



ACCELERATING ACCESS TO REMEDY

Promising Practices to Enhance Access to Remedy
for Migrant Workers in South-East Asia

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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

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LIST OF ACRONYMS

ARP	Accountability and Remedy Project
CSO	Civil Society Organization
DOLAB	Department of Overseas Labour
ESG	Environmental, social and governance
ILO	International Labour Organization
MRCs	Migrant worker Resource Centres
NAP	National Action Plan
NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OWWA	Overseas Workers' Welfare Administration
POEA	Philippine Overseas Employment Administration
PRAs	Private Recruitment Agencies
RBA	Responsible Business Alliance
SEnA	Single-Entry Approach
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights



Woman worker holding red ropes, Viet Nam. © Pexels 2019/Quang Nguyen VINH

EXECUTIVE SUMMARY

In a well-functioning ecosystem of remedy, a variety of actors, including governments, businesses, civil society organizations (CSOs), trade unions and other stakeholders have complementary and supporting roles to enable effective remedy.¹ This vision of the ecosystem of remedy is set out in the third pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs impose a duty on States to respect, protect and fulfil the right to effective remedies by ensuring the effectiveness of State/Administrative - based grievance mechanisms (judicial and non-judicial),² and to facilitate public awareness and understanding of these mechanisms, how they can be accessed, and support for doing so.³ The UNGPs also prescribe businesses the responsibility to provide remediation,⁴ in cases where they may cause or contribute to an adverse human rights impact,⁵ including through implementing or participating in an effective operational-level grievance mechanism.⁶ Other non-State actors also have a critical role to play in facilitating access to effective remedies. This may include raising awareness of rights and available remedies, capacity-building, addressing power asymmetries (through the provision of financial resources and access to information and expertise), contributing to human rights impact assessment processes, and assisting in the design and operation of grievance mechanisms, among other roles.⁷ At the heart of this ecosystem of remedy are the rightsholders, who should be able to exercise their right to access effective remedies through State/Administrative - based or non-State/Administrative - based grievance mechanisms,⁸ in an accessible, affordable, adequate and timely manner.⁹

This report presents an overview of the status of migrant workers' access to remedy in Hong Kong Special Administrative Region (SAR), China; Malaysia; the Philippines; Thailand and Viet Nam, through the lens of the UNGPs. Migrant workers may be subject to risks of human rights abuse during all phases of the migration process.¹⁰ From human rights abuse linked to worker-charged recruitment fees and costs, for example, through debt bondage,¹¹ to violations of their right to freedom of association due to restrictions on migrant worker participation in trade union participation,¹² migrant workers are vulnerable to exploitation. However, effective remedy is often out of reach for migrant workers. From fear of retaliation, discriminatory attitudes, lack of information about rights within slow legal processes, gaps in labour laws and high costs of legal assistance, migrant workers face barriers in accessing remedies.¹³ This report identifies the gaps, challenges and promising practices in the implementation of State/Administrative - based grievance mechanisms and non-State/Administrative - based grievance mechanisms. Based on these findings, this report formulates recommendations to support States, businesses, civil society and other non-State actors in furthering the implementation of the third pillar of the UNGPs on "access to remedy".

¹ CHR, *Remedy in Development Finance Guidance and Practice* (2022), p. 50; and Dutch Banking Sector Agreement, Discussion Paper – Working Group Enabling Remediation (2019), pp. 21–22.

² State/Administrative - based grievance mechanisms may be administered by a branch of an agency of the State, or by an independent body on a statutory or constitutional basis. State/Administrative - based grievance mechanisms may be judicial or non-judicial. Examples of judicial mechanisms include courts for criminal and civil law action. UNGPs Principle 25 and commentary.

³ UNGPs Principle 25 and commentary.

⁴ Remediation refers to the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact. OHCHR, *The Corporate Responsibility to Respect Human Rights*, A/72/162, p. 7.

⁵ UNGPs Principle 22 and commentary.

⁶ UNGPs Principle 29 and commentary.

⁷ OHCHR, *Human rights and transnational corporations and other business enterprises* (July 2017): A/72/162, p. 21.

⁸ Non-State/Administrative - based grievance mechanisms are mechanisms by which individuals, groups or communities, whose human rights have been adversely impacted by business activities, or their legitimate representatives, can seek remedy with respect to those adverse impacts. See Stefan Zagelmeyer, Lara Bianchi and Andrea R. Shemberg, *Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis* (July 2018).

⁹ OHCHR, *Human rights and transnational corporations and other business enterprises* (July 2017): A/72/162, pp. 8–16.

¹⁰ Migrant worker refers to a person who is to be engaged or employed, is engaged, or employed, or has recently been engaged or employed in a remunerated activity in a State of which they are not a national. This report focuses specifically on workers in low-wage occupations based on formal migration flows for which there are available data. The report refers to low-wage migrant workers as "migrant workers". See IOM, *Glossary on Migration* (2019).

¹¹ IOM, *Spotlight on Labour Migration in Asia* (Geneva, 2021), p. 35.

¹² *Ibid.*, p. 28.

¹³ ILO, *Access to Justice for Migrant Workers in South-East Asia* (2017), p. 20.

The third pillar of the UNGPs is sometimes described as the “forgotten” pillar due to the slower progress made in implementing its principles, relative to the first and second pillars of the UNGPs.¹⁴ In 2017, the United Nations Working Group on Business and Human Rights noted challenges in realizing the third pillar, and the need to explore how implementation (or lack thereof) of the State duty to protect and the corporate responsibility to respect human rights intersect, to “reinforce or undermine” access to effective remedy.¹⁵ These challenges included, among other issues, the need to overcome the trust deficits between governments, civil society, businesses and rights holders that hinder constructive dialogue between these diverse actors on realizing the third pillar of the UNGPs. Increased State leadership in delivering access to remedies, and prioritization of access to remedies in National Action Plans on Business and Human Rights were also highlighted as critical needs. Developing a better understanding of how businesses could practically implement operational-level grievance mechanisms that are consistent with the UNGPs Principle 31 effectiveness criteria was also recognized as an important need. Ensuring that rights holders and human rights defenders are not victimized in the process of seeking remedies was also recognized as critical. Many of the challenges and considerations identified by the United Nations Working Group on Business and Human Rights in 2017 remain today and are reflected in the findings of this report.



Migrant working in a rice plantation, Indonesia.
© Pexels 2021/Bayu SAMUDRO

The recent uptick in mandatory human rights due diligence laws and trade-based import bans provide an opportunity to tackle these challenges and bring access to remedy into the spotlight once again. Laws such as the French Corporate Duty of Vigilance law, the German Due Diligence in the Supply Chain Act, and the proposed European Union Corporate Sustainability Due Diligence Directive underline the need for businesses to be proactive in identifying, preventing, mitigating and remediating adverse human rights impacts, and to disclose how these responsibilities are being met. Sanctions and trade-based legislation to prohibit the importation of goods that incorporate forced labour in their supply chain have also driven governments and businesses to improve working and living conditions in affected sectors to protect exports and profits. For example, the European Union’s “yellow card”, which threatened an embargo on Thailand fisheries products, spurred regulatory action,¹⁶ as well as public–private initiatives to improve labour practices.¹⁷ More recently, the United States of America’s Customs and Border Protection’s import bans on Malaysia’s leading glove makers and palm oil producers drove amendments to Malaysia’s labour law and the launch of the country’s first National Action Plan on Forced Labour,¹⁸ as well as remediation efforts among the companies affected.¹⁹ The rise of incorporating environmental, social and governance (ESG) performance into investment decisions and more rigorous sustainability disclosure legislation²⁰ is also encouraging some companies to pay more attention to human rights issues in their business practices.²¹ At the same time, there is also increasing consumer interest in sustainability and ethical business practices.²²

¹⁴ See for example Rees and Davis, *Where we’re at: Taking stock of progress on business and human rights* (Shift, August 2016); Anti-Slavery International, *Migrant workers’ access to remedy* (December 2021), p. 4; and IHRB, *Fulfilling the Forgotten Pillar: Ensuring Access to Remedy for Business and Human Rights Abuses* (December 2015).

¹⁵ United Nations Forum on Business and Human Rights, *Reflections on theme of the 2017 Forum on Business and Human Rights* (2017), p. 6.

¹⁶ European Commission, *Commission lifts “yellow card” from Thailand for its actions against illegal fishing* (January 2019).

¹⁷ See for example, amfori, *Promoting Good Labour Practices in the Thai Fishing Industry* (June 2017).

¹⁸ VOA, *Forced labor claims at Malaysian firms spur spate of US import bans* (February 2022).

¹⁹ Thomson Reuters, *U.S. lifts import ban on Malaysia’s Top Glove over forced labour concerns* (September 2021); *The Diplomat*, *Malaysian glove maker vows reforms following US import ban* (January 2022).

²⁰ For example, the European Union’s proposed Corporate Sustainability Reporting Directive.

²¹ Principles for Responsible Investment, *What institutional investors need to know about the ‘S’ in ESG* (October 2020).

²² Deloitte, *How consumers are embracing sustainability* (2022).

The time is therefore ripe for stakeholders in Hong Kong SAR, China; Malaysia; the Philippines; Thailand and Viet Nam to take stock of regional implementation of the third pillar of the UNGPs. The legal frameworks that govern migrant workers' access to remedies in these jurisdictions offer the right to lodge complaints regarding recruitment or employment-related abuse, or criminal activity, through State/Administrative - based grievance mechanisms. These laws also typically mandate employers or recruitment agencies to resolve complaints raised by migrant workers in accordance with relevant laws. For example, Decree No. 119/2014/ND-CP in Viet Nam requires Vietnamese recruitment agencies to engage with migrant worker complainants on recruitment issues.²³ In Thailand, the Labour Protection Act B.E. 2541 provides migrant workers the right to lodge complaints with labour inspectors or the labour court relating to the payment of wages, overtime pay and holiday pay, among other offences,²⁴ and sanctions employers that fail to comply with orders made by the labour inspector or labour court.²⁵ The implementation of these laws and regulations form a key part of the State duty to respect, protect and fulfil the right of migrant workers to effective remedies, as set out in the UNGPs. However, the connection between these efforts to improve access to State/Administrative - based judicial and non-judicial remedies, and implementation of the UNGPs, has yet to be clearly drawn by governments in the region. The inclusion of activities relating to the duties of the State and the business sector to provide remedy in Thailand's first National Action Plan on Business and Human Rights (NAP) in the action plan on labour is promising.²⁶ Nonetheless, the UNDP's 2021 review of business and human rights in Asia found that the linkages between business activity and human rights abuses are not yet properly understood in the region.²⁷ The report also found that "very few" non-State/Administrative - based grievance mechanisms exist in Asia and those that do often have fundamental design flaws and do not fulfil many of the effectiveness criteria set out in UNGPs Principle 31.²⁸

While steps have been taken towards operationalizing some aspects of the UNGPs, awareness of the business sector's responsibility to remediate adverse human rights impacts they have caused or contributed to, is nascent. There are examples of promising practices. For example, Thai-listed companies are required to report on social performance, including human rights protection, and are recommended to disclose how they are managing social issues in their operations. In addition, where the listed company or its subsidiary is under regulatory scrutiny for breaches of laws or regulations; is accused of creating a negative social impact; or is involved in social controversies that could have an impact on its operations, reputation, branding and assets, they are required to disclose information regarding the issue and the preventative measures implemented.²⁹ In the Philippines, guidelines and a reporting template published by the Philippines Securities and Exchange Commission advise companies to report on grievance mechanisms, among other things.³⁰ In addition, licensed private recruitment agencies (PRAs) in the Philippines are required to submit quarterly monitoring reports to the Philippine Overseas Employment Administration (POEA) on the status and condition of deployed workers.³¹ This requirement, combined with the imposition of joint liability on PRAs for abuses committed by foreign employers against Filipino migrant workers,³² seeks to encourage PRAs to conduct due diligence on the working and living conditions of Filipino workers.

²³ Section 3, Article 17 of the Decree Stipulating Details of Some Articles of the Labor Code, the Law on Vocational Training and Law on Vietnamese Workers Working Abroad Under Contract (No. 119 /2014/ND-CP), [unofficial English translation](#).

²⁴ Sections 123 and 125 of the Labour Protection Act B.E. 2541, [English translation](#), p. 42.

²⁵ *Ibid.*, Section 124/1.

²⁶ In particular, the NAP includes a commitment to conduct periodic evaluations of the grievance mechanisms of government agencies to assess their efficiency and incorporate findings to improve the effective operation of such mechanisms. See Pillar 3: Duties of the State and the business sector to provide remedy, Thailand National Action Plan on Business and Human Rights (2019–2022). Note that the National Action Plan also includes a commitment to develop and train language coordinators from Cambodia, Laos and Myanmar to help migrant workers navigate the system, and to review and improve the claim filing mechanism, so that every worker can access protection and remedy without discrimination and irrespective of their nationality.

²⁷ UNDP, *Reflections and Directions – Business and Human Rights in Asia: From the First Decade to the Next* (Bangkok, 2021), p. 1.

²⁸ *Ibid.*, pp. 84–85.

²⁹ Stock Exchange of Thailand, Walk Free and Finance Against Slavery & Trafficking, [Guidance on Modern Slavery Risks for Thai Businesses](#) (Bangkok, 2021).

³⁰ Securities and Exchange Commission Philippines, SEC Memorandum Circular No. 4 Series of 2019 (2019).

³¹ [The Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Filipino Workers](#), Section 209, and [The Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers](#), Section 193. These Rules and Regulations are currently under review and will be revised, following the transition from POEA to the Department of Migrant Workers.

³² Known as the Joint and Solidary Liability provision. For more information, see para. 1.1 below.



Migrant workers in the salt flats of Viet Nam. © Pexels 2021/Quang Nguyen VINH

Nonetheless, there are no laws or policies in these jurisdictions that mandate all businesses to undertake human rights due diligence and implement operational-level grievance mechanisms, as envisioned in the UNGPs. Companies operating in industries that have been subjected to import bans, or otherwise face pressure from buyers who are regulated by the more rigorous human rights due diligence regimes, may have some experience in remediating human rights abuses. However, except for these pockets of sanctions-driven or buyer-led efforts, the extent to which operational-level grievance mechanisms are systematically adopted and operated effectively varies significantly. The lack of systematic adoption could be due in part to the fact that implementation of operational-level grievance mechanisms remains a largely voluntary and ad hoc effort. While corporate accountability laws exist in the region, accountability is generally conceived by the companies themselves as limited to accounting for performance to shareholders, rather than accountability to all their stakeholders on how they are addressing actual and potential human rights impacts. The United Nations Development Programme's 2021 review of business and human rights in Asia echoed the need for a change in mindset, noting that "most stakeholders in Asia still conceptualized the responsibility of business towards people and planet very narrowly" through the lens of voluntary corporate social responsibility.³³

In the absence of proper implementation of the third pillar of the UNGPs, migrant workers continue to face challenges in lodging and resolving grievances, and holding employers and recruiters accountable for human rights and labour rights violations. Significant barriers prevent migrant workers from accessing remedies through State/Administrative - based judicial and non-judicial mechanisms. Despite public campaigns to socialize these mechanisms, migrant workers often do not know about, do not trust, and are not able to use these grievance mechanisms. In countries of destination, migrant workers are often unable to access State/Administrative - based grievance mechanisms once they have been dismissed, as their permission to remain in the country is often linked to employer-tied visas and work permits. State agencies responsible for their enforcement are often not properly funded and staffed, causing delays in proceedings. For migrant workers who file complaints in countries of destination, efficient resolution is critical as they may only have permission to stay in the country for a limited time, such as the Special Pass in Malaysia. Migrant workers who file complaints in countries of origin may likewise face time pressure to take up new employment opportunities abroad and cannot afford to wait until the resolution. Furthermore, fear of reprisals, criminalization and deportation deter migrant workers – especially irregular migrant workers³⁴ – from accessing State/Administrative - based mechanisms. As lodging a complaint often results in termination of the employment relationship, migrant workers may risk losing their income in order to pursue remedies. Migrant workers are also not provided with adequate assistance (legal and financial) to navigate State/Administrative - based grievance mechanisms. All of these circumstances result in a power asymmetry between the migrant worker claimant and the defendant, as the latter is often better resourced and has better knowledge of the legal system and laws. The design and function of

³³ UNDP, *Reflections and Directions – Business and Human Rights in Asia: From the First Decade to the Next* (Bangkok, 2021), p. 1.

³⁴ Defined as a person who moves or has moved across an international border and is not authorized to enter or to stay in a State pursuant to the law of that State and to international agreements to which that State is a party. IOM, *Glossary on Migration* (2019).

State/Administrative - based grievance mechanisms often do not accommodate the realities faced by migrant workers and thus create significant challenges in access to effective remedies.

The challenges in accessing remedies are heightened in cross-border cases – where the actors, evidence, or action occurs in multiple States. The complexity and territory-focused mandate of judicial mechanisms means that it becomes difficult for migrant workers to bring legal actions against the employer once they have left the jurisdiction where the employer is located or where the facts relevant to the grievance occurred. Migrant workers who work on distant-water fishing vessels or in the maritime industry face specific challenges, as their rights to bring legal claims could vary based on the law of the flag State of the vessel, or the law of the State where the vessel owner is domiciled. Inadequate protective measures in bilateral labour agreements and limited cooperation between States in protecting migrant worker rights and identifying and/or creating adequate mechanisms exacerbate these challenges. As such, migrant workers often have limited legal recourse except to try and file a legal claim in the country of destination against the employer; however, as noted above, gaps in immigration policy and other structural barriers often prevent them from doing so in practice. Although State/Administrative - based cross-border grievance mechanisms exist, for example the Organisation for Economic Co-operation and Development (OECD) National Contact Point System, they face severe limitations in terms of accessibility and addressing grievances in a timely manner. This has an adverse impact on the ability of workers to achieve remedial outcomes.

In light of the challenges with accessing remedy through State/Administrative - based grievance mechanisms, civil society and other non-State actors play a crucial role in bridging gaps in access and effective delivery of these mechanisms. In particular, in the transnational context, there are pockets of promising practices in the provision of support, through non-governmental organization (NGO) networks or migrant worker resource centres (MRCs). However, these stakeholders often lack sufficient resources and leverage to reach their full potential. Regulatory frameworks may also hamper civil society activity (e.g. due to the risk of reprisals stemming from criminal defamation suits).

The obstacles in accessing remedies through State/Administrative - based grievance mechanisms are largely mirrored in non-State/Administrative - based grievance mechanisms. Businesses and industry bodies often play the role of the judge, jury and defendant in the operational-level grievance mechanisms of their creation. Such top-down structures are unlikely to be sufficiently independent for migrant workers to trust that their complaints will be resolved fairly. Migrant workers rely on the employer for their work permits and/or visas, to pay wages, and in some cases to provide accommodation and food. They may often view their ability to reside and work in the country of destination, their income and well-being as dependent upon maintaining a deferential relationship with employers (and even recruitment agencies). Unless this power imbalance is addressed, for example through incorporation of independent external investigators, such as labour inspectors, to ensure impartiality of decision-making, protection of the worker's identity, or provision of free, independent legal counsel, migrant workers will continue to be deterred from using operational-level grievance mechanisms.

The lack of migrant worker engagement in the design and operation of these mechanisms means that the processes and remedial outcomes might not be responsive to the needs and concerns of migrant workers. This also often results in a lack of trust of operational-level grievance mechanisms among migrant worker groups. For example, migrant workers interviewed for this report highlighted that the ability to file complaints anonymously and confidentially through the company-run grievance mechanism was important. From their perspective, protection of their identity was important to mitigate and prevent the risk of reprisals by the company management.³⁵ Furthermore, civil society members,

³⁵ Interview with Nepalese migrant workers in Malaysia (May 2022).



despite being key stakeholders with a better understanding of the lived experiences of migrant workers, are not adequately engaged by the private sector around access to remedy. Some companies consulted expressed hesitation in engaging NGOs on this issue, due to concerns that this would lead to potential reputational risks and liabilities.³⁶ However, meaningful dialogue and engagement with migrant workers and civil society would probably help overcome the trust and accessibility barriers described above, by incorporating a more migrant-centric approach. This would probably improve the effectiveness of non-State/Administrative - based grievance mechanisms in addressing and remediating migrant worker grievances.

The limited effectiveness of non-State/Administrative - based grievance mechanisms in resolving migrant worker grievances serves neither migrant workers nor businesses. For businesses, the adverse human rights impacts arising from their operations are neither properly identified nor systematically addressed. In the longer term, failure to address adverse human rights impacts can lead to legal, financial, or commercial risks to the business, as grievances escalate to public protest, litigation, or other forms of opposition.³⁷ By contrast, effective grievance mechanisms can help early detection of human rights risks to migrant workers and can therefore help reinforce the human rights due diligence process. Human rights due diligence aims to prevent and mitigate potential human rights impacts in which an enterprise might be involved. An effective grievance mechanism through which affected stakeholders can raise concerns can be a good indicator of potential adverse human rights impact. Human rights due diligence and remediation are therefore distinct, but intimately connected processes. In this way, having an effective grievance mechanism in place to enable remediation supports both rightsholders and sustainable value creation for businesses.

The combination of more robust human rights due diligence laws, trade-based import bans, and investor and consumer momentum around ESG and sustainability issues, provides a unique opportunity for States and businesses that work together to cultivate complementary and effective grievance mechanisms. From the State's perspective, effective State/Administrative - based grievance mechanisms form an important

³⁶ Focus group session conducted with representatives of multinational companies (June 2022).

³⁷ OHCHR, *The Corporate Responsibility to Respect Human Rights* (New York and Geneva, 2012).

part of ensuring a conducive environment for safe, regular migration and business. Effective State/Administrative - based grievance mechanisms enable the sanctioning of those who violate laws and the delivery of redress to migrant workers who have been harmed by the wrongdoing. In doing so, the State protects migrant workers against abuse by deterring future wrongdoing and promotes an environment of accountability and legal certainty – factors that make a country an attractive migration and/or trading partner.³⁸

By the same token, there is opportunity for businesses to reframe their approach to grievance mechanisms as a dynamic means of dialogue-based employer/employee engagement, and a proactive risk mitigation and prevention tool.³⁹ Effective grievance mechanisms can also help build positive engagement with stakeholders by demonstrating that the enterprise takes their concerns and the impact on their human rights seriously. Especially where the business has engaged with affected stakeholders and independent experts in developing and operating its grievance mechanism, the credibility of the business' commitment to respect human rights may be reinforced. Moreover, a workplace where migrant workers can express their rights and freely engage in social dialogue would probably reduce the risk of employee absenteeism and turnover.⁴⁰ For the business, this could result in improved workforce productivity,⁴¹ as well as greater resilience in tackling emerging global challenges.⁴²

However, to create an environment in which the ecosystem of remedy can flourish, governments and businesses need to reimagine the roles of grievance mechanisms and remediation. Rather than solely viewing State/Administrative - based grievance mechanisms through the traditional lens of the justice system, States should recognize the complementary role that both judicial and non-judicial mechanisms can play in creating an environment of transparency and accountability to support economic activity. Rather than negatively framing non-State/Administrative - based grievance mechanisms from a compliance or audit-based mindset, businesses should understand these mechanisms as a platform for stakeholder engagement and proactive risk mitigation. While non-State/Administrative - based grievance mechanisms cannot address all types of grievances – criminal offences should be dealt with through the State criminal justice system – they should offer a complementary pathway to effective remedy for migrant workers.

To realize this change in mindset, there needs to be an enabling environment, where States protect against human rights abuses through effective policies, laws and adjudication, and hold businesses accountable to their responsibilities to respect human rights.⁴³ Furthermore, in such an environment, States encourage and guide businesses to undertake human rights due diligence⁴⁴ and implement effective grievance mechanisms that serve the needs of migrant workers.⁴⁵ Businesses also meaningfully engage their broader stakeholders in their operations – beyond focusing on maximization of shareholder value – in fulfilling their responsibility to respect human rights.⁴⁶ In an enabled environment, migrant workers (as rights holders) have a role in shaping and owning the grievance mechanisms that they co-designed for their use. Other affected stakeholders, such as trade unions, grassroots actors and civil society can also hold States and businesses accountable to their commitments to protect and to respect human rights, respectively. The UNGPs offer a guiding framework for States and businesses to work towards the creation of this enabling environment, and ultimately, access to effective remedies for migrant workers.

³⁸ United Nations, [Rule of Law and Development](#) (n.d.).

³⁹ UNGPs Principle 29 and commentary.

⁴⁰ Ergon and Fund for Responsible Business, [Handbook Effective Grievance Mechanisms](#) (December 2021), p. 4; Oxfam Business Advisory Service, [Want motivated workers who feel their rights are respected? You need a proper grievance mechanism](#) (July 2022).

⁴¹ Better Work, [Hansae Viet Nam: Resolving grievances and moving towards sustainable development](#) (October 2020).

⁴² Anita Ramasastry, [Business and Human Rights as the Backbone of Sustainable Development and Resilient Recovery – Keynote address of Anita Ramasastry, incoming chair, United Nations Working Group on Business and Human Rights](#) (June 2020).

⁴³ UNGPs Principles 1 and 2 and commentary.

⁴⁴ UNGPs Principle 3 and commentary.

⁴⁵ UNGPs Principle 31 and commentary.

⁴⁶ UNGPs Principle 18, 20, 21 and 31 and commentary all recommend that businesses engage with external stakeholders.



Worker in the market. Penang, Malaysia. © Unsplash 2022/Kelvin ZYTENG

BACKGROUND AND PURPOSE

This report aims to provide governments, businesses, CSOs and United Nations agencies in South-East Asia with practical recommendations to work individually and collectively in building an ecosystem of remedy that enables migrant workers to access effective remedies. To formulate the recommendations, it was important to identify the features of an effective ecosystem of remedy, as envisioned in the UNGPs and the Office of the High Commissioner for Human Rights (OHCHR) Accountability and Remedy Project (ARP) reports. A detailed explanation of the features and principles of an effective ecosystem of remedy is set out in Section 5.

The recommendations are intended to be tailored to the situation on the ground and aim to reflect the needs and concerns of migrant workers. In formulating the recommendations, it was first important to understand the extent to which the current ecosystem of remedy in South-East Asia enables or hinders migrant workers' access to effective remedies. Thus, a regional stakeholder mapping exercise was conducted in May–June 2022 (Stakeholder Mapping). The Stakeholder Mapping identified the key gaps and challenges in the implementation of both State/Administrative - based and non-State/Administrative - based grievance mechanisms in each of Hong Kong SAR, China; Malaysia; the Philippines; Thailand and Viet Nam. The key findings and the methodology adopted in the Stakeholder Mapping are outlined in Sections 4 and 3, respectively.



One of the neighbourhoods where the Rohingya community lives, Sentul, Indonesia. © IOM 2021/Azwan RAHIM



Cambodian migrant workers in Thailand during a construction training provided by IOM and FIXZY under the Promise Programme. © IOM 2021/Javier VIDAL

METHODOLOGY

Violations of migrant workers' rights may occur at different stages in their migration journey, and therefore remedies must be accessible irrespective of whether the worker is in the country of origin or the country/region of destination. Hong Kong SAR, China; Malaysia and Thailand are primarily countries/regions of destination for migrant workers, whereas the Philippines and Viet Nam are largely countries of origin. Due to these migration dynamics, the research conducted for Hong Kong SAR, China; Malaysia and Thailand focused on grievance mechanisms available for migrant workers who migrate to these countries/regions of destination for employment opportunities. For the Philippines and Viet Nam, the research primarily focused on grievance mechanisms available in these countries of origin to enable Filipino or Vietnamese migrant workers' access to remedies for grievances that arose during their migration journey.⁴⁷



A desk-based review was conducted as part of the Stakeholder Mapping. The findings were triangulated from authoritative reports and studies published by United Nations agencies and international NGOs, as well as disclosures made by governments, businesses and industry associations. To the extent publicly available, independent evaluations or analyses of the identified grievance mechanisms have been referenced. A list of the sources reviewed is set out in Annex 1.

The desk-based review was supplemented with interviews with selected stakeholders and migrant workers. The stakeholders were identified based on their expertise in developing and operating grievance mechanisms in Hong Kong SAR, China; Malaysia; the Philippines; Thailand and Viet Nam, and to provide coverage of a range of sectors and types of grievance mechanisms. A list of all the stakeholders interviewed and details on the migrant worker interviews conducted are included in Annex 2.

Grievance mechanisms refer to any routinized, State/Administrative - based, or non-State/Administrative - based, judicial, or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.⁴⁸ The Stakeholder Mapping covers

⁴⁷ This encompasses the migrant worker's departure from, and in some cases transit through one or more States, immigration in the State of destination and return. Adapted from the definition of "migration cycle" in the IOM *Glossary on Migration* (2019).

⁴⁸ UNGPs Principle 25 and commentary.

State/Administrative - based judicial and non-judicial grievance mechanisms, as well as non-State/Administrative - based grievance mechanisms.

- a) State/Administrative - based grievance mechanisms may be administered by a branch of an agency of the State, or by an independent body on a statutory or constitutional basis. State/Administrative - based grievance mechanisms may be judicial or non-judicial.⁴⁹ Examples of State/Administrative - based judicial mechanisms include courts for criminal and civil law actions. State/Administrative - based non-judicial mechanisms can take on various forms and vary in their mandates, functions and powers.⁵⁰ They can be found at all levels of government. Some mechanisms may focus on specific themes, for example labour rights. State/Administrative - based non-judicial mechanisms can be categorized into: (1) complaints mechanisms;⁵¹ (2) inspectorates;⁵² (3) ombudsman services;⁵³ (4) mediation or conciliation bodies;⁵⁴ and (5) arbitration and specialized tribunals.⁵⁵ The UNGPs envision State/Administrative - based grievance mechanisms as the foundation of the ecosystem of remedy.⁵⁶ Effective State/Administrative - based judicial mechanisms have a core function in ensuring access to remedy,⁵⁷ which is complemented by State/Administrative - based non-judicial mechanisms.⁵⁸
- b) Non-State/Administrative - based grievance mechanisms are mechanisms by which individuals, groups or communities, whose human rights have been adversely impacted by business activities, or their legitimate representatives, can seek remedy with respect to those adverse impacts.⁵⁹ The State is neither involved in establishing or setting the framework, nor does it actively intervene in the operations of such mechanisms, and such mechanisms are not directly linked to the legal and judicial system of a State. Non-State/Administrative - based grievance mechanisms may be categorized as follows: (1) company- and corporate-level grievance mechanisms, including operational-level grievance mechanisms; (2) multi-stakeholder initiatives; (3) grievance mechanisms of international development finance institutions; and (4) grievance mechanisms related to international framework agreements concluded by multinational companies and trade unions.⁶⁰

⁴⁹ Ibid.

⁵⁰ OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse through State/Administrative - based non-judicial mechanisms* (May 14, 2018), A/HRC/38/20, paras. 6 and 10.

⁵¹ Typically operated by a State-appointed, State-supported and/or State-approved body with public regulatory and enforcement responsibilities. A/HRC/38/20, paras. 6 and 10.

⁵² Typically operated by a State-appointed, State-supported and/or State-approved body with public regulatory and enforcement responsibilities and a range of enforcement functions and powers (powers of investigation and to prescribe penalties and/or remedial action). A/HRC/38/20, paras. 6 and 10.

⁵³ Typically, with a specialized mandate associated with specific interest groups, regulatory themes, or commercial sectors. They may receive, investigate and resolve disputes between individuals and business enterprises, and frequently draw on mediation and/or conciliation techniques to do so. A/HRC/38/20, paras. 6 and 10.

⁵⁴ These aim at finding a mutually acceptable outcome, rather than the apportionment of blame. They are often used in the resolution of consumer, employment or environment disputes and may be the precursor to more formal processes. A/HRC/38/20, paras. 6 and 10.

⁵⁵ These oversee dispute resolution processes that are adversarial and/or inquisitorial in nature. They often have a higher degree of procedural formality. Some have investigative powers that can be used on their own initiative. They may have the power to make legally binding determinations. A/HRC/38/20, paras. 6 and 10.

⁵⁶ UNGPs Principle 25 and commentary.

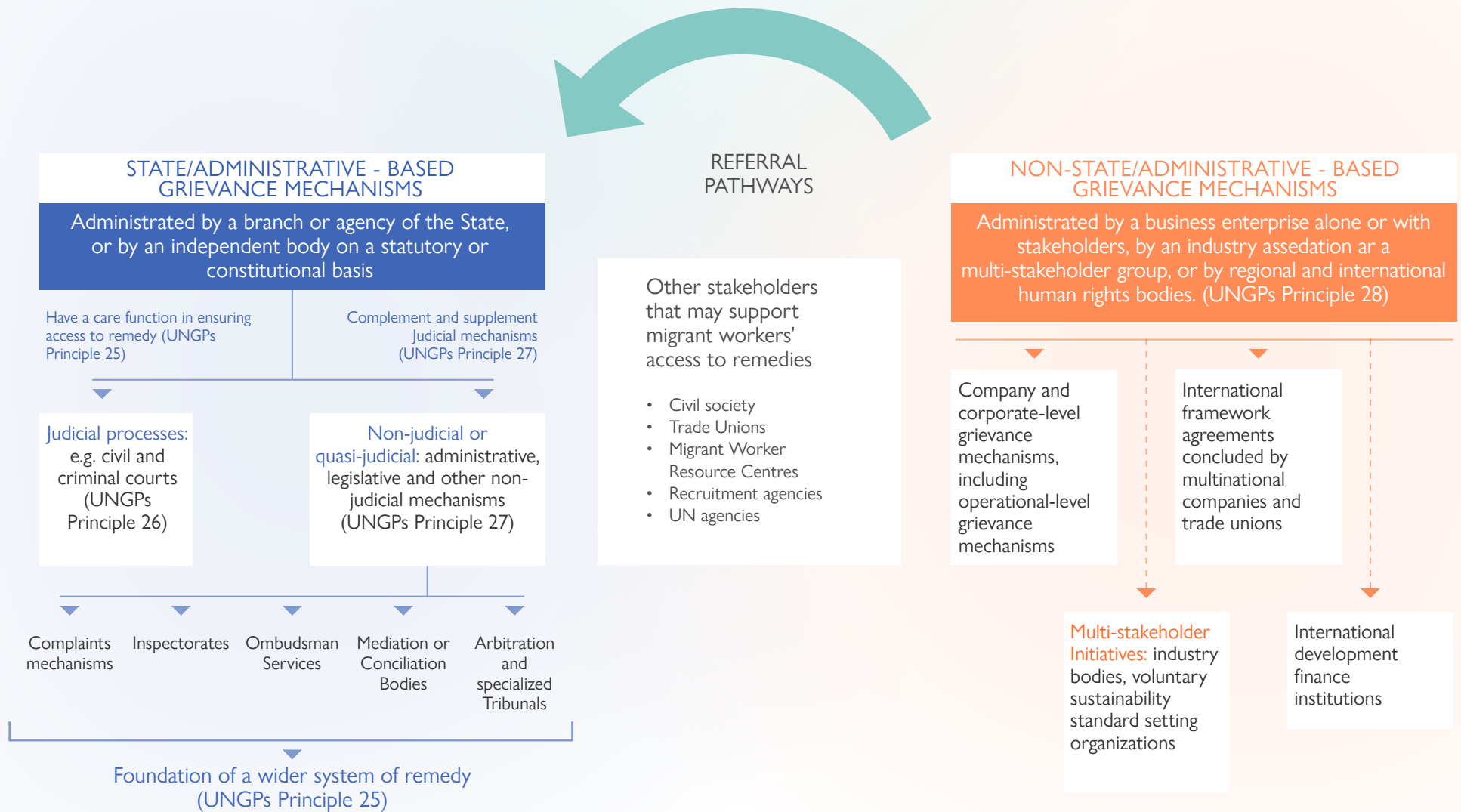
⁵⁷ UNGPs Principle 26 and commentary.

⁵⁸ UNGPs Principle 27 and commentary.

⁵⁹ UNGPs Principles 28 and 29 and commentary. See also Stefan Zagelmeyer, Lara Bianchi and Andrea R. Shemberg, *Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis* (July 2018).

⁶⁰ Stefan Zagelmeyer, Lara Bianchi and Andrea R. Shemberg, *Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis* (July 2018).

Figure 1. Types of grievance mechanisms



Source: The Remedy Project.

The UNGPs set out different criteria for evaluating the effectiveness of (State/Administrative - based and non-State/Administrative - based) non-judicial grievance mechanisms and State/Administrative - based judicial grievance mechanisms in Principles 31 and 26, respectively. In this Stakeholder Mapping, each of the identified non-judicial grievance mechanisms is benchmarked and assessed against the UNGPs Principle 31 “effectiveness criteria”. State/Administrative - based judicial mechanisms are assessed in light of UNGPs Principle 26, which sets out the steps States should take to ensure the effectiveness of domestic judicial mechanisms. Different criteria are applied to non-judicial grievance mechanisms and State/Administrative - based judicial grievance mechanisms. This is because State/Administrative - based judicial mechanisms have an adjudicative function, where the parties’ participation and outcomes do not require the consent of all parties, whereas non-judicial grievance mechanisms are generally consensus-based.

- a) According to the effectiveness criteria in Principle 31 of the UNGPs, (State/Administrative - based and non-State/Administrative - based) non-judicial grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning. Operational-level grievance mechanisms should also be based on engagement and dialogue. The principles set out in the International Labour Organization (ILO) Examination of Grievances Recommendation, 1967 are also referenced.⁶¹
- b) Principle 26 of the UNGPs notes that impartiality, integrity and ability to accord due process are key elements of an effective judicial mechanism. Furthermore, States should ensure that legal,⁶² practical and procedural barriers⁶³ do not prevent access to judicial remedies. General factors that may create barriers to judicial recourse include corruption of the judicial process, exertion of economic or political pressure from other State agents or from business agents on courts, and obstruction of the activities of human rights defenders. These barriers may be compounded by the power asymmetry between the parties to the grievance.

In its evaluation of State/Administrative - based and non-State/Administrative - based grievance mechanisms, the Stakeholder Mapping considers accessibility to effective remedies, from the perspective of migrant workers in particular. Migrant workers, in particular, often have limited financial resources, face challenges in accessing information (e.g. due to language barriers) and expertise, or face additional sociocultural, physical or financial impediments to accessing these mechanisms due to (intended, unintended or indirect) discrimination. Structural barriers and gaps in migration governance and immigration policies also mean that migrant workers often face heightened challenges in accessing remedies relative to local workers, especially through State/Administrative - based grievance mechanisms. These challenges are also exacerbated for migrants in an irregular situation, who are at risk of deportation and criminalization if they lodge complaints with State authorities.

The effectiveness of cross-border State/Administrative - based grievance mechanisms is also analysed to understand the extent to which such mechanisms are able to effectively address migrant worker grievances, which often involve cross-border elements.⁶⁴ As noted in the OHCHR ARP I Report, cross-border cases dealt with through State/Administrative - based judicial mechanisms face three major stumbling blocks: (1) lack of clarity on the roles and responsibilities of the different interested States; (2) weak cross-border cooperation and coordination between judicial bodies and other State agencies; and

⁶¹ ILO, *Examination of Grievances Recommendation (1967)*.

⁶² Legal barriers may include limited or weak corporate accountability laws, challenges with establishing jurisdiction over a claim (e.g. a migrant worker is unable to file a claim in the country of destination and cannot access legal recourse in the country of origin), and exclusion of certain groups (e.g. migrants and indigenous peoples) from the legal system.

⁶³ Practical and procedural barriers may include significant costs to bring claims, difficulty in securing legal representation, inadequate options for aggregating claims or enabling representative proceedings (class actions or other collective actions), and lack of prosecutorial capacity.

⁶⁴ Cross-border cases are those where the relevant facts that have taken place, or the relevant actors, or the evidence needed to prove a case, are in more than one State. OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse* (10 May, 2016). A/HRC/32/19.



Migrant workers painting the wall in Hong Kong. © Pexels 2019/Daniel PASTOR

(3) challenges in access to information for claimants and their legal representatives.⁶⁵ These challenges are also applicable to non-judicial mechanisms; in particular, the OHCHR ARP II Report notes that the “strictly territorial mandate” of many State/Administrative - based non-judicial mechanisms means that they often have “limited, if any, authority to respond to cross-border cases”.⁶⁶ These challenges are considered in this Stakeholder Mapping.

Furthermore, the complementary linkages and referral pathways between non-State/Administrative - based and State/Administrative - based grievance mechanisms are also analysed to understand whether the different types of remedial mechanisms interact in a way that enables migrant workers access to remedy. Improving access to remedy for migrant worker-related abuses is best served by providing affected migrant workers and other stakeholders with a range of options for seeking redress.⁶⁷ The analysis herein will reflect this holistic view of the ecosystem of remedy by also considering the practicality of existing linkages between the different types of grievance mechanisms.

3.1 LIMITATIONS

As most data used in the Stakeholder Mapping are based on publicly available information, the evaluation of the grievance mechanisms against the relevant UNGPs is limited by the extent to which information has been made available in the public domain. Where possible, the analysis has drawn upon multiple sources – from disclosures made by the developer or operator of the mechanism and where available, independent assessments/evaluations or reports prepared by third parties and/or interviews conducted with the key informants identified in Annex 2. However, this means that the Stakeholder Mapping relating to non-State/Administrative - based mechanisms is largely focused on listed companies that are obligated to make public disclosures regarding their human rights policies and practices, or companies that have faced past scrutiny for alleged exploitative labour practices. As such, the Stakeholder Mapping does not capture the perspectives of small and medium-sized enterprises and is not specifically reflective of the large majority of companies operating in South-East Asia, although many of the issues identified are shared across different types of companies.

⁶⁵ Ibid.

⁶⁶ OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse through State/Administrative-based non-judicial mechanisms* (14 May, 2018). A/HRC/38/20.

⁶⁷ Ibid., para. 21.

In addition, the stakeholders interviewed were selected based on their experience in addressing migrant worker grievances, and their willingness to participate in the Stakeholder Mapping. This means that the corporate stakeholders interviewed had some familiarity with grievance mechanisms and access to remedies. Thus, the observations made in relation to non-State/Administrative - based grievance mechanisms largely reflect the perspectives of this subset of companies that are relatively more advanced in their understanding and development of grievance mechanisms.

It should also be noted that the migrant worker interviews covered a total of 58 migrant workers (27 female; 30 male; 1 not disclosed) based in Malaysia, Thailand and Viet Nam in the agriculture, automotive manufacturing, construction, cosmetics manufacturing, domestic work, electronics, fishery, furniture, garment, glove and palm oil industries, and in the informal economy (such as informal street vendors). The industries, countries of destination and nationalities of the workers interviewed were affected by access of the third-party consultants to these migrant worker groups and constrained by the budget and time available for the Stakeholder Mapping. In addition, worker interviews were not conducted in the Philippines and Hong Kong SAR, China. Furthermore, the interviewees were selected to include a proportion of migrant workers who had experience of accessing grievance mechanisms (whether State/Administrative - based or non-State based) or knew of someone who had attempted to use such mechanisms. Thus, the data should not be considered nationally or regionally representative.



Migrant workers carrying bricks in Malaysia. © Pexels 2013/Mehmet Turgut KIRKGOZ





A migrant worker making bouquets of flowers at a flower market in Kuala Lumpur, Malaysia. © Unsplash 2018/Amandine CORNILLON

KEY FINDINGS

This section presents an overview of the status of migrant workers' access to effective remedy in Hong Kong SAR, China; Malaysia; the Philippines; Thailand and Viet Nam, through the lens of the UNGPs and the realities of international labour migration. As recognized in the commentary to Principle 25 of the UNGPs, access to effective remedy has both procedural and substantive aspects. There is a difference between having a grievance mechanism and actually enabling access to remedy. Grievance mechanisms are processes that, when working effectively, can enable remedy.⁶⁸ Remediation, however, is the act of making the affected stakeholders whole again – whether this is through apologies, restitution, rehabilitation, financial or nonfinancial compensation and punitive sanctions, as well as the prevention of harm through injunctions or guarantees of non-repetition,⁶⁹ and the process of addressing the source of the harm. Effective grievance mechanisms can also enable stakeholders to identify and address the root causes of systemic risks and prevent the same or similar harms from arising in the future. At present, governments and some business enterprises in the region make grievance mechanisms available. However, despite the existence of these pathways, effective remedy remains largely out of reach for migrant workers in the jurisdictions examined, because the grievance mechanisms are often not responsive to their realities, experiences and needs.

This section first presents the key opportunities, gaps and obstacles in the implementation of State/Administrative - based grievance mechanisms. In recognition of the need to assess the ecosystem of remedy in the context of international labour migration, the shared challenges across the region will first be summarized. This is followed by a summary of the effectiveness of State/Administrative - based grievance mechanisms for migrant workers in countries/regions of destination (Hong Kong SAR, China; Malaysia and Thailand) and for outbound migrant workers in countries of origin (the Philippines and Viet Nam). Second, a summary of the shared opportunities, gaps and challenges in the development and implementation of non-State/Administrative - based grievance mechanisms is provided. Third, the effectiveness of State/Administrative - based cross-border grievance mechanisms is summarized. As stated in the IOM's Global Compact for Safe, Orderly and Regular Migration, "no State can address migration alone due to the inherently transnational nature of the phenomenon".⁷⁰ The report considers the extent to which State/Administrative - based cross-border grievance mechanisms are able to deliver effective remedies for migrant workers. Next, the linkages and referral pathways between the types of grievance mechanisms are analysed. In practice, the knitting together of the various types of grievance mechanisms is usually done through informal networks, typically of CSOs, trade unions, MRCs and other non-State actors, that support claimants as they navigate the patchwork of available grievance mechanisms. An analysis of the roles of these non-State actors in the ecosystem of remedy concludes this section of the report.

⁶⁸ OHCHR, *Remedy in Development Finance Guidance and Practice* (2022), p. 50; and Dutch Banking Sector Agreement, *Discussion Paper – Working Group Enabling Remediation* (2019), pp. 21–22.

⁶⁹ UNGPs Principle 25 and commentary.

⁷⁰ Guiding Principle 15, the Global Compact for Safe, Orderly and Regular Migration.

4.1 STATE/ADMINISTRATIVE-BASED GRIEVANCE MECHANISMS – REGIONAL FINDINGS

A summary of the State/Administrative-based grievance mechanisms that are available for resolving migrant worker grievances in each of Hong Kong SAR, China; Malaysia; the Philippines; Thailand and Viet Nam is provided in Table 1 below.

Table 1. Mechanisms available for resolving migrant worker grievances

	Hong Kong SAR, China	Malaysia	Philippines	Thailand	Viet Nam
Conciliation of workplace grievances	✓ Conciliation Service of the Labour Relations Division (Labour Department)	○ Department of Labour and hotline (Telekerja)	N/A (country of origin) ⁷¹	✓ Ministry of Labour's Department of Labour Protection and Welfare	N/A (country of origin)
Compensation scheme for workplace injury	✓ Employees Compensation Scheme (Labour Department)	✓ Department of Labour (Workmen's Compensation) ⁷²	N/A (country of origin)	✓ Ministry of Labour's Social Security Office	N/A (country of origin)
Specialized mechanism to address complaints against PRAs	✓ The Employment Agencies Administration (Labour Department)		✓ The Department of Migrant Workers (formerly operated by the POEA)	○ Department of Employment of the Ministry of Labour	○ Department of Overseas Labour
Specialized tribunal or court system for labour-related disputes	✓ The Minor Employment Claims Adjudication Board and the Labour Tribunal	○ Labour Court (Department of Labour)	✓ National Labor Relations Commission (in the context of the Joint and Solidary Liability provision)	✓ Labour Court	N/A (country of origin)
Criminal justice system	○	✓	✓	✓	○

✗: Not established ○: Available ✓: Practically accessible to migrant workers

⁷¹ For completeness, it is noted that conciliation services are available under Philippines' Single Entry Approach system. Filipino migrant workers can seek the conciliation services from the Department of Migrant Workers (formerly operated by the Philippine Overseas Employment Administration) to resolve grievances with the relevant PRA.

⁷² However, certain groups of workers are excluded: persons engaged in non-manual labour earning more than RM 500 per month, domestic workers, casual workers and out-workers (those who take piecework back to their homes). Workmen's Compensation Act 1952, Section 2(1). In addition, it is unclear whether undocumented workers may benefit from the scheme. In theory, the scheme does not exclude migrant workers whose employment is not covered by a work permit, but this has yet to be tested before the courts in practice. See Bar Council Malaysia, *Migrant Worker Access to Justice: Malaysia* (Kuala Lumpur, 2019).

	Hong Kong SAR, China	Malaysia	Philippines	Thailand	Viet Nam
Civil proceedings	○	○	○	○	○
State/ Administrative Region MRCs	×	×	✓	✓	✓
Other	<ul style="list-style-type: none"> ✓ Small Claims Tribunal to resolve monetary claims not exceeding HKD 75,000 (approximately USD 9,560).⁷³ 	<ul style="list-style-type: none"> ○ A labour inspection system is established under the Employment Act 1955 ○ Industrial Relations Department and Industrial Court 	<ul style="list-style-type: none"> ✓ The Department of Migrant Workers (formerly operated by the Overseas Workers' Welfare Administration) ✓ The Department of Foreign Affairs and ✓ Philippines Overseas Labour Offices⁷⁴ 	<ul style="list-style-type: none"> ○ Ministry of Social Development and Human Security (MSDHS) ○ One-Stop Crisis Centres (OSCC) ○ The Rights and Liberties Protection Department (Ministry of Justice) ○ State-run Migrant Worker Assistance Centres ○ Labour Attaché at foreign embassies (Malaysia, Cambodia, Lao People's Democratic Republic) 	<ul style="list-style-type: none"> ○ Vietnamese Embassy/ Consulate Overseas and overseas section of the Ministry of Labour, Invalids and Social Affairs

×: Not established ○: Available ✓: Practically accessible to migrant workers

⁷³ Examples of migrant worker grievances that may be heard by the Small Claims Tribunal include disputes about loan agreements and recruitment agency fees, such as overcharging agency fees and invalidation of loans. For more information, see Justice Without Borders, *A Practitioner's Manual for Migrant Workers: Pursuing Civil Claims in Hong Kong and from Abroad* (Justice without Borders, 2015), p. 175.

⁷⁴ As of the publication of this report, transition is ongoing to transfer the POLOs to the supervision of the Department of Migrant Workers. They will be renamed as Migrant Workers Offices.



Migrant workers on a tea plantation field. Cameron Highlands, Pahang, Malaysia. © Pexels 2022/Job SAVELSBURG

State/Administrative - based grievance mechanisms are often perceived by the migrant workers interviewed as an unviable means of resolving their grievances. Language barriers and a lack of information provided about the availability and outcomes of grievance mechanisms continue to prevent migrant workers from trusting in the mechanism. *“If I understand the system, I might trust the system. [...] It is okay if we don’t win the case. I don’t mind, at least let me know the process and result”* (emphasis added).⁷⁵ Fear of retaliation, criminalization and deportation were also identified as key barriers that deter migrant workers from seeking assistance. Potential loss of employment, and thus the opportunity to earn an income, were key concerns that made migrant workers reluctant to engage in formal remediation processes.⁷⁶ “I don’t understand what remedy and grievance systems are. I just follow the employment agreement. If things are not as agreed, I will speak to the employer and if that doesn’t work, I quit the job. This is the method I use when I face issues in recruitment and/or employment. [...] If accessing remedies may result in trouble for me, I would not want to access remedies.”⁷⁷

The exclusion of irregular migrant workers and temporary workers from accessing the protections available in national laws remains commonplace across the region. There are, however, promising developments to recognize the legal right of migrant workers to access State/Administrative - based grievance mechanisms. For example, in Malaysia, a recent court ruling has clarified that the Labour Court could not decline to hear claims for unpaid wages by undocumented migrant workers.⁷⁸ However, immigration authorities in countries of destination continue to pursue sanctions against migrant workers in irregular situations, which then deters these vulnerable groups from lodging claims through State/Administrative - based grievance mechanisms and/or seeking help from State agencies, even if they have the right to do so in law.⁷⁹ Irregular migrant workers who are identified as victims of trafficking may benefit from non-criminalization provisions – for example Section 41 of the Anti-Trafficking in Persons Act (as amended) in Thailand provides that a victim of trafficking or forced labour should not be prosecuted for immigration-related offences, giving false statements, forging, or using forged travel documents, prostitution-related offences, or offences related to working without permission. However, no such protection is available for migrant workers who lodge civil or labour claims. These significant risks of criminalization and initiation of deportation procedures create heightened barriers for migrant workers in irregular situations from seeking remedies through State/Administrative - based grievance mechanisms.

⁷⁵ Interview with Cambodian migrant worker in Thailand (May 2022).

⁷⁶ Interview with migrant workers of Myanmar in Thailand (May 2022).

⁷⁷ Interview with migrant worker of Myanmar in Thailand (May 2022).

⁷⁸ Andy Hall, [Appeals court rules undocumented worker can take case to Labour Court in Malaysia](#) (May 2022).

⁷⁹ For more detail, please see paras. 4.22 (Malaysia), 4.37 (Thailand) and 4.42 (Viet Nam) of this report.

All States within the scope of this Stakeholder Mapping have undertaken information campaigns and other efforts to increase awareness among migrant worker populations of the available State/Administrative - based grievance mechanisms. In particular, government agencies in Thailand and Viet Nam have utilized Migrant Worker Assistance Centres and MRCs located in provinces with a high proportion of migrant workers to disseminate information about rights and grievance mechanisms. Government agencies in Hong Kong SAR, China; Malaysia and Thailand have also made information materials available in common migrant worker languages and interpretation services available in accessing their respective State/Administrative - based grievance mechanisms. The Philippines has utilized technology platforms to conduct outreach to workers, and government agencies and migrant-focused CSOs have also implemented campaigns to raise awareness among migrant worker groups of their rights and the available State/Administrative - based grievance mechanisms.

Established State/Administrative - based grievance mechanisms were often not sufficiently resourced or supported by targeted policies and capacity-building programmes. Mechanisms available for resolving migrant worker grievances have been established in legislation in the States reviewed; however, practical accessibility remains limited due to a lack of targeted policies and resources to give full effect to the legislation. Capacity constraints severely limit the ability of State agencies to resolve grievances in a timely manner. In particular, in Malaysia, Thailand, the Philippines and Viet Nam, labour agencies were under-resourced.⁸⁰ State agencies in Malaysia and Thailand also did not have sufficient capacity to service migrant worker groups in the languages understood by them.⁸¹ Moreover, hurdles remain in accessing workers in more remote locations and building trust in State/Administrative - based grievance mechanisms. The migrant worker interviews conducted in Malaysia and Thailand found that across the board, migrant workers generally learned about, or were referred to, State/Administrative - based grievance mechanisms through their peers or CSOs, rather than through official State channels. This underscores the importance of the diversity of actors in the ecosystem of remediation and their vital interaction to promote knowledge of and access to pathways to remedy.



Making rice paper in Viet Nam. © Pexels 2021/Quang Nguyen VINH

⁸⁰ For more detail, please see paras. 4.23 (Malaysia), 4.34 (the Philippines), 4.36 (Thailand) and 4.46 (Viet Nam) of this report.

⁸¹ Please see paras. 4.24 (Malaysia) and 4.35 (Thailand).

4.1.1 EFFECTIVENESS OF STATE/ADMINISTRATIVE - BASED JUDICIAL GRIEVANCE MECHANISMS

The UNGPs place effective judicial mechanisms at the core of ensuring access to remedy.⁸² However, in the region, significant legal, technical and practical barriers to judicial remedies continue to exist. The barriers observed at the national or local level are detailed in the following subsection for each jurisdiction, while some high-level regional findings are noted immediately below.

The complex, costly and lengthy nature of formal civil proceedings made the pursuit of civil remedies impractical for migrant workers in most cases. The evidentiary burden, technical paperwork and procedural requirements of civil justice systems mean that migrant workers are often unable to access these mechanisms without pro bono support or legal assistance. However, State-sponsored legal aid is not currently available in Malaysia or Thailand for civil cases. As such, civil justice systems act more as a “last port of call” – to enforce decisions made by administrative tribunals or for egregious cases (the exception rather than the norm) – rather than as a common pathway to accessing remedies. Migrant workers and other stakeholders interviewed expressed a preference for more informal, non-adversarial and consensus-based processes to resolve grievances.

In practice, access to remedies and protections under judicial mechanisms remain largely limited to migrant workers who are recognized as victims of human trafficking.⁸³ For example, Malaysia has introduced regulations to allow for the possibility of identified victims of trafficking for forced labour to be granted the right to work while criminal proceedings are pending. While few work permits have been granted in practice, and uptake among migrant worker groups remains limited,⁸⁴ the scheme could in theory encourage more migrant workers to participate in criminal proceedings by providing a potential source of income during the process. By contrast, no corresponding scheme is available for migrant workers who lodge labour or civil claims in Malaysia to seek employment while their claims are pending. While criminality such as human trafficking or forced labour must only be addressed through the criminal justice systems, the rights of migrant workers who experience violations of labour law should also be protected by improving the effectiveness of State/Administrative - based judicial mechanisms to resolve labour and civil claims. Support services, legal aid and assistance, and visas or work permits, should also be provided to migrant workers to lodge civil or labour claims through judicial mechanisms, even where the grievance does not rise to the level of criminal conduct. There is a need for judicial mechanisms to be more dynamic in their approach in cases of labour exploitation and understand how underlying migration and labour market conditions may drive such situations of exploitation.

⁸² UNGPs Principle 26 and commentary.

⁸³ For completeness, it is noted that conduct of illegal recruitment practices (as defined in the Migrant Workers Act of 1995 and [The Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Filipino Workers](#)) gives rise to a criminal offence in the Philippines.

⁸⁴ Marika McAdam, [Freedom of movement for persons identified as victims of human trafficking: An analysis of law, policy and practice in the ASEAN Region](#) (2021), p. 75.

4.1.2 EFFECTIVENESS OF STATE/ADMINISTRATIVE - BASED NON-JUDICIAL GRIEVANCE MECHANISMS

State/Administrative - based non-judicial mechanisms provide an invaluable entry point for migrant workers to seek State assistance to resolve recruitment and migration-related grievances. The implementation of administrative bodies to mediate and facilitate settlement between migrant worker claimants and employers or PRAs helps address some of the accessibility challenges found in judicial systems. The more informal and non-adversarial nature of non-judicial proceedings allow for more efficient resolution of grievances. Some mechanisms, such as the procedure for lodging claims with the Department of Overseas Labour (DOLAB) in Viet Nam, and the Labour Court in Malaysia, could benefit from keeping to time-bound procedures. Moreover, the services of State/Administrative - based non-judicial mechanisms are typically available free of charge to complainants. The use of video links or virtual conferencing facilities, the adoption of more relaxed evidential rules, and the fact-finding role played by government officials in these types of mechanisms also helped reduce the burden of engaging in such processes for migrant workers.

Building migrant worker trust and awareness in State/Administrative - based non-judicial mechanisms also remains a work-in-progress. Many of the same challenges identified in access to State/Administrative - based judicial mechanisms are also applicable to State/Administrative - based non-judicial mechanisms. These included constraints around delivery of services in the native languages of migrant workers, staff capacity, fear of reprisals and challenges with enforcing awards. In all jurisdictions reviewed, compensation awards obtained through State/Administrative - based non-judicial processes generally have to be enforced by the migrant worker claimant by initiating separate or follow-on civil proceedings, which involve added costs and time that migrant workers cannot afford. This means that migrant workers, even where successful in obtaining an award in their favour, would often not receive adequate remedy due to challenges in enforcing the award.



Irregular Cambodian migrants arrive at the IOM reception centre in Poipet, a border town with Thailand and receive an information-awareness session on the dangers of irregular migration. © IOM 2016/Muse MOHAMMED

4.2 LOCATION-BASED GRIEVANCE MECHANISM- FINDINGS

4.2.1 HONG KONG SAR, CHINA



In general, State/Administrative - based mechanisms for the resolution of labour-related grievances are well developed. Some efforts have been made by the authorities of the Hong Kong SAR, China to improve accessibility for migrant workers.⁸⁵ Migrant workers have the option of filing claims in their own language, while interpretation services are provided free of charge during proceedings. However, the efforts of promotional campaigns (e.g. hosting information kiosks for workers) have generally focused on migrant domestic workers, who are also aided significantly by a vibrant civil society network, while other migrant worker populations appear to be underserved.

Non-judicial grievance mechanisms have been designed to enable individuals without legal training to be able to benefit from the grievance resolution services provided. For example, when the claimant seeks to use the Labour Department's conciliation services, the Labour Department staff will first seek to explain the claimant's rights. These services are provided free of charge. The practical and procedural barriers to bringing claims are reduced by the relatively informal nature of proceedings, which are presided over by a presiding officer (in the Labour Tribunal) and an adjudicator (in the Small Claims Tribunal). In both forums, legal representation is not permitted, which also helps reduce the costs of bringing claims. While claimants and defendants may still choose to retain legal counsel to advise on case strategy and assist in drafting claims, these mechanisms are designed to enable those who cannot afford legal representation to have access to remedies.

⁸⁵ In particular, the Labour Department should be commended for actively producing practical guides, promotional leaflets and posters in a range of languages typically spoken by international migrant worker groups in Hong Kong SAR, China. Written response from the Labour Department to IOM (May 2022).

Accessibility nonetheless hinges on being able to stay in Hong Kong SAR, China to engage in local grievance resolution processes. There are promising practices to use video links to enable remote provision of evidence and attendance at hearings, which could enable migrant workers to see cases to their resolution even after their return of the country of origin.

Promising Practice: Video links may be a means of allowing returnee migrant workers to continue to remotely pursue claims filed at the Labour Tribunal. The claimant may appear at tribunal hearings via video link and provide evidence via video link. It must be noted that while these features have been established in regulations, the availability of these mechanisms in practice depends on the specific circumstances of each case.⁸⁶ It must be noted that a public consultation is currently under way in Hong Kong SAR, China on the use of remote hearing of legal proceedings, including at the Labour Tribunal.⁸⁷

However, migrant worker claimants who are not assisted by lawyers and/or NGOs will probably not be aware of the possibility of leveraging video links for remote hearings. Furthermore, migrant workers may still need to be assisted by NGOs or lawyers as informal administrative interactions with the relevant agencies are generally conducted in English or Cantonese, for example enquiries to follow up on case status.

It must be noted that in the case of migrant domestic workers, a significant legal barrier remains due to the “two-week rule”, which requires domestic workers to leave Hong Kong SAR, China or find a new employer within 14 days of contract termination. This prevents many from accessing remedies through State/Administrative - based grievance mechanisms, as they are unable to commence and conclude the grievance resolution processes before they are required to leave Hong Kong SAR, China. Extensions of stay may be granted to enable workers to pursue labour-related claims, but only on a discretionary basis and at a cost to the migrant worker. Without employment, these workers would probably need to seek assistance from NGOs for their daily living expenses and accommodation. Furthermore, migrant workers who have breached their conditions of stay, for example if their employer coerced them into performing work outside the scope of the employment contract, may be deterred from filing labour-related claims due to fear of prosecution for immigration-related offences. While the Immigration Department has the discretion not to pursue a prosecution against workers who have been coerced into such situations, there is no formal procedure with clearly defined requirements that would enable workers to proactively seek immunity. Nonetheless, there are some cases where the Immigration Department has permitted migrant domestic workers to switch employers where requisite evidence of exploitation is provided, which can be helpful for workers in pursuing claims as they can earn an income while case proceedings are ongoing. Notably, migrant workers in sectors other than domestic work and who hold a general employment policy visa are not subject to the two-week rule.

Access to civil proceedings before the higher courts (the District Court or High Court) is challenging for migrant workers. The costs of legal representation and the potential risk of having to pay the defendant’s costs (should the defendant win the case) would probably be prohibitive for migrant worker claimants. Although legal aid is available in these cases under [Legal Aid Ordinance \(Cap. 91\)](#) and accompanying

⁸⁶ Justice Without Borders, [Accessing Hong Kong courts from abroad: A strategic guide to remote video link for migrant workers](#) (July 2017), p. 35.

⁸⁷ Government of the Hong Kong SAR, China, [Public consultation on draft Courts \(Remote Hearing\) Bill launched](#) (June 2022).

regulations, there is no guarantee that claimants will be able to successfully obtain aid in practice.⁸⁸ This is because the legal aid department will consider not only the financial position of the claimant, but also the merits of the claimant's case.

With respect to the criminal justice system, it must be noted that Hong Kong SAR, China does not criminalize forced labour or trafficking for labour exploitation. As such, a migrant worker who is a victim of trafficking for labour exploitation, or of forced labour, may not receive compensation under the Criminal and Law Enforcement Injuries Compensation Scheme that is commensurate with the actual harm suffered. The trafficker may still be prosecuted for other offences,⁸⁹ and the victim may still receive compensation, only if they suffer personal injuries as a result of the crime.⁹⁰



Migrant construction worker, Hong Kong SAR, China. © Unsplash 2022/CATGIRLMUTANT

⁸⁸ See for example Justice Without Borders, [Victory in Hong Kong: Migrant worker wins legal aid appeal from abroad](#) (March 2018).

⁸⁹ See [Trafficking in Persons](#) under the Topics and Issues section of the Security Bureau website.

⁹⁰ Meaning that the victim died/sustained permanent disability from the incident, or the injury sustained by the victim gave rise to at least three days' hospitalization/sick leave as certified by a registered medical practitioner/registered Chinese medicine practitioner. See [Criminal and Law Enforcement Injuries Compensation \(CLEIC\) Scheme](#).

4.2.2 MALAYSIA



State/Administrative - based mechanisms are often perceived as inaccessible due to language, administrative, legal and financial barriers. In particular, migrant workers whose work permits have been cancelled (e.g. due to termination of their employment) may stay in Malaysia if they obtain a “Special Pass” at a cost. However, it appears to be very difficult to obtain an extension of a migrant worker’s visa to cover the entire duration of remediation processes.⁹¹ Furthermore, the holder of a Special Pass does not have an explicit right to work and is unable to earn an income when engaging in State/Administrative - based grievance mechanisms. Migrant workers would probably have to rely on the support of friends, NGOs, or other organizations to pursue a claim. They may also take up irregular employment in order to earn an income, which may lead to increased risk of exploitation. Due to these cost factors and structural barriers, migrant workers often prefer to return home rather than pursue a claim.

The legal and practical barriers created by this policy impact the ability of workers to engage in remediation processes offered by State mechanisms, as it tips the power imbalance even further in favour of employer defendants. Thirty-eight per cent of cases filed with the Department of Labour are withdrawn by migrant workers (because cases were settled outside the State process or the worker may have left Malaysia)⁹² or dismissed because the migrant worker failed to attend the hearing (again, possibly because the worker had to return to the country of origin). Only an estimated 20 per cent of the complaints filed proceed to a hearing before the Labour Court.⁹³ These statistics indicate how in practice, while migrant workers may be able to access the mechanism and file a complaint, they are not on equal footing with the employer, who does not face the same time pressure and financial burden to reach a resolution.

Furthermore, the risk remains that undocumented workers who come forward with claims will be subject to deportation, as their case file may be referred to the Immigration Department of Malaysia or the police. There have also been cases of labour inspectors conducting joint visits with immigration officials; the conflicting mandates of labour inspectors and immigration authorities could detract from the protection of labour standards and workers’ rights. As the Immigration Department continues

⁹¹ Interview with Our Journey.

⁹² Bar Council Malaysia, *Migrant Worker Access to Justice: Malaysia* (Kuala Lumpur, 2019), p. 129.

⁹³ *Ibid.*, p. 128.

to proactively pursue sanctions against undocumented workers, these groups are likely to remain deterred from seeking redress through State systems due to fears of deportation and arrest.⁹⁴ In addition, due to the COVID-19 pandemic, many migrant workers did not wish to file an official State-based complaint to resolve their grievances due to fears of potential job loss and not being able to return home when borders were closed.⁹⁵ A recent ruling of the Court of Appeal made clear that the Labour Court could not decline to hear claims for unpaid wages by undocumented migrant workers.⁹⁶ However, it remains to be seen whether this case will encourage more undocumented migrant workers to use the Labour Court.

Delays in grievance resolution processes are also common. While the Labour Courts have an internal key performance indicator to resolve disputes within 90 days of referral, adjournments are often granted due to frequent requests for postponements.⁹⁷ In addition, the Labour Courts are burdened with a huge workload, but have a disproportionately small number of labour officers.⁹⁸ Many of the challenges faced by migrant worker claimants in using and accessing the non-judicial mechanisms are compounded where judicial proceedings are involved. Criminal proceedings can take 12 months or more.⁹⁹ Cases that go through the Industrial Relations Department and then to the Industrial Court have historically taken years to be resolved, although recent measures (including limits on seeking postponements at the Industrial Court and use of electronic filing systems and increasing capacity of courts to deal with backlog of cases) have enabled more cases to be resolved within 12 months.¹⁰⁰

The increased complexity and costs of judicial proceedings also highlight the needs of the aggrieved parties to have access to sources of information, advice and expertise necessary to engage in these processes. These complex procedural steps may deter migrant workers from accessing State-based judicial mechanisms without the support of pro bono legal assistance, as this would require fluency in drafting Malaysian court documents. Similarly, the criminal justice system is often intimidating to navigate without legal assistance or NGOs, especially for migrant workers, who often do not speak Bahasa Malaysia.¹⁰¹ However, depending on the location of the worker, they may not be able to access such forms of support. The lack of migrant worker service providers in Kedah, Kelantan, Pahang, Perlis and Terengganu makes it difficult for migrant workers residing in these regions to access justice, as they do not have the support, advice and assistance needed for the filing of police reports and court appearances that usually take place in the locality wherein the violation has occurred.¹⁰²



Migrant workers repairing fishing boats, Viet Nam.
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⁹⁴ Interview with MTUC (May 2022).

⁹⁵ Interview with Our Journey.

⁹⁶ Andy Hall, *Appeals court rules undocumented worker can take case to Labour Court in Malaysia* (May 2022).

⁹⁷ ILO, *Report on Review of Malaysia's Labour Dispute Resolution System* (March 2020).

⁹⁸ Ibid.

⁹⁹ Bar Council Malaysia, *Migrant Worker Access to Justice: Malaysia* (Kuala Lumpur, 2019).

¹⁰⁰ Ibid.

¹⁰¹ Interview with Our Journey.

¹⁰² ILO, *Mapping of service provision to migrant workers in Peninsular Malaysia* (2021).

Moreover, even where migrant workers have support from CSOs, these service providers often face their own difficulties in accessing reliable and dedicated pro bono lawyers to support migrant worker claimants. A government-funded Legal Aid Bureau in Malaysia is in operation, but assistance through this bureau is not rendered to migrant workers,¹⁰³ and is not available for civil claims (or to access State-based non-judicial mechanisms).

Notably, all the migrant workers interviewed in Malaysia as part of this study preferred to seek remedies through factory-level mechanisms, and resolving issues on a bilateral basis (i.e. directly with the employer).¹⁰⁴ State-based grievance mechanisms are typically used where the grievance involves the commission of a crime, or the migrant worker's claim involves serious rights violations.¹⁰⁵ Outside of these circumstances, NGOs and MRCs typically advise migrant workers to use State-based grievance mechanisms, where non-State/Administrative-based grievances mechanisms are unavailable or fail to result in the satisfactory resolution of grievances.¹⁰⁶ Where such referrals are necessary, MRCs will often also transfer the migrant worker to a safer place to prevent retaliatory actions by the employer, for example so that the employer is unable to forcibly repatriate the worker to prevent them from continuing with State-based grievance resolution processes.¹⁰⁷ Thus, to a certain extent, State-based grievance mechanisms are often viewed as the last resort for redressing grievances.



Migrant workers on a pineapple plantation in Viet Nam. © Pexels 2021/Quang Nguyen VINH

¹⁰³ Ibid.

¹⁰⁴ Worker interviews conducted in Malaysia.

¹⁰⁵ Interview with MTUC (May 2022).

¹⁰⁶ Interview with MTUC (May 2022).

¹⁰⁷ Interview with MTUC (May 2022).

4.2.3 PHILIPPINES



Women at work repairing fishing nets, the Philippines. © Pexels 2021/Quang Nguyen VINH

Of the jurisdictions reviewed, the Philippines has a relatively mature State-based grievance mechanism to capture grievances against employers and PRAs, and State agencies have significant experience in assisting Filipino overseas migrant workers in accessing remedies in these cases. The Single-Entry Approach (SEnA) system, which creates multiple entry points for Filipino migrant workers to access State-based non-judicial grievance resolution processes, has made State-led mediation of disputes more accessible to workers. While there remain some concerns around limited worker understanding of the jurisdiction of each of the different agencies – Overseas Workers' Welfare Administration (OWWA), POEA¹⁰⁸ and National Labor Relations Commission (NLRC)¹⁰⁹ – in general, workers have a good awareness of the State channels available to file grievances. This is evidenced by the fact that the majority of workers seek assistance from OWWA on their own, without assistance from NGOs in most cases.¹¹⁰ A recent survey of 1,285 returnee migrant workers in the Philippines (Returnee Survey) found that 43.5 per cent of respondents (578) had sought assistance from a third party.¹¹¹ Of those who had sought assistance, 48.1 per cent (278) had sought assistance from a State agency,¹¹² and 38.6 per cent (223) had sought assistance from the Philippine Embassy, Consulate, or Philippines Overseas Labor Office (POLO).¹¹³ Only 0.7 per cent of respondents (4) had sought assistance from NGOs in the Philippines, while only 0.3 per cent (2) had sought assistance from NGOs in the country of destination. While not all of these requests for assistance would necessarily be grievance-related, the findings highlight the popularity of State agencies as the primary point of contact for Filipino migrant workers seeking assistance.

¹⁰⁸ As of the publication of this report, the POEA has been merged into the newly established Department of Migrant Workers (DMW).

¹⁰⁹ Interview with POEA (May 2022).

¹¹⁰ Interview with OWWA (May 2022).

¹¹¹ The data shown here represent the preliminary findings of a telephone survey conducted by IOM in cooperation with the Scalabrini Migration Center between May and July 2022. The survey respondents comprised 1,235 returnee Filipino migrant workers who had returned to the Philippines from overseas between 16 March 2020 and 30 April 2021, and not remigrated since, and an additional 50 respondents who had returned to the Philippines from overseas between 16 March 2020 and 30 April 2021 and had since remigrated.

¹¹² Namely, the Department of Labor and Employment (DOLE), the POEA, OWWA, Department of Foreign Affairs, or the Office of the Undersecretary for Migrant Workers Affairs (OUMWA).

¹¹³ The figures are not cumulative, as respondents were able to select more than one choice in their survey responses.

The tendency of Filipino migrant workers to use State/Administrative - based grievance mechanisms could be due to OWWA's oversight over pre-departure orientation training as well as their administration of a welfare fund maintained by membership fees paid by migrant workers. Most importantly, the introduction of the SEnA has also increased the speed of case resolution and the settlement rate.¹¹⁴ While the Returnee Survey did not ask respondents why they chose to seek assistance from State/Administrative - based rather than non-State actors, the survey findings suggest that State/Administrative - based grievance mechanisms that are well socialized among migrant workers, and are perceived as efficient and effective in resolving grievances, are more likely to be utilized by them.

That said, migrant workers interviewed in the Returnee Survey have reported barriers to accessing assistance from State actors. Among the 56.5 per cent (698) of respondents who did not seek help from a third party, 24.9 per cent (92) did not do so because of various constraints – including distance from an embassy, long lines for help, a lack of government support, the cost of documentation required to apply for assistance, COVID-related constraints (e.g. mobility restrictions or a fear of being sent to hospital), a fear of asking for help and a fear of their employer.¹¹⁵

Promising Practice: During the COVID-19 pandemic, OWWA and POEA have sought to use technology platforms to conduct outreach to workers, including by enabling online filing of complaints through email or web portals, and working to improve their ability to respond to complaints made through Facebook and other social networking sites. In particular, OWWA has also worked specifically to improve access for workers (or their relatives) who are located far from OWWA offices and do not have the time and means to file claims in person. This included developing a chatbot, with the support of IOM and the Blas Ople Center and technology solutions provider Diginex Solutions,¹¹⁶ to help triage cases received through online platforms and enable self-administration and self-filing of complaints.¹¹⁷ Where migrant workers do not have the financial resources to attend conciliation and mediation conferences due to costs of travel to the venue, OWWA enables the use of Zoom, Microsoft Teams and Facebook video calls to enable them to attend such meetings virtually.¹¹⁸

In addition to the SEnA grievance mechanism, the Philippines has empowered other agencies, such as the Department of Foreign Affairs, to support migrant workers overseas. The Department of Foreign Affairs administers a legal assistance fund, which is used to pay for legal services for migrant workers in distress and covers fees for lawyers, court fees and charges, among other litigation expenses incurred in the country of destination.¹¹⁹ Further, the newly established Department of Migrant Workers¹²⁰ will be administering a new fund to provide legal and other forms of assistance to migrant workers.¹²¹ Furthermore, the POLO

¹¹⁴ Center for Migrant Advocacy, *Access to Justice Part I* (July 2015).

¹¹⁵ These data are not further disaggregated by individual constraint factors.

¹¹⁶ This project was funded by the U.S. State Department through the Global Fund to End Modern Slavery.

¹¹⁷ Interview with OWWA (May 2022).

¹¹⁸ Interview with OWWA (May 2022).

¹¹⁹ ALTER Project: IOM and Blas F. Ople Policy Center and Training Institute, *Seeking Justice: Developing improved OFW feedback and complaints mechanisms* (2021), p. 64. It is also noted that the Assistance-to-Nationals fund administered by the Department of Foreign Affairs is also available to provide services to Filipino migrant workers in countries of destination, including repatriation, urgent rescue of workers in distress and provision of medical care.

¹²⁰ On 30 December 2021, then President Duterte signed into law the Department of Migrant Workers Act (Republic Act 11641). The new law reflects the Government of the Philippines' commitment to the Global Compact for Safe, Orderly and Regular Migration as it is the first national legislation to reference and incorporate the Global Compact. A definition of Ethical Recruitment has officially been mainstreamed into the Philippine legal framework: Section 3(b) of the law states that Ethical Recruitment "refers to the lawful hiring of workers in a fair and transparent manner that respects and protects their dignity and human rights". It also introduces stronger protection measures for all overseas foreign workers, including undocumented migrants, and reorganizes all the different agencies with a role in the labour migration process by consolidating them into a single government body. For more information, please see the [Department of Migrant Workers](#).

¹²¹ Department of Migrant Workers Act (Republic Act 11641), Section 14.

offer conciliation support globally.¹²² POLOs are headed by the Labour Attaché (Department of Labour and Employment personnel), who manages the Filipino Workers' Resource Center.¹²³ The other team members include foreign service personnel from the Department of Foreign Affairs, a welfare officer and centre coordinator (both from OWWA), and an interpreter.¹²⁴ The welfare officer of OWWA is designated as the person responsible for receiving complaints and concerns from Filipino overseas migrant workers. Upon receipt of a complaint from the migrant worker or their relatives, the OWWA welfare officer in the POLO will first discuss the grievance with the migrant worker and take a statement from them. The officer will then seek conciliation or mediation, for example calling the employer or their representatives or the foreign PRA. The nature of conciliation depends on the individual country office and the nature of the issue. If no solution is found, the Philippines Embassy may coordinate with OWWA and POEA to repatriate the migrant worker, report the case to the relevant authority, or provide shelter.

Even after a Filipino migrant worker returns to the Philippines, the Joint and Solidary Liability provision (JSL provision)¹²⁵ enables State/Administrative - based grievance mechanisms to address grievances by workers seeking remedies for acts committed against them by a foreign employer by pursuing a case/complaint against the PRA based in the Philippines, which is deemed jointly and solidary liable for any abuse committed against the worker while employed abroad.

Promising Practice: In line with Recommendation 34 of the [Montreal Recommendations on Recruitment](#), the JSL provision enables overseas Filipino migrant workers the opportunity to seek monetary compensation from the relevant Philippines PRA for grievances arising out of the employer–employee relationship. This addresses situations where filing claims against the foreign employer through State/Administrative - based grievance mechanisms in the country of destination is not possible or limited. In addition to the JSL provision, Philippines PRAs are required to pay an escrow deposit of PHP 1 million,¹²⁶ which acts as a bond to pay out migrant worker claims – although migrant workers reportedly still face challenges in satisfying claims, due to insufficient escrow balances.¹²⁷ Part of this may be due to the fact that the requirement to maintain the escrow amount falls away where the PRA's licence has been suspended or cancelled.¹²⁸ The JSL provision also allocates the risk of employer wrongdoing to the PRA, which is better placed to bear this burden compared with the migrant worker, who holds the most vulnerable position.

However, it must be noted that from the Philippines PRA's perspective, the JSL provision creates a financial risk as they could potentially incur the cost of compensating the worker. The PRA may, at their own discretion, seek legal action in the country of destination against the employer to recoup these costs. However, there is no guarantee that they will be successful. The PRAs interviewed as part of the Stakeholder Mapping were not aware of any instances where their industry peers had sought to commence such legal actions against employers in countries of destination.¹²⁹ As such, the JSL provision may also result in unfair outcomes for PRAs, especially where the PRA has made good faith

¹²² There are currently 34 POLOs located globally, 1 of which is in Asia, 13 in the Middle East, 7 in Europe and 3 in the Americas.

¹²³ This is being transitioned into a new structure, where the former POLOs would be managed by the Department of Migrant Workers and would henceforth be known as Migrant Workers Offices (MWOs).

¹²⁴ See Republic of the Philippines, [Embassy of the Philippines \(Athens, Greece\), Philippine Overseas Labor & Office](#).

¹²⁵ Section 10 of The Migrant Workers and Overseas Filipinos Act 1995 (RA 8042) renders a foreign employer/principal and a Philippines recruitment agency jointly and severally liable for damages and unpaid wages claims filed by overseas Filipino workers in the Philippines – enabling workers to pursue remedies in the local courts against local employment agencies for damages caused by overseas employers.

¹²⁶ [The Revised POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Filipino Workers](#).

¹²⁷ Center for Migrant Advocacy, [Migrant domestic workers' access to justice: A study on administrative cases and money claims](#) (2018).

¹²⁸ *Ibid.*

¹²⁹ Interviews with Staffhouse and HRD Employment (May 2022).

efforts to exercise due diligence with the employer and ensure that the migrant worker is deployed to a workplace with good working and living conditions.

In addition, it must be noted that this solution may not result in rights-compatible remedial outcomes in all instances, as justice may not always be served. The foreign employer who commits the wrongdoing is held liable under the JSL provision. However, it is often the PRA that bears the cost or possibility of conviction. The migrant worker may be able to receive monetary compensation from the PRA for the harm suffered at the hands of the employer. However, neither criminal sanctions are imposed against the employer, nor does the employer have to pay any compensation to the worker. The Philippines may remove the accreditation of the employer, thus preventing them from recruiting and employing Filipino workers in the future. However, this administrative penalty may not be commensurate with the wrongdoing committed by the employer, especially in cases involving physical, sexual, or psychological abuse. In addition, it is reported that a lack of a centralized database to record the information and status of blacklisted employers has also hindered effective enforcement of this administrative penalty in practice.¹³⁰ In some instances, the Government of the Philippines has sought to impose blanket bans on the deployment of workers to certain countries of destination;¹³¹ however, this may result in worse outcomes for Filipino migrant workers. For example, following the Philippines' deployment ban to Lebanon, the number of domestic workers from the Philippines actually increased, with on average 11,000 Filipinos finding jobs in Lebanon each year through unofficial or irregular channels.¹³² Most domestic workers that have arrived in Lebanon after the ban are undocumented and therefore face a higher risk of trafficking and forced labour. Similarly, the temporary ban on migration to Kuwait led to increased migration through unsafe and unregulated channels.¹³³

Nonetheless, the JSL provision has also been valuable in building greater awareness among PRAs of the importance of employer due diligence and ensuring that workers are deployed to workplaces with adequate living and working conditions. In order to avoid being held liable for employment-related disputes under the JSL provisions and the associated financial impact of paying out worker's claims, some PRAs have implemented protocols for handling workers' grievances.¹³⁴

Promising Practice: A Philippines-based PRA that practices and advocates for non-charging of recruitment fees to workers, Staffhouse has an in-house team of designated welfare officers whose responsibility is to respond to migrant worker enquiries and grievances when in the country of destination. Migrant workers are given the contact details of these in-house welfare officers and are encouraged to reach out to the PRA if they encounter any issues during their deployment. Where Staffhouse is notified of a grievance, the welfare officer communicates with the worker to find out more details regarding the grievance and at the same time, where appropriate, contacts the employer to verify the issue. Staffhouse will then encourage the worker and the employer to resolve the dispute amicably and may even support the parties as an informal mediator.¹³⁵

¹³⁰ Interview with Blas F. Ople Policy Center and Training Institute (May 2022). As of the publication of this report, an employer blacklist and whitelist is being piloted by the Department of Migrant Workers in the Kingdom of Saudi Arabia migration corridor, in close cooperation with the Saudi Arabia Government.⁷

¹³¹ Section 5 of the Republic Act 10022.

¹³² ILO, *Tricked and Trapped Human Trafficking in the Middle East* (2013), p. 46.

¹³³ Human Rights Watch, *Kuwait/Philippines: Protect Filipino Migrant Workers* (2018).

¹³⁴ Interviews with Staffhouse and HRD Employment (May 2022).

¹³⁵ Interview with Staffhouse (May 2022).



Working in a rice plantation, the Philippines.
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Another PRA in the Philippines, HRD Employment Consultant and Multi-services, INC. (HRD Employment), provides both pre-application and pre-departure orientation seminars to ensure that potential migrant workers are apprised of their rights to seek remedies and where they may access assistance.¹³⁶ Furthermore, HRD Employment will also inform potential employers about their obligations under Philippine law and make them aware of their potential liabilities under the JSL provision. These two PRAs have attended capacity-building and consultation activities convened by IOM and other international partners and are part of a group of Philippine PRAs and CSOs advocating for ethical recruitment practices within the local industry and implementation of the National Action Plan on Fair and Ethical Recruitment.¹³⁷

However, most Philippines PRAs do not have in-house capabilities to support migrant workers in the resolution of grievances; they may not have personnel who are sufficiently trained in handling grievances, or they may not have the resources to support migrant workers when they are in the country of destination. Notably, the JSL provision has also resulted in cases of PRAs pressuring migrant workers to agree to quitclaims, or to settle for less than what is owed to them under the applicable laws.¹³⁸

Concerns also remain that the process for grievance resolution is too lengthy, even following the introduction of the SEnA system, causing workers to lose hope in achieving remedial outcomes.¹³⁹ The mandatory conciliation period is 30 days. If the parties fail to reach settlement by the end of this period, the worker has then to file a case before POEA and the NLRC, which could take anywhere from a few additional months to over a year, despite time-bound procedural steps.¹⁴⁰ Migrant workers may only have a one-to-two-month window to have their claim resolved once they have returned to the Philippines before they are deployed once again.¹⁴¹ Thus, the lengthiness of proceedings may limit their ability to see cases through to their resolution. Resource constraints and migrant worker shortages are also noted as hindering faster resolution of claims. Furthermore, migrant workers have reported frustration at their case being transferred between the various agencies due to confusion over which agency has jurisdiction over the grievances raised.¹⁴² It is hoped that the consolidation of the various agencies into the Department of Migrant Workers may improve the efficiency of grievance resolution processes. During the consolidation process, the existing channels and modality for Filipino overseas migrant workers to report grievances through the SEnA system is also undergoing review. These efforts aim to scale up promising practices and enhance the effectiveness of the current SEnA system.

¹³⁶ Interview with HRD Employment (May 2022).

¹³⁷ The [National Action Plan on Fair and Ethical Recruitment](#) was developed through consultations with a broad range of stakeholders from the Philippine Government, civil society, and private sector, with technical support from IOM Philippines. It was adopted in November 2021, shortly before the enactment of the Department of Migrant Workers Act.

¹³⁸ Center for Migrant Advocacy, [Access to Justice Part II](#) (July 2015).

¹³⁹ Interview with Blas F. Ople Policy Center and Training Institute (May 2022).

¹⁴⁰ Center for Migrant Advocacy, [Migrant Domestic Workers' Access to Justice: A study on administrative cases and money claims](#): (2018).

¹⁴¹ Interview with OWVA (May 2022).

¹⁴² Interview with POEA (May 2022).

4.2.4 THAILAND



Language, procedural and legal barriers were acknowledged by all consulted stakeholders as key obstacles that prevent migrant workers from accessing State/Administrative - based grievance mechanisms.¹⁴³ Commendable efforts have been made by the Department of Labour Protection and Welfare (DLPW) and the Ministry of Justice to improve their respective capacity to deliver legal counseling and assistance and mediation services in the languages understood by migrant workers (primarily Khmer, Laotian and Myanmar languages). However, persistent shortages remain,¹⁴⁴ especially when catering to migrant workers with low literacy or those from ethnic minority groups.¹⁴⁵ In an interview with two Myanmar workers from the Rakhine state, the need for Rakhine–Thai interpretation (rather than Myanmar–Thai interpretation) was highlighted.¹⁴⁶ In addition, migrant workers who filed claims at the DLPW or applied for a grant under the Social Security Fund noted that due to the fact that most of the paperwork required was in formal Thai, migrant workers faced difficulty handling the documentation without the help of NGOs.¹⁴⁷

Migrant workers interviewed for this report expressed frustration about the lengthiness of the process, stating that some of their co-claimants had already returned home or moved to another province for work. This impacted their ability to obtain compensation, as the DLPW required them to sign the award in front of the officer.¹⁴⁸ Prioritizing the fast resolution of cases is crucial, as migrant workers have to leave Thailand within 15 days following the expiry of their work permit or find a new employer within 30 days where the employment contract is terminated through no fault of the worker.¹⁴⁹ However, provincial DLPW offices located in areas with large populations of migrant workers do not have sufficient staff and resources to handle the caseload and conduct outreach activities to socialize the DLPW grievance

¹⁴³ Interviews were conducted with migrant workers from Myanmar and Cambodia in the construction, garment and electronic industries in Samut Prakan Province and Samut Sakhon Province, Bangkok.

¹⁴⁴ Interview with DLPW; interview with The Rights and Liberties Protection Department (RLPD) (May and June 2022, respectively).

¹⁴⁵ See USAID Thailand Counter Trafficking In Persons, *Labor Abuse Complaint Mechanisms in Thailand* (March 2020), p. 31.

¹⁴⁶ Interview with a migrant worker from Myanmar working in garment industry in Bangkok (June 2022); interview with a migrant worker from Myanmar in the fisheries industry (June 2022).

¹⁴⁷ Field research on migrant worker experiences on grievance mechanisms (May to June 2022).

¹⁴⁸ Interview with two Cambodian migrant workers in the construction industry (June 2022).

¹⁴⁹ Section 50 of the Royal Ordinance on the Management of Foreign Workers, B.E. 2560 (2017), as amended in 2018.

mechanism.¹⁵⁰ If the DLPW officers are unable to resolve the case before the worker is repatriated, workers are unlikely to view the DLPW mechanism as a viable pathway to seek redress and may be deterred from filing claims or drop out of the process.¹⁵¹ The DLPW has sought to address this issue to a certain extent by facilitating the payment of awards to migrant workers through cooperation with the relevant embassy after they have returned to the country of origin. Nonetheless, DLPW officials recognize that migrant workers may accept lower compensation and withdraw complaints due to these difficulties.¹⁵²

While workers in an irregular situation may not be excluded from accessing certain State/Administrative - based grievance mechanisms in law, in practice there is a risk that irregular migrant workers may be exposed to criminalization when lodging claims. In order to benefit from receiving compensation or assistance through State/Administrative - based grievance mechanisms, migrant workers must submit valid legal documentation such as identity cards and work permits. Migrant workers who do not have these documents (e.g. because they have been retained by the employer or because of their irregular situation) are at risk of deportation and criminalization for immigration-related offences if they lodge complaints with State authorities. Three workers of Myanmar in the canned food industry in Samut Sakhon province were afraid to file claims against their previous employer for wage theft and exploitative working conditions. They feared that doing so would potentially expose them to arrest and deportation, because their broker had wrongfully registered their place of work with the Bangkok branch, which meant that they were informally working in the Samut Sakhon province.¹⁵³

Another key concern migrant workers face is the risk of potential retaliation from their employers. For example, an employer filed 39 criminal and civil cases against human rights defenders, reporters and workers who exposed exploitative working conditions at its poultry farm.¹⁵⁴ Migrant workers were also reluctant to file cases against employers due to fear that this would prevent them from securing future employment.¹⁵⁵



Migrant construction workers in Bangkok, Thailand. © Unsplash 2017/Etienne GIRARDET

¹⁵⁰ See USAID Thailand Counter Trafficking In Persons, *Labor Abuse Complaint Mechanisms in Thailand* (March 2020), p. 17.

¹⁵¹ ILO, *Access to Justice for Migrant Workers in South-East Asia* (2017), p. 28.

¹⁵² Five Corridors Project, *Myanmar–Thailand: Grievance and Remedy* (October 2021).

¹⁵³ Interview with three workers from Myanmar who previously worked in the food industry in the Samut Sakhon province (May 2022).

¹⁵⁴ *Fact Sheet: Thammakaset vs. human rights defenders and workers in Thailand*, The Observatory for the Protection of Human Rights Defenders (2019).

¹⁵⁵ Interview with 11 Burmese workers in the glove industry in Samut Prakan Province (June 2022).

In addition, enforcement of Labour Court awards remains a challenge, despite criminal sanctions being available against employers who fail to comply. Even where the employer is sanctioned to pay a fine for failing to comply with a Labour Court award, the fine is paid to the State and the migrant worker claimant does not receive any payment. To enforce an award and receive compensation, migrant worker claimants need to obtain an enforcement order from the Labour Court. However, no legal aid is available for migrant worker claimants to initiate this legal action. There is thus an additional financial burden and time cost for migrant workers who need to enforce awards, which may prevent them from achieving an effective remedial outcome. For example, in the case of one employer, the labour inspector ordered the overseas-based factory owner to pay THB 242 million (approximately USD 7.4 million) to workers due to violations of labour laws, including failure to pay wages, overtime, holiday and severance pay.¹⁵⁶ The company offered to pay the workers in instalments over a 10-year period, instead of within 30 days, claiming bankruptcy.¹⁵⁷ A group of international NGOs and unions conducted a public pressure campaign, demanding that the brands that sourced from the factory and the factory owner pay the USD 8.3 million settlement (including interest). Following a 13-month campaign, they succeeded, and one of the brands agreed to advance severance funds to the factory owners to ensure workers received timely payment.¹⁵⁸ In this case, without the intervention of the NGOs and unions to pressure the brands to advance the funds owed to the migrant workers, the migrant workers may not have received compensation despite receiving an award in their favour.



¹⁵⁶ IndustriALL Global Union, 13-month campaign leads to union win (2022).

¹⁵⁷ *Bangkok Post*, Sacked workers declare win after Victoria's Secret agrees to pay \$8.3m (2022).

¹⁵⁸ Victoria's Secret, PressBrilliant Alliance Thailand, Victoria's Secret (2022).

4.2.5 VIET NAM



In practice, Vietnamese migrant workers are unlikely to seek redress through State/Administrative - based mechanisms. An ILO study found that almost one in every three migrant workers interviewed decided not to make a complaint as they did not know where, or how, to lodge it, or believed it would not be given due consideration.¹⁵⁹ Another study of migrant workers who migrated to Japan and Taiwan Province of the People's Republic of China found that 70 per cent of migrant workers did not seek any help despite experiencing abuses during deployment, as they thought they could handle the grievance situation on their own or did not believe that anyone could help them.¹⁶⁰ Those who did seek help tended to reach out to overseas Vietnamese organizations in the host country (34.8%). The next most common source was brokers (20.7%), followed by local service providers and counsellors (20.3%), seeking help from local law enforcement agencies (17.4%) and friends nearby (11.3%).¹⁶¹ These findings are echoed in the interviews with Vietnamese returnee migrant workers. Only 2 of the 15 migrant workers interviewed attempted to resolve their grievances by seeking assistance from Vietnamese government departments. In both these cases, the migrant workers sought help from the Vietnamese Embassy and the representative of the Ministry of Labour, Invalids and Social Affairs while in the country of destination. However, in both cases the migrant workers received no effective remedies.¹⁶² In one case, the Vietnamese Embassy intervened by asking the employer to treat the Vietnamese workers better; however, this intervention only resulted in retaliation against the complainant. The complainant eventually resigned, but received no compensation and sought help from the Ministry of Labour. The employer was fined and the complainant was awarded compensation, but the broker in Taiwan Province of the People's Republic of China kept the entirety of the sum. In the second case, neither the representative from the Ministry of Labour nor the Vietnamese Embassy in the country of destination responded to the migrant worker's request for assistance.

¹⁵⁹ ILO, *Complaint mechanisms for Vietnamese migrant workers* (2015).

¹⁶⁰ Global Fund to End Modern Slavery, *Estimating the Prevalence of Forced Labor among Vietnamese Adult Migrant Laborers to Japan/Taiwan* (June 2021).

¹⁶¹ Ibid.

¹⁶² Interview with Vietnamese migrant workers (July 2022).

Some stakeholders expressed that the cultural norm was to seek negotiation and settlement through consensus-driven processes (rather than an adversarial, litigation process).¹⁶³ The MRC in Ha Tinh Province noted that migrant workers tended to prefer seeking an out-of-court settlement in order to avoid lengthy court proceedings and any risk of retaliation.¹⁶⁴ For example, migrant workers may reach out to their local People's Communal Committee with recruitment-related grievances. The local People's Communal Committee may then refer their case to the provincial Department of Labour, Invalids and Social Affairs (DOLISA) or even help the migrant worker negotiate with the relevant PRA.¹⁶⁵ Notably, one migrant worker interviewed for this report sought help from the PRA, which successfully intervened on the worker's behalf to negotiate with the employers to pay for the costs of the worker's repatriation.¹⁶⁶

Three primary factors were identified as driving the lack of uptake of State/Administrative - based grievance mechanisms upon return to Viet Nam. First, irregular migration is prevalent among the Vietnamese migrant population. For example, one survey conducted by the ILO and IOM found that 90 per cent of Vietnamese migrants worked irregularly in Thailand.¹⁶⁷ Vietnamese migrant workers may migrate using forged travel documents or otherwise are forced into irregular status overseas (for example, because they abscond from exploitative workplaces¹⁶⁸ and have no choice but to stay in the country of destination to repay recruitment-linked debt). The interviews conducted with Vietnamese migrant workers for this report also suggested high incidences of irregular migration.¹⁶⁹ Where Vietnamese workers are in an irregular situation, they may be reluctant to lodge complaints with DOLAB as they may fear they will be sanctioned for failing to comply with Vietnamese laws and deprived of future opportunities to seek work overseas.¹⁷⁰ Notably, Article 47 of Decree No. 28 of 2020 penalizes migrant workers who abscond from their contractual workplace and stay in the country of destination after their labour contract expires, unless they abscond on the grounds of "suffering from labour coercion".¹⁷¹ It is however unclear whether accompanying implementation efforts have been undertaken to ensure that migrant workers are aware of this provision and are provided the necessary assistance to avail this safe harbour in practice.



Man making rice noodles, Viet Nam.
© Pexels 2021/Quang Nguyen VINH

¹⁶³ Interview with MRC staff from DOLISA in Ha Tinh Province (June 2022); interview with ILO Viet Nam (June 2022).

¹⁶⁴ Interview with MRC staff from DOLISA in Ha Tinh Province (June 2022).

¹⁶⁵ ILO, *Complaint mechanisms for Vietnamese migrant workers* (2015).

¹⁶⁶ Interview with Vietnamese migrant worker (July 2022).

¹⁶⁷ ILO and IOM, *Risks and rewards: Outcomes of labour migration in South-East Asia* (2018), p. 44.

¹⁶⁸ For example, there are reports of workers absconding from exploitative workplaces under the Republic of Korea's Employment Permit System, but choosing to remain in the Republic of Korea to work undocumented. See *Foreign Policy, Migrants are doing the jobs South Koreans sneer at* (January 2021).

¹⁶⁹ Two thirds of the 15 Vietnamese migrant workers interviewed either migrated through irregular channels or become undocumented while overseas. Vietnamese migrant worker interviews (July 2022).

¹⁷⁰ Interview with MRC staff from DOLISA in Ha Tinh Province (June 2022); interview with LIGHT, a member of M-Net (June 2022).

¹⁷¹ See *Decree No. 28/2020/ND-CP*.

Second, migrant workers may face challenges in accessing adequate information on their rights, the available channels for grievance resolution in Viet Nam and the proper entity against whom to file a complaint. None of the migrant workers interviewed for this Stakeholder Mapping reported seeking help from DOLAB. One migrant worker interview noted that the local People's Communal Committee or police should provide more guidance to Vietnamese migrant workers prior to their departure overseas.¹⁷² It is noted that Law No. 69/2020/QH14 on Vietnamese Guest Workers that recently came into effect in January 2022 states that pre-departure orientation should include the provision of information regarding the protection of migrant workers' legal rights. However, access to grievance mechanisms is not specifically addressed.¹⁷³ In this environment of information asymmetry, some migrant workers may rely on their broker to provide assistance. They may not even be aware of the identity of the PRA that deployed them abroad, as they have only communicated with the broker throughout the recruitment and migration process.¹⁷⁴ A key obstacle in reaching successful conciliation through DOLAB processes is the difficulty in identifying the relevant PRA against whom to lodge a complaint. Where a migrant worker lodges a complaint with DOLAB without the necessary information regarding the PRA, DOLAB may still attempt to help the migrant worker where the PRA has been misidentified or cannot be located, by sending a letter to the last known address of the suspected relevant PRA based on DOLAB's records.¹⁷⁵ This practice by DOLAB helps alleviate the burden on migrant workers to provide evidence to substantiate claims. However, PRAs may often change their corporate names or have no fixed office location,¹⁷⁶ making it difficult in practice for DOLAB and the migrant worker claimant to resolve grievances.

Third, migrant workers may fear retaliation from PRAs if they seek help through the DOLAB complaints procedures. Decree No. 119 requires that complaints are first addressed by the relevant PRA and only passed on to DOLAB if the complainant does not agree with the agency's decision.¹⁷⁷ This framework creates situations of potential conflicts of interest. Where the worker's grievances relate to violations committed by the recruitment agency, PRAs could potentially be placed in the position of "both arbitrator and accused".¹⁷⁸ There is a significant power asymmetry between migrant workers, especially in the case of low-wage workers, and the PRA. The PRA may be the broker of information and the gatekeeper to overseas employment opportunities. Some unscrupulous PRAs may potentially leverage this power to prevent workers from reporting grievances, for example by threatening to suspend the deployment application process or to impose financial penalties. A report by a group of United Nations Special Rapporteurs on the treatment of Vietnamese migrant workers in Saudi Arabia noted that victims of abuse who contacted representatives of Vietnamese PRAs were told to "work hard and not complain or ... [they] would face a fine for breaking their employment contract".¹⁷⁹ As many Vietnamese migrant workers incur significant debts to migrate,¹⁸⁰ they are reluctant to take any action that would jeopardize their employment and their ability to repay these debts.¹⁸¹ That being said, there are examples of promising practices. As noted in paragraph 4.41 above, in one case, the Vietnamese PRA helped the migrant worker resolve their grievance.

¹⁷² Interview with Vietnamese migrant worker (July 2022).

¹⁷³ Article 65 of Law No. 69/2020/QH14.

¹⁷⁴ Interview with ILO Viet Nam (June 2022).

¹⁷⁵ Interview with DOLAB (June 2022).

¹⁷⁶ Interview with MRC staff from DOLISA in Ha Tinh Province (June 2022).

¹⁷⁷ ILO, *Access to Justice for Migrant Workers in South-East Asia* (2017).

¹⁷⁸ *Ibid.*

¹⁷⁹ Letter from United Nations Special Rapporteurs on the human rights abuses perpetrated against a group of Vietnamese women and girls victims of trafficking UA VNM 5/2021 (October 2021), pp. 1–2.

¹⁸⁰ IOM, *Debt and the Migration Experience: Insights from South-East Asia*.

¹⁸¹ See for example extract from interview on p. 32 of Global Fund to End Modern Slavery, *Estimating the Prevalence of Forced Labor among Vietnamese Adult Migrant Laborers to Japan/Taiwan* (June 2021).

Promising Practice: The Viet Nam Association of Manpower Supply (VAMAS), an association for Vietnamese PRAs, also establishes principles for recruitment agencies involved in the resolution of migrant worker grievances. These principles are set out in the VAMAS Code of Conduct, to which PRAs may adhere on a voluntary basis. The VAMAS Code of Conduct states that all disputes should be resolved in accordance with the terms of employment contracts, Vietnamese and destination country laws, and international agreements. It also stipulates that migrant workers should be provided with support by PRAs, embassy officials and interpreters during the resolution of grievances.¹⁸² In practice, Vietnamese PRAs may engage with the employer to clarify the terms of employment contracts or provide migrant workers with contact details or information of Vietnamese State agencies that can provide support in the country of destination.¹⁸³

There are also promising practices whereby State agencies have provided support to migrant workers in resolving grievances. State-run MRCs may assist migrant workers by providing legal advice, supporting them in conciliation processes and the preparation of legal documents. For simple legal issues, the staff of the MRCs can provide advice to workers. For more complex issues, the MRC may connect the migrant worker with a lawyer from the local community, who provides their services free of charge.¹⁸⁴ In the provision of legal assistance, the MRCs assisted in negotiating outcomes in 12 legal complaints in 2019, with USD 4,000 awarded in favour of migrant workers.¹⁸⁵ The National Bar Association of Viet Nam has provided support to develop mechanisms to provide legal assistance through the MRCs.¹⁸⁶ In addition, DOLAB provides legal counselling services for migrant workers free of charge, including information on filing a claim, the procedural steps involved in lodging a complaint, and their rights.¹⁸⁷

However, MRCs, DOLAB and other State agencies and bodies, including provincial DOLISAs and Vietnamese embassy/consulate labour sections, face capacity and resource constraints when addressing migrant worker grievances. The MRC in Ha Tinh province noted that a key challenge faced by MRCs in delivering assistance to migrant workers is resource constraints.¹⁸⁸ Due to staffing constraints, MRC staff members often have multiple tasks and they are generally not legally trained. Cooperation with the Ministry of Justice has helped to plug the gap in legal expertise, but further capacity would strengthen the legal assistance provided through MRCs. DOLAB also has significant capacity constraints. There are only approximately 50 staff at DOLAB. Thus, even though DOLAB aims to respond to migrant worker grievances as soon as possible, processes may be delayed due to staffing shortages.¹⁸⁹ These constraints also appear among Vietnamese State agencies and embassies overseas. A returnee Vietnamese migrant worker described their frustration in attempting to seek help from the Vietnamese Embassy in the Republic of Korea because their passport had expired, but was unable to reach any person through the provided hotline.¹⁹⁰ One migrant worker interviewed for this study noted that they had tried to seek help from the Vietnamese Embassy and the Vietnam labour representative in Algeria, but no support was provided and the latter refused to receive the worker's calls. The worker remarked **“we did not know any other organization to turn to for help** and had to wait and depend on the employer” (emphasis added).¹⁹¹

¹⁸² Benjamin Harkins and Meri Åhlberg, *Access to Justice for Migrant Workers in South-East Asia* (ILO, Bangkok, 2017).

¹⁸³ Interview with VAMAS (June 2022).

¹⁸⁴ Interview with MRC staff from DOLISA in Ha Tinh Province (June 2022).

¹⁸⁵ Vietnam's *Response to the Voluntary GCM Review* (n.d.).

¹⁸⁶ ILO, *Tripartite Action to Protect Migrants within and from the GMS from Labour Exploitation (TRIANGLE project)*, Independent Mid-Term Evaluation (March 2013).

¹⁸⁷ Interview with DOLAB.

¹⁸⁸ Interview with MRC staff from DOLISA in Ha Tinh Province (June 2022).

¹⁸⁹ Interview with DOLAB (June 2022).

¹⁹⁰ Interview with ILO Viet Nam (June 2022).

¹⁹¹ Interview with Vietnamese migrant worker (July 2022).



Women working in a cotton plantation, Viet Nam. © Pexels 2020/Quang Nguyen VINH

Several migrant workers interviewed expressed a desire for more support in countries of destination, noting that “if there is Vietnamese representation in destination countries, where many Vietnamese migrant workers are working and if there is a helpline, we could easily get help when needed and do not have to illegally cross the border to another country to seek jobs.” One migrant worker called specifically on PRAs to protect workers, while another remarked “there must be a Vietnamese representative/interpreter in the destination country to oversee, support, and resolve any problems related to Vietnamese workers.”¹⁹²

Key Recommendations for State/Administrative - based Grievance Mechanisms

Addressing the power asymmetry between migrant worker complainants and employer or PRA defendants is critical to improve opportunities for migrant workers to engage in a remediation process on fair, informed and respectful terms. It is recommended that States implement measures to reduce barriers for migrant workers to participate in State/Administrative - based grievance mechanism processes in both countries/regions of destination and countries of origin. These may include measures, among other actions, to advance the use of video links to participate in remote hearings; to increase points and modalities of filing complaints; and to ensure needs-based assistance (including comprehensive legal aid) and protection to migrant workers. In particular, the heightened vulnerability of migrant workers in irregular situations must be addressed by ensuring that they are able to access State/Administrative - based grievance mechanisms in practice, without fear of deportation and criminalization.

Furthermore, there is a need for targeted resourcing to ensure that grievance mechanisms are properly funded and staffed. Government officials responsible for resolving migrant worker grievances should be properly trained and able to communicate in the language(s) understood by migrant worker groups. These recommendations are further developed in Section 6; please refer to the recommendations under Pillars 2.1, 2.2, 2.3, 2.6 and 3.5.

¹⁹² Interview with Vietnamese migrant worker (July 2022).

4.3 NON-STATE/ADMINISTRATIVE - BASED GRIEVANCE MECHANISMS

There are promising examples of non-State/Administrative - based grievance mechanisms available in the region and the potential for these private sector initiatives to produce outcomes for rightsholders. The Stakeholder Mapping analysed the company-level grievance mechanisms of the IOI Corporation Berhad (IOI), NXP Semiconductors (NXP), Thai Union and those operated by multi-stakeholder initiatives and industries bodies in the region. The latter included amfori's Speak for Change Supply Chain Grievance Mechanism pilot programme in Viet Nam, the Responsible Business Alliance (RBA) Suara Kami helpline, RBA voices platform and its audit-based incident management process flow, and the Roundtable on Sustainable Palm Oil (RSPO) Complaints System. A summary of the key features and challenges of each of these mechanisms is provided in Table 2 below.



Table 2. Non-State/Administrative - based Grievance Mechanism Case Studies

Business/ Multi-stakeholder Initiative	Overview of Grievance Mechanism	Key Features	Key Challenges	Promising Practices to Enhance the Effectiveness of the Grievance Mechanism
<p>The IOI Group is a publicly listed Malaysian palm oil business that engages in the upstream cultivation of oil palm and processing of palm oil, and downstream refining and manufacturing of speciality oils and oleochemical products.</p> <p>The IOI Group was selected as a case study due to the availability of company disclosures and third-party reports relating to the IOI Group grievance mechanism.</p>	<p>Group level: The IOI Group has established a grievance mechanism, whereby affected internal and external stakeholders can file grievances against IOI or its group subsidiaries for identified issues or incidents in IOI Group's supply chain that are not in line with the principles stated in IOI's Sustainable Palm Oil Policy (SPOP).¹⁹³</p> <p>Plantation level: Grievances related to IOI Group's plantations may also be addressed through estate-level grievance procedures, and rightsholders may opt to use either the estate-level remediation procedure or the IOI Group mechanism.</p>	<ul style="list-style-type: none"> • A record of grievances filed through the group-level mechanism, the scope of the complaints and actions taken by the IOI Group are made available publicly on the company's website. • Multiple channels are available to file grievances. Affected stakeholders may also use the RSPO complaints procedure to file grievances. 	<ul style="list-style-type: none"> • Only seven grievances relating to social and governance issues have been filed through the IOI Group grievance mechanism between 2016 and 2022.¹⁹⁴ • Grievances are typically filed by NGOs or human rights activists on behalf of migrant workers. The limited usage of the mechanism by migrant workers themselves suggests limited awareness of, or challenges among migrant worker groups in accessing the group-level mechanism. • Workers reported that they did not feel estate management or the IOI Group's headquarters meaningfully engaged with the grievances raised at the plantation level.¹⁹⁵ 	<p>Transparency: The level of detail made available publicly by the IOI Group regarding grievances filed is commendable.</p> <p>Source of Continuous Learning: The IOI Group has demonstrated elements of continuous learning, as the company has made improvements to its policies and practices in response to the grievances filed by Finnwatch. Responding to the Finnwatch report, the IOI Group committed to take measures to review its complaints handling procedures, strengthen training and communication on grievance procedures, and enhance monitoring and employee engagement efforts to improve the effectiveness of grievance channels.¹⁹⁶ However, based on public information it is unclear where these measures have been implemented in practice.</p>

¹⁹³ IOI Group, IOI Corporation Berhad Grievance Procedure (January 2020).

¹⁹⁴ See www.ioigroup.com/Content/S/S_Grievance_UpdateESG.

¹⁹⁵ Finnwatch, Migrant workers' rights in oil palm estates in Malaysia, CASE: IOI Group, Mekassar (June 2021).

¹⁹⁶ IOI, Recommendations and Response by IOI on Finnwatch Report (n.d.).

Business/ Multi-stakeholder Initiative	Overview of Grievance Mechanism	Key Features	Key Challenges	Promising Practices to Enhance the Effectiveness of the Grievance Mechanism
<p>NXP is a global semiconductor company, headquartered in the Netherlands. It has manufacturing sites and suppliers based in Malaysia and Thailand, among other countries.</p> <p>NXP was selected as a case study as it is among the highest-scoring companies in the area of remedy based on the KnowTheChain benchmark.¹⁹⁷</p>	<p>NXP has made multiple channels available for workers in its supply chain to file grievances. These include the “Speak Up” helpline, operated by a third-party organization, the Worker Voice (WOVO) application (currently being piloted at NXP’s Malaysia facility), and directly engaging in dialogue with NXP or site management through regularly scheduled meetings/forums. The Speak Up helpline is available for workers in NXP’s supply chain, whether directly employed at NXP’s facilities or working for NXP suppliers. The WOVO application is currently only available to workers at NXP’s Malaysia facility.</p> <p>NXP also requires its suppliers to operate an effective grievance mechanism as part of its Supplier Code of Conduct.</p>	<ul style="list-style-type: none"> • The anonymity of workers who file grievances through the independently administered “Speak Up” hotline is protected. NXP also ensures that directly employed workers are made aware of protections against retaliation during worker on-boarding processes. • The NXP Ethics Committee responsible for managing the investigation and resolution of complaints is comprised of NXP senior leaders across a cross section of teams/functions. There are clear upward reporting lines, which enables data analytics on grievances filed to be reported to NXP senior management on a regular basis. 	<ul style="list-style-type: none"> • NXP noted that its existing grievance systems could better enable workers – the individuals who are most vulnerable within the organization – to voice their concerns.¹⁹⁸ NXP has sought to find alternative solutions to improve worker engagement, including introducing WOVO at its Malaysian site. NXP intends to expand WOVO to other NXP owned and operated sites, and potentially further down its supply chain.¹⁹⁹ Continuous engagement with workers, even through WOVO, remains a challenge as the number of grievances filed during the pilot started to tail off after the first few months.²⁰⁰ • Further external reporting on the outcomes and learnings of its grievance mechanism would be valuable. NXP currently discloses significant details regarding supplier non-conformances identified through audits, but similar detail is not made available for violations identified through grievances filed, although select successful cases are highlighted in its modern slavery statement.²⁰¹ 	<p>Legitimate, Accessible:</p> <p>In NXP’s Malaysian facility, 97 per cent of workers downloaded the application, while 47 complaints were filed during the pilot of its WOVO application that required further investigation. The complaints mostly related to issues with general facilities (food, dormitories and restrooms), around 21 per cent related to welfare benefits and a few cases related to working hours, recruitment and payment issues.²⁰² The uptake and engagement among workers with the WOVO application suggests a degree of trust in the mechanism among workers. NXP noted that management engagement with workers (including migrant workers) was regularly practised at its Malaysian facility, prior to the roll-out of the WOVO application, which helped encourage uptake of WOVO. For example, NXP requires management to sit together with production line workers during meal times and holds regular site-level town halls, which are attended by migrant workers.²⁰³</p>

¹⁹⁷ KnowTheChain, NXP Semiconductors N.V. (2018).

¹⁹⁸ See *Effective Modern Slavery Grievance Mechanisms*, Global Compact Network Australia (March 2021).

¹⁹⁹ Interview with NXP (May 2022).

²⁰⁰ Interview with NXP (May 2022).

²⁰¹ See NXP, *2020 NXP Slavery and Human Trafficking Statement*. One case study is reported in its most recently published Modern Slavery Statement, which details a call received from three stranded foreign migrant workers who worked for NXP’s cafeteria service provider in Malaysia. In this case, NXP worked with a local civil society organization to provide the workers with assistance and food. The NXP Malaysia team also conducted an internal investigation to verify that the service provider was compliant with NXP’s standards.

²⁰² Interview with NXP (May 2022).

²⁰³ Interview with NXP (May 2022).

Business/ Multi-stakeholder Initiative	Overview of Grievance Mechanism	Key Features	Key Challenges	Promising Practices to Enhance the Effectiveness of the Grievance Mechanism
<p>Thai Union is one of the largest processors and producers of canned and frozen fish and seafood products.</p> <p>Thai Union was selected as a case study in light of the measures developed by the company since 2012, including its SeaChange® global sustainability strategy.²⁰⁴</p>	<p>The main channel provided by Thai Union to file grievances is the “Speak Out” compliance web and phone system, which is operated by a third-party service provider. Thai Union also offers site-level or workplace-based channels for filing grievances, including suggestion boxes, local hotlines and through worker-elected welfare committees. In addition, Thai Union refers migrant workers based in Thailand to external grievance mechanisms, including the grievance platform operated by local NGOs and State/Administrative - based grievance mechanisms.</p>	<ul style="list-style-type: none"> • The investigation and remedial functions of the grievance mechanisms are managed by Thai Union in-house teams (typically human resources staff). • Thai Union has internal guidelines, which ascribe a priority rating for incidences involving human trafficking, forced labour, child labour, severe physical abuse, sexual abuse or harassment, and personal document retention, among others.²⁰⁵ 	<ul style="list-style-type: none"> • Thai Union’s initiatives to implement its Guideline for Classification & Priority Rating for Issues Concerning employment conditions and human and labor rights in Thai Union’s Facilities to address grievances raised through site-level or workplace-based channels, are currently focused on its facilities in Thailand. Thai Union is exploring the possibility of expanding the scope of these practices outside of Thailand.²⁰⁶ • There is limited external reporting of the outcomes and performance of the mechanism, although it is noted that Thai Union is working on developing key performance indicators with an international NGO under the “Tell Us” project to measure the effectiveness of Thai Union’s grievance mechanisms.²⁰⁷ 	<p>Based on Engagement and Dialogue with Stakeholders: Thai Union notes that a guiding principle of dealing with alleged incidences involving human and labour rights is to engage and consult with affected individuals to understand the true impact on workers.²⁰⁸ In line with this principle, Thai Union has collaborated with local NGO Migrant Workers Rights Network to strengthen migrant worker representation through worker welfare committees,²⁰⁹ and improve social dialogue with migrant worker groups. Furthermore, Thai Union’s collaboration with Migrant Workers Rights Network in the reimbursement of recruitment fees paid by workers is also a good example of how external stakeholders could be involved in monitoring implementation of remedial actions.²¹⁰</p> <p>Rights-Compatible: Thai Union has developed a non-reprisal policy by working with an international NGO.²¹¹ The policy sets out Thai Union’s commitment to prohibit all forms of retaliation against whistle-blowers, employees who raise workplace-related grievances, and individuals who participate in activities of worker representation bodies or collective bargaining activities, and any witness or other employees involved in the investigation of whistle-blowing reports. Thai Union has also developed a remediation protocol, which includes a commitment to develop remedial actions that are aligned with the UNGPs.²¹² However, it must be noted that publicly available information does not enable an assessment to be made as to whether these principles are implemented in practice. It is noted that Thai Union intends to conduct further capacity-building for these human resources teams so that they are aware of Thai Union’s non-reprisal and remediation protocol policies.²¹³</p>

²⁰⁴ See [SeaChange® Sustainability website](#).

²⁰⁵ Thai Union, [Guideline for Classification & Priority Rating for Issues Concerning employment conditions and human and labor rights in Thai Union’s Facilities](#) (July 2021).

²⁰⁶ Interview with Thai Union (June 2022).

²⁰⁷ Interview with Thai Union (June 2022).

²⁰⁸ Thai Union, [Guideline for Classification & Priority Rating for Issues Concerning employment conditions and human and labor rights in Thai Union’s Facilities](#) (July 2021).

²⁰⁹ Thai Union, [Giving Our Workers A Voice Through Strengthening Worker Welfare Committee](#) (n.d.).

²¹⁰ Impactt, [Ethical Recruitment: Translating policy into practice](#) (2019), p. 11.

²¹¹ Thai Union Group, [Non-Reprisal Policy](#) (September 2020).

²¹² Thai Union Group, [Thai Union Group PCL’s Guidelines for Remediation to Affected Individuals](#) (May 2021).

²¹³ Interview with Thai Union (June 2022).

Business/ Multi-stakeholder Initiative	Overview of Grievance Mechanism	Key Features	Key Challenges	Promising Practices to Enhance the Effectiveness of the Grievance Mechanism
<p>Amfori Speak for Change Supply Chain Grievance Mechanism (SCGM) Programme in Viet Nam Business association amfori is currently piloting a supply chain grievance mechanism in Viet Nam, which seeks to provide access to remedy to impacted workers and affected stakeholders in the supply chain of amfori members.</p> <p>The operation of the SCGM is supported by third-party technology solutions provider, Ulula.</p>	<p>Complainants may file grievances through a hotline or multiple digital channels, which are adapted for the local context (in the case of Viet Nam, Zalo, web forms and phone lines are available). Amfori reviews the claim to determine whether it falls within the scope of the SCGM. Where the claim is within scope, the relevant amfori members and business partners are notified. An investigation is then conducted by a third-party investigator, appointed by the relevant amfori members from a pool of investigators pre-vetted by amfori.²¹⁴ Where remediation is required, a third-party remediation expert is appointed by the amfori members to develop a remediation plan.</p>	<ul style="list-style-type: none"> • Use of technology to enable all stakeholders (complainants, employers/ business partners/suppliers, amfori and amfori members) to provide input throughout the investigation and remediation phases, while preserving the anonymity of the complainant. • Inclusive dialogue is facilitated through the protection of the complainant's anonymity using technology, through the use of third-party experts to interface with the complainant and the business partner, and further supported by a non-retaliation policy.²¹⁵ 	<ul style="list-style-type: none"> • As of 21 January 2022, over half (56.5%) of grievances were rejected as they were outside the scope of the SCGM Programme, or because insufficient information was provided to determine the admissibility of the complaint.²¹⁶ This suggests that further ground-up engagement with workers and capacity-building may be required to ensure that workers are fully informed and empowered to navigate the remediation process. • The pilot has been conducted at amfori business partners based in factories in Viet Nam that primarily employ local workers. When the SCGM Programme is scaled to other locations and supply chains where there are migrant worker groups, the digital platform and accompanying materials will need to be accessible to a range of nationalities and groups with more diverse cultural backgrounds.²¹⁷ amfori acknowledges that scaling up the programme will require local consultations, including with business partners and local worker organizations, to ensure that the channels for filing grievances and socialization of the mechanism are suited to the local context.²¹⁸ 	<p>Accessible: A significant number of cases were filed between May 2021 and April 2022 (106 cases), the large majority of which (80%) were filed by workers themselves.²¹⁹ Most of the complaints were filed using web-based forms that were accessible by scanning QR codes on posters affixed to participating factory walls.²²⁰ While the pilot is still ongoing, amfori has found that the inclusion of all stakeholders in the design and rolling out of the grievance mechanism has been crucial to encourage uptake of the mechanism among workers. Consulting all stakeholders in the design, delivery and dissemination of educational materials on the grievance mechanism was important to overcome practical obstacles posed by COVID-19 restrictions and ensuring that information about the mechanism reached the rightsholders and other affected stakeholders.²²¹</p> <p>Legitimacy: The use of third-party investigation and remediation experts provides greater scope for impartial decision-making in the investigation and remediation process. The continuous and close involvement of amfori members also enables the use of their shared leverage to facilitate remediation. However, it must be noted that amfori members (by virtue of their relationship with the business partner) are not entirely neutral parties. To safeguard the independent character of the SCGM Programme and to ensure that rightsholders trust the mechanism, amfori has an important role to play in ensuring that meaningful engagement with workers is equally made an integral part of the process.</p> <p>Transparency, Source of Continuous Learning: High-level metrics and a case summary for each grievance filed are available on amfori's SCGM website. The sharing of information on the SCGM's overall performance as well as disaggregated information regarding ongoing and resolved cases can help stakeholders prevent future grievances and harms. Furthermore, amfori has also committed to reviewing the operation of the SCGM Programme on an annual basis against predetermined key performance indicators against good practices, which include the UNGPs effectiveness criteria. The first evaluation is currently under way.²²²</p>

²¹⁴ Note that in exceptional circumstances, the relevant amfori members may also take on the role of the investigator.

²¹⁵ Amfori, [Supply Chain Grievance Mechanism – Retaliation Guidance](#) (May 2022).

²¹⁶ Amfori, [Speak for Change](#) reporting information (May 2022).

²¹⁷ Interview with amfori (May 2022).

²¹⁸ Ibid.

²¹⁹ Ulula, [Digital complaints mechanism helps Vietnamese workers speak for change to improve working conditions](#) (2021).

²²⁰ Ibid.

²²¹ Ibid.

²²² Interview with amfori (May 2022).

Business/ Multi-stakeholder Initiative	Overview of Grievance Mechanism	Key Features	Key Challenges	Promising Practices to Enhance the Effectiveness of the Grievance Mechanism
<p>Responsible Business Alliance (RBA) a membership-based industry body focused on improving social, environmental and ethical conditions in global supply chains.</p>	<p>The RBA offers several channels for supply chain workers and other stakeholders to file grievances relating to RBA members. This includes the Suara Kami helpline service (operated in partnership with sustainable business consultancy ELEVATE) as well as a general complaints mechanism linked to its incident management process flow system. The RBA has also developed a worker voice application known as RBA Voices, which includes a feature that enables workers to file complaints.</p> <p>This analysis focuses on the Suara Kami helpline, as limited public information is available on the RBA incident management process flow and RBA Voices systems.</p>	<p>Workers may access the Suara Kami helpline by phone, Facebook Messenger and SMS. Suara Kami primarily facilitates communication between the worker and employer.²²³ The employer appears to have significant discretion to decide how to investigate the grievance raised and to develop a remediation plan. Suara Kami does not appear to engage in an investigation function or support in the development of remediation actions.</p>	<ul style="list-style-type: none"> • Where the employer does not take steps to investigate or remediate grievances received via Suara Kami, it is unclear how resolution will be reached, as there does not appear to be any enforcement mechanism or sanction to compel the employer to take action. • In addition, there appear to be no prescribed investigation or remedial steps under the Suara Kami procedure, as this is left to the respondent company's discretion. As a result, the outcomes of the grievance resolution process and the remedies obtained may vary on a case-to-case basis. 	<p>Transparent: The Suara Kami helpline operators are required to update and communicate the case status at each stage to the worker.²²⁴</p> <p>Based on Engagement and Dialogue with Stakeholders: Before a case is deemed resolved, the worker must confirm that they feel the case has been resolved.²²⁵ Eliciting feedback and information from complainants during the investigation and remediation phase (rather than just at the end) could be helpful to further ensure that their needs and concerns are captured in the grievance resolution process.</p>

²²³ Where the employer is alerted to a concern raised by the worker through Suara Kami, the employer is expected to take steps unilaterally to verify and investigate the grievance. Where the investigation identifies that a remedy is required, the company should provide a remedy. The company then prepares notes regarding actions taken and these are recorded in the Suara Kami system. Suara Kami, via sustainable business consultancy ELEVATE, will report the actions taken back to the worker. Note that this understanding of how Suara Kami functions is based on the [Sime Darby Policy Instrument Framework](#).

²²⁴ Understanding of how Suara Kami functions is based on the [Sime Darby Policy Instrument Framework](#).

²²⁵ Ibid.

Business/ Multi-stakeholder Initiative	Overview of Grievance Mechanism	Key Features	Key Challenges	Promising Practices to Enhance the Effectiveness of the Grievance Mechanism
<p>RSPO is a multi-stakeholder organization, which sets voluntary standards for sustainable palm oil production. Palm oil producers can be certified through verification of the production process to the RSPO Principles and Criteria for Sustainable Palm Oil Production by accredited certifying bodies. The RSPO's Complaints System is intended to provide a framework and mechanisms for the RSPO to address any complaints against any RSPO members.</p> <p>The RSPO was selected as a case study due to their substantial experience operating its grievance mechanism in Indonesia and Malaysia. As at 31 August 2022, the RSPO had received a total of 172 complaints, out of which 146 (84.9%) were closed.²²⁶</p>	<p>The RSPO Complaints System includes multiple pathways to resolving grievances. The parties to the complaint may opt to: (1) seek a solution through a collaborative dispute resolution/mediation process within the Dispute Settlement Facility;²²⁷ (2) have the issues investigated and resolved by the RSPO-constituted Complaints Panel; or (3) attempt to resolve the issues through bilateral engagement.²²⁸</p>	<ul style="list-style-type: none"> • The parties to the grievance are presented with three different pathways to resolving the grievance. • The RSPO may be actively involved in investigating the grievance and developing the corrective action plan, where the RSPO Complaints Panel pathway is chosen. Where the parties choose to resolve the issue bilaterally, the RSPO remains involved as an observer. The RSPO may halt bilateral discussions in cases where the company against whom the allegation is made attempts to intimidate the complainant or where parties fail to engage in good faith with the grievance resolution process.²²⁹ • The status of complaints is disclosed on the RSPO's website,²³⁰ and the open minutes of the meetings of the Complaints Panel are also available publicly.²³¹ 	<ul style="list-style-type: none"> • A previous external assessment of the RSPO Complaints System noted that limits on the RSPO's capacity to investigate and manage complaints has led to backlogs and delays in resolving grievances. Challenges in securing sufficient financial and human resources to ensure efficient functioning of the procedures, particularly in relation to resource-intensive activities such as community outreach, capacity-building, investigation and monitoring, are noted.²³² The RSPO itself has publicly commented on past delays and the need to improve the efficiency of the process.²³³ • The RSPO Complaints System often deals with cases involving complex land rights issues that are highly difficult to resolve in a streamlined and time-bound manner. These issues often require the engagement of the relevant State. See for example the case of IOI Group and the Pelita Land Dispute. In May 2022, a settlement agreement was finally signed by the company involved, in the presence of Sarawak State Government, RSPO and other stakeholders, over 10 years after the complaint was first filed with the RSPO and in the High Court in Miri, Sarawak. • Further community outreach and capacity-building could be conducted to reach communities and marginalized groups that may be affected by the RSPO members' business practices. Challenges remain in reaching remote areas where plantations are located, and use of the RSPO Complaints System in Malaysia remains more infrequent, compared with Indonesia.²³⁴ 	<p>Equitable: Where the parties to the grievance elect to use the Dispute Settlement Facility, the costs of mediation (the fees of appointed mediators/technical experts and related costs) are shared by the parties. However, where a party is unable to cover these costs, the RSPO Dispute Settlement Facility Trust Fund may provide funds to support mediation. This provision of financial assistance could enable migrant worker claimants who lack the resources to engage in mediation on fairer terms.</p> <p>Transparent: The introduction of publicly reported Complaints Panel meetings minutes and publication of decision letters has helped improve clarity and consistency in decision-making.</p>

²²⁶ Comments from RSPO (September 2022).

²²⁷ As defined by the RSPO, the Dispute Settlement Facility is a mechanism within the RSPO that facilitates mediation between mutually consenting parties to resolve disputes.

²²⁸ As defined by the RSPO, bilateral engagement is a general descriptor for any process by which the parties to a complaint attempt to resolve their differences through direct discussions (i.e. without involving a third party as mediator). Bilateral engagement may involve, but is not limited to, accessing a company's own complaints-handling procedures as a means of attempting to resolve the complaint.

²²⁹ Interview with RSPO (June 2022).

²³⁰ See [RSPO Case Track](#).

²³¹ See [RSPO Minutes of Complaints Panel Meeting](#).

²³² Kate Macdonald and Samantha Balaton-Chrimes, [The complaints system of the Roundtable on Sustainable Palm Oil](#) (2016).

²³³ *Ibid.*

²³⁴ Interview with RSPO (June 2022).

As illustrated by the case studies in Table 2 above, the mandates, design and operation of these non-State/Administrative - based grievance mechanisms vary. However, some common challenges were observed in the Stakeholder Mapping.

Most of the non-State/Administrative - based grievance mechanisms reviewed had non-retaliation policies in place or some level of anonymity or confidentiality protection. However, it is unclear whether these protections were implemented in practice or adequately communicated to migrant workers. For example, migrant workers interviewed in Malaysia did not feel that company-level grievance mechanisms were sufficiently independent or adequately protected their confidentiality, for them to trust that these mechanisms would adjudicate their claims fairly.²³⁵

Migrant workers from Myanmar in the electronics manufacturing industry in Malaysia sought to address grievances relating to annual and medical leave and excessive overtime work by directly raising their complaints with their supervisor.²³⁶ However, they were unable to resolve their grievances satisfactorily with the company directly. This was due to a combination of inaction on the part of the company, retaliatory actions taken by the workers' direct supervisor, and an absence of impartiality in the grievance resolution process.²³⁷ Another group of Bangladeshi workers in the electronics manufacturing industry and furniture manufacturing industry who were interviewed as part of this study, also reported retaliation by their supervisor after filing complaints (curtailing of opportunities to work overtime and earn additional income, verbal abuse and/or threat of termination).²³⁸

Independent and impartial oversight, and more robust protection against potential retaliation, are critical to enhance the effectiveness of operational-level grievance mechanisms. Migrant workers felt that having access to better information on their rights, and an independent grievance resolution mechanism or independent third-party assistance to help them bring complaints to the company, would enhance their trust in remediation processes.²³⁹ **The migrant workers interviewed suggested an independent, nationality-specific leader who is elected by workers to convey their complaints, and/or presence of an independent translator as well as independent oversight of grievance mechanisms.**²⁴⁰ Workers in the Malaysian palm oil industry acknowledged that where a third-party organization was engaged to train the workers on using the grievance hotline, this helped earn their trust. Furthermore, the fact that the hotline was also operated by a third party who did not ask for their personal identity information was a feature that also helped build trust.²⁴¹ Prior to the introduction of the hotline, workers could only complain to their supervisors, and if they did complain, management took retaliatory actions against them.²⁴²

Some businesses and multi-stakeholder initiatives have attempted to enhance legitimacy by improving the impartiality of decision-making through working with external parties. For example, amfori's SCGM Programme includes use of third-party investigation and remediation experts selected and funded by the amfori members, who source from the business partner subject to the complaint. However, it must be noted that the amfori members are not entirely neutral parties



Street sweeper in Manila, the Philippines.
© Unsplash 2023/Aura Vida LAPITAN

²³⁵ Bangladeshi and Nepalese migrant workers interviewed in Malaysia (May 2022).

²³⁶ Interviews with Burmese migrant workers in Malaysia in electronics manufacturing (June 2022).

²³⁷ Interviews with Burmese migrant workers in Malaysia in electronics manufacturing (June 2022).

²³⁸ Interviews with Bangladeshi migrant workers in Malaysia in electronics and furniture manufacturing (June 2022).

²³⁹ Interview with Nepalese migrant workers in Malaysia (May 2022).

²⁴⁰ Interview with Nepalese migrant workers in Malaysia (May 2022).

²⁴¹ Interview with Malaysian workers in the palm oil industry (June 2022).

²⁴² This included giving them overtime work, or making them work on the outskirts of the plantation where they would face a heightened risk of getting robbed, sexually harassed, or attacked by wild animals; some were even threatened with physical abuse and were verbally harassed by supervisors. Interview with Malaysian workers in the palm oil industry (June 2022).

(by virtue of their relationship with the business partner), which creates scope for potential conflicts of interest. Thai Union's collaboration with Migrant Workers Rights Network in the reimbursement of recruitment fees paid by workers is another example of how external stakeholders could be involved in monitoring implementation of remedial actions. Thai Union also works with a Thailand-based NGO to address migrant worker grievances raised through the NGO's platform. Thai Union responds to the grievance filed through the NGO's grievance mechanism by conducting its own internal investigation, and where required, developing a corrective action plan and remedial actions. Actions undertaken are reported to the NGO, which is then responsible for checking with the worker complainant to verify whether the grievance has been adequately resolved. However, no examples were identified in the region where migrant workers or their credible representatives were given a proactive role in monitoring and evaluating the performance of non-State/Administrative-based grievance mechanisms.

Some efforts have also been made to socialize mechanisms with migrant workers, and to enhance the capacity of these mechanisms to deal with multiple languages, by working with local NGOs.

The RBA has entered into partnerships with NGOs in Malaysia, including the North–South Initiative to raise awareness about Suara Kami among migrant workers,²⁴³ and its services are provided in the major languages spoken by migrant workers in Malaysia.²⁴⁴ The RSPO has recently conducted pilot community outreach programmes in Malaysia with the Sabah Environmental Protection Association and other locations, which among other objectives aims to build a platform for local and indigenous communities, smallholders, women's groups and plantation workers to access RSPO systems.²⁴⁵ Challenges remain in reaching remote areas where plantations are located, and use of the RSPO Complaints System in Malaysia remains infrequent compared with Indonesia.²⁴⁶ However, these examples are limited, and the companies that participated in the stakeholder discussions expressed some hesitation with engaging third parties to co-implement grievance mechanisms because of reputational concerns and data privacy concerns.²⁴⁷ Given the traditional “name and shame” culture that often hinders constructive relationships between the NGO sector and private corporations, the latter often voice concerns that working with NGOs could lead to potential retaliation or reputational risks, arising from the sharing of relatively sensitive, confidential and potentially negative information about the company with these third parties.²⁴⁸

In a landscape where grievance mechanisms are designed without the perspectives and needs of migrant workers in mind, migrant workers prefer to reach out to their communities, informal networks, and CSOs to seek assistance. “If we need help, we seek for help from our people.

We have no idea about remedial process or grievance mechanisms” (emphasis added).²⁴⁹ These gaps and challenges highlight the need for a change in mindset among developers and operators of grievance mechanisms around the purpose of these mechanisms and the way in which they are designed and operated. Migrant workers interviewed for the purposes of the Stakeholder Mapping highlighted the need to view the choice to access remedies as an expression of their rights. **“I want information so that I can make a decision whether I should use remedial system or not.** When I use the remediation processes, I might need someone to assist me. But right now, I don't know what assistance I may need, because I don't know what a remediation process is like” (emphasis added).²⁵⁰

²⁴³ Embode, A feasibility study of an alternative dispute resolution mechanism in Malaysia for migrant workers (2021).

²⁴⁴ It is available in Malay, Bangla, Tamil, Hindi, Nepali, Bahasa Indonesia, Myanmar and English.

²⁴⁵ Alaza, 2021.

²⁴⁶ Interview with RSPO (June 2022).

²⁴⁷ Focus group session conducted with representatives of multinational companies (June 2022).

²⁴⁸ Focus group session conducted with representatives of multinational companies (June 2022).

²⁴⁹ Interview with migrant workers from Myanmar in Thailand (May 2022).

²⁵⁰ Interview with Cambodian migrant worker in Thailand (May 2022).

Key Recommendations for non-State/Administrative - based Grievance Mechanisms

Based on these findings, it is recommended that developers of non-State/Administrative - based grievance mechanisms should adopt a rights-based, migrant-centric approach, where migrant workers are not treated as merely passive recipients of remedy. The focus needs to be on the needs and concerns of migrant workers for whom these mechanisms are intended, rather than focusing narrowly on the question of who is responsible for providing remedy and whether such grievance mechanisms exist.²⁵¹

Furthermore, non-State/Administrative - based grievance mechanisms must be conceived as an integral part of a broader set of labour and migration dynamics, and be responsive to the reality that migrant workers face heightened vulnerabilities, relative to local workers. These vulnerabilities may stem from dependency on employer-linked visas, restrictions on trade union leadership, fear of deportation, challenges in accessing information in their own language, or financial burden from recruitment-linked fees and costs, among other factors. The design and delivery of grievance mechanisms must accommodate these concerns in order to gain migrant worker trust and uptake.

Thus, migrant workers and their credible representatives should be engaged in the design and operation of grievance mechanisms. This involves not only consulting migrant workers on the design of the mechanism, but also involving them in the implementation of such systems, such as in monitoring and evaluation efforts. More detailed recommendations can be found in Section 6 of this report (specifically Pillars 1.5, 2.4 and 2.5).



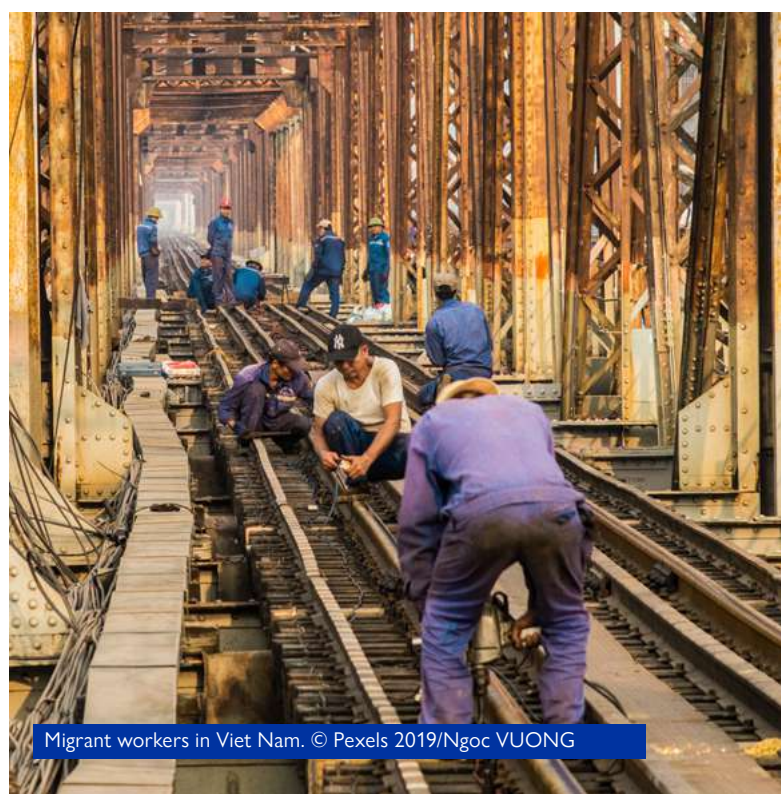
²⁵¹ OHCHR, *Remedy in Development Finance Guidance and Practice* (2022), p. 50; and Dutch Banking Sector Agreement, *Discussion Paper – Working Group Enabling Remediation* (2019), pp. 21–22.

4.4 CROSS-BORDER GRIEVANCE MECHANISMS

The findings of the Stakeholder Mapping highlight how effective State/Administrative - based grievance mechanisms that aim to enable migrant workers to access remedies must take into account the dynamics of labour migration, by supporting access at all stages of the labour migration cycle. The parties involved in a migrant worker grievance are often in different jurisdictions. For example, a Hong Kong SAR, China-registered company that supplies to a multinational company headquartered in Germany may indirectly employ migrant workers from Myanmar through a Thai-based subcontractor, at a factory located in Thailand. However, despite this global dynamic, the pathways to remedies available to migrant workers are usually limited to those offered by the State in the country of destination (in this hypothetical example, Thailand). However, once the migrant worker lodges a complaint through the State/Administrative - based grievance mechanism, their employment is likely to be terminated. They may no longer be legally permitted to work or stay in the country of destination, as their visa or permit is tied to their employment. In many such circumstances, the migrant worker often loses any chance of obtaining a remedy.

In cases involving private parties (i.e. migrant worker claimants and employers or recruitment agencies), there is a lack of clarity on the extraterritorial jurisdiction of State/Administrative - based grievance mechanisms. In cases where the migrant worker is a victim of human trafficking, extraterritorial jurisdiction might arise, enabling States to pursue criminal prosecutions against foreign individuals or organizations for offences committed outside of their territory. However, for cases involving private parties (i.e. civil claims), the ability of State/Administrative - based judicial mechanisms to adjudicate and resolve civil disputes with respect to foreign private actors is governed by a separate system of laws, known sometimes as “conflicts of law” or “private international law”. The rationale underpinning conflicts of law rules are outside the scope of this report, but the key point to note is that each State may have different approaches on how to deal with these conflicts of law, based on their position on sovereignty and fairness in judicial proceedings, among other issues. In practice, these differing approaches may result in confusion over which State has the legal right to hear a claim. The complexity and territory-focused mandate of judicial mechanisms means that it becomes difficult for workers to bring legal action against a foreign employer once they have left the jurisdiction where the foreign employer is located, or where the facts relevant to the dispute occurred (e.g. the place of employment). As such, migrant workers often have limited legal recourse except to try and file a legal claim in the country of destination against the employer. However, as noted in above in the findings on State/Administrative - based grievance mechanisms, legal, procedural and other barriers will prevent them from doing so in practice.

One solution to address this gap can be found in getting international or regional regimes that regulate the application of legal jurisdiction to address the barriers migrant workers face in commencing legal action against employers in countries of destination. An example of this is European Union



Migrant workers in Viet Nam. © Pexels 2019/Ngoc VUONG

Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. Pursuant to Article 21 of the regulation, employers can be sued in the (European Union) State where they are domiciled, or where the employee habitually carries out the work and/or where the business which engaged the employee is, or was, situated. These rules recognize the fact that employees are often in a weaker bargaining position and may not have the resources to commence or participate in a legal action outside of the jurisdiction where they reside. States could, in theory, incorporate such rules in a bilateral labour agreement or Memorandum of Understanding between States on labour migration. However, in order for this to be a reality, a consensus must be reached among the States involved on the use of extraterritorial jurisdiction in labour disputes, which can be politically challenging due to concerns relating to sovereignty. The Stakeholder Mapping did not find any examples of existing bilateral or regional agreements within the geographic scope that would enable migrant workers to lodge claims against employers upon their return to the country of origin. Instead, Memoranda of Understanding tend to recognize the law of the country of destination to adjudicate and resolve disputes. For example, the Memorandum of Understanding on Cooperation in the Employment of Workers between Thailand and Cambodia (2015) only provides that disputes shall be settled by the relevant government agencies in accordance with the laws and regulations of the country of destination and is silent on how recruitment-related issues should be adjudicated. In addition, employers may even include jurisdiction clauses in employment contracts to stipulate that any disputes that arise relating to the employment relationship must be dealt with in the jurisdiction of the country of destination, or the place of the employer's domicile. The lack of legal counsel for migrant workers, and unequal bargaining power between migrant workers and employers enable the inclusion of such jurisdiction clauses, which create additional hurdles for migrant workers to access remedies.

One effective solution that seeks to address the issue of extraterritorial jurisdiction is the Philippines' JSL provision. The JSL provision is a commendable example of how States could use their legislative power to uphold migrant workers' rights to remedy unilaterally, although this provision faces limitations in serving justice and rights-compatible remedial outcomes, as discussed in paragraph 4.29 above.

Promising Practice: The JSL provision attempts to address the limits of the Philippines' jurisdiction by enabling migrant worker claimants to seek redress against the locally based Philippine PRA for the wrongdoing of the foreign employer. The JSL provision shifts the burden of pursuing remedies against the foreign employer from the migrant worker (who has the least resources to pursue action against the employer), to the Philippine PRA. It also increases the likelihood that the migrant worker can locate and hold an entity accountable for the grievances suffered, because the Philippines has jurisdiction over the local PRA and, therefore, the ability to sanction non-compliant PRAs.

Where law enforcement agencies in countries of destination and countries of origin have stronger personal connections, there is improved coordination in cross-border investigations.²⁵²

Most States will enter into mutual legal assistance agreements to set out formal procedures through which this cooperation takes place. There are also official channels (e.g. diplomatic relations, regional bodies such as Association of Southeast Asian Nations (ASEAN), or networks such as International Criminal Police Organization (INTERPOL), or even more informal relationships or networks, for coordinating these

²⁵² Interview with Blas F. Ople Policy Center and Training Institute.

efforts. However, this type of bilateral or multilateral cooperation typically remains confined to criminal investigations (cases involving human trafficking). For civil claims, the formal processes for taking evidence in judicial mechanisms remain quite cumbersome and are therefore rarely effectively deployed.²⁵³ Claimants and their legal representatives may therefore not be able to obtain the information they need to pursue a civil claim.

Promising Practice: Thai State agencies have used embassies/consulates as a way of ensuring that migrant workers are able to receive compensation owed to them after the migrant worker has returned to the country of origin. Where law enforcement agencies in countries of destination and countries of origin have stronger personal connections, this coordination has improved the efficacy and efficiency of investigations.²⁵⁴

While cross-border State-based mechanisms exist, such as the OECD National Contact Point (NCP) system, remedies are difficult to access through these mechanisms in practice due to a low level of awareness of their availability, language barriers and difficulties associated with providing the required supporting evidence, among other factors. For example, the OECD NCP mechanism can be costly for grassroots organizations, CSOs and migrant worker complainants. In a case filed by Thai and Filipino labour unions against an international brand, the lack of financial assistance available served as a barrier to resolution.²⁵⁵ It was established practice for the Swiss NCP to have the mediation hosted in Switzerland. However, the Swiss NCP could not offer any financial assistance to the complainants for travel expenses or translation of key documentation. As such, the complainants had to front such costs themselves. Furthermore, there are no clearly defined time-bound steps that NCPs are required to follow in resolving cases. As a result, the length of time required to resolve cases can vary significantly, from one and a half years to three years.²⁵⁶

Importantly, due in part to their transnational nature, cross-border grievance mechanisms often lack the necessary legal mandate to compel the actors subject to the complaint to meaningfully engage in the remediation process or to comply with recommended remedial actions. For example, the OECD NCP mechanism is predicated on voluntary mediation and NCPs generally have limited formal investigative powers of their own, although there are exceptions such as the Danish NCP highlighted below.

Promising Practice: The Danish legal framework provides that the NCP can perform an actual investigation where the parties to the mediation do not manage to reach a solution, and it also allows NCPs to commence a case without the submission of a complaint by a third party.²⁵⁷

²⁵³ The Remedy Project and Freedom Fund, *Corporate Accountability Report* (summary).

²⁵⁴ Interview with Blas F. Ople Policy Center and Training Institute.

²⁵⁵ Full details of the case are available at <http://mneguidelines.oecd.org/database/instances/ch0005.htm>.

²⁵⁶ This is based on the Consultant's review of the following cases filed through the OECD NCP system where the country of harm was within the scope of the Stakeholder Mapping: Trade Unions versus Japanese Suzuki Motor Corporation; Swedwatch versus Electrolux and Mölnlycke; Thai and Filipino Labour Unions versus Triumph International; KTNC Watch et al. versus KEXIM; International Labor Rights Forum versus Dole; Framtiden I våre hender versus Intex Resources; Workers Assistance Center et al. versus Chongwon Fashion Inc and Il-Kyoung Co Ltd; Fenceline Community and FoE NL versus Royal Dutch Shell; Protest Toyota Campaign versus Toyota; Fivas versus Norconsult; Market Forces versus SMBC, MUFG and Mizuho; and Finance & Trade Watch Austria et al. versus Andritz AG.

²⁵⁷ OECD, *Structures and Procedures for National Contact Points for the OECD Guidelines for Multinational Enterprises* (2018).

Due to these challenges, cases filed through the OECD NCP mechanism often fall short of their ability to deliver rights-compatible outcomes for potential complainants. Based on an analysis of 250 cases, NGO OECD Watch found only 35 cases that resulted in some sort of remedial outcome.²⁵⁸ Compensation for harms was provided in none of the cases surveyed, but in 8 per cent of cases it was found that there was an improvement in corporate policy and/or due diligence procedures, and in 1 per cent of cases, the complaint directly improved conditions for victims of corporate abuses.²⁵⁹ In a recent case filed by NGOs against an Australian bank before the Australian NCP, the bank returned the profits earned from financing a Cambodian company to the Cambodian families who were forcibly evicted from their homes to make way for the company's sugar plantation. This case was only the third time in the 20-year history of the NCP system where concrete financial remedies were provided to the complainants.²⁶⁰ As such, the effectiveness of the NCP system relies heavily on the cooperation of the parties (in particular, the defendant company).



Women working on a tea plantation in Viet Nam. © Pexels 2020/Quang Nguyen VINH

Key Recommendations to enhance the effectiveness of cross-border grievance resolution

Where States implement cross-border grievance mechanisms, these need to be backed up by a legal mandate that grants the mechanism the necessary investigation and enforcement powers to deliver adequate remedies in a timely manner for rightsholders. In the absence of such mandates, States should work to better embed access to State/Administrative - based grievance systems for migrant workers, for example through bilateral labour agreements, and strengthen cross-border investigation and cooperation in judicial cases. For more detailed recommendations, please refer in particular to Section 6, Pillars 2.1 and 2.6.

²⁵⁸ OECD Watch, *Remedy Remains Rare* (June 2015).

²⁵⁹ *Ibid.*

²⁶⁰ Inclusive Development International, *ANZ payment to displaced Cambodian families brings landmark human rights case to a close* (November 2021).

4.5 LINKAGES BETWEEN DIFFERENT TYPES OF GRIEVANCE MECHANISMS

Few non-State/Administrative - based mechanisms analysed in the Stakeholder Mapping set out clear referral pathways or escalation protocols to State/Administrative - based mechanisms, although a promising practice was identified in amfori's SCGM pilot programme.

Promising Practice: The amfori SCGM programme acknowledges that cases may be escalated to other judicial or non-judicial mechanisms. Where complaints involve serious matters of physical harm or criminal activities, these should be referred to the relevant local authorities, with the consent of the complainant.²⁶¹

- The investigation handler will provide information to the complainant on escalation if the investigation handler or another involved party determines that escalation should be considered or if the complainant asks for information and possibilities on this topic. The rules specify that the decision to escalate to judicial or non-judicial authorities should only be made by the complainant.
- If the complainant decides to escalate, the SCGM programme will endeavour to assist the complainant, for example by connecting the complainant with external resources and contacts, or encouraging the relevant amfori member(s) to use their influence to ensure a correct implementation of any judicial remediation process. The type of assistance provided varies depending on the facts of the case. Local partners, such as trade unions, national experts, NGOs, legal aid initiatives and union representatives, are acknowledged as resources that can provide essential support to the escalation process, especially in cases where authority involvement could lead to retaliation or retribution against the complainant, or any other party involved in the resolution of the complaint.

The limited attention paid to the ecosystem of remedy approach leads to potential gaps in the protection of migrant workers' rights. Migrant worker grievances might not be dealt with through the appropriate grievance mechanism, leading to outcomes that are not compatible with international human rights standards and/or national laws. To take a hypothetical example, a migrant worker who is a victim of forced labour in Malaysia should have their case dealt with through the criminal justice system. Moreover, they may need urgent, immediate care and might need to be extracted from the situation of exploitation. However, the migrant worker might file a complaint through the third-party hotline because this is the mechanism most easily accessible to them, and their case is then dealt with by the company involved as a simple labour dispute, despite the presence of indicators of forced labour. As a result, they may neither receive the support required (shelter, medical attention, etc.) nor obtain a remedial outcome that is proportionate to the harm suffered.

²⁶¹ amfori, SCGM Rules of Procedure (n.d.).

Key Recommendations to strengthen linkages between different types of grievance mechanisms

Linkages between the different types of State/Administrative - based and non-State/Administrative - based mechanisms could be strengthened. From a rights perspective, it is important to promote the complementarity between the different mechanisms and establish clear referral pathways. In the absence of integration of State/Administrative - based and non-State/Administrative - based grievance mechanisms into one cohesive ecosystem, the burden falls upon the potential claimant to understand and select the pathway to remedies that would deliver the best outcome in their case. However, the migrant worker claimant is often the more poorly resourced party with limited access to information, financial resources and time. Ensuring clearer referral pathways would reduce the cost, delay and other burdens to migrant worker claimants, which could improve the ability of migrant workers to achieve remedial outcomes.

Operators and developers of grievance mechanisms should also be proactive in building linkages with other mechanisms and facilitating referrals, where appropriate. This should also include working collaboratively with the external stakeholders described above. Indeed, the OHCHR ARP III report recommends that where remedial outcomes obtained through non-State mechanisms might be legally enforced (e.g. by constructing the decision as a binding contract), rightsholders should be made aware of this possibility.²⁶² Similarly, where a grievance or aspects of it may (or should) be referred to a State/Administrative - based grievance mechanism, rightsholders should be provided with the necessary information to be able to engage with the relevant processes, easily and efficiently, and in a way that avoids duplication of effort.²⁶³



Migrant woman working on a textile machine in Binh Dinh Province, Vietnam. © Pexels 2019/Pew NGUYEN

²⁶² OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse through non-State/Administrative - based grievance mechanisms* (19 May 2020). A/HRC/44/32.

²⁶³ *Ibid.*

4.6 OTHER ACTORS IN THE ECOSYSTEM OF REMEDY

CSOs, trade unions, MRCs, grassroots organizations and other non-State actors were observed to have an invaluable role in building national and cross-border networks of support to enable migrant workers to engage in State/Administrative - based and non-State/Administrative - based remediation processes. These stakeholders are found at the fringes of grievance mechanisms, yet play a crucial role in filling the gaps left by the patchwork coverage of State and non-State systems. They provide information on the availability and accessibility of various remedial mechanisms, counselling to help migrant workers navigate remediation processes, and in some cases, direct legal assistance, financial support, shelter and even informal mediation services. These efforts better equip migrant workers to engage in remediation processes on fair and informed terms.

4.6.1 CIVIL SOCIETY

CSOs provide front-line assistance to migrant workers and act as a crucial “first port of call” for aggrieved migrant workers. In Malaysia, CSOs (including North South Initiative, Migrant Care, Tenaganita, Sabah Environmental Protection Association and Sahabat Wanita) may even provide informal mediation services to workers, working with employers and workers to negotiate a settlement.²⁶⁴ The North South Initiative reported receiving over 100 case referrals in 2020.²⁶⁵ These Malaysian CSOs also provide capacity-building for migrant worker leaders and worker representatives, which includes information about channels for accessing grievance mechanisms. There are legal NGOs such as Human Rights and Development Foundation (HRDF) in Thailand and the Alternative Law Groups (ALG) in the Philippines that provide legal assistance for migrant workers seeking to access remedies through State/Administrative - based grievance mechanisms. The ALG is an important network of legal NGOs and public interest lawyers in the Philippines that works to facilitate poor litigants’ access to lawyers with relevant specializations among their member organisations, including women’s rights, environmental law, labour law and workers’ rights, and children’s rights. The ALG’s members provide legal assistance to help claimants pursue precedent-setting cases before courts and quasi-judicial agencies.²⁶⁶ NGO Justice Without Borders supports migrant domestic workers from Indonesia and the Philippines to seek compensation in the countries of destination (mainly Hong Kong SAR, China and Singapore).²⁶⁷ Justice Without Borders works with pro bono lawyers in the countries of destination to file claims through State/Administrative - based judicial systems and/or to engage in negotiation with employers, trade unions and NGOs in the countries of origin to facilitate communication with workers.

CSOs also play an essential role in developing capacity to deal with cross-border cases, primarily through referrals and informal relationship and network-building.

Promising Practice: Regional network of NGOs, Migrant Forum in Asia (MFA), facilitates not only exchanges of information between member CSOs based in countries of destination and countries of origin, but also has a roster of pro bono lawyers who are able to support migrant workers in cross-border cases.

²⁶⁴ Embode, A feasibility study of an alternative dispute resolution mechanism in Malaysia for migrant workers (2021).

²⁶⁵ Ibid.

²⁶⁶ International Commission of Jurists, *Access to Justice: Human Rights Abuses Involving Corporations – Philippines* (Geneva, 2010), p. 49.

²⁶⁷ Bassina Farbenblum and Laurie Berg, *Migrant Workers’ Access to Justice for Wage Theft: A Global Study of Promising Initiatives* (Migrant Justice Institute, Sydney, 2021).

Promising Practice: MAP Foundation, an NGO based in Chiang Mai, Thailand, assisted workers in seeking compensation from the factory owner who employed the workers and the brands that sourced from the factory.²⁶⁸ In addition to being the initial port of call for workers, MAP Foundation played an important role in reaching out to the international NGOs Clean Clothes Campaign (CCC) and Workers Rights Consortium (WRC) and worked with a community-based organization in Thailand, the Arakan Workers Organization, to establish a dialogue between the workers and the brands. Another Thailand-based NGO, HRDF, provided legal assistance together with a faith-based organization, the Adventist Development and Relief Agency. The coalition of NGOs worked collaboratively to push the brands to cover the amount of compensation that the employer refused to pay. Through continuous engagement with the brands via the CSOs, all brands involved paid the outstanding compensation to the workers.²⁶⁹ However, success stories like the one involving MAP Foundation are rare.²⁷⁰

However, CSOs face significant resource constraints and assistance is often only available on an ad hoc basis. The nature of global supply chains means that a coalition of NGOs is often required to support migrant workers in pursuing remedies, especially where State/Administrative - based judicial systems are engaged. Lawyers and NGOs that provide legal assistance may not have the skills, resources and/or experience to build a transnational case.²⁷¹ They may not be able to independently conduct supply chain investigations to identify upstream entities with supply chain links or other relationships connecting them to the workers' grievances. These investigations are often a crucial means of gathering evidence to identify potentially liable upstream brands and formulating potential strategies and/or causes of action.

Security risks may also limit CSOs' capacity to support workers, especially in jurisdictions where there are weak protections for human rights defenders. An MFA member that worked to advocate for migrant worker rights and provided assistance to workers in distress, experienced retaliatory action. The personnel working as the MFA member were deported by the government where the advocacy work was undertaken.²⁷² While CSOs are an integral part of the ecosystem of remediation, these limitations highlight the fact that migrant workers should not be in a position where access to effective remediation depends on CSO involvement.

4.6.2 MIGRANT WORKER RESOURCE CENTRES (MRCs)

In Malaysia, Thailand and Viet Nam, MRCs supported by the ILO TRIANGLE in ASEAN programme play an active role in the ecosystem of remediation by providing free-of-charge legal assistance and counselling that is available outside of the workplace. MRCs provide support to migrant workers in countries of both origin and destination by serving as focal points for migrants and potential migrants to obtain accurate information and counselling on safe migration and rights at work. MRCs are managed in partnership with government institutions, trade unions and civil society organizations.

²⁶⁸ MAP Foundation, [An exceptional case: Brands step up and take responsibility for exploited workers in Mae Sot](#) (May 2021).

²⁶⁹ Interview with MAP Foundation (May 2022).

²⁷⁰ MAP Foundation, [An exceptional case: Brands step up and take responsibility for exploited workers in Mae Sot](#) (May 2021).

²⁷¹ The Freedom Fund and The Remedy Project, [From Local to Global: Building a strategic litigation ecosystem to address modern slavery in supply chains Scoping study](#), Executive summary (May 2021).

²⁷² Interview with MAP Foundation (May 2022).

In Thailand, the three MRCs are operated by CSOs, Homenet, MAP Foundation and HRDF. Thailand also has Migrant Worker Assistance Centres, which are established in all 10 provinces in Thailand under the authorizing power of the Department of Employment. MRCs in Viet Nam are also operated by government agencies, while in the Philippines MRCs are operated by the newly established Department of Migrant Workers. MRCs in Malaysia are located in Penang, Kuala Lumpur and Johor, and represent a means through which migrant workers can file complaints and access remedies. Two of the centres are affiliated with the Malaysian Trade Union Congress (MTUC). These MRCs provide full-scope grievance remediation support, including case analysis and management, mediation and coordination with relevant government and third-party support entities, and repatriation support. In addition, MRCs may also provide representative support in industrial disputes and labour claims.²⁷³ It appears that the work of these MRCs has focused on the resolution of wage-related disputes. Between September 2011 and December 2014, the MTUC was successful in winning awards of over USD 65,300 in compensation for migrant workers.

The regional scope of the MRCs provides infrastructure for end-to-end support for workers during their migration journeys. There have been cases raised by service providers in Cambodia or Viet Nam that were resolved through consultations with service providers in Thailand and Malaysia. These include cases relating to the location of missing migrant workers; relatives of the missing worker contact the MRC in the country of origin, which then refers the issue to the relevant MRC in the country of destination.²⁷⁴ In this regard, MRCs have significant potential to support the cross-border resolution of grievances.²⁷⁵

Promising Practice: The MRCs under the ILO TRIANGLE in ASEAN programme have also developed some cross-border relationships that enable the MRCs to support migrant workers access remedies in cross-border cases. In one example, the relatives of a Myanmar migrant worker who suffered a fatal workplace accident sought support from an MRC located in Myanmar. The MRC in Myanmar liaised with the MRC in Thailand. The MRCs were able to help the relatives, which included arranging and covering the costs of travel from Myanmar to Thailand for the relatives to lodge a claim for social security in Thailand.²⁷⁶

The MTUC is also now working in partnership with the Vietnam General Confederation of Labour (VCGL) and the General Federation of Nepalese Trade Unions (GEFONT) to provide more comprehensive support for migrant workers.²⁷⁷ The coverage of different nationalities and the ability to provide support in both the country of origin and country of destination is valuable in improving cross-border accessibility to legal assistance from the worker's perspective.

²⁷³ MTUC, *Knowledge sharing workshop on good and promising practice and lessons learned to promote decent work for domestic workers and eliminate child labour* (January 2018).

²⁷⁴ *Ibid.*

²⁷⁵ See *GMS TRIANGLE: Migrant Worker Resource Centres (MRCs) and the provision of support services* (December 2013).

²⁷⁶ Interview with ILO TRIANGLE in ASEAN (June 2022).

²⁷⁷ Eliza Marks and Anna Olsen, *The role of trade unions in reducing migrant workers' vulnerability to forced labour and human trafficking in the Greater Mekong Subregion*, *Anti-Trafficking Review* (5):111–128 (2015).

4.6.3 TRADE UNIONS AND WORKER COMMITTEES

Organized forms of worker representation, for example through trade unions, can play an important role in supporting access to remedy. An essential component of an effective non-State/Administrative - based grievance mechanism is to facilitate dialogue between the rightsholder and the private sector actor, in which there is a mutual respect and commitment to resolve grievances. In this way, an effective collective bargaining system is akin to a grievance mechanism – a system whereby the trade union, employees and employers can engage in dialogue to address issues relating to labour standards. Where trade union representatives or worker representatives are selected from the same workplaces as those they are representing and are trusted by the workers, they can be effective advocates for workers. Such democratically elected representatives will have an invaluable understanding of the grievances faced by workers and the expertise to engage in dialogue with the employer and workplace management. They can also be an important source of referral to operational-level grievance mechanisms run by companies or multi-stakeholder organizations. The complementary nature of workplace dialogue processes and operational-level grievance mechanisms is recognized in UNGPs Principle 29.

However, as will be set out in detail below, in certain countries local laws may act as a barrier to full respect for trade union rights and restrict freedom of association. In Malaysia, the role of trade unions in supporting migrant workers access remedies, through the Industrial Courts system (in cases of breach of collective bargaining agreements) or in raising grievances with employers on behalf of migrant workers, is severely curtailed due to legal barriers, discriminatory attitudes and antiunion tactics adopted by some companies. While migrant workers are permitted to join trade unions, they are not permitted to be part of union stewardship or hold executive positions.²⁷⁸ This prohibition significantly affects migrant worker participation in local trade unions and limits the trust migrant workers may have in the ability of trade unions to reflect their interests. National trade unions have limited foreign language capabilities, which result in difficulties in educating and organizing migrant workers.²⁷⁹ Where local trade unions are involved in the operation of the available grievance mechanism, they are sometimes slow to advocate for migrant workers due to sentiment against foreign workers.²⁸⁰ Although national trade unions have supported initiatives such as levy deductions for migrant workers, they are found to provide insufficient representation and services that address the needs of migrant workers.²⁸¹ Thus, migrant workers may not trust local trade unions.

In addition, migrant workers have also been reticent to join trade unions due to fears of retaliatory consequences such as termination of their employment or non-renewal of contracts,²⁸² especially as migrant workers are usually employed



Rice plantation worker, Indonesia.
© Unsplash 2018/Maksym IVASHCHENKO

²⁷⁸ Trade Union Act 1959.

²⁷⁹ Ethical Trading Initiative, *Human Rights Due Diligence in Malaysia's Manufacturing Sector* (December 2019).

²⁸⁰ Lisa Rende Taylor and Elena Shih, *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):131–165 (June 2019).

²⁸¹ Aarti Kapoor, *The road to worthy work and valuable labour: A consolidated report and strategic recommendations on migrant labour in Malaysia* (Embode, 2020).

²⁸² Ethical Trading Initiative, *Human Rights Due Diligence in Malaysia's Manufacturing Sector* (December 2019).



Migrant worker, Viet Nam. © Pexels 2020/Quang Nguyen VINH

on short-term contracts.²⁸³ While this is in conflict with labour laws, there have been reported cases of migrant workers who have participated in union activities that have been dismissed and repatriated within 24 hours, preventing them from seeking redress or reinstatement.²⁸⁴ In an interview conducted with two Bangladeshi workers in Malaysia working in the electronics and furniture industries respectively, the Bangladeshi workers revealed that the companies did not permit workers to unionize or organize any committees or unions.²⁸⁵ Moreover, as migrant workers may live and work on company property, companies can easily discover and interfere with attempts to organize.²⁸⁶

In Thailand, migrant workers face similar limitations in accessing support from trade unions to resolve grievances. It is estimated that only 3 per cent of workers employed by private sector enterprises are organized into trade unions.²⁸⁷ Migrant workers' participation in unions is probably even lower. Even though migrant workers have the legal right to join unions, they are not permitted to establish their own unions.²⁸⁸ Migrant workers and Thai workers are also unlikely to organize together due to language barriers, perceived differences in interest and discrimination, among other factors.²⁸⁹ Thai trade unions have historically faced challenges in adequately representing the voices of migrant workers, due in part to their focus on national concerns and limited willingness to engage with more challenging issues around migrant work.²⁹⁰ As such, even if migrant workers have access to a union, it will probably remain difficult for them to ensure that their specific concerns are represented and communicated to employers.

In addition, the scope for collective bargaining in Thailand is relatively limited in practice. Workers are vulnerable to employer retaliation for union participation and there have also been cases of civil and criminal charges against trade union leaders for defaming a company's reputation or for financial losses associated with trade union activities.²⁹¹ While the Labour Relations Act protects workers

²⁸³ Ibid.

²⁸⁴ MTUC, *Knowledge sharing workshop on good and promising practice and lessons learned to promote decent work for domestic workers and eliminate child labour* (January 2018).

²⁸⁵ Interviews with two Bangladeshi workers (one in the electronics industry, one in the furniture industry) in Malaysia (May 2022).

²⁸⁶ Solidar, *Exploited and Illegalised: The Lives of Palm Oil Migrant Workers in Sabah* (Zurich, 2019).

²⁸⁷ The Office of Permanent Secretary, Ministry of Labor, Thailand, *Labor Statistics Yearbook 2018*.

²⁸⁸ International Labor Rights Forum, *Time for a Sea of Change: Why union rights for migrant workers are needed to prevent forced labour in the Thai seafood industry* (2020)

²⁸⁹ Ibid.

²⁹⁰ Eliza Marks and Anna Olsen, *The role of trade unions in reducing migrant workers' vulnerability to forced labour and human trafficking in the Greater Mekong Subregion*, *Anti-Trafficking Review* (5):111–128 (2015).

²⁹¹ International Labor Rights Forum, *Time for a Sea of Change: Why union rights for migrant workers are needed to prevent forced labour in the Thai seafood industry* (2020).

who have submitted collective demands from being dismissed or transferred, workers remain vulnerable to potential retaliation prior to submitting a demand.²⁹² This lack of legal protection has significant implications for migrant workers. If migrant workers are terminated, there is a strong likelihood that they will be deported.

Worker committees can be another forum for workers to report grievances and/or seek assistance for resolution of grievances. However, where worker committees are deployed, it is essential that the employer enables constructive worker participation in committee meetings and respects the dialogue process. The quality of the committee and migrant worker representation has a significant impact on the effectiveness of such worker committees to facilitate migrant worker access to remedy.

Promising Practice Thai Union, supported by Migrant Worker Rights Network, has worked to strengthen existing worker welfare committees.²⁹³ This included educating and supporting candidates in their campaigns, and training elected representatives in their roles and responsibilities. Following this programme in 2016, 60 candidates ran for the worker welfare committee, including 46 migrant workers. The committee was then established with 19 members, comprising 11 migrant workers and 8 Thai nationals.²⁹⁴ Guidelines were also prescribed for worker welfare committees, which set standards on worker representation through these committees, including ensuring proportional representation by workers from different countries.

Key Recommendations for non-State/Administrative-based grievance mechanisms

States should work together with CSOs, MRCs and United Nations agencies to support workers, for example Migrant Worker Assistance Centres established by the Department of Employment of the Royal Thai Government formed a working group with the NGO HRDF to improve assistance to migrant workers.²⁹⁵ In addition, States should ensure that laws do not curtail the ability of CSOs and trade unions to support migrant workers in accessing remedies and realization of their rights.

Developers and operators of non-State/Administrative-based grievance mechanisms should also engage with CSOs and trade unions (where they exist and are representative of migrant worker groups). Working with CSOs can be one way in which the private sector can leverage the trust and relationship CSOs often have with workers to improve the effectiveness of their grievance mechanisms. These recommendations are further developed in Section 6; see in particular Pillars 1.5, 3.1, 3.2 and 3.3.

²⁹² Ibid.

²⁹³ Ibid., p. 38.

²⁹⁴ Figures are from April 2016; it is noted that the composition of the worker welfare committee may change from time to time. See Thai Union, *Giving our Workers a Voice Through Strengthening Worker Welfare Committee* (n.d.).

²⁹⁵ ILO, *Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers* (2020).



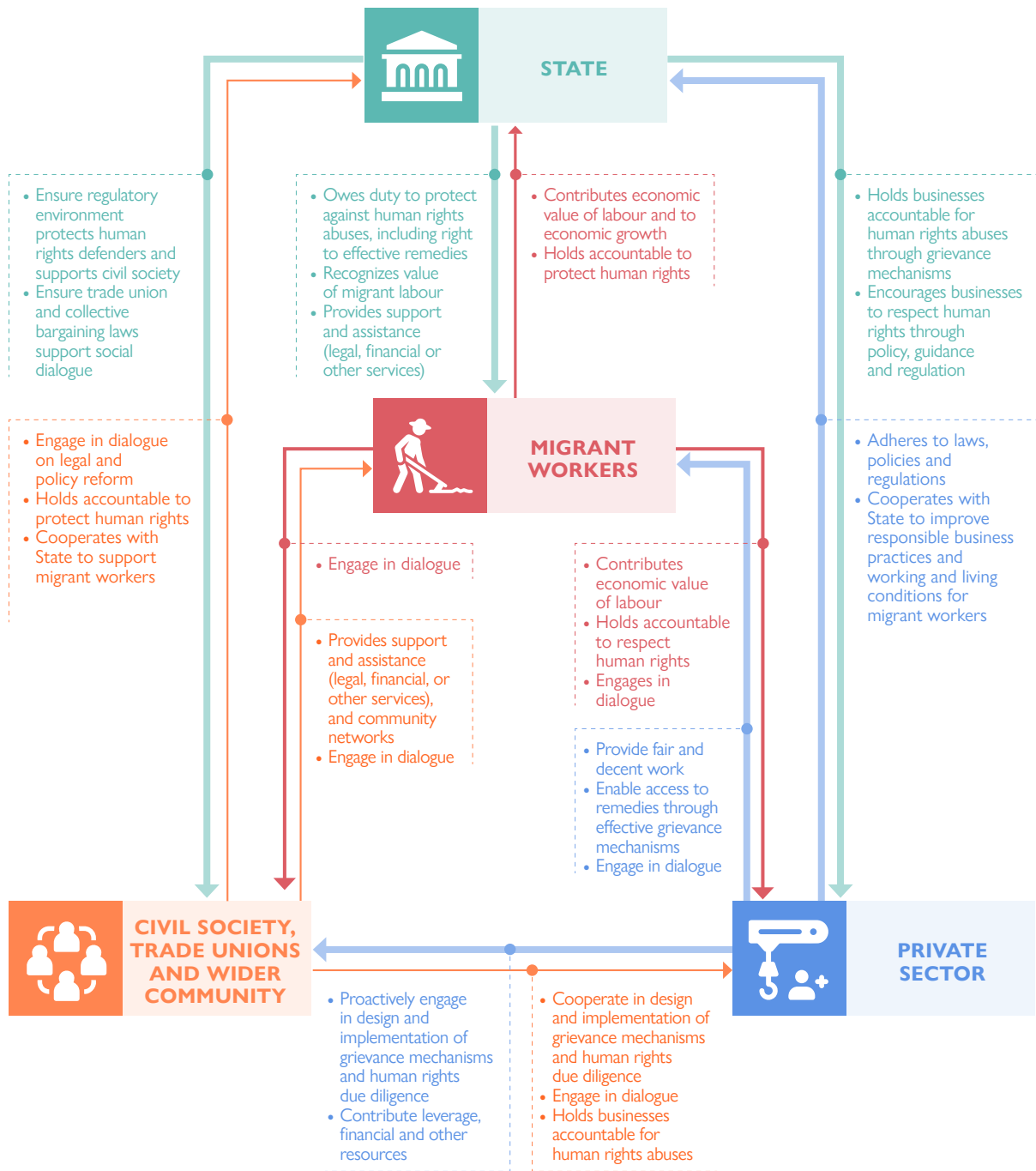


A migrant workers back to her parents' house, Cambodia. © IOM 2020

LOOKING FORWARD TOWARDS AN EFFECTIVE ECOSYSTEM OF REMEDY

In order to formulate the recommended actions that would enable States, businesses, civil society and other non-State actors to enable migrant workers access to effective remedies, it is important to identify the features of an effective ecosystem of remedy, as envisioned in the UNGPs and the OHCHR ARP reports. This effective ecosystem of remedy, illustrated in Figure 2 below, should represent the overarching implementation outcomes of the recommendations.

Figure 2. An effective ecosystem of remedy



Source: The Remedy Project.



Migrant construction workers on their lunch break. Dumaguete City, Negros Oriental, the Philippines. © Pexels 2020/Denniz FUTALAN

The following features would exist in an effective ecosystem of remedy:

- **Migrant workers, as the rights holders, are at the heart of the ecosystem of remedy.** They must be able to exercise their right to access remedies through grievance mechanisms in a way that is accessible, affordable, adequate and timely.²⁹⁶ Common shortfalls of non-State/Administrative - based grievance mechanisms, including power imbalances and lack of trust, are addressed by giving migrant workers a role in shaping, implementing and monitoring these mechanisms. Furthermore, migrant workers are responsible for holding the State and private sector accountable to their duty to protect and responsibility to respect human rights, respectively. However, the regulatory and social environment must enable them to do so. This means that migrant workers must be able to access grievance mechanisms (whether State/Administrative - based or non-State/Administrative - based) without fear of reprisals. Businesses must also proactively and meaningfully consult migrant workers in their human rights due diligence processes. Laws on trade unions and collective bargaining must enable migrant workers to contribute to social dialogue. As rights holders, migrant workers can realize their economic, social and cultural rights. They are treated as economic actors. The value of their labour is acknowledged by employers through the provision of decent work and by the State in the protections and rights afforded to them in migration and labour laws and policies.
- **States foster a safe and enabling environment for migrant workers, the private sector and civil society to engage in social dialogue and work collaboratively to respect, protect and fulfil human rights.** States implement and enforce laws, policies and regulations that protect migrant workers' rights. Furthermore, States hold the private sector liable for causing or contributing to adverse human rights impacts, through effective corporate accountability laws and enforcement, and put in place a regulatory framework that obligates and incentivizes the private sector to fulfil their responsibility to respect human rights. States also have an important role in providing access to judicial and non-judicial remedies, through effective State/Administrative - based grievance mechanisms. States are also responsible for creating a climate of transparency and accountability, including through regulating the disclosures made by companies on their human rights policies and practices (as well as their broader ESG performance). This duty also includes protecting the rights that are fundamental to the activities and safety of human rights defenders, including freedom of peaceful assembly and association, freedom of expression, and access to funding.

²⁹⁶ OHCHR, Human rights and transnational corporations and other business enterprises (July 2017). A/72/162, pp. 8-16.

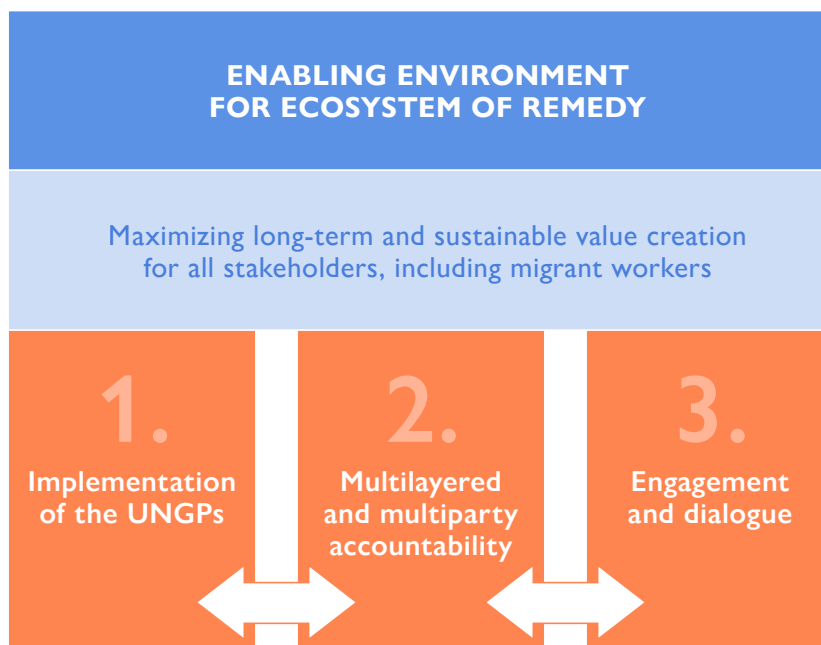
- **The private sector collaborates with diverse stakeholders to maximize long-term, sustainable value creation.** Businesses understand corporate accountability to mean accountability to all their stakeholders, including migrant workers. Rather than solely focusing on maximizing shareholder value, businesses understand that migrant workers and other stakeholders also invest time and effort in their financial success, and take their rights and interests into account. Businesses are proactive in identifying, preventing and mitigating human rights impacts across their value chain and are transparent in disclosing their efforts. They conduct human rights due diligence and offer grievance mechanisms that are embedded within an ecosystem of dynamic workplace dialogue. They meaningfully engage migrant workers, as well as other stakeholders, in fulfilling their responsibility to respect human rights.
- **Civil society, trade unions and other non-State actors play an active role in supporting migrant workers access remedies, and in holding States and the private sector accountable.** These stakeholders support migrant workers to engage in remediation on fair and informed terms, including through the provision of information, expertise, or financial resources. These stakeholders also work constructively alongside States and the private sector to respect, protect and fulfil human rights, including through contributing to the design and operation of non-State/Administrative - based grievance mechanisms. They also play an active role in holding States and the private sector accountable for human rights abuses and are free do so without fear of reprisals.

To enable the identified stakeholders to work practically towards creating this ideal ecosystem of remedy, the key elements of this ecosystem are distilled into three foundational pillars, which form the basis for the recommendations:

- (1) **Implementation of the UNGPs** – Where the UNGPs are fully implemented, human rights due diligence and remediation are embedded in corporate governance and business models, and businesses focus on risks to people (rather than just risks to business). Partnerships grounded in engagement and dialogue between States and businesses, as well as multi-stakeholder alliances involving migrant workers, businesses, governments and civil society, enable collective action to tackle systemic human rights issues.²⁹⁷
- (2) **Ensuring multilayered, multiparty accountability** – migrant workers, businesses, States, civil society, trade unions and other non-State actors all have a role in ensuring accountability – whether through dialogue, monitoring and evaluation, or using grievance mechanisms – as this fosters an environment in which each stakeholder has ownership in the ecosystem of remedy.
- (3) **Facilitating engagement and dialogue** – Where migrant workers can meaningfully engage with employers in workplace dialogue (whether through trade unions, worker committees, or use of grievance mechanisms), this is likely to enable issues to be resolved early and reduce the potential for irreparable conflicts. Migrant workers are likely to feel a greater sense of agency, ownership and satisfaction, while from the businesses' perspectives, this could reduce employee absenteeism and turnover, and improve labour productivity.

²⁹⁷ Enhancing collective action to address systemic challenges is also acknowledged as a priority action area in the UNGPs 10+ A Roadmap for the Next Decade of Business and Human Rights (Goal 1.2).

Figure 3. An enabling environment for an effective ecosystem of remedy



Source: The Remedy Project.

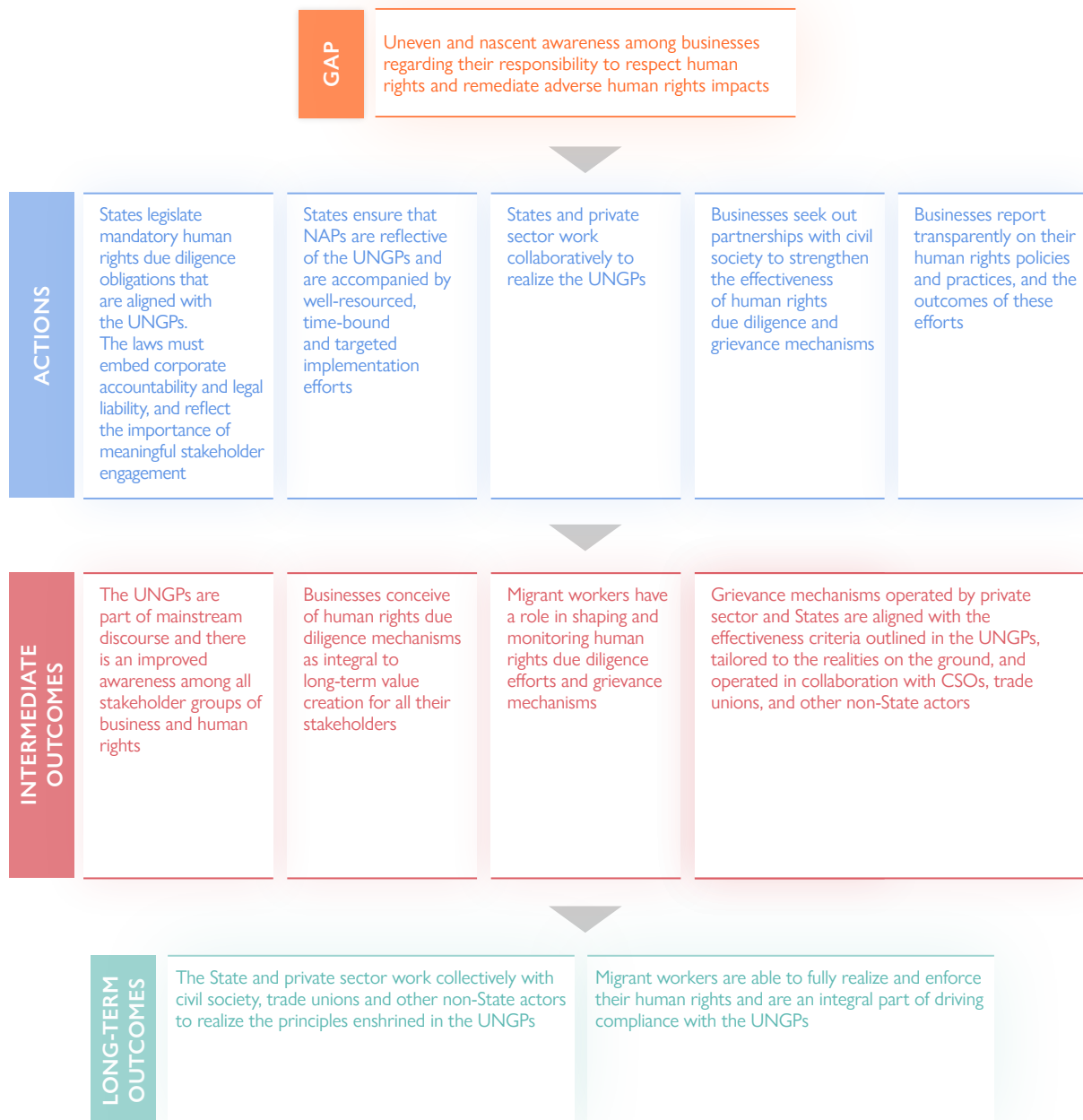
These three pillars are cross-pollinating, as the recommendations in each pillar often intersect and work to reinforce the overarching outcome of creating an enabling environment for migrant workers to access effective remedies. Finally, this ecosystem of remedy is held together by States and businesses understanding that migrant workers and their communities, trade unions, human rights defenders, civil society and other non-State actors all play an essential role in monitoring States and business practices as partners. In particular, the private sector engages with its diverse stakeholders to maximize long-term and sustainable value creation.

To ensure that the recommendations reflect the situation on the ground (in particular, the needs and concerns of the migrant workers interviewed), the gaps and challenges identified in the Stakeholder Mapping informed the theory of change models developed in this section below to work towards an effective ecosystem of remedy. The theory of change models that underlie each pillar are explained diagrammatically in the subsections below.

1. IMPLEMENTING THE UNGPs

The implementation of laws that ground State and non-State efforts around grievance mechanisms in the standards set out in the UNGPs, would provide the necessary framework to build a more cohesive ecosystem of remedy in South-East Asia. Without mandatory human rights due diligence laws that translate the UNGPs into legally binding laws, non-State/Administrative - based grievance mechanisms are unlikely to fulfil their dual purpose of facilitating access to remedies and acting as an early warning system for human rights risks. Figure 4 below illustrates how States and businesses could take concrete steps towards implementing the UNGPs.

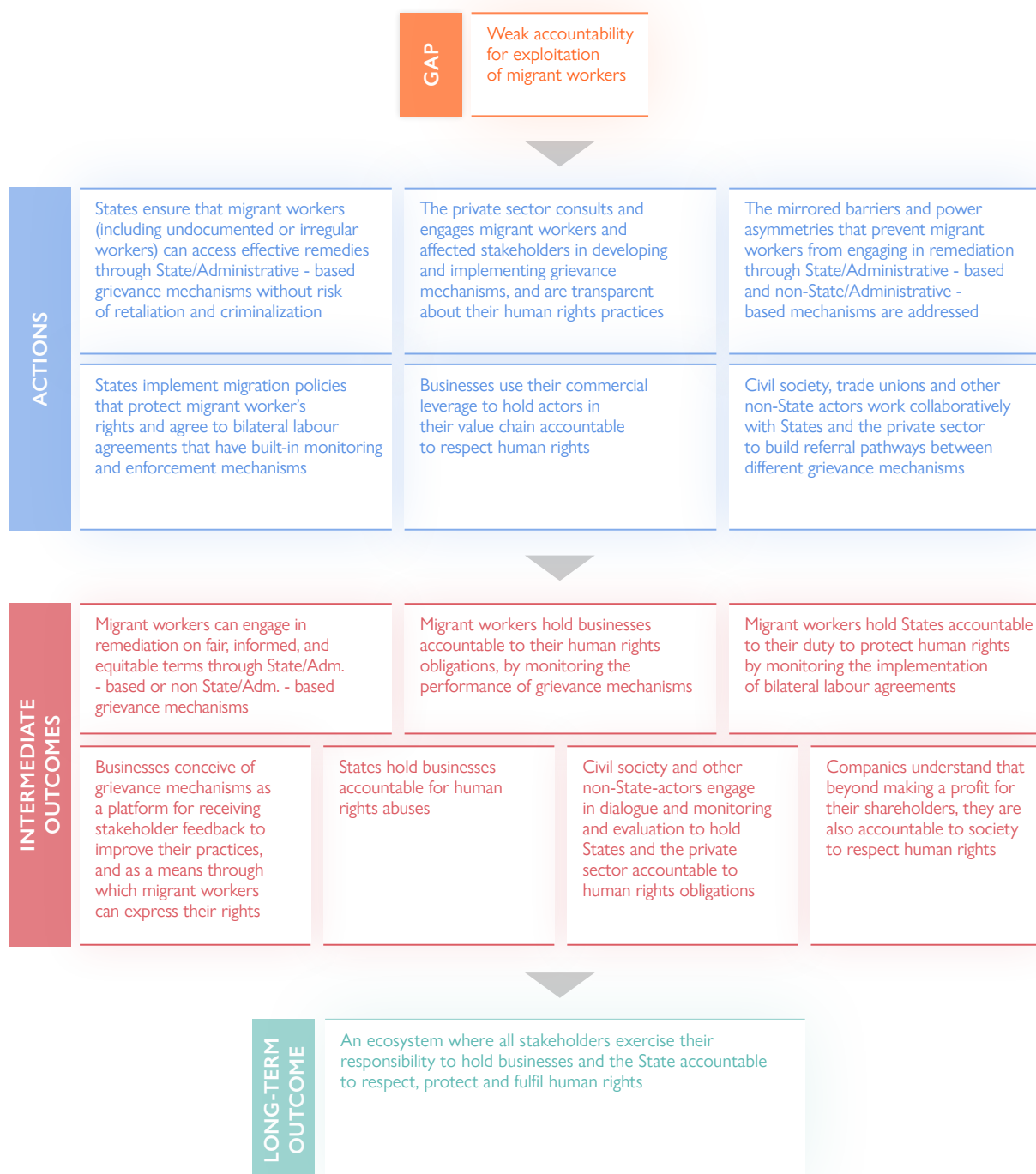
Figure 4. Theory of change: Implementing the UNGPs



2. ENSURING MULTILAYERED, MULTIPARTY ACCOUNTABILITY

Figure 5 below illustrates how accountability for the exploitation of migrant workers could be strengthened, to create an ecosystem of remedy in which all stakeholders reinforce each other's responsibilities to respect, protect and fulfil the human rights of migrant workers. The actions that will help stakeholders achieve this outcome are also illustrated in Figure 5 (centre left).

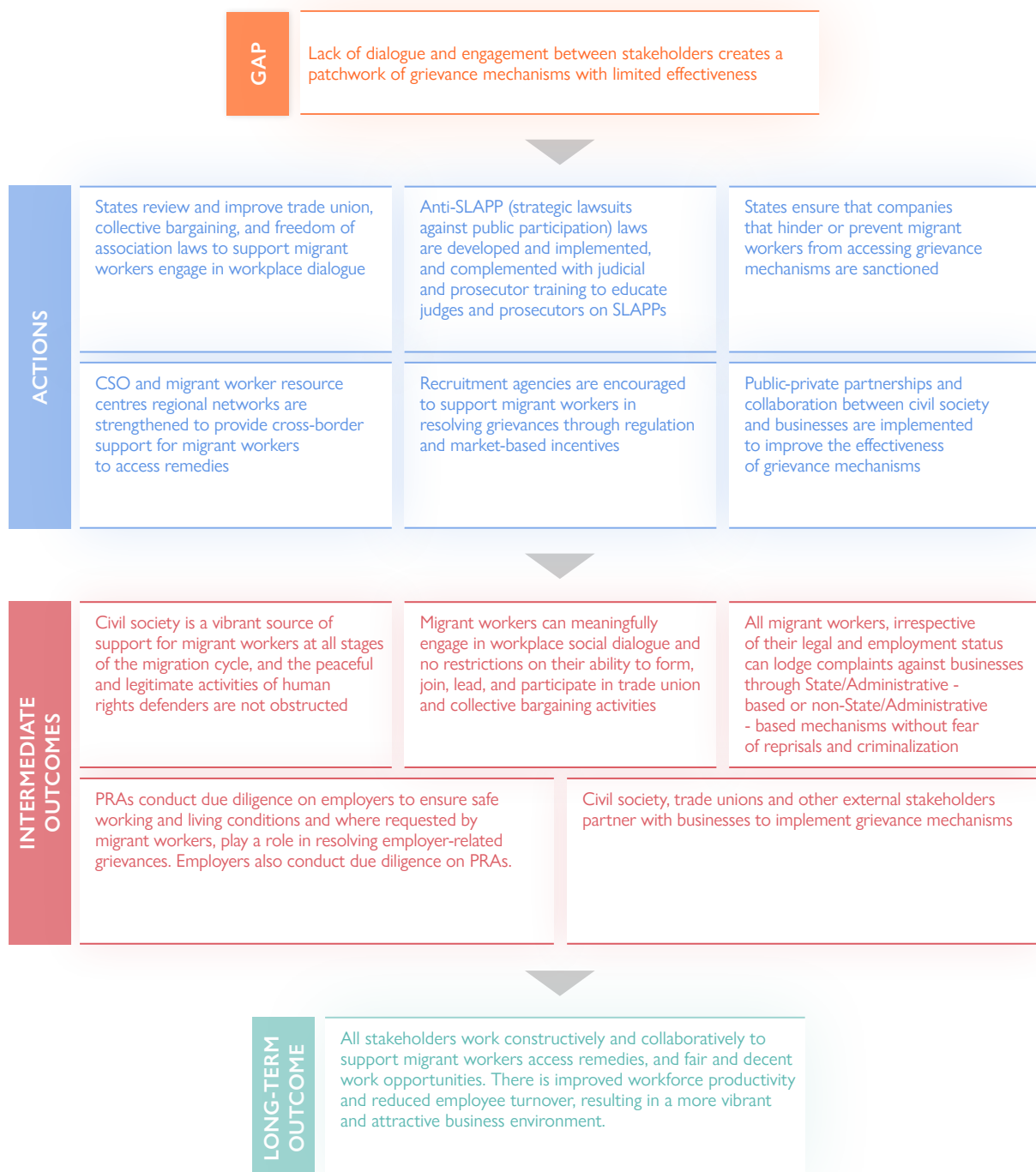
Figure 5. Theory of change: Ensuring multilayered, multiparty accountability



3. FACILITATING ENGAGEMENT AND DIALOGUE

Figure 6 below illustrates how engagement and dialogue between States, the private sector, civil society and other non-State actors could be fostered, to improve the effectiveness of existing grievance mechanisms and knit the disparate pieces of the remediation ecosystem together. The actions that will help stakeholders achieve this outcome are also illustrated in Figure 6 (centre left).

Figure 6. Theory of change: Facilitating engagement and dialogue





Migrant workers harvesting tea leaves in Viet Nam. © Pexels/Quang Nguyen VINH

RECOMMENDATIONS

The recommendations are set out in the following tables that are built around each of the thematic pillars: (1) implementing the UNGPs; (2) ensuring multilayering and multi-accountability; and (3) facilitating engagement and dialogue. The recommendations are organized based on intermediate outcomes. The headline recommendations are intended to apply across the region, while local-level recommendations have been highlighted where specific considerations apply.

6.1 PILLAR 1: IMPLEMENTING THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Long-term Outcome:

The State and private sector work collectively with civil society, trade unions and other non-State actors to realize the principles enshrined in the UNGPs. Migrant workers are able to fully realize and enforce their human rights and are an integral part of driving compliance with the UNGPs.

Pillar 1. Implementing the UNGPs – Recommendations

Intermediate Outcome: The UNGPs are part of mainstream discourse and there is an improved awareness among all stakeholder groups of business and human rights.

1. States should take concrete steps to include business and human rights in the legislative agenda.

Specifically, States could:

- Survey the private sector and map existing business practices on business and human rights, especially as they relate to human rights due diligence, grievance mechanisms and access to remedies, and develop good practice guidance for businesses.
- Leverage existing ESG momentum to ensure that social disclosures are reflective of the [UNGPs Reporting Framework](#). In particular, States could mandate that publicly listed companies utilize the framework to manage and report on their salient human rights risks.
- Review existing corporate accountability laws relating to transparency and accountability to ensure that they are consistent with the principles set out in the UNGPs, and enable States to take appropriate action to prevent, investigate, punish and redress human rights abuses resulting from business activities and operations. This may include building upon existing obligations on PRAs to conduct due diligence on prospective employers and clearly articulating PRAs' responsibilities in supporting migrant workers resolve grievances with employers.

Specific local or national-level recommendations (responsible stakeholders):

Hong Kong SAR, China:

- It is recommended that the authorities of Hong Kong SAR, China encourage the Hong Kong Exchanges and Clearing (HKEX) to ensure that its [ESG Reporting Guide](#) (in particular, the requirements relating to social and governance) is reflective of the UNGPs Reporting Framework and includes disclosures on grievance mechanisms and access to remedy, especially considering HKEX's role as a regional hub for public company listings. (*Authorities of Hong Kong SAR, China and HKEX*).

Pillar 1. Implementing the UNGPs – Recommendations

Thailand:

- The Stock Exchange of Thailand, which has already published [guidelines](#) on sustainability reporting that reference the UNGPs, could develop a compendium of good practices and case studies to further support listed companies to improve their disclosures. (Stock Exchange of Thailand).

2. States should ensure that civil society, trade unions and other stakeholders are meaningfully consulted in the development of National Action Plans on Business and Human Rights (NAPs) and that their views and the potential roles they may play in implementing UNGPs are likewise reflected in the NAP.

- NAPs should be backed by concrete action, inclusive stakeholder engagement, and sufficient resources and political mandates for lead ministries and other agents within States.
- NAPs should be closely aligned with the UNGPs. The United Nations Working Group on Business and Human Rights workshop on [National Actions Plans on business and human rights: How to ensure ambition and coherence?](#) and [Guidance on National Action Plans](#), as well as the Danish Institute for Human Rights and International Corporate Accountability Roundtable [National Action Plans on Business and Human Rights Toolkit](#) may provide helpful guidance.
- NAPs should include a plan for concrete action to address migrant workers' rights, including prioritizing actions to enhance access to remedies for migrant workers. This could include actions to remove identified barriers that prevent migrant workers from accessing remedies through State/Administrative - based grievance mechanisms, or measures to promote business implementation of effective operational-level grievance mechanisms to resolve and remediate migrant worker grievances.

Specific local or national-level recommendations (responsible stakeholders):

Malaysia:

- In the development of its first NAP, Malaysia should make sure that it is aligned with its existing National Action Plan to Combat Trafficking in Persons and National Action Plan on Forced Labour. Malaysia should also ensure transparency in the development process of the NAP (including timeline and outcomes of public consultation events) and meaningful stakeholder engagement in genuine consultative processes. The aspirational milestones included in the NAP must be backed by time-bound policy commitments, legislative reform, allocated funding and targeted resourcing. (*National Steering Committee, the Human Rights Commission SUHAKAM, United Nations agencies*).

Philippines:

- The Government of the Philippines should make concrete commitments to develop its first NAP and make publicly available its intended timeline to achieve this outcome. The NAP should be aligned with its existing [Multi-stakeholder National Action Plan and Roadmap on Mainstreaming Fair and Ethical Recruitment in the Philippines](#) (*The Government of the Philippines, National Human Rights Commission, United Nations agencies*).

Thailand:

- To encourage transparency, Thailand should ensure that the evaluation of its first NAP (and all subsequent NAPs) is made publicly available and conducted by independent, external experts in consultation with affected stakeholders and civil society. In the development of Thailand's second NAP, Thailand should ensure that there is meaningful consultation with all affected stakeholders and that it is backed by clear policy proposals, allocated funding and targeted resourcing to implement the activities outlined in the NAP. (*Rights and Liberties Protection Department, Ministry of Justice, United Nations agencies*).

Viet Nam:

- In the development of its first NAP, Viet Nam should make sure that it is aligned with its existing National Action Plan on Trafficking and Forced Labour. There should be more transparency around the process to develop the NAP and ensure that all affected stakeholders are meaningfully engaged in genuine consultative processes. The aspirational milestones included in the NAP must be backed by time-bound policy commitments, legislative reform, allocated funding and targeted resourcing. (*Ministry of Justice, United Nations agencies*).

Pillar 1. Implementing the UNGPs – Recommendations

3. States should legislate mandatory human rights due diligence obligations that reflect the importance of grievance mechanisms and stakeholder engagement in these efforts.

Mandatory human rights due diligence laws should contain legally binding standards that are aligned with the principles outlined in the UNGPs. All the key activities of human rights due diligence, as set out in the UNGPs, must be captured by these laws. The role and importance of stakeholder engagement in human rights due diligence is clearly articulated. The laws must embed corporate accountability and legal liability by providing mechanisms for stakeholders to file complaints and seek redress where companies fail to comply with their obligations. Non-State/Administrative - based grievance mechanisms must be emphasized and the UNGPs Principle 31 “effectiveness” criteria should be properly reflected. The [OHCHR EU Mandatory Human Rights Due Diligence Directive: Recommendations to the European Commission](#) (July 2021) and [OHCHR Feedback on the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence](#) (May 2022) may provide helpful guidance.

Intermediate Outcome: Businesses conceive of human rights due diligence and grievance mechanisms as integral to long-term value creation for all their stakeholders.

4. States and the private sector should work collaboratively to build capacity to realize pillar 3 of the UNGPs.

In particular, States and the private sector could:

- Enter into public–private partnerships or work with United Nations agencies to provide forums to build private sector capacity on the UNGPs, including by disseminating good practices on mandatory human rights due diligence and grievance mechanisms. Civil society and affected stakeholders, and business and human rights experts, should be invited to participate in these forums.
- Jointly develop targeted guidance and capacity-building for small and medium enterprises to engage in systematic remediation of migrant worker grievances in accordance with the UNGPs, utilizing progressive step-up models that are adapted to their scale.
- Encourage large buyers or brands to invest in their supply chain through supporting pilot projects to implement supply chain grievance mechanisms that cover all workers in their value chain. Such support could be in the form of awards or incentives.
- Work collaboratively with industry bodies to develop good practices, toolkits and training sessions to raise awareness of the UNGPs, and in particular with regard to implementation of human rights due diligence practices and operational-level grievance mechanisms.

Specific local or national-level recommendations (responsible stakeholders):

Malaysia:

- Where there are existing industry-wide initiatives to advance business and human rights standards, such as in palm oil and electronics manufacturing, businesses and multi-stakeholder initiatives should consider using their leverage to implement effective non-State/Administrative-based grievance mechanisms. This could include working collaboratively with United Nations agencies and CSOs to explore the feasibility of implementing supply chain grievance mechanisms that utilize alternative dispute resolution to provide migrant workers with genuine opportunity to engage in remediation processes on fair, respectful and informed terms. (Private sector, United Nations agencies, CSOs).

Intermediate Outcomes:

- Grievance mechanisms operated by the private sector and States are aligned with the effectiveness criteria outlined in the UNGPs, tailored to realities on the ground, and operated in collaboration with CSOs, trade unions and other non-State actors.
- Migrant workers have a role in shaping and monitoring human rights due diligence efforts and grievance mechanisms.

Pillar 1. Implementing the UNGPs – Recommendations

5. Businesses should seek out partnerships with civil society to strengthen the effectiveness of human rights due diligence and grievance mechanisms.

- In the design and implementation of human rights due diligence and grievance mechanisms, businesses should meaningfully engage migrant workers in a consultative co-creation process. Migrant workers should also have an opportunity to provide feedback on implemented mechanisms or practices, without fear of reprisals.
- Businesses should consider working collaboratively with civil society, trade unions and other non-State actors (such as United Nations agencies), to carry out the functions of their grievance mechanisms. For example, businesses should meaningfully engage external stakeholders to build trust in their mechanisms, not only for awareness-raising, but also in investigating grievances filed and verifying that agreed-upon remedial outcomes are implemented. [Using Third Parties to Support the Design and Implementation of Grievance Mechanisms](#), developed by The Remedy Project for Bonsucro and the Responsible Jewellery Council, may provide helpful guidance.

6. Businesses should report transparently on their human rights policies and practices, as well as the outcomes of these efforts.

- Businesses should align their human rights reporting with the [UNGPs Reporting Framework](#).
- Businesses, industry bodies and multi-stakeholder initiatives should ensure that all affected stakeholders, including civil society, trade unions and other actors are meaningfully engaged in monitoring and evaluating their human rights policies and practices. Independent, external experts should also be engaged to conduct such evaluations.
- Data on the performance and the intended and unintended outcomes of implemented grievance mechanisms should be reported, including case studies and examples of remediation undertaken.



Construction workers, Hong Kong SAR, China. © Pexels 2017/PIXABAY

6.2 PILLAR 2: ENSURING MULTILAYERED, MULTIPARTY ACCOUNTABILITY

Long-term Outcome:

An ecosystem in which all stakeholders exercise their responsibility to hold businesses and the State accountable to respect, protect and fulfil human rights.

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

Intermediate Outcome: Migrant workers can engage in remediation on fair, informed and equitable terms through State/Administrative - based or non-State/Administrative - based grievance mechanisms.

Mirrored barriers and power asymmetries currently prevent migrant workers from using and trusting both State/Administrative - based and non-State/Administrative - based grievance mechanisms. The recommendations in Pillar 2.1 aim to address obstacles common to both State/Administrative - based non-judicial and judicial mechanisms; while the recommendations in Pillar 2.2 and Pillar 2.3 aim to address the specific context of State/Administrative - based non-judicial and State/Administrative - based judicial mechanisms, respectively. The recommendations in Pillar 2.4 offer practical suggestions for developers and operators of non-State/Administrative - based grievance mechanisms to work collaboratively to enhance the effectiveness of these mechanisms.

1. Regional recommendations to enhance the effectiveness of State/Administrative - based (judicial and non-judicial) grievance mechanisms

a) States should offer legal aid, financial assistance and counselling support for all migrant workers to access all types of State/Administrative - based grievance mechanisms. This could include:

- Ensuring that legal aid is available for all types of claims, including civil actions, especially in countries of destination. The right of migrant workers to legal aid to resolve employment and/or recruitment-related disputes could be recognized in bilateral labour agreements.
- Establishing a specific fund for migrant workers to access financial assistance to lodge claims through State/Administrative - based grievance mechanisms that is embedded within bilateral labour agreements and funded equally by both countries of origin and countries of destination. The funds could be allocated from the fees received from recruitment agencies for their licences and/or charged to employers that recruit migrant labour.
- Establishing legal sections where labour attachés are stationed to provide legal counselling and information to migrant workers regarding their legal rights and grievance mechanisms.
- Ensuring that State agencies responsible for resolving and/or adjudicating labour disputes and migrant worker grievances in countries of destination facilitate or offer access to free, independent legal counselling for migrant worker claimants (including prospective claimants).
- Supporting MRCs (in both countries of destination and countries of origin) that provide legal assistance and counselling to migrant workers.
- Ensuring that labour laws in countries of destination permit migrant workers to take paid leave to engage in remediation through State/Administrative - based grievance mechanisms.
- Please also cross-refer to the recommendations in Pillar 3.4 on ensuring the rights of undocumented or irregular migrant workers to access grievance mechanisms.

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

b) States should work collaboratively with the private sector, civil society, United Nations agencies, trade unions and other stakeholders to ensure that information about migrant workers' rights and access to grievance mechanisms is disseminated in a format that is responsive to migrant worker needs and is embedded within the migration process.

- States should ensure that pre-departure orientation and post-arrival information sessions make clear where migrant workers can lodge complaints and reach out for legal assistance and other support services. The content and delivery of these information sessions should focus on knowledge and awareness gaps and be responsive to the needs and concerns of migrant workers and tailored to their socioeconomic and cultural backgrounds. In particular, countries of destination should require employers and PRAs (based in their territory) to provide post-arrival information sessions.
- States should enhance existing information campaigns about State/Administrative - based grievance mechanisms and “know your rights” campaigns by meaningfully engaging migrant worker communities, their representatives and CSOs in these campaigns. For example, migrant workers should be consulted during the design of these campaigns to ensure that the content and format of delivery is valuable to them. The inclusion of success stories was identified as helpful in the migrant worker interviews conducted in the Stakeholder Mapping. Governments could also consider partnering with migrant worker peer leaders, trade unions, United Nations agencies, PRAs, MRCs and grassroots organizations to support information dissemination.
- States should ensure that all information and materials are made available in the common languages spoken by migrant workers, including local dialects.
- In addition, to improve transparency, States should ensure that case statistics and information (including types of cases handled, time required for resolution and common outcomes) are made publicly available and accessible to migrant workers. Sanctions imposed on employers and recruitment agencies that violate labour laws should also likewise be published.

c) States should consult with stakeholders in undertaking regular reviews of State/Administrative - based grievance mechanisms to identify areas for improvement and ensure that the findings of any review are used to inform migration, labour and other policies.

- States should conduct regular evaluations of grievance mechanisms and identify areas of improvement in a way that is grounded in the analysis of case statistics and stakeholder feedback. Independent experts should be engaged to conduct these evaluations. The feedback of migrant workers and other affected stakeholders must be solicited as part of this evaluation process. In particular, migrant workers should have an opportunity to feed back their experiences with using State/Administrative - based grievance mechanisms or seeking support from State agencies anonymously and without fear of retaliation.
- The results of the evaluation should be shared publicly. States should also ensure that the findings are used to inform policies and initiatives to improve these grievance mechanisms. In addition, the case statistics could be used to inform migration and labour policies and bilateral labour agreements to protect migrant workers from similar, future grievances from arising.

Specific local or national-level recommendations (responsible stakeholder)

Hong Kong SAR, China

- It is recommended that the Labour Department conducts outreach to socialize Labour Department services with the wider migrant worker community (and not only migrant domestic workers) and collaborate with CSOs and the private sector to disseminate such information. (*Labour Department*).
- It is recommended that the Labour Department develops a centralized and publicly searchable database of decisions involving recruitment agencies or employers that have been sanctioned for violations of labour law and failures to pay awards issued by Labour Tribunal. This would consolidate existing good practices undertaken to publish such statistics and case data on the Labour Department and other government websites. (*Labour Department*).
- It is recommended that the right to legal aid and financial assistance be guaranteed to enforce awards made by the Minor Employment Claims Adjudication Board (MECAB), Labour Tribunal or Small Claims Tribunal. (*Hong Kong SAR, China Judiciary*).

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

- It is recommended that the Hong Kong SAR, China Judiciary issues clear guidance for proceedings before the Labour Tribunal and the Small Claims Tribunal to clarify that migrant workers who have returned to their country of origin are able to participate in non-judicial proceedings through a video link or by assigning a representative. (*Hong Kong SAR, China Judiciary*)
- It is recommended that the Immigration Department issues guidance and formalizes procedures to enable migrant domestic workers to switch employers where requisite evidence of exploitation is provided. (*Immigration Department*).

Malaysia

- The Government of Malaysia should automatically grant migrant workers seeking redress through the Labour Department the “Special Pass” visa free of charge, extend the permitted duration of the pass, and grant these workers the right to work for the duration of the remediation process. These recommendations were also echoed in the ILO’s [Report on Review of Malaysia’s Labour Dispute Resolution System](#). (*Ministry of Human Resources, Immigration Department*).
- The Government of Malaysia should work to fill the vacant labour officer positions to increase the capacity of the Labour Department and Labour Courts to resolve cases in a timely manner. Furthermore, officials should be sufficiently trained to deal with migrant worker grievances and translation/interpretation services must be available to address all major migrant worker languages. (*Department of Labour*).
- The assistance available through the government-funded Legal Aid Bureau should be rendered to migrant workers, including the ability to bring civil actions. (*Legal Aid Department*).
- The Government of Malaysia should also ensure that undocumented workers who come forward with claims are not criminalized. Please cross-refer to the recommendations in Pillar 3.4 below. (*Immigration Department*).

Philippines

- The Government of the Philippines should curb practices among PRAs of threatening migrant workers to sign quitclaims and ensure that settlement agreements entered into between migrant workers and PRAs are not grossly unfair. This includes making sure that migrant workers have access to free, independent legal advice to navigate the process, and increasing oversight over bilateral settlement negotiations undertaken outside of government processes. There needs to be a greater focus on the quality of remedial outcomes, as the receipt of inadequate monetary compensation does not fulfil the right to effective remedies. (*Department of Migrant Workers*).
- The Government of the Philippines should work collaboratively with CSOs and United Nations agencies to increase transparency around the outcomes of remediation processes undertaken by POEA, NLRC and OWWA (and in the future by the Department of Migrant Workers). It is commendable that case statistics are made available; however, more detailed case studies and sharing of good practices could strengthen trust in State/Administrative - based grievance mechanisms. (*Department of Migrant Workers*).

Thailand

- The Royal Thai Government should review all State/Administrative - based grievance mechanisms and State actors involved in remediating migrant worker grievances and consider whether all the parts of the ecosystem are well integrated and cohesive. In particular, cooperation between labour inspectors and the police could be strengthened to enhance the efficiency of investigation and enforcement actions. Similarly, referral pathways for complaints received through migrant worker assistance centres established under the Department of Employment should be implemented so that complaints are efficiently addressed by the appropriate State agency and system. (*Department of Employment, Ministry of Justice, Royal Thai Police*).
- Ensure that legal aid is available for migrant worker claimants to pursue labour claims; and enforce awards made by the Labour Court and orders made by labour inspectors. (*Department of Employment, Ministry of Justice*).
- Incidences of retaliation against migrant worker claimants and human rights defenders must be addressed. Please cross-refer to the recommendations in Pillar 3.1 below.

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

Viet Nam

- The Government of Viet Nam should address capacity constraints at Vietnamese Embassies in countries of destination, State-run MRCs and provincial and local DOLISA Employment Service Centers, as well as the central DOLAB office. This could also include strengthening partnerships with the National Bar Association of Viet Nam to facilitate improved access to legal assistance for migrant workers and conducting capacity-building for MRC staff members. Officials stationed in embassies/consulates in countries of destination must be trained to handle migrant worker grievances, and be familiar with the legal systems and laws of the countries of destination as well as of Viet Nam. (DOLAB, DOLISA).
- The Government of Viet Nam should work collaboratively with relevant United Nations agencies and VAMAS, and through the State-run MRCs, to improve dissemination of information to prospective and current Vietnamese migrant workers regarding their rights, available channels of support and assistance, and advice on what they should do if they encounter an exploitative situation while in the country of destination. Vietnamese migrant workers should be consulted in the development of the safe migration campaign so that the content and format of delivery suits their needs. For example, migrant workers may express a preference for materials that are tailored to specific countries of destination, or find case studies valuable. Outreach should be targeted and resourced to reach provinces or communes with high levels of outbound international migration. (DOLAB, local and provincial DOLISA, MRCs, United Nations agencies, VAMAS).

2. Regional recommendations to enhance the effectiveness of State/Administrative - based non-judicial grievance mechanisms.

In addition to Pillar 2.1 above, the below recommendations address the specific characteristics to enhance State/Administrative-based non-judicial grievance mechanisms.

- a) States should strive to diversify channels and sources for migrant worker claimants to lodge complaints through State/Administrative - based non-judicial grievance mechanisms, and ensure these channels are responsive to their needs and situations.
 - States should ensure that the right and ability of migrant workers to lodge complaints and participate in State/Administrative - based non-judicial proceedings is not conditional upon their physical presence in the State where the complaint is heard. For example, States could facilitate the use of video-link testimony, online filing of legal documents and payment of filing fees, and use of Powers of Attorney, among others.
 - States should ensure that hotline services available through State agencies, in particular embassies or consulates, are sufficiently resourced and that funding is made available to enable migrant workers timely access to assistance.
 - States should explore the use of social media and mobile applications to enhance access to complaints mechanisms. However, they must ensure that such complaints are handled in a timely manner, that safeguards are in place to ensure data protection and confidentiality, and that measures are taken to address any instances of retaliation against the worker.
 - States should leverage provincial and local offices to broaden the geographic reach of grievance mechanisms. Labour attaches stationed at consulates and embassies, as well as MRCs, should be empowered to receive and file complaints and directly refer these to the relevant State agency.
 - States should ensure that the operating hours of hotlines and State agencies enable migrant workers to access help at times which are convenient to them (e.g. during rest days and after typical working hours).
- b) States should work to address power asymmetry between migrant worker claimants and defendant employers or recruitment agencies by ensuring that migrant workers can access support when engaging in State-sponsored negotiation and conciliation processes.
 - States should ensure that migrant workers are referred to migrant worker networks, grassroots organizations, or other CSOs to help them navigate non-judicial processes. The worker interviews conducted as part of the Stakeholder Mapping found that networks of peer support were valuable.
 - Where legal representation is not permitted or not required in non-judicial proceedings, States should permit migrant workers to be represented by NGOs or worker representatives if this is preferred by the migrant worker.
 - Where the initial complaint was lodged by the migrant worker to a State agency, but settlement is reached outside of State/Administrative - based mechanisms (i.e. the relevant State adjudicator or government official is not present during the negotiation), the relevant State agency should review the settlement agreement to ensure that the migrant worker's rights are not infringed or unfairly disadvantaged.

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

- c) States should strengthen intra- and inter-agency cooperation to undertake reasonable measures to relieve administrative burdens and costs for migrant workers to engage in and obtain redress through State/Administrative - based non-judicial grievance mechanisms. In particular, State agencies should explore practical mechanisms to:
- Proactively reduce the burden on migrant workers to produce documentation in support of their claims, where such documents are available through other State agencies. For example, with the migrant worker's full and informed consent, the State agency responsible for adjudicating a labour dispute could establish linkages with the relevant consulate/embassy or labour department of the country of origin to directly obtain a copy of the employment contract.
 - Proactively keep migrant worker complainants informed on the status of their case and enable migrant workers to enquire on progress with minimal cost and administrative burden. For example, an automated SMS system could be used that is available in the migrant worker's preferred language.
 - Ensure that migrant workers are able to receive compensation awarded to them through non-judicial proceedings even after they have returned to the country of origin. For example, establish channels through the relevant consulate/embassy, or enter into partnerships with remittance companies or banks.
 - Ensure that defendants pay security to the relevant State agency before appeals against awards made at first instance can be lodged. The State agency should hold this amount in escrow and transfer the compensation sum to the migrant worker, in cases where the appeal is dismissed.
- d) States should ensure that State agencies responsible for handling and investigating migrant worker claims are sufficiently resourced and trained.
- States should ensure that government officials responsible for receiving and adjudicating migrant worker cases are specifically trained. They should have good knowledge of the relevant migration policies and laws regulating the deployment of migrants of the most common countries of origin, the labour laws of the country of destination, as well as the common risks and vulnerabilities of migrant workers specific to each migration corridor. This could enable officials to deal with claims in a more nuanced and responsive way. The training should also include modules on antidiscrimination, anticorruption, and rights-based and migrant-centric approaches to mediation and adjudication, to ensure that officials handle claims in a fair, transparent and impartial manner. The training should be developed and delivered in consultation with United Nations agencies, civil society and other affected stakeholders with knowledge of migrant workers' experiences, needs and concerns.
 - States should ensure that sufficient resources and funding is provided to the agencies responsible for remediating migrant worker cases; in particular, adequate translation/interpretation services should be available.
- e) States should prevent defendants from delaying non-judicial proceedings in bad faith and leveraging procedural loopholes to force migrant workers to drop cases.
- States should take steps to curb abusive practices by unscrupulous defendants to delay proceedings, for example by imposing limits on the number of permitted suspensions of hearing requests.
 - Please also cross-refer to Pillar 3.1 on measures to address the use of SLAPP (strategic lawsuits against public participation) lawsuits to pressure migrant workers to withdraw cases.

3. Regional recommendations to enhance the effectiveness of State/Administrative - based judicial grievance mechanisms

- a) States should improve access to remedial outcomes by reducing legal and procedural barriers for migrant worker claimants to enforce judgements and help migrant workers who are deemed victims of crime to access compensation.
- Where a worker is determined to be a victim of crime, an inbuilt mechanism should be established to compensate the worker as a victim of crime, so that the worker does not need to initiate a separate claim for civil damages.
 - States should guarantee the right to legal aid to enforce judgements through the civil justice system.
 - States should require security deposits to be paid by defendants to lodge an appeal, to prevent defendants from perpetually delaying payment of compensation to migrant worker claimants.

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

Intermediate Outcomes:

- Migrant workers can engage in remediation on fair, informed and equitable terms through State/Administrative - based or non-State/Administrative - based grievance mechanisms.
- Migrant workers hold businesses accountable to their human rights obligations, by monitoring the performance of grievance mechanisms.
- Businesses conceive of grievance mechanisms as a platform for receiving stakeholder feedback to improve their practices, and as a means through which migrant workers can express their rights.

4. Regional recommendations to enhance the effectiveness of non-State/Administrative - based grievance mechanisms

The private sector should use the effectiveness criteria in UNGPs Principle 31 to assess and improve grievance mechanisms. This Pillar 2.4 sets out tailored recommendations to address the specific gaps observed in the Stakeholder Mapping for each effectiveness criterion. The private sector may also refer to the [Operational Guidelines for Business on Remediation of Migrant-worker grievances](#) developed by IOM and The Remedy Project for more general comprehensive guidance.

- **Legitimate:** Businesses should consider engaging external stakeholders in the implementation of some functions of their grievance mechanisms (e.g. investigation of claims or adjudication functions) to improve impartiality of decision-making and address potential conflicts of interest. Industry bodies and multi-stakeholder initiatives in particular should consider whether they are sufficiently independent to be trusted by migrant workers and other affected stakeholders, or should make changes to their funding structure, governance, or grievance procedures to enhance the impartiality of decision-making.
- **Accessible:** Businesses should ensure that developed grievance mechanisms are backed by targeted resourcing and funding, so they function effectively. This includes investing in tailoring channels to file grievances to migrant worker groups and ensuring multilingual capabilities (beyond web-based translation tools), for example employing staff who speak migrant worker languages on the ground to address claims or partnering with grassroots organizations to develop peer-to-peer training and socialize migrant worker groups with the mechanism.
- **Equitable:** Businesses should provide migrant workers with independent legal assistance or counselling to navigate the remediation process. Where the grievance procedure requires costly fact-finding or investigation/audits to be undertaken, or formal mediation or adjudication, the funding for these functions should come from a sufficiently independent source (e.g. pooled funds from all brands or suppliers within the scope of the mechanism, rather than solely from the company against whom the complaint has been made).
- **Predictable:** Grievance procedures should follow reasonable time-bound steps that are adhered to, and clearly communicated to all stakeholders. All parties should be proactively kept informed on the status of the case; the burden to follow up should not fall upon the migrant worker.
- **Transparent:** Data on grievances filed and resolved, including success stories and case studies, and rationales for decisions made should be shared with migrant workers and other affected stakeholders (with appropriate safeguards to protect confidentiality). Interviews conducted with migrant workers for the Stakeholder Mapping cited transparency around the outcomes of grievance mechanisms as a factor that would help build their trust.
- **Rights-Compatible:** Policies to protect migrant workers from retaliation must be implemented. For example, migrant workers interviewed for the Stakeholder Mapping suggested measures to file claims anonymously or as a group.
- **Rights-Compatible:** Remedies must be developed with consultation of migrant workers so that the outcomes directly address their needs and concerns, rather than focus narrowly on compliance-based, corrective action from the company's perspective.
- **Source of Continuous Learning:** Businesses should view grievance mechanisms as an early and proactive warning system. Businesses should leverage the data gathered through the mechanism and triangulate this with audits and other tools, to improve their risk management processes. This learning must be applied to addressing underlying systemic causes for violation of rights, for example, requiring the amendment of company policies.
- **Based on Engagement and Dialogue:** Businesses should ensure migrant workers can anonymously provide feedback on the function and outcomes of remediation processes. In particular, they must be able to confirm whether they are satisfied with how their complaint is resolved. Please also cross-refer to the recommendations in Pillar 1.5, which include guidance on engaging external stakeholders in the implementation of grievance mechanisms.

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

Intermediate Outcome: Civil society and other non-State actors engage in dialogue and monitoring and evaluation to hold States and the private sector accountable to their human rights obligations.

5. The private sector should work collaboratively with the State, civil society, trade unions and other non-State actors to build referral pathways between different grievance mechanisms.

- Businesses should develop clearly defined protocols to ensure that migrant worker grievances are referred to State/Administrative - based mechanisms, where appropriate. Aside from setting out a clear policy to address when cases should be referred, businesses should also consider implementing a referral system/directory that enables workers to access migrant worker support groups, resources, or service providers, as well as legal aid organizations that help workers to access remedies. Businesses should also make information on State/Administrative-based grievance mechanisms available to migrant workers in the workplace.
- Businesses must ensure that their grievance mechanisms respect the choice of migrant workers to use other systems to resolve issues (including State/Administrative - based grievance mechanisms or through collective bargaining). Access must not be conditional upon waiving the right to use other systems.
- Please also refer to Pillar 1 for recommendations on how civil society and other stakeholders can keep the State and private sector accountable to their human rights obligations.

Intermediate Outcome: Migrant workers hold States accountable to their duty to protect human rights by monitoring the implementation of bilateral labour agreements.

6. States should implement migration policies that protect migrant workers' rights and agree to bilateral labour agreements that have inbuilt monitoring and enforcement mechanisms.

- Countries of origin and countries of destination should both ensure that their respective infrastructure and State agencies to support migrant workers access remedies are adequately resourced. This includes working collaboratively to engage in cross-border investigation and enforcement of claims, and investing and training for labour attachés and/or consulates.
- Countries of origin and countries of destination could consider reflecting in bilateral labour agreements:
 - An agreement that migrant worker claimants do not need to be physically present in the relevant State to file a complaint through a State/Administrative - based grievance mechanism, and measures to enable migrant workers who have returned to the country of origin to engage in remediation processes overseen by State agencies in the country of destination. For example, use of technology to enable virtual hearings (with reasonable safeguards to ensure fairness to all parties), virtual filings, the availability of legal aid or financial assistance, the granting of special visas or work permits to engage in proceedings, and use of representatives or Powers of Attorney, among other practical measures.
 - An agreement to mutually recognize and enforce judgements and awards to migrant workers.
 - An agreement to establish a supranational complaint investigation mechanism to which migrant workers would be able to turn with complaints regarding violations of rights that may occur as a result of migration under the bilateral labour agreement.

Specific local or national-level recommendations (responsible stakeholder)

Philippines

- The Government of the Philippines should work with governments in the countries of destination to support Filipino migrant workers seek remedies through destination country State/Administrative - based grievance mechanisms. This could include incorporating in bilateral labour agreements the right for Filipino migrant workers to assistance to access State/Administrative - based grievance mechanisms in countries of destination. This could include their right to obtain legal aid or financial assistance to lodge claims (funded by the country of destination), or to make provisions for virtual filings, or grant special visas or work permits to engage in proceedings. (*Department of Migrant Workers*).
- The Government of the Philippines could also consider including in future bilateral labour agreements a mechanism that would enable Philippine PRAs to seek damages from foreign employers in the country of destination, where judgements or legally binding awards are issued against the recruitment agency and the foreign employer under the JSL Provision in the Philippines. For example, the country of destination could agree to mutually recognize and enforce such judgements or awards. (*Department of Migrant Workers*).

Pillar 2. Ensuring Multilayered, Multiparty Accountability – Recommendations

- The Government of the Philippines should consider strengthening its mechanism to blacklist foreign employers that violate Philippine laws on overseas employment, by implementing a centralized database that would enable the relevant State agencies to efficiently identify and track employers against whom migrant workers have previously filed claims. (*Department of Migrant Workers*).

Viet Nam

- The Government of Viet Nam should continue efforts to improve the international labour migration framework to address the human rights risks to Vietnamese migrant workers who migrate irregularly. Irregular status increases vulnerability to exploitation and limits the available assistance. Imposing sanctions in Viet Nam on those who migrate irregularly may deter these groups from seeking assistance. The Government Viet Nam should consider working with United Nations agencies and with MRCs in countries of destination (e.g. Thailand and Malaysia), as well as through State-run MRCs in Viet Nam to strengthen support for all Vietnamese migrant workers (including undocumented or independent migrant workers, and those in an irregular situation). In the absence of, or to complement, protections in formal bilateral labour arrangements, MRC support services should be leveraged to reduce the incidence of exploitation and ensure that all Vietnamese migrant workers have adequate access to assistance, without fear of criminalization or deportation. (*Ministry of Labour, Invalids and Social Affairs*).
- The Government of Viet Nam should also continue to reduce the costs, time and complexity of migrating through regular migration channels, and take measures to shift the costs paid for recruitment from workers to employers. (*Ministry of Labour, Invalids and Social Affairs*).

Intermediate Outcome: Companies understand that beyond making a profit for their shareholders, they are also accountable to society to respect human rights.

7. The private sector should use their leverage to hold actors in their value chain accountable to respect human rights.²⁹⁸

- Brands and large buyers in the region should consider engaging commercial leverage to improve remedial outcomes for migrant workers, for example by sanctioning suppliers that fail to address grievances effectively and rewarding those that demonstrate effective remediation practices, incorporating contractual terms in contracts with suppliers and partners that enable the brand/buyer to audit and monitor the performance of grievance mechanisms, or by pooling their resources and bargaining power to improve the effectiveness of supplier grievance mechanisms.
- Institutional investors and financial institutions should:
 - Engage ESG reporting frameworks, benchmarks and data providers to ensure that the research methodologies, corporate performance data and advisory services used to assess investees are aligned with the UNGPs and reflect real-world outcomes for people.
- Engage investees in constructive dialogue to promote: (1) the adoption of human rights policies, governance, due diligence and effective grievance mechanisms and (2) the provision of remedy for victims of human rights abuse where the investee has caused or contributed to adverse human rights impacts.
- Engage portfolio companies to address root causes of short-term, shareholder value maximization. The UNGPs 10+ project report *Taking stock of investor implementation of the UN Guiding Principles on Business and Human Rights* (June 2021) provides helpful guidance.
- The private sector should responsibly engage policymakers and standards-setting bodies to tackle systemic human rights risks and create enabling environments for responsible business conduct that are grounded in respect for human rights and access to remedy for affected stakeholders.
- Please also cross-refer to Pillar 1.5 and Pillar 1.6, on the importance of stakeholder engagement and transparency in building corporate accountability.

²⁹⁸ Leverage is an advantage that gives power to influence. In the context of the UNGPs, it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact. OHCHR, *The Corporate Responsibility to Respect Human Rights* (New York and Geneva, 2012).

6.3 PILLAR 3: FACILITATE ENGAGEMENT AND DIALOGUE WITH STAKEHOLDERS

Long-term Outcome:

All stakeholders work constructively and collaboratively to support migrant workers to access remedies, as well as fair and decent work opportunities. There is improved workforce productivity and reduced employee turnover, resulting in a more vibrant and attractive business environment.

Pillar 3. Facilitate Engagement and Dialogue with Stakeholders – Recommendations

Intermediate Outcomes:

- Civil society is an essential and accessible source of support for migrant workers at all stages of the migration cycle, and the peaceful and legitimate activities of human rights defenders are not obstructed.
- Civil society, trade unions and other external stakeholders partner with businesses to design, implement and monitor grievance mechanisms.

1. States should ensure that companies that hinder or prevent migrant workers from accessing grievance mechanisms are sanctioned, including through implementing anti-SLAPP laws.

- States should enact anti-SLAPP legislation to ensure that migrant workers, trade unions, human rights and environmental defenders, and CSOs do not face legal harassment for filing complaints against businesses. The enacted legislation should be complemented with judicial and prosecutor training to educate judges and prosecutors on the use of SLAPPs.
- States should avoid taking other steps that could shrink civic space, such as withdrawing charitable tax status for civil society organizations engaged in advocating for migrant workers' rights.

2. Civil society, MRCs, trade unions and United Nations agencies should work collaboratively to strengthen regional networks to provide cross-border support for migrant workers to access remedies.

- United Nations agencies should support capacity-building for CSOs in the region to improve their capacity to support migrant workers to access remedies through State/Administrative - based grievance mechanisms and non-State/Administrative - based grievance mechanisms. This could include supporting workshops in partnership with local lawyers/national bar associations on the procedures and requirements of lodging and resolving migrant worker claims through State/Administrative - based grievance mechanisms, or skills-based training on mediation, development of case typologies, or preparation of evidence. This may also include developing toolkits, guidance, webinars, or workshops on how CSOs could leverage business and human rights concepts or ESG tools to work constructively with businesses in the remediation of migrant worker grievances.
- United Nations agencies should provide forums for examples and learnings from successful cross-border collaboration to be shared among civil society organizations, and for grassroots organizations and local NGOs to network with international NGOs. For example, the collaborative effort of MAP Foundation, HRDF, Clean Clothes Campaign, Arakan Workers Organization and the Workers' Rights Consortium, and Adventist Development Relief Agency, Freedom Fund and Diakonia to secure compensation for workers in Chiang Mai, Thailand could be used as a case study to build and scale up similar collaborative efforts. Similarly, the learnings from the [Joint Action Plan](#) between the Malaysian Trade Union Congress and the Viet Nam General Confederation of Labour to increase protection of Vietnamese migrant workers in Malaysia should be shared and scaled. Informal referral systems between MRCs in countries of origin and countries of destination should be systematically formalized and scaled with sufficient funding, and staff should also be trained on how to address cross-border issues.
- Please also cross-refer to Pillars 1.5 and 2.4 on recommendations for how the private sector could work with its stakeholders to enhance the effectiveness of non-State/Administrative - based grievance mechanisms.

Pillar 3. Facilitate Engagement and Dialogue with Stakeholders – Recommendations

Specific local or national-level recommendations (responsible stakeholders):

Thailand: The Royal Thai Government should consider withdrawing the draft act on the Operation of Not-For-Profit Organizations. (*The Royal Thai Government*).

Viet Nam: The Government of Viet Nam should consider reviewing provisions of its Criminal Code to ensure that that civil society can act freely and advocate for migrant workers' rights. (*Government of Viet Nam*).

Intermediate Outcome: Migrant workers can meaningfully engage in workplace social dialogue with no restrictions on their ability to form, join, lead and participate in trade union and collective bargaining activities.

3. States should review and improve trade union, collective bargaining and freedom of association laws to support migrant workers to engage in workplace dialogue.

- States should ensure that implemented laws are accompanied by capacity-building to address discriminatory attitudes towards migrant workers. This could also involve campaigns targeted towards migrant workers and trade union members to encourage migrant workers to join unions, and to shape the attitudes of trade unions towards accepting and empowering all workers. General awareness-raising activities should also be conducted with the public to address the root of negative attitudes towards migrant workers. The recommendations in the ILO's report on [Public attitudes towards migrant workers in Japan, Malaysia, Singapore and Thailand](#) may provide helpful guidance.

Specific local or national-level recommendations (responsible stakeholders):

Malaysia

- The Government of Malaysia should ensure the Trade Unions (Amendment) Bill 2022 is aligned with the ILO Convention No. 87 and enables migrant workers to form their own trade unions and/or take part in the leadership of trade unions. (*The Ministry of Human Resources Malaysia, Malaysian Parliament*).

Thailand

- Thailand should consider amending its laws to ensure that migrant workers can establish their own unions and/or take part in the leadership of trade unions. Furthermore, anti-SLAPP legislation (as noted in Pillar 3.1 above) should also be implemented, to address risk of reprisals by companies against migrant workers who engage in union activities and/or trade union leaders to seek to represent migrant workers' rights. (*Ministry of Labour, Ministry of Justice*).
- Thailand should implement capacity-building programmes to ensure that worker committees are representative of the workforce. This may include issuing guidance to employers or conducting workshops with the private sector, and working with CSOs to increase the number of migrant workers participating in elections to worker committees. (*Ministry of Labour, Ministry of Justice*).

Intermediate Outcome: All migrant workers, irrespective of their legal and employment status, can lodge complaints against businesses through State/Administrative - based or non-State/Administrative - based mechanisms without fear of reprisals and criminalization.

4. States should protect the right of all migrant workers, even where they migrate through irregular means or are undocumented, to access State/Administrative - based grievance mechanisms. In particular:

- States could consider implementing firewalls, a separation in law and practice, between complaints filed by undocumented or irregular migrant workers dealt with by the relevant State agency, and any proceedings relating to immigration. This includes ensuring protection of undocumented or irregular migrant workers who come forward with complaints (irrespective of whether they have been identified as victims of trafficking), from fines and other administrative sanctions, prosecution for immigration-related criminal offences, arrest, detention and deportation.

Pillar 3. Facilitate Engagement and Dialogue with Stakeholders – Recommendations

- States should ensure that undocumented or irregular migrant workers:
 - Enjoy guaranteed access to legal aid to file complaints.
 - Are eligible to access State/Administrative - based grievance mechanisms.
 - Can obtain a temporary residence permit, which also provides them the legal right to work for an employer of their choosing, for the duration of remediation processes.
- States should work with the private sector so that employers who identify undocumented or irregular workers in their workforce are incentivized to help these workers obtain the necessary legal permits to work and reside in the country, this could be done by considering the implementation of regularisation mechanisms, including for those who have been victims of labour exploitation.
- States should ensure that social security or welfare laws do not discriminate against migrant workers, and cover all workers, irrespective of their legal status, nationality, job status or category (temporary, outsourced, permanent, seasonal, etc.).

Intermediate Outcome: Recruitment agencies conduct due diligence on employers to ensure safe working and living conditions and, where requested by migrant workers, play a role in resolving employer-related grievances. Employers also conduct due diligence on PRAs.

5. States should encourage PRAs to support migrant workers in resolving grievances through regulation and market-based incentives.

- States could develop guidance for PRAs on supporting the resolution of migrant worker grievances, as well as conducting due diligence on working and living conditions. The guidance could be accompanied by capacity-building in the form of training and workshops on facilitating conciliation between migrant workers and employers. Awards or other incentives, for example expedited approval for licence renewals or reduced licensing fees, could be provided for those who attend the training and demonstrate adherence to ethical recruitment standards. The guidance should be aligned with the [IOM IRIS Standard](#).
- States and the private sector should work collaboratively to create demand for fair and ethical recruitment and decent work through raising awareness of the business case for respecting human rights. National business associations or international industry associations in the countries of destination and PRA associations in the countries of origin could organize meetings between their members to raise awareness of human rights due diligence laws that may impact recruitment processes (see also Pillar 1 above).

Specific local or national-level recommendations (responsible stakeholders):

Philippines

- The Government of the Philippines should provide support (in the form of incentives or awards) to the ethical Philippines PRAs that have been proactive in offering orientation seminars/information sessions to prospective migrant workers regarding grievance mechanisms and their rights to seek remedies and conducting due diligence on working and living conditions offered by potential foreign employers. This recommendation is reflected in the [Multi-stakeholder National Action Plan and Roadmap on Mainstreaming Fair and Ethical Recruitment in the Philippines](#) (Department of Migrant Workers).

Viet Nam

- The Government of Viet Nam should review and evaluate the current role and responsibilities of PRAs in the three-tiered DOLAB complaints mechanism. In particular, DOLAB should seek to understand the extent to which PRAs are best placed to be the first port of call for migrant worker grievances, given the potential for conflict-of-interest issues, and what measures could be implemented to address this risk. (DOLAB).
- The Government of Viet Nam should work collaboratively with VAMAS and the relevant United Nations agencies to develop market-led incentives to raise the rate of compliance of PRAs with the VAMAS Code of Conduct. (VAMAS, ILO, IOM).
- VAMAS and the relevant United Nations agencies should work collaboratively to conduct training for PRAs to ensure that they are better able to support migrant workers in resolving grievances with foreign employers. (VAMAS, ILO, IOM).



An interview session with a beneficiary of IOM Malaysia. © IOM 2022/Abdul Hamid WADZKIR

ANNEX

LIST OF STAKEHOLDERS CONSULTED

LIST OF STAKEHOLDERS CONSULTED

Stakeholder Name	Date of consultation	Jurisdiction	Category
Labour Department ²⁹⁹	May 2022	Hong Kong SAR, China	State/ Administrative - based
RSPO	June 2022	Malaysia	Non-State/ Administrative - based
MTUC	May 2022	Malaysia	Non-State/ Administrative - based
NXP Semiconductors	May 2022	Malaysia	Non-State/ Administrative - based
Our Journey	N/A ³⁰⁰	Malaysia	Civil society
Ministry of Justice of the Royal Thai Government	June 2022	Thailand	State/ Administrative - based
Ministry of Labour (DLPW) of the Royal Thai Government	June 2022	Thailand	State/ Administrative - based
Thai Union	June 2022	Thailand	Non-State/ Administrative - based
Migrant Workers Rights Network (MWRN)	May 2022	Thailand	Civil society
Migrant Working Group Thailand (MWGT)	May 2022	Thailand	Civil society
Human Rights Development Foundation (HRDF)	May 2022	Thailand	Civil society
MAP Foundation	May 2022	Thailand	Civil society
POEA	May 2022	Philippines	State/ Administrative - based
HRD Employment	May 2022	Philippines	Non-State/ Administrative - based
Staffhouse	May 2022	Philippines	Non-State/ Administrative - based
OWWA	May 2022	Philippines	State/ Administrative - based

²⁹⁹ The Labour Department of Hong Kong SAR, China provided their responses to the interview questions in written format.

³⁰⁰ Our Journey was interviewed on similar topics in another IOM project and provided consent for their interview to be used for this project.

Stakeholder Name	Date of consultation	Jurisdiction	Category
Blas F. Ople Policy Center	May 2022	Philippines	Civil society
DOLAB	June 2022	Viet Nam	State/ Administrative - based
amfori	May 2022	Viet Nam	Non-State/ Administrative - based
Migrant Worker Resource Centre (DOLISA Ha Tinh Province)	June 2022	Viet Nam	State/ Administrative - based
Migrant Workers Action Network (M-Net LIGHT)	June 2022	Viet Nam	Non-State/ Administrative - based
VAMAS	June 2022	Viet Nam	Non-State/ Administrative - based
ILO Viet Nam	June 2022	Viet Nam	United Nations agency
ILO Triangle in ASEAN	June 2022	Regional	United Nations agency
Migrant Forum Asia	May 2022	Regional	Civil society
Worker interviews in Malaysia • Fieldwork was undertaken by a third-party consultant in May 2022. A total of 16 migrant workers from Myanmar, Bangladesh and Nepal in the electronics, furniture, glove and cosmetics manufacturing industries and Malaysian workers on palm oil plantations were interviewed in separate focus group sessions.	May 2022	Malaysia	Migrant workers
Worker survey in the Philippines • A survey was conducted by the IOM in partnership with the Scalabrini Migration Center. Survey respondents comprised 1,235 Filipino migrant workers who had returned to the Philippines from overseas between 16 March 2020 and 30 April 2021 and who had not subsequently remigrated, and an additional 50 respondents who had subsequently remigrated. The survey was administered by a telephone interview with participants using a standardized questionnaire.	May–July 2022	Philippines	Migrant workers
Worker interviews in Thailand • Fieldwork was undertaken by a third-party consultant between May–June 2022, in Samut Prakan, Samut Sakhon, Phetchaburi, Pathum Thani and Bangkok Provinces. The data collection used in-depth interview and group discussion with semi-structured open questions and closed follow-up questions. The interviews and group discussion were conducted with 27 Myanmar and Cambodian migrant workers in garment and electronic factories, as well as in the construction and fishery sectors.	May–June 2022	Thailand	Migrant workers





Woman drying incense sticks in Viet Nam. © Pexels 2021/Quang Nguyen VINH

REFERENCES*

* All hyperlinks were active at the time of writing this report.

Access to Justice in South-East Asia

- 2019 Mekong Migration Network, *Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants' Rights*, Chiang Mai, 2019.
- 2020 USAID, *Labor Abuse Complaint Mechanisms in Thailand*.
- 2021 ALTER Project *Seeking Justice: Developing Improved OFW Feedback and Complaints Mechanisms*.

Alaza, L.

- 2021 *RSPO Outreach Programme Independent Review Final Report*. Roundtable for Sustainable Palm Oil (RSPO). Not available online.

Aligning Lenses Towards Ethical Recruitment (ALTER) Project:, International Organization for Migration (IOM) and Blas F. Ople Policy Center and Training Institute, Inc.

- 2021 *Seeking Justice: Developing Improved OFW Feedback and Complaints Mechanisms*.

Colombo Process

- 2019 *Mapping of Complaints Mechanism in the Colombo Process Member States: 98–104*.

CSR Europe

- 2013 *Assessing the Effectiveness of Company Grievance Mechanisms CSR Europe's Management of Complaints Assessment, (MOC-A) Results*.

Ergon Associates

- 2021 *Handbook Effective Grievance Mechanisms Fund for Responsible Business*, London.

Ethical Trading Initiative

- 2017 *NGO leadership in grievance mechanisms and access to remedy in global supply chains*, Oct-Dec 2017.
- 2019 *Access to Remedy: Practical Guidance for Companies*, London.

Fair Labor Association

- 2018 *Mapping study on seasonal agriculture workers and worker feedback and grievance mechanisms in the agricultural sector*, June 2018.

Farbenblum, B. and L. Berg

- 2021 *Migrant Workers' Access to Justice for Wage Theft*. Migrant Justice Institute, Sydney.

Global Compact Network Australia

- 2021 *Effective Modern Slavery Grievance Mechanisms: A Case Study Publication for Business*, March 2021.

International Commission of Jurists (ICJ)

- 2019 *Effective Operational-level Grievance Mechanisms*, November 2019.

International Federation for Human Rights (FIDH)

- 2022 *Corporate Accountability for Human Rights Abuses Guide: A Guide for Victims and NGOs on Recourse Mechanisms*.

International Labour Organization (ILO)

- 1967 *Examination of Grievances Recommendation, No. 130*.
- 2015 *Complaint mechanisms for Vietnamese migrant workers: An overview of law and practice*, 06 April 2016.
- 2017 *Access to Justice for Migrant Workers in South-East Asia*, 28 July 2017.
- 2019 *An analysis of multiparty bargaining models for global supply chains*, 20 December 2018.
- 2020 *Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers*, 17 November 2020.

International Finance Corporation (IFC)

2009 [Good Practice Note: Addressing Grievances from Project-Affected Communities](#).

International Labor Rights Forum

2019 [Future of Fashion: Worker-Led Strategies for Corporate Accountability in the Global Apparel Industry](#), 13 February 2019.

International Organization for Migration (IOM)

2021a [The Multi-Stakeholder National Action Plan and Roadmap on Mainstreaming Fair and Ethical Recruitment in the Philippines](#), Philippines.

2021b [Operational Guidelines for Businesses on Remediation of Migrant-Workers Grievances](#), 31 May 2021.

2021c [Business Guidebook: How to Mediate Employment Disputes under Thai Labour Law](#), Bangkok, 22 September 2021.

2022 [IOM Migrant Worker Guidelines for Employers](#), 21 January 2022.

[Achieving fair and ethical recruitment in the Cambodia–Thailand migration corridor](#), position paper (forthcoming).

[Fair and Ethical Recruitment, Cambodia–Thailand Roadmap and Regional Roadmap](#) (forthcoming).

[Regional roadmap for Cambodia, Lao People's Democratic Republic, Myanmar and Viet Nam to Thailand migration corridors](#) (forthcoming).

Jonas, H.C

2014 [A Review of the Complaints System of the Roundtable on Sustainable Palm Oil: Final Report](#), Natural Justice, Sabah, Malaysia.

Macdonald, K. and S. Balaton-Chrimes

2016 [The complaints system of the Roundtable on Sustainable Palm Oil \(RSPO\)](#), SSRN, 01 October 2016.

Malaysia

2021 [National Action Plan on Forced Labour, 2021–2025](#).

Mekong Migration Network

2019 [Social Protection Across Borders: Roles of Mekong Countries of Origin in Protecting Migrants' Rights](#), Chiang Mai, September 2019.

Migrant Justice and Milk with Dignity Standards Council

2020 [Milk with Dignity First Biennial Report: 2018–2019](#), October 2020.

Morris, D.

2020 [Thailand – non-judicial grievance mechanisms](#), National Action Plans on Business and Human Rights, 04 September 2020.

MSI Integrity

2020 [Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance](#), Berkeley, July 2020.

Office of the United Nations High Commissioner for Human Rights (OHCHR)

2020 [Accountability and Remedy Project III report](#). See in particular the [Accountability and Remedy Project \(ARP\) III report](#).

Rees, C.

2021 [Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned](#), Harvard Kennedy School, Cambridge, May 2011.

Ruggie, J.G.

- 2013 *Just Business: Multinational Corporations and Human Rights*, W.W. Norton, New York.
- 2020 OHCHR, *Accountability and Remedy Project III report*.

Shift Workshop Report No. 5

- 2014 *Remediation, grievance mechanisms and the corporate responsibility to respect human rights*, May 2014.

Sociaal-Economische Raad (SER)

- 2019 *Discussion Paper: Working Group enabling remediation*, May 2019.

Thailand

- 2019 *The National Action Plan on Business and Human Rights*.

The Bali Process

- 2016 *The Acknowledge, Act, and Advance Recommendations (AAA Recommendations)* – Government and Business Forum, March 2016.

The United Nations Guiding Principles on Business and Human Rights (UNGPs)

- 2018 *The Global Compact for Safe, Orderly and Regular Migration: Intergovernmentally Negotiated and Agreed Outcome*, 13 July 2018.
- 2021 *UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights*, November 2021.

USAID

- 2020 *Labor Abuse Complaint Mechanisms in Thailand*, March 2020.

Zagelmeyer, S., L. Bianchi, and A.R. Shemberg

- 2009 International Finance Corporation, *Good practice note addressing grievances from project-affected communities*.
- 2014 Holly C. Jonas, *A Review of the Complaints System of the Roundtable on Sustainable Palm Oil: Final Report* Natural Justice, Sabah, Malaysia, 2014.
- 2016 Kate Macdonald and Samantha Balaton-Chrimes, *The complaints system of the Roundtable on Sustainable Palm Oil*, SSRN, 2016.
- 2017 Ethical Trading Initiative, *NGO leadership in grievance mechanisms and access to remedy in global supply chains*.
- 2018a Fair Labor Association, *Mapping study on seasonal agriculture workers and worker feedback and grievance mechanisms in the agricultural sector*, June 2018.
- 2018b *Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis*, OHCHR, Manchester, 13 July 2018.
- 2019a Ethical Trading Initiative, *Access to Remedy: Practical Guidance for Companies*, London, 2019.
- 2019b ICJ, *Effective Operational-level Grievance Mechanisms*
- 2019c ILO, *An analysis of multiparty bargaining models for global supply chains*
- 2019d International Labor Rights Forum, *Future of fashion worker-led strategies for corporate accountability in the global apparel industry*
- 2019e Sociaal-Economische Raad, *Working Group enabling remediation discussion paper*
- 2020a Migrant Justice and Milk with Dignity Standards Council, *Milk with Dignity First Biennial Report: 2018–2019*
- 2020b MSI Integrity, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance*, Berkeley, July 2020.
- 2021a Ergon Associates, *Handbook Effective Grievance Mechanisms Fund for Responsible Business*, London, 2021.
- 2021b Global Compact Network Australia, *Effective Modern Slavery Grievance Mechanisms*.
- 2021c Caroline Rees, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*, Harvard Kennedy School, Cambridge, 2021.



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