party actors to safely remove an individual from an unsafe situation.
- **Level 2.** Strengthening support services and addressing contextual factors that led to exploitation. This requires analysis and redress of the conditions that led to exploitation. This may include factors like debt bondage as a result of fraudulent recruitment practices

Have separate procedures for small/routine grievances and more complex grievances to allow for more streamlined and efficient investigation.

CASE STUDY EXAMPLE*Tesco fruit supply chain in South Africa*

The oversight body for the remediation and monitoring programme clearly outlined the four levels of resolution. These levels were increasingly more formalized, as the severity of the grievance or dispute increased. Time frames and procedures were clearly specified in materials for the oversight body (United Nations, 2011b: 14).



STEP

REDRESSING THE GRIEVANCE (DESIGN REMEDIATION ACTION PLAN)

4

If an investigation determines that a violation or grievance occurred, the worker should be given a remedy to undo the harm caused. Remedies should be proportional to the gravity of the harm and adapted to the circumstances of the case and the specific needs of the worker. Remedies are not intended to be punitive, but are intended to correct wrongdoing, provide restitution and prevent reoccurrence. In order to ensure this standard is met, workers could be consulted after the fact to confirm the remedy was appropriate. In appropriate circumstances, the remedy should be supplementary – not an alternative – to remedies available under formal judicial or other State-based processes. Workers should not be required to waive their access to State-based remedies in order to receive a remedy from a company (ICJ, 2019: 71–72).



WORKERS ON ASSEMBLY LINE IN CAR FACTORY. © BIGSOTCK 2016 / GOLDEN BROWN

KEY PRACTICE
Ensure specific and satisfactory remedies

Ensure remedies are applied fairly, consistently and in a non-discriminatory manner by having written guidance that meets legal and company standards.

Specify standards for how grievances and remedies will be assessed, including analysis of international and domestic guidance, the severity of the grievance, and the unique needs of vulnerable populations, including women and migrant workers.

Specify time frames for outcomes of remedies, and ensure resolution occurs promptly.

Engage with workers in determining the remedy.

Look beyond compensation and restitution to include an apology and disciplinary action against the company.

Protect the individual worker. ▾

- Have a clear non-retaliation policy and monitor compliance with that policy.
 - Communicate to the worker that the grievance mechanism supplements formal judicial relief.
 - Ensure that receipt of the remedy is not conditional on the worker waiving rights to pursue other relief.

KEY PRACTICE
Specialized
response for
instances
of human
trafficking,
forced labour
and other
serious forms
of exploitation

Provide additional and specialized attention for workers who have identified issues of human trafficking, forced labour, or other serious violations.

Ensure that trained personnel include women and individuals who can communicate with migrant workers, as these vulnerable populations are often targets or victims of exploitation.

(For more specific guidance on this issue, see the Key policies for effective remediation programmes, below.)

KEY PRACTICE
Prepare for
monitoring

Document the remedy that was provided and the rationale for that remedy.

Develop remediation plans that (a) define clear expected results and (b) can be monitored and measured over time using quantitative or qualitative performance indicators to gauge the effectiveness of remediation efforts and identify areas for further refinement.

IMPLEMENTING AND MONITORING THE REMEDIATION

Once a grievance has been redressed, the remediation programme continues its monitoring function while implementation is underway. Monitoring both ensures that the remedy was effectively applied and helps to determine whether the grievance was isolated or part of a larger, systemic issue that needs to be addressed.



MIGRANTS WORKERS ACROSS THE GLOBE ARE AN INDISPENSABLE WORKFORCE, BUT ARE MADE INCREASINGLY VULNERABLE TO EXPLOITATION DURING AND AFTER COVID-19. © IOM 2020 / MUSE MOHAMMED

KEY PRACTICE Follow up with worker

Communicate to the worker when the remedy has been fully provided and when, in the opinion of the organization, the matter has been closed.

Confirm with the worker whether:

- The remedy has in fact been fully provided.
- There have been any negative or positive consequences, including:
 - Better treatment or retaliatory treatment.
 - Adequate or inadequate health care.
 - Any stigma.

Consider whether additional actions are required to complete the remedy.

Additional options

- Work with external partners to conduct this follow-up.
- If the remediation programme is operating across a supply chain or across an industry group, ensure there are local partners that can connect with the worker and provide feedback to the body.
- Consider using an app to facilitate this follow-up.
- Consider implementing a review process whereby a worker can later seek review of the remedy.

KEY PRACTICE
Document the implementation of a remedy

Details on the support provided to the worker should be documented in a timely, accurate, and secure manner.

Log and compile all complaints and resolution outcomes, including the time taken to resolve the complaint, as well as remediation and restitution efforts.

DOCUMENTATION SHOULD INCLUDE

- Contact details of all stakeholders involved (subject to confidentiality).
- Information on assessments of grievance.
- Any assistance plan for workers.
- Information on the monitoring of the case.
- Outcomes of communications with the workers and service providers involved in the assistance plan.
- Feedback from the worker.

Detail and document follow-up actions with employee and supervisor.

Employ a digital system of documentation, whenever possible.

KEY PRACTICE
Improve the remediation process

Review the grievance mechanism and understand the mechanism's performance.

- Engage regularly with a standing workers' committee or workers' interest group.
- In any review, involve company employees who are not the administrators of the grievance mechanism.

STEP

CLOSING THE INCIDENT

6

Once the issue is considered sufficiently redressed by the worker and by all individuals involved in resolving the grievance (such as the case manager or any consultative body), a final report should be submitted to the established body that screens and reviews grievances.



TEA PICKERS WORKING ON TEA PLANTATION. © BIGSTOCK / EFIRED

THE FINAL REPORT SHOULD INCLUDE

- ✓ The date of the referral.
- ✓ A brief summary of the remedy provided to the worker(s), adhering to privacy and confidentiality principles.
- ✓ The results of monitoring reports, including the worker's (or workers') level of satisfaction with the assistance provided.
- ✓ A financial report that respects privacy principles.

STEP

7

INCORPORATING FEEDBACK AND EVALUATING RESULTS

The information gained from remediation can be used to strengthen and inform a company's or an industry's broader efforts concerning human rights compliance, due diligence and ESG policies. Additionally, the improvements in human rights compliance can be communicated to legal authorities, investors and consumers to strengthen a company's reputation.



KEY PRACTICE
Assess and
evaluate the
results of
remediation

Review the logs and records of the resolution of grievances to identify:

- Any trends in non-compliance (Ergon, 2018: 8).
- Any trends in better compliance.

Determine whether any broader changes in a company, industry, or supply chain are needed.

Additional options

- Work with external parties to conduct a broader human rights compliance assessment.
- Work with external parties to capture and report the company's improved human rights compliance and improved ESG efforts.
- Study the intended/unintended outcomes for workers, to identify unfairness.

KEY PRACTICE
Review
and update
internal
policies

Develop a cross-functional team to update internal policies based on the results of remediation. Such a team could:

- Incorporate lessons learned into cost-effective risk management strategies.
- Update policies and procedures.
- Provide or request training on new procedures.
- Audit any areas of concern

Draft, as necessary, monitoring reports.

Additional options

- Partner with external groups to conduct this analysis.
- Adapt this process to assess a full supply chain and/or industry.

KEY PRACTICE
Communicate
changes

Circulate broader lessons learned across the company, supply chain, and industry (as applicable).

Communicate to workers any changes that are being made as a result of lessons learned from the remediation programme.

Ensure accountability. Clear and regular communication about changes will ensure accountability. Accountability is necessary for all stakeholders to be able to trust the remediation process. All remediation facilitators – from members of the body established to screen grievances to mediators and case managers – must abide by strict ethical and professional standards. Any trends suggesting corruption, discrimination or the like should be swiftly acted upon.

KEY PRACTICE**Adapt to
changes**

Monitor the performance of grievance mechanisms in times of emergencies and adjust the process so that the mechanism continues to function.

- For example, shift to electronic submission of grievances or virtual investigations due to COVID-19.

Evaluate policies against changing norms in human rights law.

To operate a remediation programme effectively and consistently, it is helpful to have policies in place that provide guidance on the investigation and resolution of human rights issues. The scope and content of these policies will depend on the unique circumstances of the companies, the industry, and the workers involved. As a starting point, these guidelines recommend that the policies listed below be developed. To provide additional information, existing guidance is listed for each policy (links to all guidance documents are included in the list of references available at the end of these guidelines). However, the guidelines encourage stakeholders to tailor policies to meet the needs of the companies, workers, stakeholders, and industries involved.

Investigation policy

A policy that establishes the standards for the investigation of a grievance, including gathering evidence, deadlines, and documentation. This policy can also help to triage grievances based on urgency and severity. Aspects of the policy might include:

- Guidance on triaging grievances.
- Guidance on individuals who should be interviewed, questions that should be asked, and safety precautions for the worker that should be put in place, and forms requiring documentation of such procedures.
- Guidance on data protection and privacy principles.
- Anticipated timelines and deadlines for each stage of the investigation.
- Identification of key personnel and their roles in the investigation, including support assistance for the workers and specialized support for vulnerable groups, including women and migrant workers.
- Examples of distinguishing marks of particular types of grievance.



GUIDANCE

- United Nations Development Programme (UNDP), office of audits and investigations, Investigation guidelines (United Nations, 2019).



Non-retaliation policy. A policy that commits to non-retaliation against any individual who is involved in reporting a grievance and that creates safeguards to both prevent and discipline any retaliatory conduct.

GUIDANCE

- UNDP, Policy for protection against retaliation (United Nations, 2018).
- Conference of International Investigators, Uniform principles and guidelines for investigations (2009).



Non-discrimination policy. A policy that commits to non-discrimination of workers when screening, investigating, and resolving grievances and that provides specific examples of avoiding discrimination. Particular attention should be paid to gender discrimination and discrimination against migrant workers, as well as issues of informed consent. Aspects of the policy might include:

- Company commitment to non-discrimination.
- Ongoing training on preventing discrimination and bias, particularly towards vulnerable groups.

GUIDANCE

- International Labour Organization (ILO), Eliminating discrimination in the workplace (2009).



Confidentiality policy. A policy that commits to upholding the confidentiality and anonymity of the worker throughout the process. Aspects of the policy might include:

- Definition of confidentiality and anonymity.
- Company commitment to confidentiality and anonymity.
- Specific direction on how to securely store and document all reported grievances (for example, password-protected documents or folders)

GUIDANCE

- UNDP, Office of Audits and Investigations, Investigation guidelines (United Nations, 2019).
- United Nations Secretary-General, Information sensitivity, classification and handling (United Nations, 2007).
- IOM Data Protection Manual, 2010.



Specialized response for forced labour, trafficking, and exploitation. A policy that provides on-the-ground assistance and support to workers who have experienced severe forms of exploitation (including forced labour and trafficking). The provider should be an organization already working with the victims of exploitation in that area that can be trusted to:

- Identify issues of immediate concern to the worker and ensure that any services and assistance provided are designed in accordance with the worker's wishes, interests and participation. Initial support may include short-term accommodation, meals, clothing, medical care and counselling.

Specialized response for forced labour, trafficking and exploitation. A policy that provides on-the-ground assistance and support to workers who have experienced severe forms of exploitation (including forced labour and trafficking). The provider should be an organization already working with the victims of exploitation in that area that can be trusted to:

- Identify issues of immediate concern to the worker and ensure that any services and assistance provided are designed in accordance with the worker's wishes, interests and participation. Initial support may include short-term accommodation, meals, clothing, medical care and counselling.
- Offer case management planning that includes the safe, dignified and effective reintegration of workers into society. For migrant workers, determining the country, region and place of residence where reintegration will take place is a vital part of the initial assessment. Any reintegration plan must be based on actual services that service delivery organizations and upstream programmes, where available, can provide, including:
 - Shelter and accommodation.
 - Medical and health-care services and counselling.
 - Mental health and psychosocial support.
 - Legal assistance.
 - Financial assistance.
 - Return assistance.
 - Reintegration services.

GUIDANCE

- IOM, *Handbook on Direct Assistance for Victims of Trafficking (2007)*.
- IOM, *Reintegration Handbook: Practical Guidance on the Design, Implementation and Monitoring of Reintegration Assistance (2019)*.



Review process. Guidelines that describe when and how decisions can be reviewed, either automatically or at the request of workers. Aspects of the policy might include:

- Mandatory review of resolutions concerning a specific type of grievance.
- Mandatory review of all resolutions during the trial period of a remediation and monitoring system.
- The individuals permitted (or not permitted) to be involved in a review.
- The timeline for requesting any review.

CONCLUSION

Remediation programmes have the potential to strengthen existing human rights due diligence, compliance, and broader ESG policies first by involving workers in the detection and resolution of any human rights grievance and then by providing consistent feedback on the success of these human rights policies. These programmes can thus improve a company's or industry's compliance with human rights by allowing for early detection, efficient resolution, and future prevention of human rights issues. Not only can remediation programmes be implemented within a single company, but they can also be used across a supply chain and within an industry to combat external causes of human rights grievances, such as fees charged by recruitment agencies or other exploitative practices against migrant workers.

As discussed in the guidelines, remediation programmes are most effective when workers are engaged in the design and operation of the system and the development of the remedy. Involving workers and their representatives helps build their trust in the programme and process and encourage them to use it. Additionally, worker involvement helps tailor the programme to the needs and concerns of the workers, allowing for a more responsive approach to any human rights at issue in the company, supply chain, region or industry.



ITINERANT WORKERS. © UNSPLASH 2019 / K8

The information set out herein does not contain, and is not intended to contain legal advice on any general or specific matter.

MALAYSIAN LAW: GUIDANCE FOR REMEDIATION AND MONITORING

In addition to what is imposed by international standards, national law imposes mandatory requirements on businesses. In Malaysia, two human rights issues that are of particular concern are forced labour and human trafficking, which predominantly affect migrant workers. The most direct and relevant laws in Malaysia addressing these issues are:

- a- **ATIPSOM**, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670);
- b- **The Federal Constitution of Malaysia**;
- c- **The Penal Code** (Act 574) and Criminal Procedure Code (Act 593); as well as
- d- **Various labour laws**.

These sources are explained below and described in the flowcharts that follow.

It is important that domestic law be considered when designing and operating remediation and monitoring so that any grievance alleging criminal activity can be referred to the applicable State-based authority and so that workers can be educated about their rights and about alternative sources for relief. However, Malaysia's definition of certain human rights violations – such as forced labour and human trafficking – is more restrictive than other international guidance (such as the Palermo Protocol and ILO Convention on Forced Labour) and also than the laws of other jurisdictions. As a result, companies and other groups administering a remediation programme should still seek to address grievances that fall short of the definitions of forced labour and human trafficking under Malaysian law. (For more information about the legal framework for forced labour, see ILO, 2019a.)

a. ATIPSOM

Currently, Malaysia does not have a specific legal definition of forced labour.³ Nevertheless, forced labour is a recognized and pertinent indicator of exploitation, which is necessary to establish the act of trafficking under ATIPSOM. In particular, Section 2 of ATIPSOM defines exploitation as “all forms of sexual exploitation, **forced labour or services**, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs” (emphasis added).

³ Note that as of 28 September 2018, amendments had been proposed to the Employment Act 1955 including a new definition of “forced labour” and a prohibition on all forms of forced labour. At the time of writing there is no evidence that the proposed changes have come into force.

Section 13 and Section 14 of ATIPSOM state as follows:

13. Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means: (a) threat; (b) use of force or other forms of coercion; (c) abduction; (d) fraud; (e) deception; (f) abuse of power; (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

14. Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine. “Coercion” is defined as (a) threat of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process.

This definition of coercion offered in ATIPSOM is difficult to meet and is a significant barrier in many forced labour cases. The definition does not acknowledge other control methods such as the abuse of vulnerabilities, debt and deception and in particular the psychological coercion which is generated as a result of these and which has a powerful coercive effect on those subjected to it. As a result, companies should be aware that there are human rights grievances that, while falling outside of Malaysia’s definition of forced labour, are serious and require attention. As noted by the ILO (2019b: 2):

There are forced labour cases that do not meet the current threshold of ATIPSOM, and other national laws fall short of penalizing forced labour with appropriate sanctions as called for in ILO C29. The definition of coercion in ATIPSOM is narrow and not in keeping with the realities of modern forms of exploitation where there is a distinct prevalence of elements such as psychological coercion, deception, fraud and abuse of vulnerabilities. In practice, coercion as defined in ATIPSOM can be very hard for the prosecution to prove. Broadening the “means” element of trafficking to include more than coercion will provide a better opportunity to combat forced labour exploitation in all its forms.

It is also important to note that existing screening and identification procedures and policies screen victims for trafficking only according to the definition given in ATIPSOM. Access to remedy or support is likewise currently only available to those identified as victims of trafficking pursuant to ATIPSOM. That is, remedies and support available to victims of trafficking pursuant to ATIPSOM are currently not available to victims of forced labour unless they satisfy the definition of trafficking as set out in ATIPSOM. Further, victims of forced labour of irregular status who have not been identified as victims of trafficking pursuant to ATIPSOM also risk ending up in detention due to having committed immigration offences. It must also be noted that the National Strategic Office Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (NSO MAPO) is currently working on revisions to the definition of “coercion” in ATIPSOM, and these revisions will soon be tabled in Parliament.

b. The Federal Constitution of Malaysia

Article 6 of the Federal Constitution states that “no person shall be held in slavery” and “all forms of forced labour are prohibited” with the exception of compulsory national service and work or service carried out by persons as a consequence of a court conviction. The use of the term “no persons” indicates the inclusion of all persons, that is, citizens and non-citizens, including migrant workers, documented or otherwise (ILO, 2019b: 11). This is supported by the case of *Ali Salih Khalaf v. Taj Mahal Hotel* (ILO 2019b: 11), in which the Industrial Court held that Article 8 of the Federal Constitution uses the word “person” and not “citizen”, and that the rights guaranteed by its equality is extended to documented and undocumented migrants.

c. Penal Code (Act 574) and Criminal Procedure Code (Act 593)

Section 374 of the Penal Code provides that “[w]hoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both”. Section 370 prohibits buying or disposing of any person as a slave and Section 371 similarly criminalizes habitual dealing in slaves. All three sections refer to “any person” rather than “citizen”, and so includes documented and undocumented migrants (ILO, 2019b: 11).

d. Other relevant legislation

Various relevant laws prohibit certain acts indicative of forced labour or may apply to victims of forced labour.

- The Children and Young Persons (Employment) Act 1966 (as amended) regulates and restricts the employment of children and young persons.
- The Passport Act 1966 prohibits employers from withholding the passports of their workers (S.12[1][f]).
- The Private Employment Agencies Act 1981 (as amended by the Private Employment Agencies [Amendment] Act 2017) regulates private recruitment agencies. The Act requires that a licence must be granted under the Act before an agency is permitted to carry out recruiting activity (The Private Employment Agencies Act 1981 as amended, s.7[1]); a licence will only be granted to an employment agency that satisfies certain good conduct provisions, including that the director is a citizen of Malaysia, is not an undischarged bankrupt and has not been convicted of a trafficking in persons or forced labour offence (s.9[b][i]–[iii]). The licence may be granted subject to conditions (S.9[B]). There is provision for suspension or revocation of the licence in certain circumstances, including in cases of failure to comply with the Act (as amended) or any relevant regulations (a.11A[1][a]). Additionally, there is a recruitment fee limit of the first month’s wages.
- The Employment Act 1955, the Sabah Labour Ordinance 1949 and the Sarawak Labour Ordinance 1952 provide for basic labour rights of workers such as contract of service, wages, hours of work, protection for female employees, entitlement of leave, and with certain provisions for domestic workers. For example, domestic workers are specifically not subject to the protections offered under certain parts of the Act (Employment Act 1955, first schedule, para. 5).⁴

As of April 2019, extensive amendments have been proposed to the Employment Act 1955 which are in the final stages of public engagement before the amendments are tabled before Parliament (Malaysia, 2018). At the time of writing the proposed changes have yet to come into force. The proposed amendments include: (i) a new definition of “forced labour”⁵; (ii) inclusion of a new section 17c that prohibits all forms of forced labour and sets out penalties for contravention; (iii) amendment of section 10(1) to provide simply that a contract of service shall be in writing⁶; and (iv) that section 59(1) of the Employment Act 1955 (weekly rest day) would apply to domestic employees.

⁴ Note that relevant sections of the Act include Part IX (maternity protection); Part XII (rest days, limitations on hours of work, annual leave and sick leave); and Part XIIA (termination, lay off and retirement benefits).

⁵ The proposed definition is as follows:

“forced labour” means the condition of any person who provides labour or services by the use of threat or deception, a reasonable person in the position of the victim would not consider himself to be free:

(a) to cease providing the labour or services; or

(b) to leave the place or area where the victim provides the labour or services.

⁶ This portion of the Act as originally drafted stated that a contract of service for a period longer than one month, or for performance of a specific piece of work which may take longer than a month to complete, must be in writing. S.10(1) applied to both domestic and other workers.

- The Immigration Act 1959/63 gives immigration officers a range of powers to arrest and detain any person reasonably believed to be liable for removal under the Act. In such circumstances, arrest can be made without warrant and the relevant person can be detained in a prison, police station or immigration depot for up to 30 days pending a decision about removal (S.35).
 - *Note:* ILO (2019b) and the ILO Forced Labour Convention and Protocol highlight the fact that migrant workers who are undocumented may be detained on the basis that their documents need to be verified, even if they are victims of forced labour and trafficking (ILO, 2019b 13). It is important that this practice is not followed.
- The Workers' Minimum Standards of Housing and Amenities Act 1990 as amended and passed in Parliament in 2019 sets the minimum standards of housing, living, medical and social amenities for workers to be provided by employers.
- The Occupational Safety and Health Act 1994 provides for securing the safety, health and welfare of persons at work, and to protect workers from unsafe work practices. The Act applies to certain industry sectors set out in the first schedule to the Act including manufacturing, construction, agriculture, forestry and fishing, mining and quarrying, utilities, hotels and restaurants. The Act imposes a duty on all employers to ensure, so far as practicable, the safety, health and welfare at work of all employees (s.15[1]). The duty extends to the creation of safety plans, training and supervision, formulation of health and safety policies and maintenance of the workplace (s.15[2]).

MALAYSIAN STATE-BASED SYSTEMS

The following flowcharts outline various State-based mechanisms for relief. These flowcharts were developed by the ILO and are contained in their training manual for Malaysian law enforcers (Cronje and Zaid, 2021: 94–97), which is a set of existing relevant tools on referral developed with the Government of Malaysia.

Figure 4. Initial assessment and referral of potential forced labour and trafficking cases

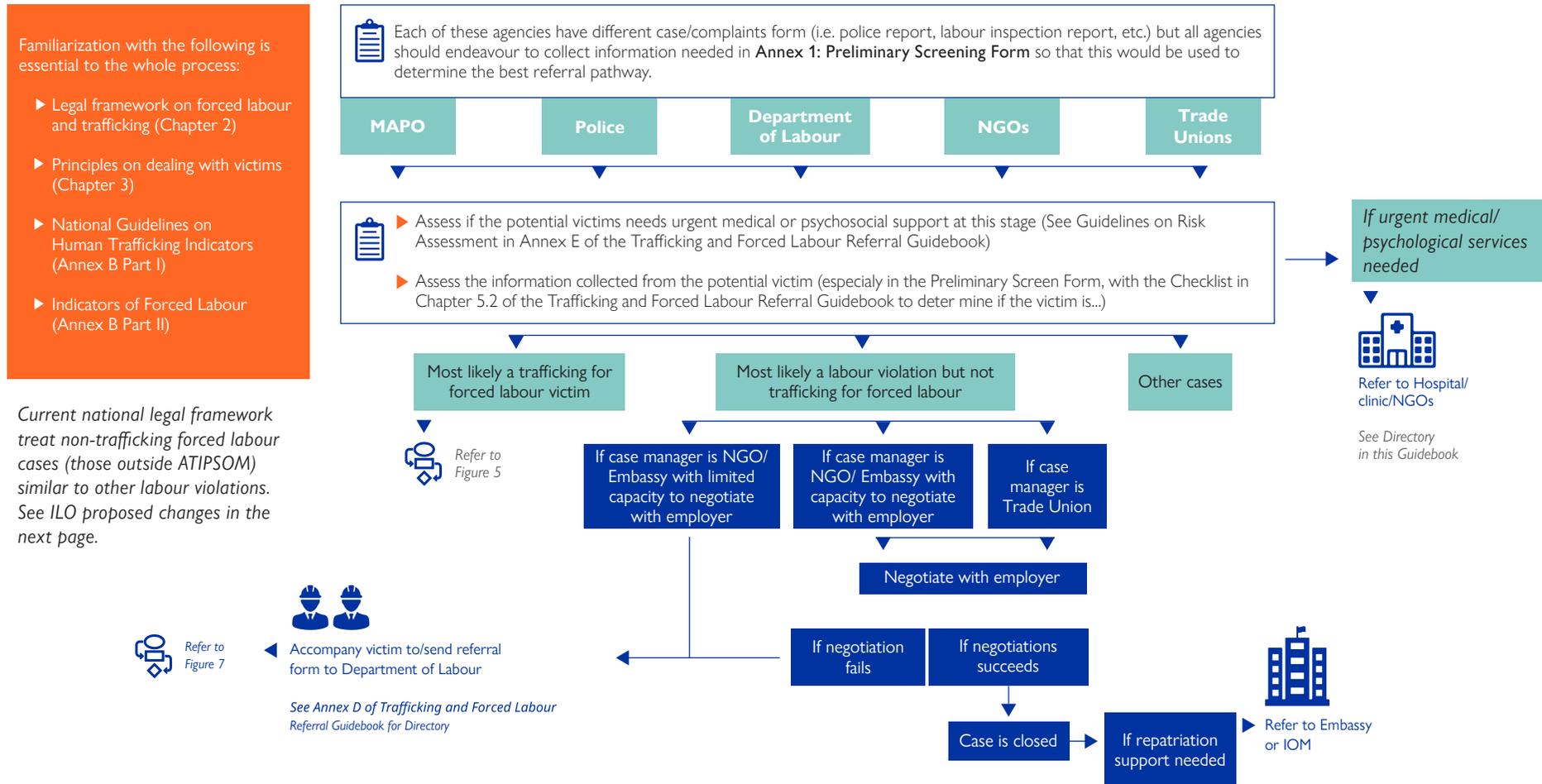


Figure 5. Actions undertaken if most likely a trafficking for forced labour case

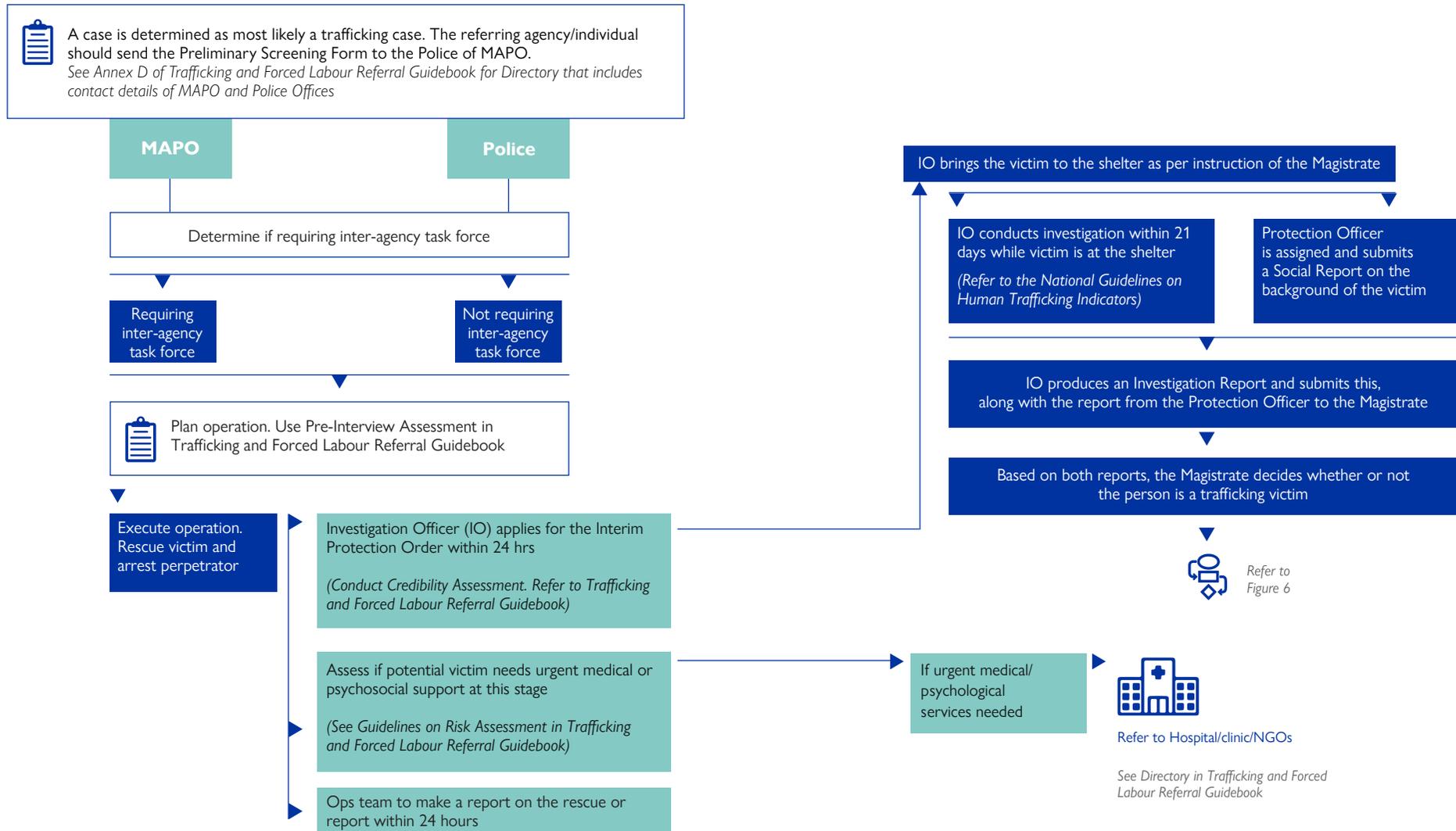


Figure 6. Actions undertaken after reports from Investigation and Protection Officer are submitted

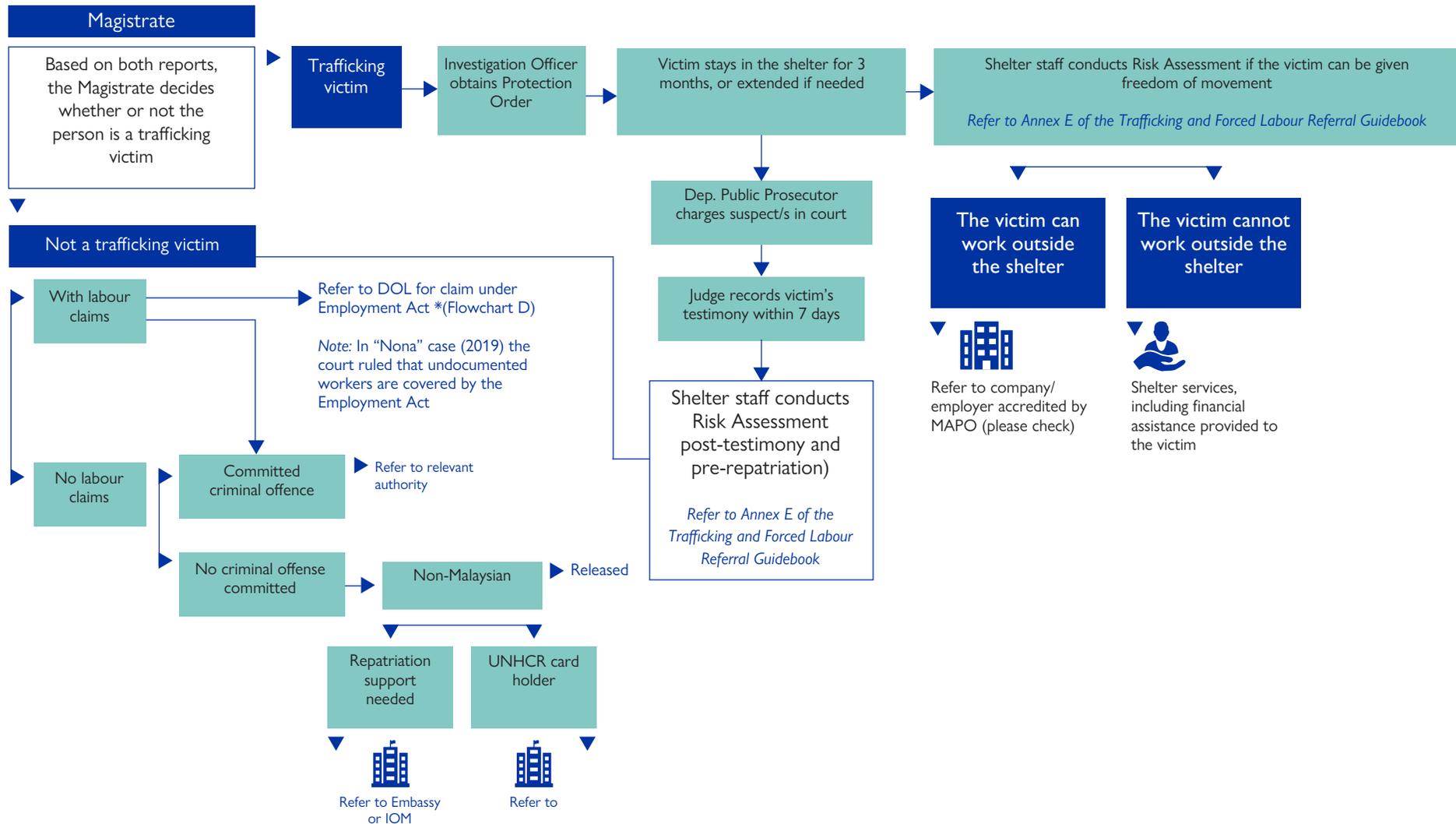
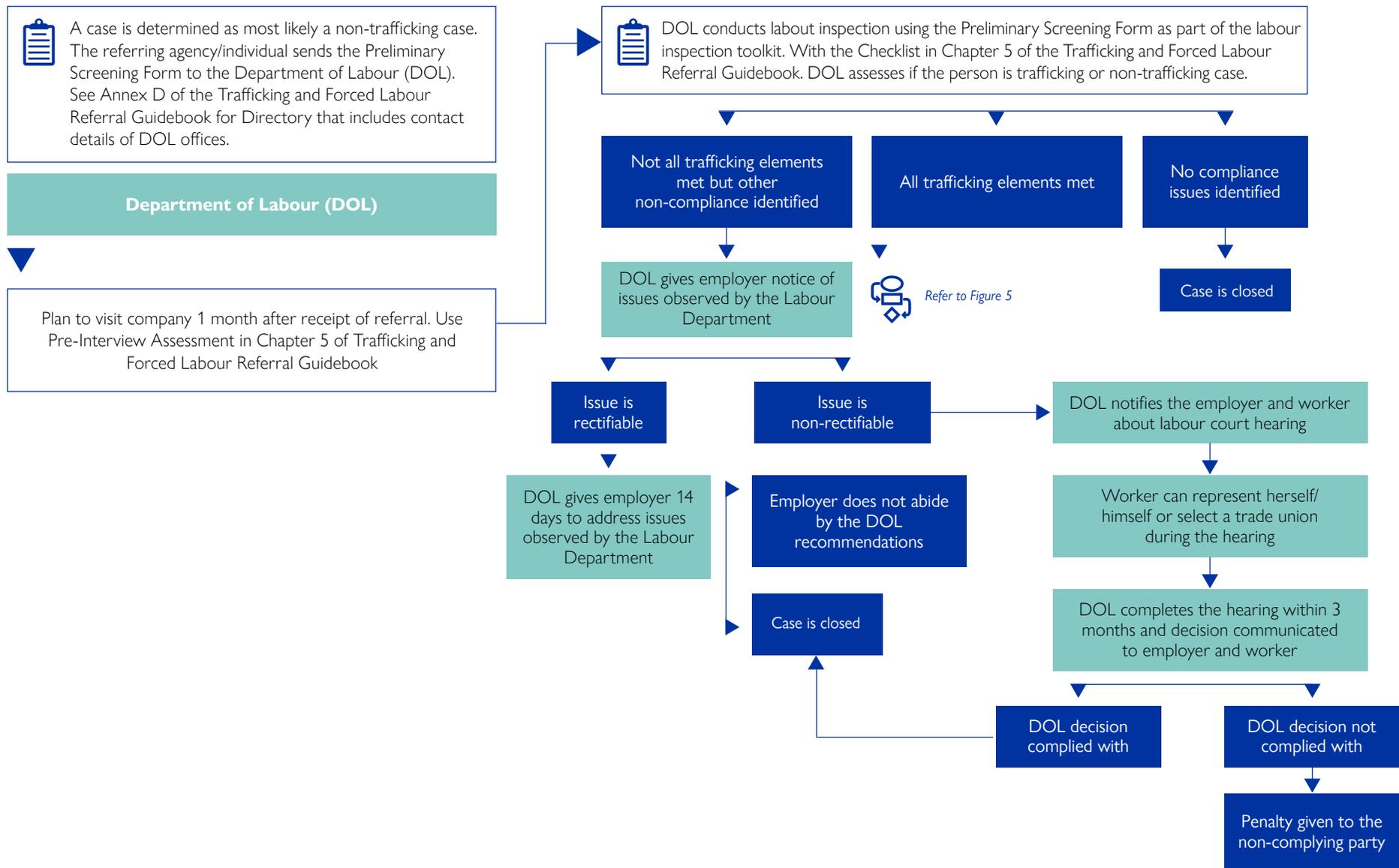


Figure 7. Actions undertaken if most likely a non-trafficking but forced labour/other labour case





FEMALE WORKERS AT TEXTILE MILL INTERIOR. © BIGSTOCK / GYN9038

For a remediation programme to be effective, it must be tailored to meet the needs and concerns of the worker population (United Nations, 2020: 10). The most effective way to understand the needs and concerns of workers is to engage with them individually through interviews and questionnaires. To supplement any interviews, this section provides an overview of the demographic of migrant workers in Malaysia and instances of forced labour.

Demographic of migrant workers

Although understanding the demographics of undocumented workers can be difficult, a recent study estimates that Malaysia has 3–5.5 million migrant workers coming primarily from neighbouring countries, including Indonesia, Bangladesh, Nepal and India (Sukumaran, 2020). While Indonesian migrant workers often understand Malay, the predominant language spoken in Malaysia, this is not the case for migrant workers from other countries (Salleh et al., 2012: 98). Different industries utilize these foreign workers to varying degrees. For example, roughly 70 per cent of labourers on oil palm plantations are migrant workers, mostly from Indonesia (Raghu, 2014; Accenture for Humanity United, 2013: 20). In contrast, as of 2018, around 20–30 per cent of the workers in the Malaysian electronics industry were foreigners (ETI, 2019b; Verité, 2014).

Approximately 80 per cent of migrants in Malaysia are men (Knowledge and Research, 2020: 20), and most migrant workers are between the ages of 24 and 29 (United Nations, 2014). Both men and women are employed on palm oil plantations, with women primarily employed as “casual” labourers responsible for applying fertilizers and pesticides (FLA, 2018: 10). Of the foreign workers employed in the electronics industry in Malaysia, which is less physically demanding, two thirds were women (ETI, 2019b; Verité, 2014).

Forced labour in Malaysia

Forced labour is a particular concern when it comes to migrant workers. The ILO Forced Labour Convention defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (ILO, 1930). Indicators of forced labour include, among other things, the retention of identity documents, excessive overtime, deception and debt bondage (ILO, 2012). Many of these indicators have been identified in studies of migrant workers in Malaysia (ILO, 2012). These risks exist both within the framework of legal migration in Malaysia and in the context of illegal or undocumented migration and human trafficking.

Risks posed to migrant workers in Malaysia begin with the process of obtaining work. Employers may hire workers either directly or through outsourcing agencies that manage recruitment, wage payment, accommodation, and transport of migrant workers (Taylor-Nicholson et al., 2019: 43). In addition, employers may use recruiting agencies in a worker's home country, as long as the agency is appropriately registered in Malaysia (Taylor-Nicholson et al., 2019: 55).

The recruited workers often incur significant debt to pay the outsourcing and recruiting agencies (Taylor-Nicholson et al., 2019: 64; FLA, 2018: 10, 14). Yet these same outsourcing and recruitment agencies have been reported as misleading potential workers about the terms of their payment and living conditions (FLA, 2018: 65). Workers therefore feel that they have no choice but to work excessive hours to pay off their incurred debt (FLA, 2018: 10).

The risks continue once the individual arrives in Malaysia. One of the most frequently reported abuses suffered by workers in Malaysia is the employer's retention of workers' identity and travel documents, even though this is illegal (Taylor-Nicholson, 2019: 25; FLA, 2018: 68). Some attribute this practice to the fact that employers have invested in foreign workers through a lengthy recruiting process and levy payment, and are thus incentivized to reduce the risk of workers running away (FLA, 2018: 22). But this practice contributes to the isolation of the workers and restricts their movement, particularly on palm oil plantations that are located in rural areas of the country. Worker mobility is further restricted by the fact that permits for unskilled work must be renewed yearly and that it is illegal for workers to leave employment with their existing employer, even to obtain work from a different employer (FLA, 2018: 15). In addition to these restrictions, workers report being unable to leave their living quarters, even when not working, and being prevented or limited in their ability to make calls (Taylor-Nicholson, 2019: 73). There are potential financial, legal, and reputational risks for any company that engages in these practices. (For more information about the legal framework for forced labour, see ILO, 2019a.)

On the whole, forced labour continues to pose a significant risk in Malaysia's manufacturing sectors generally, and the electronics and palm oil sectors in particular (ETI, 2019b). The United States Department of Labor's 2018 Trafficking Victims Protection Act (TVPRA) List classifies Malaysia's electronics and palm oil industries as dependent on forced labour (and it classifies the palm oil industry further as dependent on child labour) (USDOL, 2018). The Malaysian Government's heavy dependence on revenue from both sectors⁷ means that, despite ostensible worker rights reforms, Malaysia has little incentive to crack down on those industries' use of forced labour in earnest (Slater, 2017).

For example, although Malaysia has signalled a desire to end the abusive employment of undocumented migrant workers, in Sabah this has translated to law enforcement crackdowns on the migrant workers themselves, without any accountability for their employers (Slater, 2017). At risk of being arrested in police raids, the undocumented migrant workers do not leave their plantations and are at the mercy of their employers who have often confiscated their passports (Slater, 2017). In addition to adult workers, NGOs report the presence of 50,000–200,000 migrant children in the region, many of whom work on the plantations with their parents in violation of international standards (Slater, 2017). Children of migrant workers who are born on the plantations are stateless since Malaysia will not issue them birth certificates, which further restricts the mobility of these migrant workers and their families (Slater, 2017).

⁷ Electronics are by far Malaysia's most exported good, accounting for 20 per cent of the country's total exports, while palm oil is a top-five exported good as well, with 3.5 per cent of the country's exports (OEC, n.d.).



AERIAL VIEW OF PALM OIL TREES. NEGERI SEMBILAN, MALAYSIA. © UNSPLASH 2020 / NAZARIZAL MOHAMMAD

A November 2018 analysis by Fair Labor Association (FLA) found that the Malaysian palm oil sector met every one of the eleven ILO indicators of forced labour (FLA, 2018: 11). The most commonly occurring indicators of forced labour included the use of foreign migrant workers, deception or lack of communication regarding work terms and conditions, and document retention (FLA, 2018: 12). Despite being prohibited, workers' payment of recruitment fees still occurs (FLA, 2018: 14), and upstream customers interviewed by FLA identified debt bondage as the primary issue indicator of forced labour in the sector (FLA, 2018: 15). FLA further found that the risk of forced labour was highest in plantation- and harvesting-specific stages of palm oil processing (FLA, 2018: 12). Most of this plantation-based labour occurs in remote rural areas, limiting both workers' ability to access offsite services and resources as well as government inspectors' ability to monitor the work sites (FLA, 2018: 15).

Overall, civil society stakeholders interviewed by FLA identified the use of migrant workers and the weak government enforcement of existing labour laws as the two primary drivers of forced labour in the Malaysian palm oil sector (FLA, 2018: 20). Downstream customers also identified palm oil's highly fragmented supply chain as a key obstacle to sector-wide action against forced labour (FLA, 2018: 22).

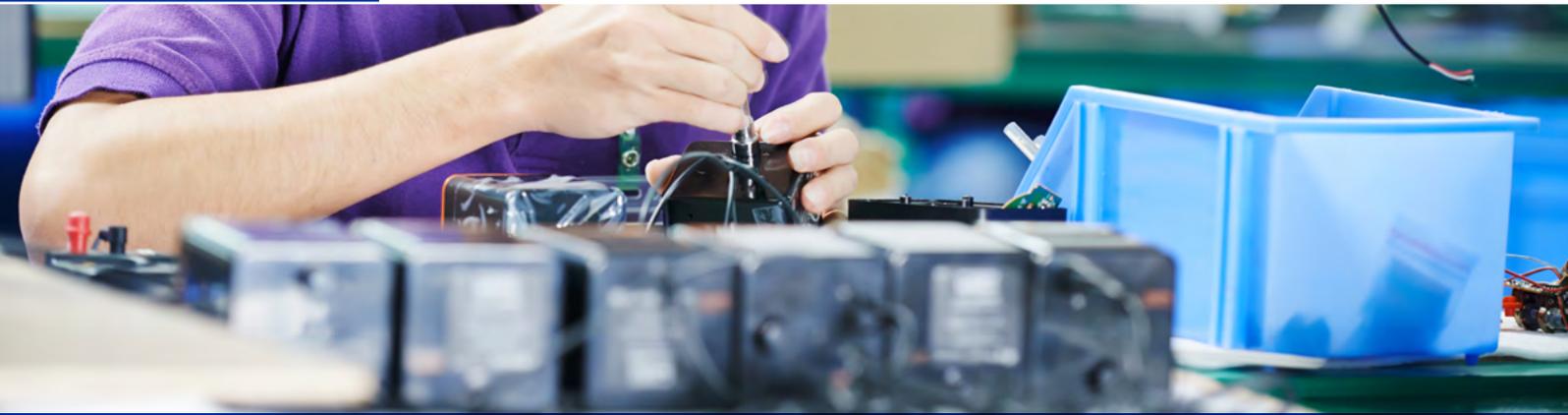
As recently as September 2019, a Swiss NGO reported that in the isolated Malaysian state of Sabah, forced and child labour in the palm oil industry persists, despite the stated commitment to worker rights from major downstream customers (Solidar Suisse, 2019a; SWI swissinfo.ch, 2019). In Sabah, almost all palm oil plantation workers are foreigners, mostly from neighbouring Indonesia and the Philippines, and around 70 per cent do not have proper work visas (Solidar Suisse, 2019a). The palm oil plantation employers recruit most new and temporary undocumented workers from their current workers' networks of friends and family in Indonesia (Solidar Suisse, 2019a: 11). The work is difficult, unsanitary, dangerous, and performed for wages that fluctuate with the harvests and often do not cover the basic needs of the workers (Solidar Suisse, 2019a: 10). Such wage practices persist even though they are contrary to Malaysian minimum wage laws (Solidar Suisse, 2019a).

Recently, the palm oil industry in Sabah shut down due to concerns over COVID-19. It is unclear what the long-term effects of this shutdown will be for the more than one million workers who rely on it for their survival, but mass emigration is a likely result (Shankar, 2020).

CONSIDERATIONS FOR REMEDIATION PROGRAMMES IN MALAYSIA'S PALM OIL INDUSTRY

In light of these circumstances, the following factors should be considered when developing a remediation programme for the Malaysian palm oil industry:

- The unique needs and preferences of migrant workers should be reflected throughout the process. This includes:
 - Specific engagement with migrant workers, including at pre-arrival and post-arrival information sessions.
 - Engaging with migrant workers in their own language.
 - Ensuring access for migrant workers who are geographically removed or located in rural areas. For example, providing a mechanism to collect or submit grievances offsite and providing trainings about remediation and monitoring offsite.
 - Engaging with external stakeholders who can better assess the needs and vulnerabilities of migrant workers.
- Indigenous communities can also be affected by palm oil plantations; the programme could be designed to also permit community members to raise grievances.
- Palm oil plantations are typically located in remote locations. As a result, to conduct the various processes of the remediation programme, transportation of trained personnel will need to be arranged.
- The palm oil industry is less digitized than other industries, and, therefore, the use of apps or other technology that makes a remediation programme more efficient or transparent may not be available. As a result, regular in-person contact may be necessary to provide updates on any investigation or to encourage workers to submit grievances.



WORKER ASSEMBLING PRODUCTION AT LINE CONVEYOR. © BIGSTOCK / KADMY

In 2014, the labour rights NGO Verité published a report on forced labour in the Malaysian electronics industry, which remains the most in-depth and cited report on this topic (Verité, 2014). The report found that, according to the most conservative estimates, one third of migrant workers in electronics manufacturing were victims of forced labour (Verité, 2014: 10).

Regarding the key factors that drive forced labour among migrants, the report found that over 80 per cent of foreign workers paid excessive recruitment fees in order to secure their jobs (Verité, 2014). The vast majority of workers financed these fee payments through loans, and reported that their debt made it functionally impossible for them to leave their jobs (Verité, 2014: 11). Additionally, over 70 per cent of foreign workers stated that it was difficult or impossible to retrieve their passports, which their employers had retained despite Malaysian law prohibiting this practice (Verité, 2014). Nearly two thirds of foreign workers reported that they did not possess freedom of movement, and over 20 per cent stated that they did not feel safe in their housing and that they were deceived about their working conditions during their recruitment (Verité, 2014: 11–12). In the same vein, during 2015 interviews with migrant electronics workers, Malaysian Bar researchers found evidence that employers deducted visa fees from workers' wages and also prohibited sick workers from terminating their employment, even when the workers offered to pay compensation (Taylor-Nicholson et al., 2019: 70, 74).

Since Verité's 2014 report, Malaysia has increased enforcement of human trafficking prohibitions (Ramchandani, 2018), and many downstream multinational electronic goods companies have reiterated their commitments to respecting and enforcing human rights in their supply chains (for example, see EICC, 2015 and Viederman, 2019). Samsung Electronics, for instance, partnered with IOM in 2019 to host several forced labour prevention workshops in Malaysia and Hungary for local Samsung employees, suppliers, and business partners (Samsung Newsroom, 2019).

As of 2018, the U.S. Department of Labor still classified the Malaysian electronics industry as being dependent on forced labour (USDOL, 2018), and ongoing indicators of forced labour in the sector have been reported (Ramchandani, 2018). Practices such as excessive recruitment fees, passport confiscation, and inadequate and unsanitary living conditions for workers persist in the electronics sector, especially when the local employer is further down in the supply chain from a well-known multinational (Ramchandani, 2018).

CONSIDERATIONS FOR REMEDIATION PROGRAMMES IN MALAYSIA'S ELECTRONICS INDUSTRY

Because Malaysia's electronic industry typically involves more technologically advanced companies and processes, technology can be leveraged to better ensure efficiency and transparency of the remediation programme, including the use of apps to submit and track a grievance and provide ongoing information about the remediation programme and workers' rights to workers.

To remedy worker payment of recruitment fees, specific practices could be adopted, including:

- Creation and adoption of a recruitment fee policy which calls for immediate reporting and repayment of any recruitment fee.
- Reducing the burden of proof required to establish a payment of a recruitment fee.

Key resources

Ergon

2018 Understanding remediation. A working paper for the project “New data to detect forced labour in agriculture”. Available at www.isealliance.org/sites/default/files/resource/2019-02/Forced_Labour_Remediation_Working_Paper_0.pdf.

Ethical Trading Initiative (ETI)

2019a Access to remedy: Practical guidance for companies. Available at www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf.

2019b Human rights due diligence in Malaysia’s manufacturing sector. Available at www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Malaysia%20HRDD.pdf.

Ergon Associates, and Ethical Trading Initiative

2018 Managing risks associated with modern slavery: A good practice note for the private sector. Available at www.ifc.org/wps/wcm/connect/5e5238a6-98b3-445e-a2d6-efe44260b7f8/GPN_Managing-Risks-Associated-with-Modern-Slavery.pdf?MOD=AJPERES&CVID=mR5Bx5h.

International Commission of Jurists (ICJ)

2019 Effective operational-level grievance mechanisms. Available at www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf.

Institute for Human Rights and Business (IHRB)

2017 Responsible recruitment: Remediating worker-paid recruitment fees. Available at www.ihrb.org/uploads/reports/IHRB,_Remediating_Worker-Paid_Recruitment_Fees,_Nov_2017.pdf.

International Labour Organization (ILO)

2012 ILO indicators of forced labour. Available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

International Organization for Migration (IOM)

2018 Remediation guidelines for victims of exploitation in extended mineral supply chains. Available at <http://publications.iom.int/books/remediation-guidelines-victims-human-trafficking-mineral-supply-chains>.

Shift

2014 Remediation, grievance mechanisms and the corporate responsibility to respect human rights. Shift workshop report no. 5. Available at http://shiftproject.org/wp-content/uploads/2014/05/Shift_remediationUNGPs_2014.pdf.

Stichting Onderzoek Multinationale Ondernemingen (Centre for Research on Multinational Corporations; SOMO)

2015 The patchwork of non-judicial grievance mechanisms: Addressing the limitations of the current landscape. SOMO briefing note. Available at www.somo.nl/wp-content/uploads/2014/12/The-Patchwork-of-Non-Judicial-Grievance-Mechanisms-1.pdf.

United Nations

- 2006 General Assembly, Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (A/RES/60/147). Available at www.refworld.org/docid/4721cb942.html.
- 2011a Human Rights Council, Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” framework. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (A/HR/17/31). (Commonly referred to as the United Nations Guiding Principles or UNGP).
- 2020a Human Rights Council, Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms: Report of the United Nations High Commissioner of Human Rights (A/HRC/44/3).
- 2020b Human Rights Council, Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms: Explanatory notes. Report of the United Nations High Commissioner on Human Rights (A/HRC/44/32/Add.1).

Remediation and monitoring case studies

Curtze, L and S Gibbons

- 2017 Access to remedy – operational grievance mechanisms: An issues paper for ETI. Ergon, working paper version 2.0, revised, October 25.

Fair Food Standards Council

- 2019 Fair Food 2018 update. Available at www.fairfoodprogram.org/wp-content/uploads/2019/10/Fair-Food-Program-2018-SOTP-Update-Final.pdf.

Hudson, J and M Winters

- 2017 NGO leadership in grievance mechanisms and access to remedy in global supply chains. Ethical Trading Initiative. Available at www.ethicaltrade.org/sites/default/files/shared_resources/ngo_leadership_in_gms_and_remedy_paper_eti_revised_feb_2018.pdf.

Taylor, and E Shih

- 2019 Worker feedback technologies and combatting modern slavery in global supply chains: Examining the effectiveness of remediation-oriented and due-diligence-oriented technologies in identifying and addressing forced labour and human trafficking. *Journal of the British Academy*, 7(s1):131-65. DOI <https://doi.org/10.5871/jba/007s1.131>.

United Nations

- 2011b Human Rights Council, Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (A/HRC/17/31/Add.1). Available at <https://undocs.org/en/A/HRC/17/31/Add.1>. Also published as Caroline Rees. Piloting principles for effective company–stakeholder grievance mechanisms: A report of lessons learned. Harvard Kennedy School Corporate Social Responsibility Initiative, 2011. Available at <https://media.business-humanrights.org/media/documents/files/media/documents/ruggie/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf>.

Gender-specific guidance

IOM.

- 2020a Corporate Responsibility in Eliminating Slavery and Trafficking (CREST), Addressing women migrant worker vulnerabilities in international supply chains. Available at <https://crest.iom.int/sites/default/files/document/addressing.pdf>.
- 2020b Crest, Gender-specific risks and vulnerabilities in supply chains. Available at https://crest.iom.int/sites/default/files/document/1-pager_gender_brief_final.pdf.
-

References

Accenture for Humanity United

- 2013 Exploitative labor practices in the global palm oil industry. Available at http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf.

ACCESS Facility

- 2014 Expert Meeting Report. ACCESS to remedy in context of business and human rights: Improving the effectiveness of non-judicial grievance mechanisms. Available at <https://media.business-humanrights.org/media/documents/0c3037e767b49243d08b1f3d8dceafa3edd3e48c.pdf>.

Alliance 8.7.

- 2017 Global Estimates of Modern Slavery: Forced Labour and Forced Marriage. International Labour Office, Geneva. Available at www.alliance87.org/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf.

Conference of International Investigators

- 2009 Uniform guidelines for investigators. Second edition. Endorsed by the tenth Conference of International Investigators, Jordan. Available at www.conf-int-investigators.org/uniform-guidelines-for-investigations/.

Cronje, P and bin Zaid

- 2021 Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers. Geneva. Available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_767250.pdf.

Curtze, L and S Gibbons

- 2017 Access to remedy – operational grievance mechanisms: An issues paper for ETI. Ergon, working paper version 2.0, revised, October 25.

Electronic Industry Citizenship Coalition (EICC)

- 2015 Working to eradicate forced labor in the electronics supply chain. Available at www.responsiblebusiness.org/media/docs/publications/EICC%20Position%20on%20Forced%20Labor.pdf.

Ergon

- 2018 Understanding remediation. A working paper for the project “New data to detect forced labour in agriculture”. Available at www.isealalliance.org/sites/default/files/resource/2019-02/Forced_Labour_Remediation_Working_Paper_0.pdf.

Ethical Trading Initiative (ETI)

- 2019b Human rights due diligence in Malaysia’s manufacturing sector. Available at www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Malaysia%20HRDD.pdf.

Fair Food Standards Council

2019 Fair Food 2018 update. Available at www.fairfoodprogram.org/wp-content/uploads/2019/10/Fair-Food-Program-2018-SOTP-Update-Final.pdf.

Fair Labor Association (FLA)

2018 Assessing forced labor risks in the palm oil sector in Indonesia and Malaysia. Available at www.fairlabor.org/sites/default/files/documents/palm_oil_report_fla-cgf_final.pdf.

Government of Malaysia

2018 Ministry of Human Resources. Announcement. Available at www.mohr.gov.my/index.php/en/?option=com_content&view=article&id=885.

Institute for Human Rights and Business (IHRB)

2017 Responsible recruitment: Remediating worker-paid recruitment fees. Available at www.ihrb.org/uploads/reports/IHRB,_Remediating_Worker-Paid_Recruitment_Fees,_Nov_2017.pdf.

International Commission of Jurists (ICJ)

2019 Effective operational-level grievance mechanisms. Available at www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf.

International Labour Organization (ILO)

1930 Forced Labour Convention (no. 29). Available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.

2009 Eliminating discrimination in the workplace. ILO helpdesk factsheet no. 5. Available at www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_116342.pdf.

2012 ILO indicators of forced labour. Available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

2018 ILO Global Estimates on International Migrant Workers: Results and Methodology. Second edition. International Labour Office, Geneva. Available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_652001.pdf.

2019a Judges, Prosecutors and Legal Aid Practitioners' Training on Forced Labour: Facilitators Guide, Part I. International Labour Office, Geneva. Available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_686734.pdf.

2019b Situation and gap analysis on Malaysian legislation, policies and programmes, and the ILO Forced Labour Convention and Protocol. Available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_650658.pdf.

International Organization for Migration (IOM)

2007 The IOM Handbook on Direct Assistance for Victims of Trafficking. Geneva. Available at https://publications.iom.int/system/files/pdf/iom_handbook_assistance.pdf.

2010 IOM Data Protection Manual. Geneva. Available at https://publications.iom.int/system/files/pdf/iomdataprotection_web.pdf.

2019 Reintegration Handbook: Practical Guidance on the Design, Implementation and Monitoring of Reintegration Assistance. Geneva. Available at https://publications.iom.int/system/files/pdf/iom_reintegration_handbook.pdf.

International Transport Workers' Federation Seafarers (ITF Seafarers)

2020 ITF wins back \$1.7 million in owed wages as more seafarers abandoned. 3 December. Available at www.itfseafarers.org/en/news/itf-wins-back-17-million-owed-wages-more-seafarers-abandoned.

Knowledge and Research

2020 Who is keeping score? Estimating the number of foreign workers in Malaysia. The Malaysia Development Experience Series, World Bank Group. Available at <http://documents.worldbank.org/curated/en/892721588859396364/pdf/Who-is-Keeping-Score-Estimating-the-Number-of-Foreign-Workers-in-Malaysia.pdf>.

Observatory of Economic Complexity (OEC)

n.d. Malaysia. Available at <https://oec.world/en/profile/country/mys/>.

Ramchandani, A

2018 Forced labor is the backbone of the world's electronics industry. The Atlantic, 28 June. Available at www.theatlantic.com/business/archive/2018/06/malaysia-forced-labor-electronics/563873/.

Reisch, N

2020 Non-judicial grievance mechanisms: Hardening the soft law on corporate accountability? In: Advocating Social Change through International Law: Exploring the Choice Between Hard and Soft International Law (Daniel D. Bradlow and David B. Hunter, eds.). Brill, Leiden.

Raghu, A

2014 Labour crunch hurts Malaysian palm oil growers as Indonesians stay home. Reuters, 27 April. Available at www.reuters.com/article/us-palmoil-labour/labour-crunch-hurts-malaysian-palm-oil-growers-as-indonesians-stay-home-idUSBREA3Q0P320140427.

Salleh, N. Nordin and A. Rashid

2012 The language problem issue among foreign workers in the Malaysian construction industry. International Journal of Business and Social Science, 3(11): 97–99. Available at www.ijbssnet.com/journals/Vol_3_No_11_June_2012/11.pdf.

Samsung Newsroom

2019 Samsung Electronics, IOM expand efforts to eradicate forced labor. 27 November. Available at <https://news.samsung.com/global/samsung-electronics-iom-expand-efforts-to-eradicate-forced-labor>.

Shankar

2020 Operational restrictions at Sabah palm oil estates will lead to worker exodus, says MEOA. The Edge Markets, 3 April. Available at <https://www.theedgemarkets.com/article/operational-restrictions-sabah-palm-oil-estates-will-lead-worker-exodus-says-meo>.

Slater

2017 Slavery in the palm oil industry. Human Rights First. Available at www.humanrightsfirst.org/blog/slavery-palm-oil-industry.

Solidar Suisse

2019 Exploited and illegalised: The lives of palm oil migrant workers in Sabah. Palm oil report. Available at www.amrc.org.hk/sites/default/files/Exploited%20and%20Illegalised_AMRC%20%28160120%29_New.pdf.

Sukumaran

2020 Coronavirus: For Malaysia's migrant workers, lack of food is a bigger worry than Covid-19. South China Morning Post, 26 April. Available at www.scmp.com/week-asia/health-environment/article/3081310/coronavirus-malaysias-migrant-workers-lack-food-bigger?exp_signup=opt-ggl-sign-in&onboard=true#.

SWI swissinfo.ch

2019 Nestlé criticised over migrant palm oil workers in Malaysia. 17 September. Available at www.swissinfo.ch/eng/responsible-business_nestl%C3%A9-criticised-over-migrant-palm-oil-workers-in-malaysia/45234426.

Taylor-Nicholson, E, R Balasubramaniam and N Mahendran

2019 Migrant Workers' Access to Justice: Malaysia. Bar Council Malaysia, Kuala Lumpur. Available at [www.malaysianbar.org.my/cms/upload_files/document/Migrant%20Workers%20Access%20to%20Justice%20Report%20\(28Nov2019\).pdf](http://www.malaysianbar.org.my/cms/upload_files/document/Migrant%20Workers%20Access%20to%20Justice%20Report%20(28Nov2019).pdf).

United Nations

2007 Secretariat, Secretary-General's bulletin. Information sensitivity, classification and handling (ST/SGB/2007/6). Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/235/79/PDF/N0723579.pdf>.

2011a Human Rights Council, Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (A/HR/17/31). (Commonly referred to as the United Nations Guiding Principles or UNGP).

2011b Human Rights Council, Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie (A/HRC/17/31/Add.1). Available at <https://undocs.org/en/A/HRC/17/31/Add.1>. Also published as Caroline Rees. Piloting principles for effective company–stakeholder grievance mechanisms: A report of lessons learned. Harvard Kennedy School Corporate Social Responsibility Initiative, 2011. Available at <https://media.business-humanrights.org/media/documents/files/media/documents/ruggie/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf>. Page numbers in the text refer to this second version.

2014 United Nations International Children's Emergency Fund (UNICEF), Migration profiles: Malaysia. Available at <https://esa.un.org/MigGMGProfiles/indicators/files/Malaysia.pdf>.

2018 United Nations Development Programme, Policy for protection against retaliation. Available at <https://popp.undp.org/SitePages/POPPSubject.aspx?SBJID=5&Menu=BusinessUnit&Beta=0&lng=English>.

2019 United Nations Development Programme, Office of Audit and Investigations. Investigation guidelines. Available at www.undp.org/content/dam/undp/library/corporate/Transparency/Investigation_Guidelines_ENG_August_2019.pdf.

2020b Human Rights Council, Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms: Explanatory notes. Report of the United Nations High Commissioner on Human Rights (A/HRC/44/32/Add.1).

United States Department of Labor (USDOL)

2018 List of goods produced by child labour or forced labour. Available at www.dol.gov/sites/dolgov/files/ILAB/ListofGoods.pdf.

Verité

2014 Forced labor in the production of electronic goods in Malaysia: A comprehensive study of scope and characteristics. Available at www.verite.org/wp-content/uploads/2016/11/VeriteForcedLaborMalaysianElectronics2014.pdf.

Viederman, D

2019 Modern slavery is a problem that companies cannot ignore. Brink, 16 Dec. Available at www.brinknews.com/modern-slavery-is-a-problem-that-companies-cannot-ignore/.

Walk Free Foundation

2018 The Global Slavery Index 2018. Available at www.globalslaveryindex.org/resources/downloads/.



International Organization for Migration
17 route des Morillons, P.O. Box 17, 1211 Geneva 19, Switzerland
Tel.: +41 22 717 9111 Fax: +41 22 798 6150
Email: hq@iom.int Website: www.iom.int