



International
Labour
Organization



▶ Training for Malaysian inspectors on forced labour, child labour and gender-based discrimination, violence and harassment in the workplace

Facilitator's manual

From Protocol to Practice: A Bridge to Global Action on Forced Labour

Safe and Fair: Realising women migrant workers' rights and opportunities in
the ASEAN region

Supported by:



Through the EU-UN Spotlight Initiative



► Training for Malaysian inspectors on forced labour, child labour and gender-based discrimination, violence and harassment in the workplace

Facilitator's manual

From Protocol to Practice: A Bridge to Global Action on Forced Labour

Safe and Fair: Realising women migrant workers' rights and opportunities in the ASEAN region

Copyright© International Labour Organization 2022

First published 2022



This is an open access work distributed under the Creative Commons Attribution 4.0 International License (<https://creativecommons.org/licenses/by/4.0/>). Users can reuse, share, adapt and build upon the original work, as detailed in the License. The ILO must be clearly credited as the owner of the original work. The use of the emblem of the ILO is not permitted in connection with users' work.

Attribution – The work must be cited as follows: [T Kamazeri T Ismail, Yuenmei Wong, Jodelen Mitra, Yen Ne Foo, *Training for the Malaysian Labour Inspectors on Forced Labour, Child Labour, and Gender-Based Discrimination, Violence and Harassment in the Workplace: Facilitators' Manual*, Malaysia: International Labour Organization, 2022].

Translations – In case of a translation of this work, the following disclaimer must be added along with the attribution: *This translation was not created by the International Labour Office (ILO) and should not be considered an official ILO translation. The ILO is not responsible for the content or accuracy of this translation.*

Adaptations – In case of an adaptation of this work, the following disclaimer must be added along with the attribution: *This is an adaptation of an original work by the International Labour Office (ILO). Responsibility for the views and opinions expressed in the adaptation rests solely with the author or authors of the adaptation and are not endorsed by the ILO.*

All queries on rights and licensing should be addressed to ILO Publishing (Rights and Licensing), CH-1211 Geneva 22, Switzerland, or by email to rights@ilo.org.

ISBN: 9789220355015 (Print)

9789220355022 (Web PDF)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Funding is provided by the United States Department of Labor under cooperative agreement number IL-27592-15-75-K—1. 100 percentage of the total costs of the global “From Protocol to Practice: A Bridge to Global Action on Forced Labour” Project is financed with Federal funds, for a total of US\$17,395,138. This material does not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government.

This publication was produced with the support of the “Safe and Fair: Realizing women migrant workers' rights and opportunities in the ASEAN region” as part of the Spotlight Initiative – a global, multi-year partnership between the European Union (EU) and the United Nations (UN) to eliminate all forms of violence against women and girls. Safe and Fair is implemented by the ILO and UN Women, in collaboration with UNODC. The views expressed herein can in no way be taken to reflect the official opinion of the EU.

Printed in Malaysia

► Acronyms and abbreviations

ACTIP	ASEAN Convention against Trafficking in Persons, Especially Women and Children
ASEAN	Association of Southeast Asian Nations
ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
CBO	community-based organization
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CIDB	Construction Industries Development Board
CSO	Civil society organization
CYPA	Children and Young Persons (Employment) Act 1966
DOI	Department of Immigration
DOL	Department of Labour
DOSH	Department of Occupational Safety and Health
DOSM	Department of Statistics Malaysia
DPP	Deputy Public Prosecutor
EA	Employment Act 1955
FMA	Factories and Machinery Act 1967
FOMEMA	Foreign Workers' Medical Examination Monitoring Agency
FPRW	Fundamental Principles and Rights at Work
HR	Human resources
ILMIA	Institute of Labour Market Information Analysis
ILO	International Labour Organization
ITC	International Training Centre of the ILO
MAPO	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Majlis Anti-Pemerdagangan Orang)
MEF	Malaysian Employers' Federation
MMEA	Malaysian Maritime Enforcement Agency
MOHR	Ministry of Human Resources
MPIC	Ministry of Primary Industries and Commodities
MPOB	Malaysian Palm Oil Board
MSPO	Malaysian Sustainable Palm Oil
MTUC	Malaysian Trades Union Congress
NAPTIP	National Action Plan on Trafficking in Persons
NGHTI	National Guidelines on Human Trafficking Indicators
NGO	Non-governmental organization
NSO-MAPO	National Strategic Office Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
NUPW	National Union of Plantation Workers
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSH	Occupational safety and health
OSHA	Occupational Safety and Health Act 1994

► Acronyms and abbreviations

PEACE	Preparation and planning, engage and explain, account, closure and evaluation (model)
PPE	Personal protective equipment
RBA	Responsible Business Alliance
RMC	Royal Malaysian Customs
RMP	Royal Malaysian Police
ROAP	Regional Office for Asia and the Pacific
RSPO	Roundtable for Sustainable Palm Oil
SOCISO	Social Security Organization
SOP	standard operating procedure
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia)
TIP	Trafficking in persons
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
USCBP	United States Customs Border Patrol
WAO	Women's Aid Organisation

► Contents

Module 1: Introduction 8

Module 2: Forced labour 16

2.1	What are substandard working conditions, forced labour, and trafficking?	18
2.2	What are some of the issues of forced labour in Malaysia?	22
2.3	What are labour inspectors' mandates regarding forced labour?	24
2.4	What are the challenges in conducting inspections regarding forced labour, and how to address them?	25
2.5	What are the indicators of forced labour and trafficking in persons (TIP)?	31
2.6	How can suspected victims of forced labour be protected?	54
2.7	What can be done if you find a suspected victim of forced labour?	59
2.8	How can strategic compliance planning be used to prevent forced labour?	71
2.9	Exercise	73

Module 3: Child labour 74

3.1	What is child labour according to applicable national laws?	76
3.2	What are some of the issues of child labour in Malaysia?	83
3.3	What are the labour inspectorate's mandates on child labour?	85
3.4	What are the challenges in conducting inspection for child labour and how to address them?	87
3.5	What can be done if you find a child labour?	94
3.6	How can strategic compliance planning be used to prevent child labour?	95
3.7	Exercises	96

Module 4: Gender-based discrimination, violence and harassment in the workplace, particularly of women migrant workers 97

4.1.	What are the international and national legal frameworks on gender-based discrimination, violence and harassment in the workplace?	100
4.2.	What are some of the issues of gender-based discrimination, violence and harassment in the workplace?	112
4.3.	What are the labour inspectors' mandates on gender-based discrimination, violence and harassment in the workplace?	119
4.4.	What are the challenges in carrying out labour inspection on gender-based discrimination, violence and harassment, and how to address these challenges?	119
4.5	What can be done if you find gender-based discrimination, violence and harassment in the workplace?	123
4.6.	How can strategic compliance planning be used to prevent gender-based discrimination, violence and harassment in the workplace?	125
4.7.	Exercises	126

Annexes 131

Annex 1:	Brief for labour inspectors on the domestic work sector	131
Annex 2:	Brief for labour inspectors on the palm oil plantation sector	142
Annex 3:	Brief for labour inspectors on the agro-processing and manufacturing sector	150
Annex 4:	Brief for labour inspectors on the construction sector	155
Annex 5:	Sample inspectorate questionnaire on sex discrimination and equality	165
Annex 6:	Sample interview form on sexual harassment	175
Annex 7:	Fourth Schedule of the Children and Young Persons Act (CYPA) 1966 [Act 350]	177
Annex 8:	Fifth Schedule of the Children and Young Persons Act (CYPA) of 1966 [Act 350]	180
Annex 9:	Step-by-Step Guide for referral of forced labour and human trafficking cases	182
Annex 10:	Directory of Service Providers for referral of potential victims	199

▶ 1

Introduction

1 Introduction

▶ About the training

This training manual is developed specifically as a guide for the Malaysian Government's labour inspection trainers. Building the capacity of the labour inspectorate on these issues will improve its ability to respond to the most urgent needs for the protection of workers' rights on forced labour, child labour and gender-based discrimination, violence and harassment in the workplace. This manual will also contribute to Malaysia's adherence to core ILO Conventions and other international human rights standards.

Target audience

The labour inspectors are the target users for this manual, acknowledging that the specialized labour inspection system in Malaysia includes inspectors from the labour department(s), Department of Occupational Safety and Health (DOSH) and Social Security Organization (SOCISO). Each has a potential role to play in combatting the violations covered by this training.

The topics

This manual deals with three of the four Fundamental Principles and Rights at Work (FPRW). Adopted in 1998, the ILO Declaration on FPRW is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values that are vital to our social and economic lives.¹ These principles and rights are:

- ▶ the elimination of all forms of forced or compulsory labour;
- ▶ the effective abolition of child labour;
- ▶ the elimination of discrimination in employment and occupation; and
- ▶ freedom of association and the effective recognition of the right to collective bargaining (to be covered in separate ILO training).

¹ ILO, "ILO Declaration on Fundamental Principles and Rights at Work".

Importance of this course

The proper application of labour legislation and the FPRW is highly dependent on an effective labour inspectorate. Labour inspectors investigate and enforce national labour standards at work, and advise employers and workers on how to improve the application of national law in such areas as working time, wages, occupational safety and health (OSH), child labour and other areas that are enforceable by labour inspectors. Labour inspectors also bring to the notice of national authorities' the gaps in national laws as they apply in the field.

Enforcement and sanctions are indispensable components of any labour inspection system, but they should be adequately combined with prevention policies, aimed at helping employers and workers to avoid or eliminate the risk of labour violations. Labour inspectors play an important role in ensuring that labour law protections are applied equally, including addressing the specific needs or vulnerabilities of migrant workers, particularly of women migrant workers, including issues on sexual harassment in the workplace and issues regarding maternity protection for women migrant workers.

As of September 2021, Malaysia has ratified 6 out of 8 ILO fundamental Conventions:

- ▶ Forced Labour Convention, 1930 (No. 29)
- ▶ Abolition of Forced Labour Convention, 1957 (No. 105), denounced in 1990
- ▶ Minimum Age Convention, 1973 (No. 138)
- ▶ Worst Forms of Child Labour Convention, 1999 (No. 182)
- ▶ Equal Remuneration Convention, 1951 (No. 100)
- ▶ Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Not yet ratified

- ▶ Freedom of Association and Protection of the Right to Organize, 1948 (No. 87)
- ▶ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Protocol of 2014 to the Forced Labour Convention, 1930 (P.29), is also not yet ratified to date but Malaysia announced publicly in 2019 its intention to ratify it.²

² ILO, "Countries in Asia and the Pacific drive action to end child labour, forced labour and human trafficking".

The ILO Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), set out the international labour standards on labour inspection.

These two Conventions are designated as priority Conventions because of their significance from the viewpoint of labour market governance.³ Malaysia has ratified Convention No. 81. According to Article 3 of Convention No. 81, the primary functions of the system of labour inspection are:

- a. To secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, in so far as those provisions are enforceable by labour inspectors;
- b. To supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; and
- c. To bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

In practical terms, labour inspectors have a key role both in terms of prevention and providing information and advice (including awareness-raising campaigns, and assessing plans for new buildings, plant, equipment and processes) and in terms of ensuring enforcement of the applicable legislation (including detecting violations, investigating complaints and cases of occupational accidents or illnesses, to identify causes and potential faults, and taking proactive actions to prevent recurrences).

Challenges remain in countries where labour inspection systems are underfunded and understaffed, and the inspectors are consequently unable to do their job. This is also the case in Malaysia. Studies show that the costs resulting from occupational accidents and illnesses, absenteeism, abuse of workers and labour disputes can be very high. Labour inspection can help prevent these problems and thereby enhance productivity and economic development.

The economic development model largely adopted in recent decades has tended to promote "softer" systems of compliance, stressing the preventative and awareness-raising function of labour inspection compared to the enforcement function. Today, economic crises, including that caused by COVID-19, has highlighted the importance of good labour market governance and of a solid, normative framework and enforcement measures. In this context, labour inspection is again capturing the interest of the international community, and this momentum should be utilized by Member States to analyse, redesign and strengthen their systems. For this, they need to strengthen their institutional capacity.⁴

³ ILO, Declaration on Social Justice for a Fair Globalization, 2008.

⁴ ILO, "International Labour Standards on Labour inspection".

Laws relevant to conduct of labour inspectorate in Malaysia

As public officials, labour inspectors must ensure that their conduct is both professional and ethical. This means adherence to national laws including laws requiring confidentiality and integrity in the conduct of Government servants. They are expected to comply with:

- ▶ the Penal Code (Act 574);
- ▶ the Official Secrets Act 1972 (Act 88);
- ▶ the Malaysian Anti-Corruption Commission Act 2009 (Act 694);
- ▶ the Enforcement Agency Integrity Commission Act 2009 (Act 700);
- ▶ the Public Officer (Conduct and Discipline) Regulations 1993; and
- ▶ the Federal Constitution of Malaysia 1957.

They must also ensure that these laws are applied in enterprises and that workers' rights are protected, or, if breached, that victims are able to access legal remedies. The inspections carried out by labour officers are assessed by the Labour Standard Division from the Ministry of Human Resources (MOHR) headquarters, so as to ensure that they comply with standard operating procedures (SOPs), key performance indicators (KPIs) and national laws. Disciplinary action can be taken against any labour inspector who commits misconduct in the performance of their duty.

Note: The laws being enforced by the labour inspectors may change and inspectors must always consult the relevant legislation for the legally correct information at that period.

Labour inspections focus on the following issues, as contained in the SOPs and checklist for inspection:

- | | |
|--|---|
| ▶ employment terms and conditions | ▶ occupational safety and health |
| ▶ contract of service | ▶ accommodation and amenities for workers |
| ▶ hours of work | ▶ forced labour and trafficking issues |
| ▶ employment of female employees | ▶ contracts for labour |
| ▶ entitlement to leave | ▶ duty to furnish information |
| ▶ sexual harassment protection | ▶ duty to give due notice and any other information |
| ▶ minimum wage | ▶ recruitment issues |
| ▶ employment of children and young persons | ▶ penalties on employers for violations |
| ▶ retirement age of workers | ▶ work permits of foreign workers |
| ▶ accommodation and amenities for workers | ▶ human capital |
| ▶ social protection | ▶ good practices |

The training modules

The three training modules in this manual focus on (1) forced labour; (2) child labour, and (3) gender-based discrimination, violence and harassment in the workplace. The manual was developed to be a practical tool. For each topic, key terms are defined, and the issues of identification of legal violations and actions to undertake are discussed. The manual is based on the mandate of the labour inspectorate and the national legal frameworks, and provides case studies, tips and good practices on particular topics for each module. International standards are referred to in relevant sections.

Annexes 1 to 4 contain sector-specific briefs that can be used as supplementary resources to expound upon or illustrate key issues in the modules. These are on (1) domestic work, (2) the plantation sector, (3) the agro-processing and manufacturing sector, and (4) the construction sector.⁵

The MOHR is encouraged to update this manual at regular intervals to reflect any changes to the laws or the practices highlighted in this publication.

The training

The full training, in which trainers cover all the topics in the core modules, is designed to be completed in three days. However, trainers may consider delivering each module separately, where practicable. The recommended agenda for full training is shown below. However, the trainer should adapt this timetable based on the needs and constraints of the training participants.

Recommended training agenda

Time	Session
Day 1 – Introductory and forced labour sessions	
08.30–09.00	Opening message Introduction about the training
09.00–09.20	Pre-test
09.20–09.30	Ice-breaker activity
09.30–10.30	Concepts and definitions (including strategic compliance planning approach)
10.30–10.45	Coffee break
10.45–11.30	Legal mandates of labour inspectors regarding forced labour
11.30–12.30	How to identify violations regarding forced labour
12.30–13.30	Lunch break
13.30–14.30	Activity with reporting
14.30–15.15	What to do if a violation is found, and how to protect the victim and provide assistance
15.15–16.00	Activity on what action to take and how to protect and provide assistance to the victim

⁵ These sectors have also been identified by stakeholders as high-risk sectors regarding labour rights violations, and where labour inspection is more challenging given various factors. For instance, domestic work – comprised largely of women migrant workers – is essentially under-regulated, and labour inspectors in practice do not cover their workplaces in their regular inspections. Plantations are typically found in remote locations, which makes labour inspection challenging. The construction sector has subcontracting and project-based (disguised) employment practices, which pose a huge risk for workers in terms of their labour rights. Lastly, agro-processing and manufacturing presents a huge challenge in ensuring supply chain transparency and monitoring.

16.00–16.15	Coffee break
16.15–17.00	Strategic compliance planning regarding forced labour
Day 2 – Child Labour	
09.00–09.10	Recap of Day 1
09.10–09.30	Ice-breaker activity
09.30–10.30	Concepts and definitions
10.30–10.45	Coffee break
10.45–11.30	Legal mandates of labour inspectors regarding child labour
11.30–12.30	How to identify violations regarding child labour
12.30–13.30	Lunch break
13.30–14.30	Activity with reporting
14.30–15.15	What to do if a violation is found, and how to protect the victim and provide assistance
15.15–16.00	Activity on what action to take and how to protect and provide assistance to the victim
16.00–16.15	Coffee break
16.15–17.00	Strategic compliance planning regarding child labour
Day 3 – Elimination of gender-based discrimination, violence and harassment in the workplace	
09.45–10.45	Concepts and definitions
10.45–11.00	Coffee break
11.00–11.45	Legal mandates of labour inspectors regarding gender-based discrimination, violence and harassment in the workplace
11.45–12.30	How to identify violations on this particular issue
12.30–13.30	Lunch break
13.30–14.30	Activity with reporting
14.30–15.15	What to do if a violation is found, and how to protect the victim and provide assistance
15.15–16.00	Activity on what action to take and how to protect and provide assistance to the victim
16.00–16.15	Coffee break
16.15–17.00	Strategic compliance planning regarding gender-based discrimination, violence and harassment in the workplace

2

Forced labour

2 Forced labour

- 2.1. What are substandard working conditions, forced labour, and trafficking?
- 2.2. What are some of the issues of forced labour in Malaysia?
- 2.3. What are labour inspectors' mandates regarding forced labour?
- 2.4. What are the challenges in conducting inspections regarding forced labour, and how to address them?
- 2.5. What are the indicators of forced labour and trafficking in persons (TIP)?
- 2.6. How can suspected victims of forced labour be protected?
- 2.7. What can be done if you find a suspected victim of forced labour?
- 2.8. How can strategic compliance planning be used to prevent forced labour?
- 2.9. Exercises



Learning objectives

- ▶ To improve labour inspectors' understanding regarding forced labour and how it differs from, and relates to, substandard working conditions and TIP according to national laws
- ▶ To increase labour inspectors' understanding of their mandate and role in enforcing forced labour-related laws
- ▶ To increase labour inspectors' knowledge about actions to take when forced labour victims are identified
- ▶ To be able to include forced labour in the labour inspection strategic compliance planning



Learning methodologies

- ▶ Lecture (with slide presentation)
- ▶ Case study



Supporting documents and recommended reading

- ▶ ATIPSOM [amended in 2010 and 2015]
- ▶ ILO Convention No. 190
- ▶ ILO, Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers, 2021
- ▶ ILO, Judges, Prosecutors and Legal Aid Practitioners' Training on Forced Labour: Facilitator's Guide, 2019
- ▶ United States of America Department of State, Trafficking in Persons Report, 2020
- ▶ ILO Situation and gap analysis on Malaysian legislation, policies, and programmes and the ILO Forced Labour Convention and Protocol



Suggested duration

6 hours

► 2.1 What are substandard working conditions, forced labour, and trafficking?

What is forced labour?

There is no national definition of forced labour.⁶ However, the internationally recognized definition of forced labour is found in ILO Convention No. 29, which Malaysia ratified in 1957⁷ and which states that forced labour is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself (or herself) voluntarily”.

For a situation to be considered forced labour, the following issues must be noted:

- **There should be work or service rendered:** This includes all types of work, service and employment, regardless of the industry, sector or occupation within which it is found. This encompasses legal and formal employment as well as irregular and informal employment.
- **The definition applies to any person:** This refers to adults as well as children, regardless of nationality and legal status.
- **There is menace or threat of a penalty:** Menace or threat of penalty by the perpetrator to the victim can be any form of coercion such as threats, violence, retention of identity documents, confinement or non-payment of wages. A penalty may also take the form of a loss of rights or privileges. Subsection 2.5 discusses the indicators of menace or threat of a penalty.
- **There is the element of involuntariness:** This means that the victim did not consent to enter into employment freely, or has no freedom to leave the employment at any time, with reasonable notice in accordance with national law or collective agreements. Subsection 2.5 discusses the indicators of involuntariness. The element of involuntariness may have a particularly gendered nature, leading to violence against women. It may be a result of acts of violence, resulting in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.

⁶ ILO, *Judges, Prosecutors and Legal Aid Practitioners' Training on Forced Labour: Facilitator's Guide*, 2019.

⁷ Ratification of this Convention comes with the obligation to eliminate forced labour as a matter of urgency; criminalize forced labour; impose adequate penalties to reflect the seriousness of the offence; and strictly enforce the penalties.

► What is not forced labour?

Article 2(2) of Convention No. 29 sets out certain exceptions pertaining to practices that would otherwise fall under the definition of forced labour:

- compulsory military service
- normal civic obligations
- prison labour carried out under supervision and the control of public authority, and not for private individuals, companies or associations
- emergencies and minor communal service

All of these situations only constitute exceptions under certain conditions, as defined by the ILO Committee of Experts.⁸

Article 1 of the Protocol of 2014 to Convention No. 29 reaffirms the definition of forced or compulsory labour contained in ILO C29. The Protocol also provides that measures tackling forced labour should include specific action against trafficking in persons (TIP) for the purposes of forced labour – making a clear link between forced labour and human trafficking.

What is trafficking in persons?

Malaysia's definition of trafficking in persons is from the ATIPSOM, which states that TIP means all actions involved in acquiring or maintaining the labour or services of a person through coercion, including recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of forced labour.

The element of coercion is a prerequisite to establish an act of trafficking. Coercion under the ATIPSOM is defined as:

- the threat of serious harm to, or physical restraint against, any person;
- any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to, or physical restraint against him or her, or any other person; or
- the abuse or threatened abuse of the legal process.

⁸ ILO, *General Survey*, 2012.



Photo source: GettyImages

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

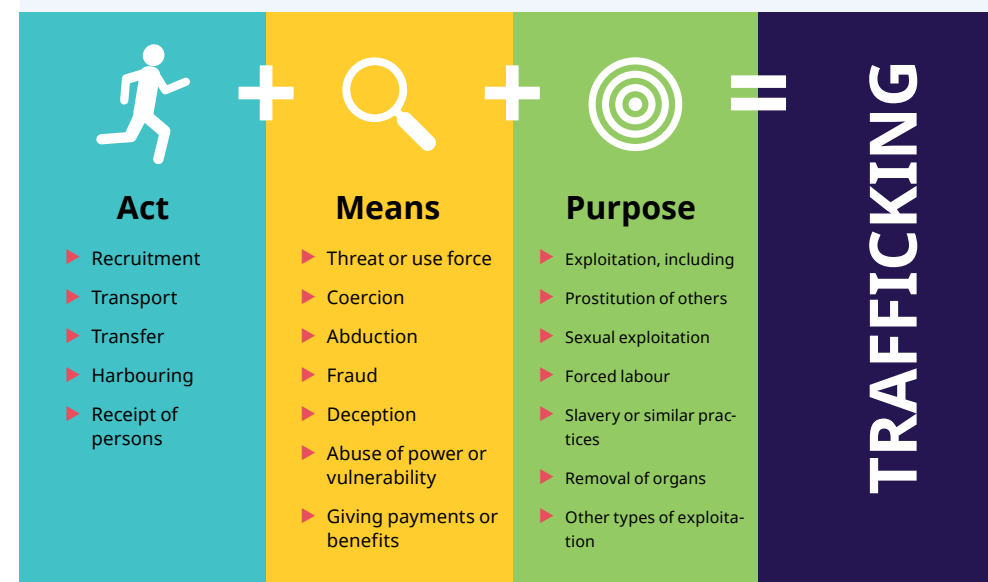
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol 2000), acceded to by Malaysia on 26 February 2009

In *Chang Chai Choi v. PP* [2013] 7 CLJ 166, the High Court held that in order to obtain a conviction under section 13 of the ATIPSOM, the charge must satisfy three elements:

1. The **act** – by way of recruitment, transporting, transfer, harbouring or receipt.
2. The **means** – through the threat of use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits, to achieve the consent of a person having control over another person.
3. The **purpose** – being any form of sexual exploitation, forced labour or service, slavery or practice similar to slavery, servitude, or any illegal activity, or the removal of human organs.

A person can become a victim of forced labour (meeting the ILO’s forced labour definition) even without being trafficked (or meeting the requirements to be considered TIP). From the ATIPSOM perspective, a forced labour victim is not a victim of TIP unless the act-means-purpose elements described above (and in the illustration below) are satisfied.

► **Figure 1: Elements of trafficking**



For an adult victim, if one condition from each element is met, the result is trafficking. If any one of the three main elements is missing, then it will not be trafficking. However, if the person is under the age of 18, it is only necessary to show that any one or more of the defined acts has been used to achieve any one or more of the defined exploitative purposes. The means by which this has been achieved are considered irrelevant and can be ignored.

► What are substandard working conditions?

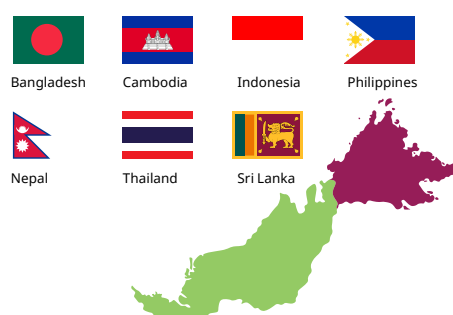
Forced labour is different from substandard or exploitative working conditions. Victims in receipt of low wages may not be working in a forced labour situation if they are not working under the threat of a penalty and freely consent to their employment. In addition, substandard working conditions on their own are also not enough to determine the existence of a forced labour situation. Various indicators can be used to ascertain when a situation amounts to forced labour, such as restrictions on workers’ freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape. It is also of vital importance that these indicators are correctly weighted in order to arrive at a determination of forced labour. Incorrectly placing emphasis on one indicator as opposed to another is likely to lead to an inaccurate determination, as described in the *ILO’s Judges, Prosecutors And Legal Aid Practitioners’ Training on Forced Labour: Facilitator’s Guide, 2019*.

A lack of viable economic alternatives that makes a person stay in an exploitative work relationship does not in itself constitute forced labour, but it may constitute a position of vulnerability to forced labour and trafficking.

► 2.2 What are some of the issues of forced labour in Malaysia?

In Malaysia, the report entitled **ILO Situation and gap analysis on Malaysian legislation, policies, and programmes and the ILO Forced Labour Convention and Protocol**, stated that some migrant workers are victims of forced labour at the hands of employers and informal labour recruiters carrying out abusive practices. Forced labour victims may be exposed to high recruitment fees, wage arrears and contract substitution, long working hours without additional remuneration, denial of rest days and leave, and unsanitary accommodation. Some have their personal identification documents taken from them, exposing them to harassment and arrest by authorities. At the same time, stateless persons and refugees are also vulnerable to trafficking and forced labour due to their precarious legal status.

- Migrant workers in Malaysia come **mostly from other Asian countries** such as



- sectors in which migrant workers, refugees and stateless persons mainly work:



Factors that affecting labour inspection and worker's ability to report abuses are:

- remote geographical location of plantations
- difficulty in transportation
- under-regulated for domestic work
- lack of surveillance
- lack of access to communication technology

Factors that contribute to the vulnerability of migrant workers to forced labour are:

- high recruitment fees
- power imbalance between employer and worker
- passport retention
- the employer not securing work permits for the workers (thus making them undocumented, giving them irregular status and limiting their legal protection)
- extreme poverty
- lack of necessary social support in Malaysia
- dependency on the employer
- lack of legal status also make refugees and stateless individuals vulnerable to forced labour

- In the ILO's 2017 report, Access to Justice for Migrant Workers in South-East Asia, most of the 263 complaint cases handled by the Migrant Worker Resource Centres in Malaysia are:

- 77% withholding of identification documents
- 74% inability to take leave from work
- 70% excessive work hours
- 64% contract substitution
- 94% of the cases involved multiple forms of abuse

At the international level, the United States Customs Border Patrol (USCBP) has issued Withhold Release Orders ⁹ (otherwise referred to as detention orders) for Malaysian companies as part of its enforcement of the US Trade Facilitation and Trade Enforcement Act 2015 (TFTEA), in response to reports that forced labour has been used in operations by the companies in question. ¹⁰

The US Department of Labor's 2020 List of Goods Produced by Child Labor or Forced Labor lists Malaysian electronics, rubber gloves, garments and oil palm as products produced with forced labour.

Forced labour and women migrant workers in Malaysia

Women are particularly vulnerable to forced labour because they are often marginalized or disadvantaged by the mainstream socio-economic systems, due to male privilege in the prevailing patriarchal structures and gender norms in the family and larger community, and by lack of opportunity in education, employment, property ownership and mobility in both the country of origin and destination. In Asia, some women from poor and working-class families have been reported to be compelled to migrate for jobs, or to be sold into forced labour to support the needs of their families. In the workplace, women migrant workers suffer from income inequality and disparity in opportunities for leadership and decision-making roles. Gender-based division of labour in the trans-national or global labour market often leads women migrant workers into low-skilled and low-wage sectors which are under- or un-regulated, making it possible for forced labour to go unreported. They often suffer more due to gender-based stereotypes and prejudices, in particular sexual harassment and sexual exploitation in the migration or trafficking process.

According to the Women's Aid Organisation (WAO), the most common types of forced labour and trafficking in Malaysia are:

- **Domestic servitude.** Many women migrant domestic workers become victims of forced labour due to exploitative practices such as debt bondage through initial recruitment fees by employment agencies in both the country of origin or destination, or by employers in Malaysia.
- **Trafficking for sexual exploitation.** Malaysia has been identified as a prominent location in the sex trade. ¹¹ Migrant women and girls are coerced into sex work and are often subject to harassment and violence in all phases of the trafficking process. They are trafficked for work in the entertainment sector, including massage parlours, spas, pubs, karaoke lounges and restaurants.

⁹ A Withhold Release Order prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labour – including forced child labour. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

¹⁰ US Customs and Border Protection, "Withhold Release Orders and Findings".

¹¹ "The ILO computes that the average annual profit per sex worker in Malaysia is about US\$23,500. It is estimated that there are 142,000 sex workers in Malaysia, of which 8,000 to 10,000 are located in Kuala Lumpur." WAO, Human Trafficking in Malaysia: A Focus on Women and Children, 2017.

- **Agro-processing and manufacturing.** Many undocumented women migrants enter Malaysia with valid documentation but are subsequently victimized and coerced into exploitative work conditions in various industries and sectors including agriculture, food service, textiles and electronics.

► 2.3 What are labour inspectors' mandates regarding forced labour?

Forced labour that meets the definition of TIP is covered under the ATIPSOM. **This applies nationwide.** However, there is currently no law that covers forced labour falling outside the ambit of the ATIPSOM, and this is also outside the scope of the labour ordinances for Sabah and Sarawak.

Section 27 of the ATIPSOM provides that officers appointed under the Employment Act (EA), the Sabah Labour Ordinance and the Sarawak Labour Ordinance are enforcement officers for the purpose of the ATIPSOM. The objective of including labour inspectors in the ATIPSOM is obviously to tackle TIP for labour exploitation, including forced labour. This is in line with the responsibilities of labour inspectors in conducting inspections of workplaces. The task is to identify indicators of forced labour as provided in the inspection checklist (see section 2.5). The labour inspectors are also tasked with conducting investigations under the ATIPSOM, which are done by a specialized team of the Department of Labour (DOL) called the Special Enforcement Squad. This team, started in October 2020 and located in different zones, is made up of labour officers who have been extensively trained regarding forced labour and the ATIPSOM.¹²

The DOL's SOP provides that an investigation must be carried out under the ATIPSOM whenever there is an allegation of forced labour. Cases that do not meet the threshold under the ATIPSOM will be dealt with normally under the EA, the Minimum Housing, Accommodation and Amenities Act 1990, or the CYP. Another relevant law is the Passport Act, for cases involving retention of passports, with referral to the Department of Immigration (DOI).

Although employment laws provide equal protection for Malaysian workers and migrant workers, this protection is hampered by uneven law enforcement and uneven interpretation of the labour laws. In some cases, labour officers consider undocumented workers outside the protection of the law.

This contributes to the exploitation of migrant workers, particularly those who are undocumented, and the continuation of the cycle of exploitation. In a landmark case, a Malaysian court ruled that an undocumented migrant domestic worker (whose name was "Nona") had the right to pursue her claim for unpaid wages in Malaysia. As a result, workers can now file similar claims at the labour courts.¹³ All workers can claim unpaid wages and benefits at labour courts, but for domestic workers it is limited only to wages.

Currently, the inspectors' mandate regarding occupational safety and health (OSH) is to ensure safe and healthy working conditions. This role, which is related to indicators of forced labour, necessitates that OSH inspectors enhance their knowledge on forced labour, identify indicators of forced labour and refer information obtained during inspection to the DOL for necessary action to be taken.

Malaysia has developed the National Action Plan on Trafficking in Persons (NAPTIP) 2021–25, which includes issues regarding forced labour. If trafficking is identified and is within the purview of the ATIPSOM, the NAPTIP requires victim identification and protection, as well as referral to relevant service providers.

► 2.4 What are the challenges in conducting inspections regarding forced labour, and how to address them?

Challenges in detecting forced labour

The hidden nature of some forced labour cases

Some victims of forced labour are kept isolated and are unable to seek assistance. Victims can also be put in situations in which threats or intimidation are so strong that they are afraid of seeking help. In this case, violence and abuse can be reported through non-governmental organizations (NGOs), civil society organizations (CSOs) or trade unions to the DOL, which should take these reports seriously and promptly investigate them. Labour inspectors must be observant and conduct workplace inspections thoroughly to detect subtle signs of abuse.

¹² Feedback from the Department of Labour of Peninsular Malaysia, 2021.

¹³ Business & Human Rights Resource Centres, "Malaysia: High court sets precedent by ruling that an undocumented domestic worker can claim for unpaid wages".

They must also follow up with interviews of potential victims of forced labour. But workers have to be guaranteed protection from retaliation by employers, recruiters or other perpetrators, when responding to labour inspectors' requests for interview, hence the critical importance of inspectors keeping the identity of complainants or interviewees confidential. (See Annex 1 for conducting labour inspections in the domestic work sector.)

Victims may not necessarily exhibit physical signs of abuse

Psychological coercion experienced by victims may not be easy to recognize during labour inspections. Psychological coercion is a powerful means of control for abusers who exploit the vulnerabilities of victims. For instance, victims may be coerced to remain in an abusive working situation due to threats that their work permits will not be renewed, or salaries will be withheld if they do not obey the employer. Another form of coercion is the threat of being reported to the authorities regarding legal status. Even if a worker can leave the work premises and have a mobile phone, this does not mean that he or she is not in a forced labour situation.¹⁴

-
- ▶ **Law enforcers should be watchful for signs of psychological coercion when screening for potential victims of forced labour or TIP. Interview questions should also be designed to ascertain these indicators.**

Forced labour may not happen at the beginning of the work relationship

Work conditions may evolve and forced labour indicators may emerge over time. Even when workers freely start a job, the situation may change once they are employed – when passports are taken away, when they are underpaid or unpaid, when forced to work long hours under dangerous or extremely poor working conditions, and when faced with physical or sexual abuse. This is especially true for women workers, particularly domestic workers who work in private spaces and may suffer rape and other forms of sexual violence. Some workers may receive loans at exorbitant interest rates, in order to migrate in the first place. Many, if not most, migrant workers in this situation cannot afford to pay back the loans and interest, and cannot return to their countries of origin. The end result is that they become bonded labour.

Enforcement authorities will often seek to find characteristics of trafficking in a forced labour victim, despite some forced labour cases not meeting trafficking criteria. This may lead to a lack of identification of forced labour and more hardship for the victim.¹⁵ It must not be forgotten, therefore, that legitimate cases of forced labour can exist even in the absence of trafficking.

¹⁴ ILO, *Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers*, 2021.

¹⁵ ILO, *Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers*, 2021.

-
- ▶ **Coordination between the DOL and law enforcement agencies is important, as the DOL will be able to distinguish labour violations throughout the employment of the worker. When screening for victims, look at indicators of abusive working and living conditions. There could be indicators of involuntariness or threats of penalty that could signify forced labour.**

Difficulty in identifying evidence of forced labour

More and more traffickers and unscrupulous employers use methods to hide their crimes and make them more difficult for law enforcement officers and labour inspectors to detect. For instance, it is easy to detect if a worker is not paid. But more and more often, workers are paid so that labour inspectors find the salary slips in order. However, workers are then forced to withdraw the cash and give it back to their employers. There could also be a system manipulating the accounting entries.

Organized crime might be involved

Traffickers, smugglers and labour exploiters increasingly cooperate closely with each other, which makes it harder to distinguish between them. Labour exploiters and traffickers use methods that are deliberately intended to make it difficult for law enforcement officials to detect the types of crime.¹⁶

-
- ▶ **Dismantling organized crime takes time, expertise, resources and networks. Law enforcers should attempt to spot patterns in cases of forced labour and TIP involving certain individuals or groups, such as the methods and promises used in the recruitment, transport and exploitation of human trafficking victims. Officials should aim to work with specialized units of the Government of Malaysia, as well as countries of origin, when investigating cases. They should also aim to ensure the safety of victims and their families and loved ones.**

Lack of cooperation from victims

Forced labour often occurs when workers are not adequately protected by labour laws. Victims of forced labour may also lack awareness of their rights and have limited information on services that are available and accessible in situations of forced labour. Victims may be led by their exploiters to be afraid of law enforcement officers and avoid contact with them. This is even more likely if they belong to a group that is discriminated against. It is sometimes the case that victims are too scared and distrustful of law enforcement officials to honestly answer their questions.

¹⁶ ILO, *Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers*, 2021.

-
- ▶ Law enforcement agencies should apply the principle of non-discrimination in their operations. Understanding that abuses will continue unless perpetrators are punished will emphasize the importance of ensuring the protection of victims. Law enforcers should ensure that those who are found without legal documents are screened for indications of forced labour, TIP and violence and harassment, so that punishment of the perpetrators is realized. This is a survivor-centric approach to enforcement.

Victims may be under the instructions of their traffickers and exploiters to provide misleading information to officials. The reluctance of victims to come forward may be due to fear for their lives or for the lives of their loved ones.¹⁷ When workers tend to give the same stereotyped answers, this is a good sign that they have been instructed by the employers or traffickers on how to respond to the authorities.

-
- ▶ Law enforcement officials should use all efforts to understand how the perpetrators may be controlling the victims, and to protect workers during the process, so that they do not suffer intimidation. Apart from using the indicators of forced labour and TIP, use interview techniques that can reveal the relationship between the potential victim and the perpetrator, the causes of the victim's fear to cooperate, and the situation regarding family or loved ones. The law enforcer should not use intimidation or threats to get the information needed. Show empathy for the situation of the victim instead.

Some victims also fear becoming undocumented and homeless, especially if there is extensive dependency on the employer for accommodation and work permit sponsorship.

-
- ▶ Explain to the victim their legal right to cooperate or otherwise, the protection allowed to them under the laws, the services provided to victims under the ATIPSOM (including shelter and the right to work) and the assessments that have to be made to determine eligibility for these services.

¹⁷ ILO, *Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers*, 2021.



Photo source: GettyImages

Challenges regarding resources and capacity

Limited inspection resources

Globally, countries face the same challenge of lack of labour inspectors to conduct workplace inspections. As such, the ILO continues to urge all Member States to invest more in national institutions that oversee employment matters, including labour inspectorates.¹⁸ But in the face of limited resources, it remains important to pursue strategic approaches to labour inspection, while at the same time allocating sufficient resources for this task. An improved labour inspection strategy enables efficient use of available resources by identifying strategic areas to focus on during inspection that will have far-reaching effects on industries and workers, utilizing communications tools to increase awareness about labour issues, and emphasize prevention of labour violations before they occur or degenerate into conditions such as forced labour.

The DOL could also collaborate with workers' organizations such as the Malaysian Trades Union Congress (MTUC), regulatory organizations such as the Malaysian Palm Oil Board (MPOB) and the Construction Industries Development Board, certification bodies such as the Roundtable for Sustainable Palm Oil, Malaysian Sustainable Palm Oil (MSPO), and employers' associations such as the Malaysian Employers' Federation (MEF) and the Federation of Malaysian Manufacturers, in implementing relevant activities. The constraint on having language interpretation for labour inspectors, particularly in dealing with migrant workers who are particularly vulnerable to forced labour violations, should also be addressed, either with the Government allocating a budget to hire translators, or through collaboration with CSOs, migrant community-based organizations, and embassies.

Lack of guidance on how to use the indicators of forced labour in practice

The various forms of coercion are subtle and often difficult to identify. SOPs and guidelines on indicators of forced labour alone are not enough without a clear explanation on how each specific indicator of forced labour is determined. These determinations cannot be reduced to a mathematical equation and, as in other instances, inspectors must exercise discretion based on the applicable legal standards and the demonstrable facts gathered from an inspection.

¹⁸ ILO, *Centenary Declaration for the Future of Work*, 2019.

The degree or severity of exploitation presents another challenge, as it is a very subjective term, which has not generally been covered in labour standards. This is especially difficult in certain less regulated sectors like domestic work, where there is no regulation on the number of working hours, rest days and the minimum wage. Cases of forced labour may emerge in the course of investigations into the non-payment of wages or other underlying labour violations, following worker complaints, or even in response to intelligence gathered through non-traditional sources like media and academic reports.

Labour inspectors should be trained on victim identification and protection, and referral to appropriate services, along with gender sensitivity. Moreover, labour inspectors should prioritize the protection of all workers, regardless of legal residence or migratory status, and should not act as immigration officers.¹⁹ This manual could be used, as it provides detailed information on these topics.

Lack of shelter for victims

One of the most immediate needs of victims of TIP, including those exploited for forced labour, is shelter, and this protection service is afforded under the ATIPSOM. However, according to the DOL, in some States there are no shelters for victims, which puts labour inspectors in the difficult situation of not being able to propose immediate assistance to the victims they identify. This lack of facilities for rescued victims should not affect the confidence of labour inspectors in taking potential victims out from abusive working or living conditions. In coordination with the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Majlis Anti-Pemerdagangan Orang) (MAPO), and with collaboration from embassies and CSOs, the number of shelters could be increased.

Dealing with gender issues

Labour inspectors should be mindful that victims, especially women who have faced trafficking and violence and harassment, may be reluctant to make formal complaints, or even to talk to an officer, due to trauma, fear, stigma and the effects of the violence and harassment. According to WAO's Human Trafficking in Malaysia: A Focus on Women and Children: A 2017 Report, trafficking victims often experience both physical and psychological harm. Women and girls who have survived trafficking often suffer from mental health issues due to the prolonged traumatizing experience and feeling of helplessness during the trafficking process. Among the mental health issues they suffer are post-traumatic stress disorder (PTSD), depression and anxiety.

¹⁹ The 2006 General Survey on labour inspection states that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Given the potentially large proportion of inspection activities on verifying the legality of immigration status, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that additional duties that are not aimed at securing enforcement of the legal provisions regarding conditions of work and the protection of workers, should be assigned to labour inspectors only in so far as they do not interfere with their primary duties and do not prejudice in any way the authority and impartiality that are necessary to inspectors in their relations with employers and workers. ILO, "Labour Inspection Convention, 1947 (No. 81) Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021)".

A prolonged period of disempowerment may lead to hopelessness, cognitive impairment, suicidal behaviour and even aggression. Some women and girl survivors may also have to deal with lasting sexual and reproductive health issues such as sexually transmitted diseases, while some have to suffer more from social discrimination and stigma after escaping their trafficking situation. This problem may be mitigated with a strong victim support system as outlined in the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP). (See subsection 4 for information on gender considerations in inspection interviews, and Annex 5 for sample indicators of victims of gender-based violence and harassment in forced labour.)

► 2.5. What are the indicators of forced labour and trafficking in persons?

Key points on the indicators

- Indicators are signs that suggest a case may be one of forced labour or TIP.
- No single indicator on its own will answer the question of whether a person has been trafficked or exploited for labour purposes.
- Indicators are not proof of the crime; they are the starting point for investigation.
- Indicators are to be understood from the point of view of the victim: Even if the threat does not look credible, it may be frightening to the workers, depending on their age, their education level or their language skills.

Be careful not to equate poor working conditions or other violations of labour laws as forced labour. Always make a connection with other indicators of involuntariness. Simply lacking alternative economic opportunities or not leaving because of poverty would not be considered symptomatic of forced labour unless the elements of coercion or lack of consent are present.

Forced labour indicators in the Malaysian labour inspection checklist, as of the date of publication

- Abuse of vulnerability
- Withholding of wages
- Retention of passport or identification document

- ▶ Excessive working hours
- ▶ Deception
- ▶ Restriction of movement
- ▶ Isolation
- ▶ Threat and intimidation
- ▶ Physical abuse
- ▶ Non-conducive workplace
- ▶ Unsuitable accommodation and amenities
- ▶ Non-compliance with OSH regulations

▶ Sample questions and evidence of forced labour indicators

Indicator (in the LI checklist)	Examples of questions to ask	Examples of evidence
Deception <i>Deception involves deceit surrounding the nature of the work, working conditions, living conditions or wages. This includes contract substitution.</i>	▶ What was promised by the recruiter or employer in terms of type of work, identity of the employer, working hours, pay and living arrangements? Are any of these not fulfilled in the actual employment? ▶ If the victim is a below 18 years old (a child), additional questions should be asked regarding promises of support for education, school attendance or the frequency of visits by or to their parents.	▶ A contract or written communication about the job, including phone or social media messages. ▶ Embassy records about approved employment of the victim. ▶ Previous reports about the recruiter or employer regarding deception or contract substitution. ▶ If the victim is a child, communication between parent and the recruiter or employer about work and living arrangements for the child ▶ A copy of a new contract or written agreement.
	Contract Substitution ▶ Is there a contract in the workers' first language, signed before starting work? ▶ What were the terms and conditions of employment? ▶ Have these terms and conditions changed?	

Indicator (in the LI checklist)	Examples of questions to ask	Examples of evidence
Restriction of Movement	▶ How did the worker find the employer? ▶ Did someone use force or blackmail to get the worker to work for the employer? ▶ Has the worker attempted to run away? ▶ Are the living areas and workplace heavily guarded? ▶ Has the worker contacted family members or friends? ▶ Can the worker leave working place freely? ▶ Can the worker freely leave the place where he or she lives? ▶ Is the worker locked up at the workplace? ▶ Is the worker forced to sleep at the workplace? ▶ Are there visible signs indicating that the worker is not free to leave the workplace due, for example, to barbed wire or the presence of armed guards or other such constraints? ▶ Is the worker constrained from leaving the workplace? ▶ Does the worker have days off? ▶ Can the worker freely contact friends and family? ▶ Is the absence of the workers monitored? For instance, are they only allowed to leave for a limited time?	▶ Police report filed by family members about a missing person. ▶ Evidence about the blackmail. ▶ Presence of armed guards or barbed wire. ▶ Worker has no mobile phone. ▶ If the worker has a mobile phone, call check logs. ▶ Logbooks for going in and out of the workplace. ▶ Check with the worker's closest friends in Malaysia how often they see the worker. ▶ Timesheets. ▶ Payslips (check the number of days used for computation, to see if there is no day off). ▶ Check the last time the victim contacted family members.
Unsuitable accommodation and amenities <i>Be careful not to equate poor working conditions or even violations of Act 446 with strong indicators of forced labour. Making the connection with voluntariness is key (such as restrictions on movement outside of accommodation).</i>	▶ Pertaining to the dimensions and provisions of the housing, does it comply with the Minimum Housing Standards and Amenities Act? ▶ Are there separate rooms for male and female workers? ▶ Is clean drinking water available? ▶ Is the accommodation unhealthy and overcrowded? ▶ Does the worker have privacy in the accommodation?	▶ Photos of working, living and sleeping areas ▶ DOL report about housing and accommodation.

Indicator (in the LI checklist)	Examples of questions to ask	Examples of evidence
Abuse of vulnerability <i>This includes the issue of dependency, and is difficult as some dependencies like reliance on the employer for food and lodging may be created by the law, and could be systemic. For example, work permits tying workers down to one employer are also an example of dependency created by the legal framework.</i>	- Does the worker retain her/his own bank account and could she/he access her or his own money from wages? - Can the worker freely choose where to buy basic necessities? - Does the worker have the option to choose accommodation? - Can the worker withdraw her or his own money any time from a bank account without asking permission from the employer?	- Payslip. - Bank account. - ATM card with the victim. - Receipts of purchases from the employer's store. - Receipts for house rent.
Hazardous working conditions (under coercion)	- Is the worker subject to occupational hazards that he or she would not otherwise accept without coercion? - Is the worker forced to engage in hazardous work without providing the necessary personal protective equipment (PPE)? - Did the worker know about the hazardous nature of the work before accepting the job?	- OSH report. - Photo of the work environment and PPEs provided. - Payslip with PPE deduction. - Contract or written communication mentioning the nature of the work.
Excessive working hours	- Does the worker have a choice not to work overtime? - How many hours of overtime per week does the worker do? - Check if in compliance with the labour laws. - How often is the worker asked to work overtime? - Is the worker paid for overtime? - Is there a penalty if the worker refuses to do overtime (for instance, a blacklist)? - How many hours of overtime per week does the worker do? - How much is the hourly rate? - Compute whether a normal eight-hour workday gives at least the minimum wage. - Does the worker have to do overtime to meet production targets?	- Time card. - Payslip with salary deduction. - Contract or written communication from the employer. - Company notice boards about overtime.

Indicator (in the LI checklist)	Examples of questions to ask	Examples of evidence
Withholding of wages <i>This creates coercion that often acts to prevent a worker from exercising the right to leave an employer. Workers feel that they stand to lose wages already earned if they leave.</i>	- Does the worker have a regular employment contract? If not, how are wages paid? - Is there any illegal wage deduction? - Has the worker received any wages at all? - Does the worker receive little or no payment? - What is the amount of the wage in relation to national statutory requirements? - Do the workers have access to their earnings? - Have the workers been deceived about the amount of their wages? - Are wages paid on a regular basis? - Is the worker paid in-kind?	- Employment contract. - Emails or messages from the employer or recruiter. - Payslips. - Contract on debts to pay. - ATM card should be with the worker. - Check bank statements on wages paid.
Physical violence <i>Forced labour is frequently exacted from workers by the threat and application of physical or sexual violence. Some physical abuses by employers can potentially amount to torture. Some sexual violence by employers can potentially amount to rape.</i>	- Does the worker have any sign of maltreatment, such as bruises? - Does the worker show signs of anxiety? - Is there any other sign of mental confusion or traces of violence? - Do supervisors or employers demonstrate violent behaviour?	- Medical exam. - Psychiatric test. - Testimonies from neighbours or co-workers. - Interview family members and friends of the victim as to the mental state of the victim before and after abuse. - Interview accommodation guards and management. - Interview previous employers of the victim. - Previous reports filed against the employer or supervisor. - Photos of the workplace and living conditions.
Threats and intimidation <i>Workers are threatened with denunciation to the authorities, loss of wages or access to accommodation, further worsening of working conditions or withdrawal of privileges such as the right to leave the workplace.</i>	- Does the worker make statements that are incoherent or indicate indoctrination by the employer? - Do the workers report any threat against themselves, their co-workers or family members? - Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)?	- Psychological report. - Interview with colleagues and family members about threats made to the worker or to them. - Undocumented status of the worker. - Investigation report on the recruiter.

Indicator (in the LI checklist)	Examples of questions to ask	Examples of evidence
<i>Verbal and emotional violence, constant insults, isolation, denial of a private life and individual autonomy, prohibition of communications with family and various forms of daily harassment and reproaches undermine the victim's sense of self-efficacy and personal dignity and increase the sense of vulnerability. This is just as effective as physical violence but much more difficult to identify.</i>	▶ Does the worker demonstrate any anxious behaviour? ▶ Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are they threatened if they refuse? ▶ Is the worker in an irregular situation (for example, a migrant) and threatened with denunciation to the authorities? ▶ Is there any sign of mental confusion?	▶ Previous reports about the recruiter or the employer. ▶ Company notice boards on overtime and penalties for not carrying it out.
Debt bondage <i>This occurs when a person becomes a security against a debt or loan; or when debts are inflated to cause the person to continue working.</i>	▶ Does the worker have to repay high or inflated recruitment or transportation fees? If so, are these deducted from the salary? ▶ Is the worker forced to pay excessive fees for accommodation, food or working tools and safety gear that are directly deducted from the salary? ▶ Has any loan or advance been paid that makes it impossible to leave the employer? (Exorbitant interest?) ▶ Has there been any complaint about the employer before?	▶ Receipts for recruitment fees and transport fees paid. ▶ Communications about how these fees are to be paid. ▶ Payslips with salary deductions. ▶ Loan receipts and terms and conditions. ▶ Complaints filed about the employer before.
Retention of passport or identification document <i>Retention of identity or travel documents is a common form of coercion.</i>	▶ Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why? ▶ Does the worker have access to the documents at all times?	▶ Passport and other legal documents should be with the worker. ▶ If kept in a locker, the worker should have the key to the locker. ▶ If kept by the employer or security guard, is the office accessible at all times?
It is also important to determine involuntariness by asking these questions: ▶ How did you start the job? ▶ Do you want to leave the job? ▶ Is it possible to leave the job? These have yielded positive responses in some cases, including in the Thai fishing context.		

Other key considerations

Eliminating and preventing forced labour: Checkpoints

Prison labour ²⁰

If prisoners are working under the supervision of a private employer, check if the prison labourers freely agreed to perform the work without being threatened or subject to a penalty.

If prisoners are working under the supervision of a private employer, compare the working conditions to those of a free labour arrangement.

Work or service performed by prisoners in a private undertaking must be voluntary, and prison workers must freely give their consent without being subject to a threat or penalty, including the loss of rights or privileges inside the prison.

Conditions for prisoners working for private employers should be comparable to conditions enjoyed by free workers. For example, prison workers should have access to similar wage levels, social security benefits and the same OSH standards. Reasonable differences in wage levels are acceptable on the basis of deductions made for board and lodging.

Take action

- ▶ If possible, speak with prison workers directly and examine written consent forms.
- ▶ Consider whether prison workers have given their consent freely and voluntarily.
- ▶ Review wage records of prison workers to verify that they are paid wages comparable to free workers, allowing for legal deductions.
- ▶ Assess OSH standards by inspecting the workplace either inside or outside the prison.
- ▶ Speak with the employer about employment policies and practices regarding prison workers or contracting work or service to prisons.
- ▶ Ensure that no prisoner has suffered loss of rights or privileges of any kind as a result of refusing to work for a private employer.
- ▶ When relevant, review contracts concluded between the prison and the company using prison workers.
- ▶ To the extent possible, ensure that information gathered from interviews with prison workers remains anonymous and confidential.
- ▶ Take appropriate measures to determine whether prison workers have been coached before being interviewed.

²⁰ ILO, Eliminating and Preventing Forced Labour: Checkpoints app, 2016.

Violence, harassment and intimidation

Find any evidence of the use or threat of physical or sexual violence, harassment or intimidation against workers, their families or close associates.

Threats of or the use of violence, harassment or intimidation directed towards workers, their families or their close associates must not be used as a means to intimidate individual employees or the workforce as a whole.

Take action

- ▶ Speak with workers individually, and keep in mind the sensitive nature of this issue. Take particular care to ensure the confidentiality of these interviews, to protect workers from any possible reprisals. If possible, meet workers away from the workplace.
- ▶ Discuss with the employer the company policy on violence, harassment and intimidation in the workplace, and examine copies of that policy.
- ▶ Examine legal records for any evidence of outstanding complaints or actions taken against the employer. For example, in a labour tribunal, to determine whether there have been past allegations of the use or threat of physical or sexual violence, harassment or intimidation against workers and their families.
- ▶ Female workers may be more comfortable in speaking to or confiding with a female inspector. Other service providers specialized in dealing with gender-based violence and harassment may be needed in order to gather more information from potential victims.

Coercion, debt bondage and bonded labour

Non-compliance with wage payment practices and regulations – for example, a delay or irregularity in payment – is not automatically considered forced labour. However, certain abuses, particularly when combined with other types of exploitation, can amount to situations of coercion and force in employment.

Wages should be paid regularly and directly to the worker, and they should be paid in legal tender. In-kind payments, if allowed by law, should only be partial.

Non-cash payment should not be used as a means to indebt a worker, and payment in the form of vouchers and promissory notes is prohibited, as are methods of payment that have the effect (intended or not) of depriving the worker of the ability to terminate employment.

Workers must not be held in debt bondage or forced to work in order to pay off an actually incurred or inherited debt. Wage advances and loans (and related interest rates) should not exceed the limits prescribed by law.

Abusive practices must not be used to bind workers, including migrant workers and those belonging to indigenous and tribal peoples, to employment. Such abusive practices may include, but are not limited to:

- ▶ charging excessive recruitment fees;
- ▶ delayed or non-payment of wages, and allowing wage arrears to accumulate;
- ▶ deception in the calculation and payment of wages, including wage deductions;
- ▶ requiring workers to pay deposit fees (such as upon employment that will be forfeited when they abscond); and
- ▶ the offer of wage advances or loans with malicious intent, or charging excessively high interest rates.

Take action

- ▶ Examine payslips to determine whether coercion has been used at any time in the payment or non-payment of wages, or whether there is evidence of unlawful or unexplained deductions. In examining wage records, consider whether workers paid at piece-rate receive the legal minimum wage.
- ▶ Speak with workers about wage payment practices (for example, whether wages are paid on time and calculated correctly, taking into consideration overtime and legal deductions); how they were recruited; and whether they were required to pay a deposit or a recruitment fee, either to the employer or to a third party.
- ▶ Ensure that a representative cross-section of workers is interviewed – for example, those on indefinite and fixed-duration contracts, as well as those paid hourly and piece-rate wages. Speak with managers and human resources (HR) personnel about recruitment and payment policies and practices.
- ▶ Determine whether the sale of company goods, tools or uniforms is used as a means to create a state of dependency by the worker on the employer.
- ▶ Examine financial records of wage advances and loans, if applicable.
- ▶ Review a random selection of payroll and wage-related records to consider whether there is evidence of malpractice. Take appropriate measures to ensure that the employer is not using a double set of accounting books to mislead auditors.
- ▶ Consider whether special attention should be paid to the rights of indigenous or tribal peoples or migrant workers or female workers, and take appropriate measures to determine whether the employer subcontracts to informal businesses where the risk of bonded labour and debt bondage might be higher.
- ▶ If the employer uses a private employment agency to hire workers, speak with management about policies regarding this. If possible, meet with representatives of employment agencies to discuss recruitment policies and procedures.
- ▶ Cross-check information provided by management and workers to determine validity.

Disciplinary measures

Broadly speaking, disciplinary measures in the workplace should not include sanctions that result in an obligation to work. Forced or compulsory labour should not be imposed as a means to discipline workers or to punish them for having participated in a strike.

Disciplinary sanctions or sanctions of a monetary character that do not involve an obligation to work are not considered as contravening international standards concerning forced or compulsory labour.

► Take action

- Speak with a broad cross-section of workers to determine whether disciplinary measures require or result in an obligation to work. Make a special effort to identify and interview workers who have been disciplined for different types of infractions.
- In cases of recent strike action, speak with workers who participated in or led the strike, to determine whether they faced punishment for having done so and whether the punishment involved an obligation to work.
- Review the employers documentation regarding disciplinary measures and sanctions (including policies and procedures, and written warnings or reprimands given to workers) to determine whether the company imposes work as a means of disciplining workers.
- Speak with managers about policies concerning disciplinary measures and, in particular, about management responses to strike action. Also make an effort to speak with supervisory staff to determine whether the measures used to discipline workers result in an obligation to work.

Skills development and training

Training opportunities provided to employees should be undertaken voluntarily, and employers providing the opportunities should not unreasonably impose work or service as a means of recovering the costs associated with them.

The key principle here is the freedom of the worker to terminate employment. It is recommended that employers not stipulate that workers cannot terminate employment before training costs have been paid back.



Photo source: GettyImages

► Take action

- Examine wage records for evidence of deductions related to training costs.
- Review employment contracts for provisions regarding training opportunities and related payment arrangements.
- Identify and speak with workers who have benefited from training opportunities. Determine the conditions under which they have been offered and participated in training.
- Speak with management about training policies and matters regarding freedom to terminate employment. Examine training and termination policies.

Recruitment and migration for employment

Migrant workers should be treated fairly, irrespective of their legal status and gender, and should benefit from conditions of work that are no less favourable than those available to Malaysian workers.

They must have the right to voluntarily and freely enter into and terminate employment (with reasonable notice in accordance with national law or a collective agreement), without being subject to threats of any kind.

Employers should take measures to prevent abusive conditions and fraudulent practices that may lead to coercion or trafficking for labour exploitation. Irregular migrant workers and their family members should never be threatened with denunciation to the authorities or otherwise be coerced into employment. Practices such as confiscating or withholding identity documents are prohibited. However, if requested by an employee, the employer may provide secure storage for identity documents, provided that the worker has free access to them at all times.

Employers may also wish to provide workers with photocopies of the original documents and "receipts" that indicate which documents have been lodged with the employer.

► Take action

- Consider whether migrant workers benefit from working conditions that are comparable to Malaysian workers.
- For migrant workers, contracts should also be examined against standard employment contracts prescribed by the Malaysian government and any labour agreement/MOU between Malaysia and country of origin (as applicable).
- Review wage records to ensure that wage levels are the same for Malaysian and migrant workers, and also between men and women workers.
- Examine company policies and migrant workers' contracts, and consider the provisions concerning entering into and terminating employment.
- Speak with migrant workers about how they were recruited. Inquire about whether they had to pay a fee to the employer or an intermediary, or had to pay a deposit. Consider whether workers feel free to terminate employment in cases in which they have paid a recruitment fee.
- If management has been asked by workers to retain their identity documents, examine the location of these documents, speak with workers about whether they have free access to them at all times, and interview managers or HR personnel about policies and procedures. Inquire into the conditions under which workers access their personal documents.
- Speak with management about any measures undertaken to prevent abusive conditions and fraudulent practices regarding migrant workers.
- Consider whether special attention should be paid to the rights of indigenous or tribal peoples or migrant workers or female workers. Cross-check if the passports or any contract documents of migrant workers have been taken away by employers for "safe-keeping".

Employment agencies and contracts

Fees and costs related to recruitment should not be charged directly or indirectly, in whole or in part, to workers, but should be borne by the employer.

Enterprises that have workers in the direct employ of private employment agencies should ensure that those workers receive adequate protection regarding minimum wages, working hours, overtime and other conditions related to preventing forced labour.

Employers should provide written contracts of employment in language that all workers can easily understand and which clearly indicates their rights and responsibilities regarding payment of wages, working hours, valid grounds for termination and issues related to preventing forced labour.



Photo source: GettyImages

► Take action

- Speak with workers who have been recruited by or who are directly employed by private employment agencies. Identify and speak with migrant workers, in particular, to discuss the terms under which they were recruited.
- Examine the employment contracts of migrant workers and of other workers recruited or directly employed by private employment agencies if in accordance with the national laws and other MOUs that may be signed between Malaysia and countries of origin.
- Consider the employment conditions of workers employed by these agencies, in particular concerning wage payments, working hours, overtime and other relevant issues.
- Examine payslips for evidence of unexplained or illegal deductions.
- Speak with representatives of contracted employment agencies to discuss recruitment procedures. Examine related company policies.

Why should labour inspectors focus on forced labour

The following are the main reasons why it is important to be able to accurately and quickly identify victims of forced labour and TIP:

Legal mandate

Labour inspectors are mandated under the national laws to determine labour violations, including forced labour and TIP.

International law provides victims of crime with the fundamental right of access to justice regarding the crimes that are committed against them. If victims of forced labour and TIP are not quickly and accurately identified, they cannot be rescued from exploitation and, if they are not rescued, they cannot exercise this right.

In 2002, the United Nations High Commissioner for Human Rights (UNHCHR) published the Principles and Guidelines on Human Rights and Human Trafficking. This document sets out the international standards by which victims of trafficking should be treated. Guideline 2(i) calls upon States to:

- ▶ **Develop guidelines and procedures for relevant State authorities and officials such as police, border guards and immigration officials and others involved in the detection, detention, reception and processing of irregular migrants to permit the rapid and accurate identification of trafficked persons.**

Guideline 2(ii) calls upon State authorities to provide appropriate training to those officials in the identification of trafficked persons and the correct application of the guidelines and procedures outlined above.

The Protocol of 2014 (P.29), not yet ratified by Malaysia, which supplements Convention No. 29, requires Member States to take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, and for the provision of other forms of assistance and support (Article 3).

Humanitarian duty

Analysis of cases from around the world overwhelmingly proves that forced labour and TIP victims repeatedly suffer grave levels of physical, sexual and psychological abuse at the hands of traffickers. This situation creates a duty on front-line law enforcement officials to take all possible steps to identify victims or potential victims of forced labour and TIP, in order to rescue them from their exploitation and abuse, or to prevent it from occurring in the first place.

Investigative opportunity

At the practical investigative level, increased rates of identification and rescue of victims will provide greater opportunities to gather intelligence and evidence with which to investigate and detain exploiters and traffickers. This will in turn assist in stopping the practice of forced labour and TIP.

Victim protection

Protection begins with proactive identification and withdrawal of the victim from an exploitative situation. This is followed by provision of care and protection through rights-based and survivor-centric approaches, and sometimes by participation in legal proceedings against the trafficker. The process ends with reintegration or safe repatriation. Proper identification of trafficked persons will ensure that trafficked persons are able to

access protection and support services. Support services may be provided by government agencies or non-government organisations. Referral of trafficked persons to relevant services will aid their recovery and better prepare them to participate in legal proceedings.

Trafficking in persons

This section is taken from the MAPO's National Guidelines on Human Trafficking Indicators (NGHTI). The NGHTI will be used primarily by Malaysia's five enforcement agencies: the Royal Malaysian Police (RMP), the DOI, the Royal Malaysian Customs (RMC), the DOL and the Malaysian Maritime Enforcement Agency (MMEA). It will also form part of the SOPs for the enforcement agencies, which will use these guidelines in the course of their work on the ground when it comes to identifying potential victims of human trafficking.

Council for Anti-Trafficking In Persons and Anti-Smuggling of Migrants (MAPO) National Guidelines on Human Trafficking Indicators (MEANS)		
No	Types and definition	Indicators
1. Threats or use of force or other forms of coercion		
1.1	Threats An expression or intention to inflict harm, injury, loss or damage to another person (including financial loss or damage)	▶ The person (his/her/family, friends or community) is threatened. ▶ the person (his/her/family, friends or community) is threatened with force. ▶ The person is threatened to be imposed with even worse living or working condition. ▶ The person is threatened with termination of employment.
1.2	Use of force When someone, a situation or an event, forces a person to do something against their will. Use of force usually means that threats have already been inflicted upon the person	▶ The person is threatened with being turned over to authorities. ▶ Threats to inform family/community/public. ▶ The person displays signs of physical harm. ▶ The person shows signs of mental and psychological harm. ▶ The person shows signs of sexual assault and/or more.
1.3	Other forms of coercion The action or practice of persuading someone to do something using other forms of force or threats.	

Council for Anti-Trafficking In Persons and Anti-Smuggling of Migrants (MAPO) National Guidelines on Human Trafficking Indicators (MEANS)		
No	Types and definition	Indicators
1. Threats or use of force or other forms of coercion		
		▶ Be disciplined through punishment. ▶ Debt bondage or unfair debt arrangements. ▶ Confiscation of documents (e.g. passport, identity documents), money or other possessions. ▶ Withholding of money and wages. ▶ Isolation, confinement or surveillance. ▶ The person's cultural or religious beliefs have been manipulated. ▶ Forced into illicit/criminal activities.
2. Abduction		
2.1	<i>Abduction</i> The action of taking away of a person by persuasion, fraud or open force or violence	▶ Abduction - the person was brought to Malaysia against his/her will. ▶ Forced marriage, forced adoption or selling of victim.
3. Fraud or deception		
3.1	Fraud or deception (False, inaccurate, incomplete or misleading information)	▶ Nature of the job/location/employer. ▶ Terms and conditions of work (including type, pay, wages, income, earnings). ▶ Family reunification (i.e. promise made that the person can be reunifies with his/her family at country of destination). ▶ Housing and living conditions (e.g. poor quality of lodgings which is unhealthy and unsanitary, overcrowded etc). ▶ The legality of the person's documents, migration status, work or employment contract. ▶ Travel and recruitment conditions. ▶ Laws, attitude or conduct of authorities in relation to the person. ▶ Promise of marriage/adoption. ▶ Access to education opportunities.

No	Types and definition	Indicators
4. Abuse of power or abuse of a position of vulnerability		
4.1	Abuse of power by the exploiter who is in a position of power, or the abuse of a person's position of vulnerability by the exploiter. <i>"Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her. and the belief is reasonable in light of the victim's situation. (UNODC 2012)"</i>	▶ Economic dependency on the exploiter. ▶ Psychological or emotional dependency or relationship with the exploiter/employer/family member. ▶ Migration documentation/status. ▶ Unemployment or economic destitution. ▶ Personal characteristics (age, sex, gender, sexual orientation, nationality, ethnic, social origin, mental or physical disability). ▶ Cultural or religious beliefs, rituals or practice. ▶ Lack of information, education (language) and/or illiteracy. ▶ Drug or alcohol dependency or addiction. ▶ Control of under strong influence by exploiters. ▶ Denial of medical treatment and/or food/drink. ▶ Isolation, unfamiliarity with new surrounding or difficulty to live in an unknown area.
5. Giving or receiving of payments or benefits to achieve the consent of a person having control over another		
5.1	Giving/receiving payments or benefits to achieve the consent of a person having control over another person	▶ The person is placed in a situation through payment of fees, dowry, or giving or receiving of gifts to third persons.
1) Sexual exploitations *Exploitation (shall include, at the minimum, the exploitation of the following)		
	Sexual exploitation - "the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude of other kinds of sexual services, including pornographic acts or the production of pornographic materials".	▶ The person cannot refuse to service clients, to carry out specific sexual acts or to have unprotected sex. ▶ The person does not receive money directly from clients or receives only a small portion of the fee paid. ▶ The person if forced or coerced to use or not to use specific types of contraception. ▶ The person is forced or coerced to received medical/pregnancy testing/abortion. ▶ The person is forced into a position of debt if he/she refuses to carry out the sex act.

No	Types and definition	Indicators
		▶ The person was brought and sold for sexual exploitation. ▶ Works as escort, exotic dancer, massage therapist/masseur, or other forms of work area commonly associated with sex. ▶ Works long hours, often leaves during unusual hours, and/or have few days off, if any.
	<i>Indicators for maritime</i>	▶ The person on board the boat/ship has been kept isolated from the other.
	<i>Indicators for maritime</i>	▶ The person has been on board the boat/ship for an extensive period of time without having access to land.
	Additional indicators linked to sexual exploitation of children The Convention on the Rights of the Child identifies the following practices as "sexual exploitation of children": a. The inducement or coercion of a child to engage in any unlawful sexual activity; b. The exploitative use of children in prostitution or other unlawful sexual practices; c. The exploitative use of children in pornographic performances and materials.	▶ The person being sexually exploited is underage (below 18 years old). ▶ Engaged in work that is not suitable for children. ▶ The child does not behave in a way typical of children of the same age (e.g. is showing sexually explicit behaviour) ▶ The child is pregnant. ▶ The child appears to be forming unhealthy relationship with adults. ▶ The child uses drugs/alcohol provided by the exploiter or person related to the exploiter. ▶ The presence of toys, beds and children's clothing in inappropriate places such as brothels and places known for illicit activities. ▶ Unaccompanied children carrying telephone number for calling taxis.
	<i>Indicators for maritime</i>	▶ The child on board the boat/ship is accompanied by others who are not related to the child.
	<i>Indicators for maritime</i>	▶ The child on board the boat/ship appears to be drugged
2. Forced labour or services (continued) *Exploitation (shall include, at the minimum, the exploitation of the following)		
	All work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.	▶ No Employment contract, contract substitution or non-compliance of labour laws. ▶ Works excessively long hours/or no day off (not in accordance to relevant laws). ▶ Does not receive salary or very limited one or have no access to earnings. ▶ Bad living conditions (e.g. unhealthy/unsanitary, overcrowded)

No	Types and definition	Indicators
		▶ Very bad working conditions. ▶ No social protection. ▶ Hazardous work. ▶ Wage manipulation. ▶ Withholding of wages or refusal of payment. ▶ Debt bondage/bonded labour - the person is expected to repay a debt. The debt is often in excess of the costs involved and often unpayable. ▶ Restriction of movement and/or confinement to the workplace or to a limited area. ▶ Retention of passport and identity documents so the worker cannot leave or prove his or her identity and status. ▶ The person has to sign an agreement/contract/ MOU to allow employer/third party to hold the person's passport and identity documents. ▶ Threat of denunciation to the authorities (reporting to authorities that the person broke the law) ▶ (Threat of) physical or sexual violence; this may also include emotional torture like blackmail, condemnation, use of abusive language and so on. ▶ The person has been on board the ship for an extensive period of time without having access to land. ▶ No access to education.
	Additional indicators linked to labour exploitation of children:	▶ Children is engaged in work that is not suitable for children (e.g. handling heavy machinery, poisonous chemicals etc).
3) Slavery or practices similar to slavery		
	"Slavery" shall mean the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised; or "Slavery" shall mean the status or condition of a person over whom control is exercised to the extent that the person is treated like property. "Practices similar to slavery" shall include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.	▶ The person is being bought and sold, and has no freedom to leave. ▶ Debt bondage/bonded labour (the person is expected to use his/her labour or services to repay a debt. The debt is often in excess of the costs involved and often unpayable. A new debt may be incurred when the person is sold.) ▶ Forced or servile marriage (includes marriage in consideration of a payment without the woman's consent, the transfer of a wife to another for value and the inheritance of a wife by another on the death of her husband).

No	Types and definition	Indicators
4. Servitude		
	Servitude "shall mean the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change". <i>Remark:</i> Servitude commonly involves the ill treatment of the person in question. Ill treatment refers to the act of treating someone cruelly or improperly.	▶ Person lives with a family which is not hers/his. ▶ Never or rarely leaves the house. ▶ Never leaves the house without the employer (or someone assigned by the employer). ▶ Has no private space, may sleep in a shared or inappropriate space. ▶ Be given only leftovers to eat or insufficient/poor quality food. ▶ Subjected to insults, abuse, threats or violence. ▶ Has to take care of all domestic tasks in the house and/or look after the children/elderly on a daily basis, denied breaks and free time. ▶ Person denied or given limited access to communication with family members or people outside the house. ▶ Be reported missing by their employer even though they are still living in the employer's house.
6. Illegal activities		
	Exploitation for illegal activities - should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shoplifting, baby selling and other similar activities which are subject to penalties and imply financial gain. Forced begging, or the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occurs.	▶ Person with vulnerabilities (children, elderly, disabled, women who are pregnant or with small children) begging on the street or in public transport. ▶ Person/Child is punished if he/she does not collect or steal enough. ▶ Moves everyday in groups of several people/ children, usually of some nationality or ethnicity, especially in popular or touristic places. ▶ Person/Child working on the streets - selling items, cleaning windshields at traffic lights etc. ▶ Person/Child forced to engage in illegal activities (snatch-theft, pick-pocketing, shoplifting, burglary, car theft, drug dealing). ▶ Person/Child have physical impairments - disabled or mutilated. ▶ Evidence that the person/child in the group has been involved in begging or committing criminal activities in other states or another country over a period of time. ▶ There appears to be money transferred to third party/parties for the activity of baby selling.

Gender considerations in inspection interviews

Consideration should be given for women inspectors to interview female workers, if this might be beneficial in establishing trust in addressing topics that might be awkward between a male inspector and a female worker. The Treaty of Versailles (Part XIII) establishing the ILO explicitly calls on States to make provision for a system of inspection in which women should take part, with this very notion in mind.

Nevertheless, male inspectors should always be aware of, and account for, gender issues and dynamics in an interview setting.

Gender relations are an important dynamic shaping the interview process, which can significantly influence the sorts of data obtained.²¹ The art of qualitative interviewing in labour inspection is not merely a method for gathering empirical data. Labour inspectors have to be aware of the power dynamics of interviewing, and the importance of gaining trust, while making a special effort to guard the confidentiality of information obtained from workers. Interviewing is a special case of interpersonal communication. The following of gender-sensitive and culturally situated interviewing techniques should be adopted by labour inspectors.

- ▶ Be mindful of the interviewer-interviewee interaction and practices regarding gender²² - any explicit and implicit attitude, stereotype, motivation, or assumption that occur within the interviewer's knowledge related to gender differences might influence the interview performance.²³
- ▶ Be mindful that some women workers may not feel comfortable speaking up about violence and harassment (especially sexual violence) in the presence of male labour inspectors. Where sexual violence and harassment is suspected, a follow-up interview/enquiry may be needed.
- ▶ Minimize the impact of the interviewer's gender on data collected during the interview. Consciously prevent any explicit and implicit attitude, stereotype, motivation, or assumption about gender differences when asking questions and recording answers.²⁴ Avoid using language and sending messages that contain expectations based on sex, gender, age, race, ethnicity, religion, status and position.

²¹ Andrew Harod, "Gender Issues in the Use of Interviewing as a Research Method", The Professional Geographer (August 1993).

²² Barbara Pini, "Interviewing Men: Gender and the Collection and Interpretation of Qualitative Data", Journal of Sociology (2005).

²³ Linn Egeberg Holmgren, "Cofielding in Qualitative Interviews: Gender, Knowledge, and Interaction in a Study of (Pro) Feminist Men", Qualitative Inquiry 17(4) (2011), 364–378.

²⁴ Maureen Padfield and Ian Procter, "The Effect of Interviewer's Gender on the Interviewing Process: A Comparative Enquiry", Sociology Vol. 30, No. 2 (May 1996), 355–366.

- ▶ Enable the women workers and women migrant workers' lived experiences to be discussed in their own terms.²⁵
- ▶ Encourage co-interviewing across gender and culture by having male and female interviewers for an interview session to better understand their influence on the interview process and data collected.²⁶

Interview techniques

Good practice in interviewing vulnerable witnesses is essential to the viability of an investigation.²⁷ In the majority of cases, investigations strongly rely upon the workers' accounts and testimony in criminal proceedings. Therefore, it is essential that the prosecutor and court officials take into account the individual circumstances and expressed needs and wishes of each witness. The following preparation and planning, engage and explain, account, closure and evaluation (PEACE) model guideline provides a useful tool in planning and conducting interviews with vulnerable witnesses. This model guideline of investigation is being used successfully in several jurisdictions including the United Kingdom of Great Britain and Northern Ireland.

Planning and preparing for the interview

A risk assessment should be conducted as soon as possible. When compared to other interviews, forced labour cases may require additional planning such as arranging interpreters, social supporters and accommodation and engaging female interviewers. However, situations of forced labour may not be known in advance, and evidence can emerge from an unrelated inspection. Such detailed planning may not always be possible.

Some key general pointers on inspection interviews should also be considered:

- ▶ Do not let the employer select the workers to interview (this should be at the labour inspectors' discretion).
- ▶ In more formal enterprises, do not consider interviews with HR staff equivalent to worker interviews. HR staff are part of management and do not represent workers.
- ▶ To ensure confidentiality, carry out the interview away from the employer. Another way to ensure confidentiality and prevent possible retaliation is to carry out group interviews (if relevant and appropriate given the level of personal information to be revealed). The interview venue should be a safe space, with sufficient privacy to encourage open discussion.

- ▶ It is likely not possible to interview all workers in most cases, so a strategic selection of interviewees is required. In this case, guidance should be given on a representative selection of workers (by age, gender, migration status and work areas), especially if the workplace is large. However, if there is suspicion of forced labour, all workers should be interviewed, as far as possible.
- ▶ Other measures may be necessary, such as considering a psychological assessment, assessing the worker's physical health, or other needs such as clothing, meals and accommodation so that a referral to other relevant organisations may be made.
- ▶ Engage with the witness and explain the process and content of the interview. Typically, the worker should be told what is going to happen in the interview, how information obtained might be used, his or her rights, and that he/she can terminate the interview at any time. If an initial interview indicates that the worker is so severely traumatized that obtaining an account would seriously affect his or her mental health, consider terminating the interview and making alternative enquiries.

Interviewing workers and witnesses

Interviewers should use open-ended questions where possible, by asking the worker to give a free narrative account. If possible, avoid closed questions that only lead to yes or no answers. Aim to obtain an uninterrupted account of relevant events in the worker's own words.

Interviewers follow this approach by expanding on and clarifying the account. Refer to third-party sources such as medical evidence, social worker assessments and NGO representatives' accounts. Ask the individual to provide their account of events by writing their statement in their own words or by using drawings.

If a language barrier exists, an interpreter should be called in to assist. If a worker or witness is traumatized, the investigation officer should refer to a medical practitioner. Investigation officers must go through special training in investigation techniques in order to handle these matters. If training / specialization is not possible or available, work with other front line service organizations that specialize on survivors of forced labour, TIP, and violence against women.

If an initial interview indicates that the worker is so severely traumatized that obtaining an account would seriously affect his or her mental health, consider terminating the interview and making alternative enquiries.

²⁵ Rosalind Edwards, "Connecting Method and Epistemology: A White Woman Interviewing Black Women", *Women's Studies International Forum* 13, No. 5 (1990), 477-490.

²⁶ Michelle L. Redman-MacLaren et al., "Co-Interviewing Across Gender and Culture: Expanding Qualitative Research Methods in Melanesia", *BMC Public Health* (2014); and Alex Broom, Kelly Hand and Philip Tovey, "The Role of Gender, Environment and Individual Biography in Shaping Qualitative Interview Data", *International Journal of Social Research Methodology*, Volume 12, Issue 1 (2009).

²⁷ Adapted from ILO, Judges, Prosecutors and Legal Aid Practitioners' Training on Forced Labour: Facilitator's Guide.

Closing an interview appropriately

The content of the interview should be summarized and the worker should be given the opportunity to add comments and ask questions. If possible, the investigation officer should inform the worker of what will happen next. Review the case history for any new or changed risks the interview has revealed. The inspector may also give contact information of relevant service providers if the worker (or others) would like to make contact outside of the workplace (See Annex 10 for Directory of Service Providers).

Documenting the interview

The interview should be documented, either through notes or through audio recording. The labour inspector should indicate to the worker that the interview is being documented, and should make it clear that labour inspectors have a professional obligation to maintain the anonymity of the worker.

Evaluating the content of the interview

Always consider and assess any risks to the worker, their family or others that have been revealed in the interview. Evaluation should take place after each interview, no matter how short the interview was. Evaluation of cases should also assess the mental and physical condition of the worker in light of what has happened in the interview. This may involve reference to experts such as doctors and psychologists. Work closely with other investigators and those managing the investigation to identify further enquiries to be made outside the interview, and additional points to explore during or following the interview.

► 2.6 How can suspected victims of forced labour be protected?

Key principles of victim protection ²⁸

As a law enforcement officer, it is important to realize that the victim of any forced labour or TIP case is your primary witness. They are the ones that can tell you everything about the crime. When working with victims of forced labour and trafficking, one must always remember that these are victims of a crime; they are not criminals themselves, even though they may have committed offences such as illegal entry, or may not have the necessary documentation to be in the country.

This can be a challenging situation, as other enforcement agencies might have a different mandate due to different laws, key performance indicators or raid operations they must take against TIP victims for irregular entry. A victim-centred approach focuses on the needs and rights of the victim of forced labour and TIP. This requires that the victim is:

not treated as an offender	not stigmatized
not re-victimized	extended all help and assistance as a matter of right

Even if a forced labour situation is not confirmed, it remains important for inspectors to maintain a priority focus on worker protection, even if the worker's migration status in the country is irregular or uncertain.

Confidentiality and data protection

All support measures are implemented under strict confidentiality rules that define the ways of storing, transferring and using information related to cases of forced labour and trafficking. These practices must conform with the conditions provided for in the national legislation regarding the protection of personal data, and must be used exclusively for the purposes for which they were originally compiled. Under Article 15(c) of Convention No. 81, labour inspectors have a duty of confidentiality regarding complaints, but this can also, by analogy, be extended to claims made by workers in the course of interviews regarding a possible violation by an employer.

Non-discrimination

Appropriate protection and support should be extended to all victims of forced labour and trafficking, without discrimination. Victims must be treated fairly, regardless of race or ethnicity, nationality, sex, sexual orientation, age, disability, religious beliefs and practices, political affiliations or social and cultural background, and without prejudice to the fact that they were exploited or forced to engage in illegal activities.

Respect for and protection of human rights

According to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, safeguarding the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. As trafficking itself can lead to other rights violations, all assistance and protection efforts should seek to restore the victim's rights and prevent further violations, without discrimination and re-victimization.

²⁸ Excerpted from ILO, Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers, 2021.

Unconditional support to victims of forced labour and trafficking

Ideally, all trafficked persons and victims of forced labour have the right to receive support within the framework of the referral mechanism, immediately after they are identified as such. However, currently in Malaysia only victims of trafficking are entitled to this support. The provision of care and protection included in the ATIPSOM should not be made contingent on the willingness of victims to cooperate with the investigation and prosecution of alleged offenders.

Principle 8 of the Office of the High Commissioner for Human Rights (OHCHR) Recommended Guidelines sets out the obligations of States to protect trafficked persons from further exploitation, and to ensure that they have access to adequate physical and psychological care. It is explicitly stated that the principle of care and protection should not be conditional upon cooperation by a trafficked person in legal proceedings.

Taking victims' trauma into account

It is important for labour inspectors to understand the impact of forced labour and trafficking on victims' health, including mental health, as this will have a direct impact on the way inspectors are able to collaborate with victims and avoid causing further trauma.

Trauma-inducing experiences include restriction of movement, physical and sexual assault and threats of violence against the victim or family members. Threats may be implied – for example, arranging for a victim to witness the abuse of another victim. The power of these threats should not be underestimated. As a result, victims of trafficking may fail to cooperate in investigations because of fear of repercussions by the traffickers. Post-traumatic stress disorder occurs more in victims of trafficking than in other victims because of their exposure to one or more traumatic events over a long period of time.

Traffickers control their victims by making them feel responsible for their own behaviour. As a result, victims often do not self-identify or view themselves as victims of trafficking.

Victims may react to an investigation in a hostile or aggressive way, or may suffer from memory loss resulting in the inability to recall details and discrepancies in stories.

Victims of forced labour and TIP may suffer different types of abuse:

Impacts of forced labour and TIP on the victims

Types of abuse	Health consequences
Physical abuse	Damage to physical health
▶ Murder	▶ Loss of life
▶ Physical assault	▶ Severe physical injuries
▶ Torture	▶ Mutilation and physical incapacity
▶ Deprivation - food, sleep, medical care	▶ Malnutrition
▶ Unlawful imprisonment	▶ Worsening of existing illnesses or injury
Sexual abuse	Injury to sexual health
▶ Vaginal, oral and anal rape	▶ Infection with HIV/AIDS
▶ Forced prostitution	▶ Forms of sexually transmitted diseases
▶ Un-protected sexual intercourse	▶ Damage to sexual organs
▶ Un-wanted pregnancies	▶ Damage to reproductive organs
▶ Forced abortions	
Psychological abuse	Damage to mental health
▶ Isolation - linguistic and social	▶ Traumatization
▶ Induced fear of authorities and isolation from assistance	▶ Suicidal tendencies
▶ Deprivation of liberty	▶ Severe depression and nightmares
▶ Threats of violence and other forms of coercion	▶ Feelings of isolation and mistrust
▶ Substance dependency	▶ Loss of memory and perception
▶ Emotional manipulation	▶ Severe fatigue and sleep loss
	▶ Emotional de-moralisation
	▶ Unable to make relationships
	▶ Feelings of guilt and shame
	▶ Loss of self-worth

Types of abuse	Health consequences
Coercion and control	Psychological impact
▶ Loss of economic power ▶ Threats ▶ Emotional abuse ▶ Intimidation ▶ Branding or tattooing ▶ Physical violence ▶ Sexual abuse ▶ Drugs or alcohol dependency ▶ Identification papers withheld or taken away ▶ Exploiting victims fear of the police ▶ Exploiting victim's vulnerability ▶ Debt bondage ▶ Withholding of wages	▶ Loss of self -worth ▶ Fear ▶ Reluctance to engage ▶ Fabrications ▶ Hostility ▶ Denial ▶ Misguided loyalty to the perpetrator (Stockholm Syndrome) ▶ It may also affect recollection of events
Restriction of freedom of movement	Personal impact
▶ Isolation ▶ Deprivation of liberty ▶ Restricting movement ▶ Not allowing access to family and friends	▶ Loss of self-worth ▶ Loss of dignity ▶ Lack of education ▶ Lack of opportunities ▶ Depression ▶ Loss of income

In their initial contacts with suspected victims, labour inspectors should aim at assessing the immediate needs of the victims such eating and drinking, sleeping, receiving urgent medical assistance, ensuring secure shelter for them and their families and protecting them from retaliation. Then, following in-depth interviews, labour inspectors will be able to assess medium- and long-term needs such as administrative and legal assistance. It is important that labour inspectors are able to assess these different needs and know to whom they can refer the victims to address these issues, as it will be difficult to gain victims' trust and ensure their collaboration if these issues are not addressed.

▶ 2.7 What can be done if you find a suspected victim of forced labour?

Excerpted from ILO, Forced labour and trafficking in persons: Training manual for Malaysian law enforcers, 2021.

Assessing victims' needs

Once an individual is identified as a victim of forced labour and TIP, he or she should be immediately removed from the exploitative situation and taken to an appropriate, safe and secure environment. Referrals to the appropriate assistance and protection organizations are paramount to ensure successful assistance for victims.

Often, victims of forced labour have psychological trauma, are experiencing paranoia or are under duress or other forms of coercion, and are not free to file complaints to the authorities. **This is important to note, to enable proactive labour inspection.** Once indicators of forced labour are present, official complaints should not be waited upon before an investigation or rescue can be carried out.

Immediate needs of victims

The safety of victims is the most immediate concern. Do not arrest victims. Remove them from immediate harm and relocate them to a place of safety such as a victim shelter or hospital, where their rights can be protected regardless of their gender or legal status.

Shelters

Shelters vary greatly in type, capacity and resources. The assistance offered to sheltered victims may include accommodation, meals, water, basic medical assistance and toiletries. Some shelters provide a full range of services including psychosocial assistance, legal counselling, medical care and empowerment opportunities. Once a victim is settled into a secure place, health and medical assistance, counselling and psychological services and legal assistance can be provided directly by the shelter or by other local service providers. A determination may need to be made as to whether a shelter comprises suitable accommodation for any given victim, as some shelters may have mixed occupancy (males, females and children) or may not be specific to victims of trafficking.

Legal status

It is important to address the legal and immigration status of the individual, as this is often tied to a specific employment relationship with a particular employer, and to check if there are any ongoing criminal proceedings involving the victim. Remember that the responsibility to get a proper work permit for a migrant worker is that of the employer. It is also important not to criminalize the victim for any crimes that were committed due to forced labour.

Advice

Explain to the victim the legal options and responsibilities and right to temporary residency visas and repatriation support.

Provide information on social, financial and welfare assistance measures. Your job is to provide access to assistance, not to provide the assistance itself. Therefore, it will be important to know and understand all other actors who play a role in supporting victims (see the referral process in the next section).

Seek the help of medical practitioners to obtain examinations of suspected victims for physical and psychological injury, symptoms of illness or malnutrition, and sexual health screening. It is important to immediately assess any victim's physical and psychological condition and provide appropriate help such as referral to specialists as required. Victims with medical conditions should be given medical attention. Initial assessment of trauma and provision of psychological counselling and support should also be provided to the victim.

Voluntary return

The return phase aims at ensuring the safe and secure voluntary return from the destination place to the country of origin. The return is organized only after all necessary measures have been undertaken to guarantee the victim's safety and the possibilities to continue the process of reintegration. Safe return means a guarantee that the trafficked person will not become involved again in a situation of trafficking or forced labour, and that he or she will receive the necessary support to meet medical, social, and psychological needs. A necessary precondition of return and reintegration is an assessment of the home, family and community, in order to ascertain if this option is appropriate. To respect the rights of victims of trafficking or forced labour, the return must be voluntary and based on an informed decision, and, when possible, with written consent.

Reintegration support

The reintegration phase is long-term and involves various steps and various stakeholders like social services, NGOs, local authorities, the DOI, police and other law enforcement agencies and, in some cases, international organizations. The aim of the reintegration is to foster, nurture and strengthen the rehabilitation process of the victim into his or her community or host community, to live a normal life and to reduce vulnerability to re-trafficking and re-victimization.

Examples of reintegration assistance include:

- ▶ medical and healthcare services;
- ▶ counselling and long-term psychosocial support;
- ▶ financial assistance;
- ▶ legal assistance and access to legal remedies;
- ▶ access to education;
- ▶ vocational training;
- ▶ micro-enterprise and income-generating activities;
- ▶ job placement, wage subsidies and apprenticeship programs; and
- ▶ housing and accommodation.

In cases where returning to the country of origin is not the best option for the victim, organizations working on behalf of victims may consider advocating for a longer stay in the country of destination or for permission to move to a third country or possible local integration, depending on the wishes of the victim. Assistance providers should also keep in mind that return to the country of origin should not be required as mandatory unless that is the victim's preference. If possible, services should be provided to assist the victim in relocating to a community of his or her choosing.

Other needs

Other emergency matters vary according to the individual needs and situation of the particular person. For example, some individuals may have an emergency need to ascertain the whereabouts of missing family members.

Victims of forced labour and TIP might have various long-term personal needs that also have to be catered for.

The current approach is that labour inspectors conduct investigations under the ATIPSOM. This is the appropriate law to be invoked, as it provides protection for victims. A victim, after being rescued, will be temporarily housed in a gazetted shelter home after obtaining an interim protection order (IPO). Within 21 days, an investigation must be conducted to ascertain whether the person is a trafficking victim or otherwise. A protection order (PO) will be issued by the court if the Deputy Public Prosecutor (DPP) is satisfied with the evidence of trafficking. A victim of labour trafficking will then be given the opportunity to be employed and to be given freedom of movement, after a determination of mental health and a security assessment. The alleged perpetrator will normally be charged under section 12 or 13 of the ATIPSOM (please refer para 4.1).

However, if the investigation reveals that the subject is not a victim of trafficking, the IPO will be annulled and the subject will be referred to the immigration authorities for repatriation in the case of a foreigner, while a Malaysian national will be released from the shelter. Alternatively, the case may be classified as a violation under the EA, Immigration Act or Passport Act. Even if the person is not a trafficking victim but has suffered as a result of labour violations, he or she should be compensated under the labour laws and, in exceptional cases (if proven to have been abused) may be given the right to change employment after intervention by the DOL.

► Important to note

- The safety of the victim is the duty of law enforcement officials and is not dependent on issues such as the availability of, or cooperation with, other partners.
- Access to these support measures is a fundamental right of victims, **irrespective of whether they decide to cooperate with law enforcement officials** or not.
- Access to help should never be made dependent upon agreement to cooperate with law enforcement officers.
- Law enforcement officials should assist victims to have access to these support measures.

Legal options and procedures against employers

Labour inspectors are enforcement officers by virtue of section 27 of the ATIPSOM. It is a mandate of labour inspectors to investigate offences relating to TIP for the purpose of labour exploitation.

The offence of trafficking in persons

Under section 12 of the ATIPSOM, **anyone who traffics in persons not being children, for the purpose of exploitation**, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding 15 years, and shall also be liable to fine.

Offence of trafficking in persons by means of threat or force

Under section 13 of the ATIPSOM, anyone who traffics in persons not being children, for the purpose of exploitation, by one or more of the following means, commits an offence and shall, on conviction, be punished with imprisonment for a term of not less than three years but not exceeding 20 years, and shall also be liable to a fine:

- a. threat;
- b. use of force or other form of coercion;
- c. abduction;
- d. fraud;
- e. deception;
- f. abuse of power;
- g. abuse of a position of vulnerability of a person; or
- h. the giving or receiving of payments or benefits to obtain the consent of a person having control over a trafficked person.

Offence of trafficking in children

Under Section 14 of the ATIPSOM, any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.

Offence of profiting from the exploitation of a trafficked person

Under section 15 of the ATIPSOM, any person who profits from the exploitation of a trafficked person commits an offence and shall, on conviction, be punished with

imprisonment for a term not exceeding 15 years, and shall also be liable to a fine of not less than 50,000 Malaysian ringgit but not exceeding 500,000 ringgit.

Objective of investigation

- ▶ To identify the act of TIP, by determining the form of coercion.
- ▶ To identify the means trafficking.
- ▶ To identify the form of exploitation.
- ▶ To identify the profit from the act of trafficking.

Powers of investigation

Under section 28 of the ATIPSOM, labour inspectors are given the power to investigate. To facilitate investigation, several actions and procedures can be utilized:

Pre-raid procedure

The procedure for gathering information before a raid can include the following activities:

1. Appointing a labour inspector to conduct intelligence gathering.
2. Identifying the premises where the offences have allegedly taken place.
3. Setting up a raid team comprising:
 - a. a senior labour inspector to lead the raid;
 - b. labour inspectors to rescue and secure the victims;
 - c. labour inspectors to detain and question the suspected perpetrators;
 - d. labour inspectors to search the premises for any relevant documents, records, and other evidence;
 - e. labour inspectors to secure the premises and surrounding area; and
 - f. a photographer to take photographs of the scene.

A team briefing should be held before the raid to ensure smooth operation. It is also important to ensure that the plan itself is kept confidential, so as not to jeopardize its success.

Procedure during a raid

Before conducting a raid, the labour inspectors normally must have the right to enter the premises. However, they may exercise this power without a warrant, by virtue of section

30 of the ATIPSOM. If the inspectors have reason to believe that delay would hamper their investigation, they can enter premises even without a warrant, as provided under section 31 of the ATIPSOM.

The following actions can be taken during a raid:

- ▶ To stop and to inspect vehicles and people.
- ▶ To detain those believed to be suspects, by virtue of section 29 of the ATIPSOM.
- ▶ To confiscate and detain vehicles, movable property, books and records.
- ▶ To inspect, make copies of, or extract any parts of books, records, reports or documents found in the premises or in suspect vehicles.
- ▶ To secure the premises as a crime scene.
- ▶ To secure, wrap and mark evidence.
- ▶ To prepare an inventory of items confiscated during the raid.
- ▶ To take crime scene photos.
- ▶ To prepare a sketched plan of the premises.
- ▶ To secure the victims and send them to hospital for medical attention.
- ▶ To prepare a raid report (to be signed by the senior inspector).

Post-raid procedure

- ▶ To seal and secure the premises.
- ▶ To lodge a police report.
- ▶ To provide a copy of the inventory list to the suspects and to the labour inspector who is appointed as the investigating officer.
- ▶ To submit the items under the inventory list to the investigating officer, to complete the investigation papers.
- ▶ To submit the report on the raid, as soon as possible, to the police.

Detention of suspects

If necessary, suspects can be detained under remand for further investigation, as provided under section 117 of the Criminal Procedure Code. Suspects must be produced within 24 hours before the magistrate, by the investigating officer, who will then apply for a remand order. Copies of the investigation documentation must be submitted with the application. Ideally investigation is supposed to be concluded during remand however this would be subject to any other direction of the DPP. In certain cases, investigation can still continue after the remand period.

Recording of statements

To complete the investigation, the inspector acting as the investigating officer, with the assistance of another labour inspector (as recording officer), must record statements from persons who can provide evidence. These include the suspects, the victims, Government officials and any other persons who may have knowledge relating to the case. This is provided under section 34 of the ATIPSOM, which also provides that a person may refuse to answer any question that may incriminate him or her in criminal conduct. If a suspect is under remand, the recording of the statement must be done within the remand period allowed by the magistrate.

Submission of investigation papers

The investigating officer must prepare the investigation papers, which comprise:

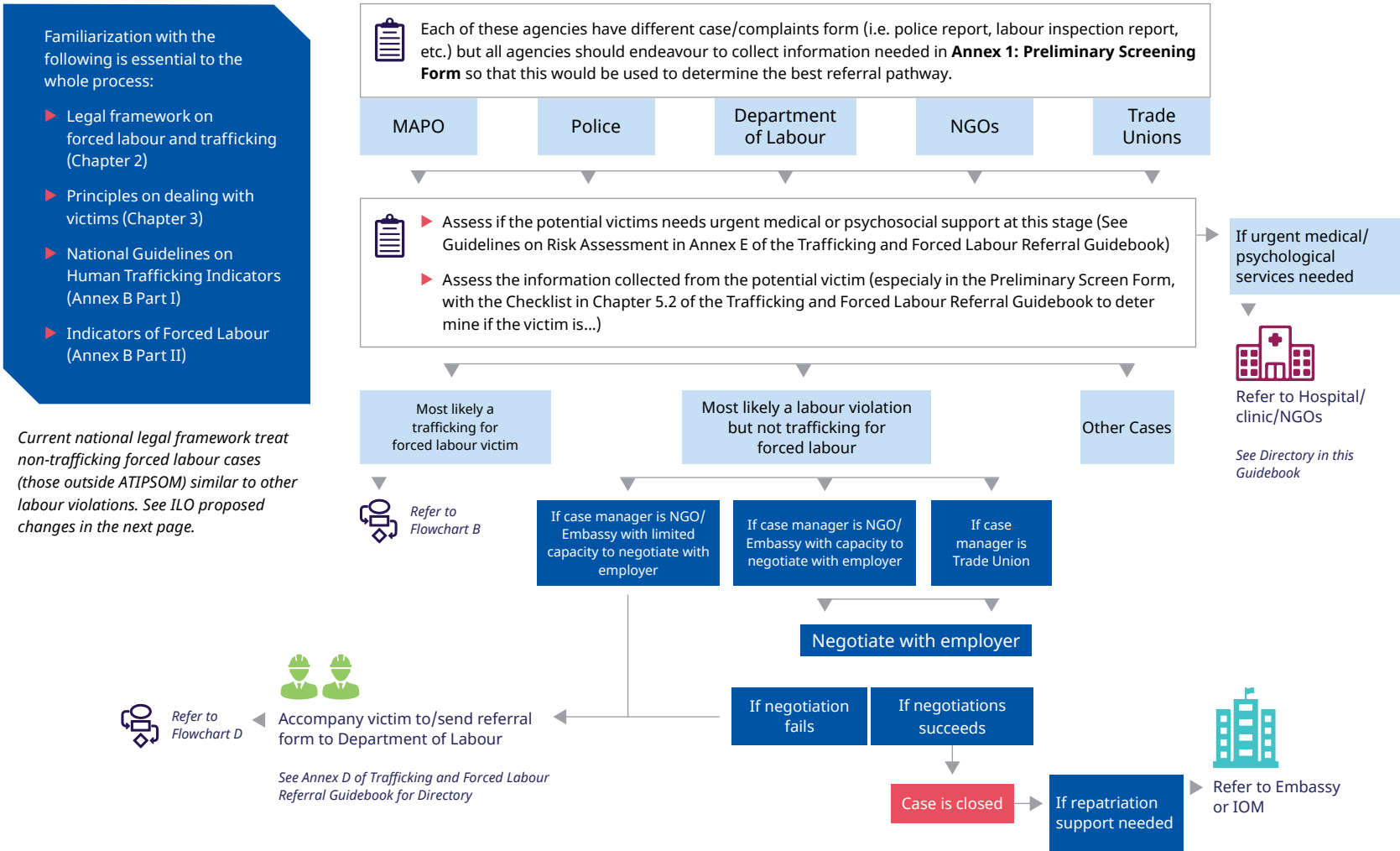
- ▶ brief facts of the case;
- ▶ a draft of the charge;
- ▶ the “first information report”;
- ▶ statements from the victim, suspects, and other persons with relevant information;
- ▶ inventory list of items seized during the raid and investigation;
- ▶ official documents relating to the case;
- ▶ photos of the premises;
- ▶ investigation diary; and
- ▶ investigation meeting minutes.

The investigation papers will be submitted to the DPP, who is responsible for the direction of the investigation. Once the DPP is satisfied that sufficient evidence has been obtained and the draft charge has been finalized, the DPP will instruct the investigating officer to file the charge sheet in the Sessions Court.

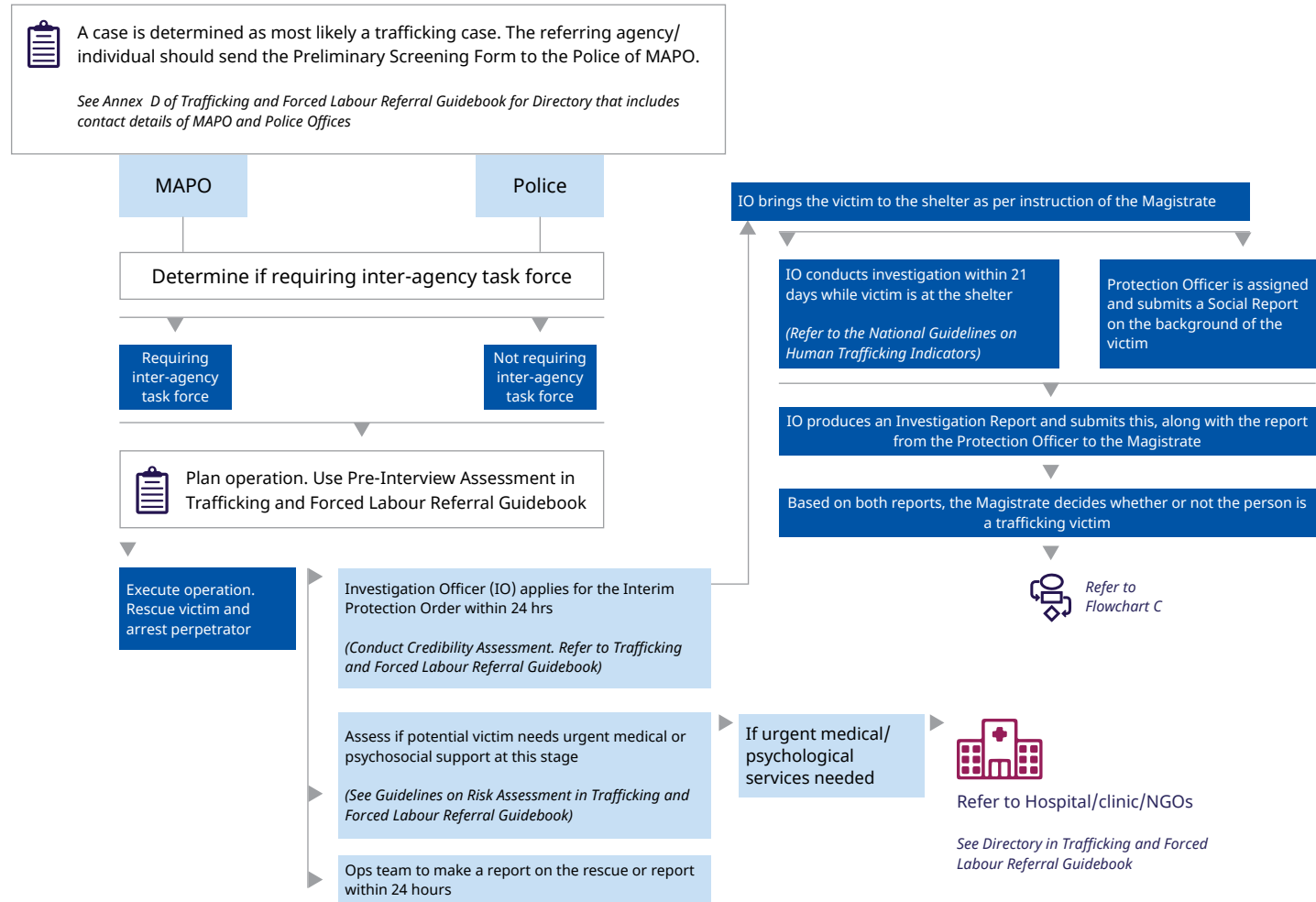
Referring victims

Service provision is a complex and multi-layered process involving several State and non-State actors. At the centre of this process are vulnerable individuals who require assistance and support, given the exploitation they have endured. Labour inspectors should do their best to assist victims, including in referral to other agencies, so their needs are met, and the process is made easier. Understanding the referral process (shown in the chart below) is, therefore, important.

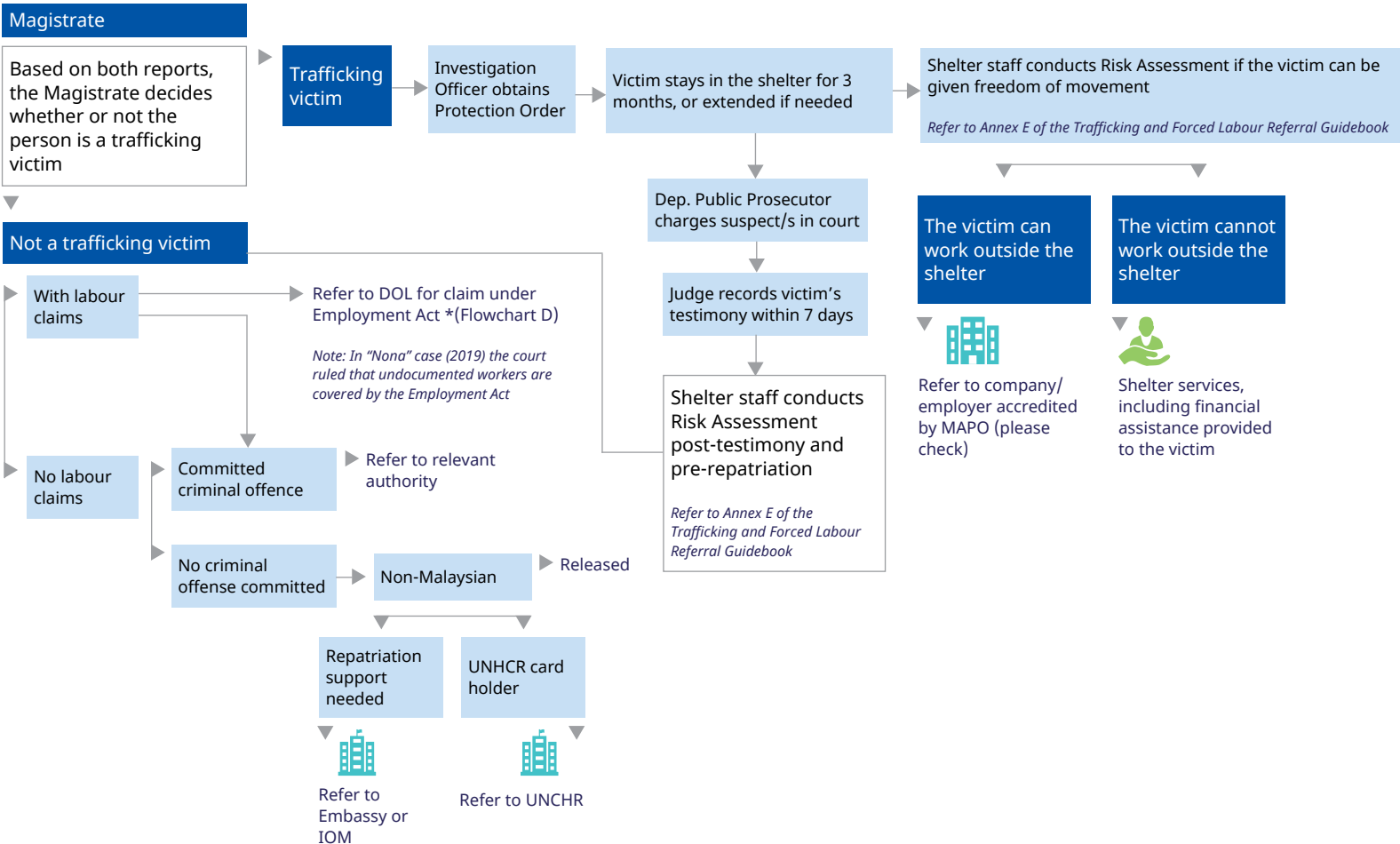
► **Flowchart A-1: Initial assessment and referral of potential forced labour and trafficking cases**



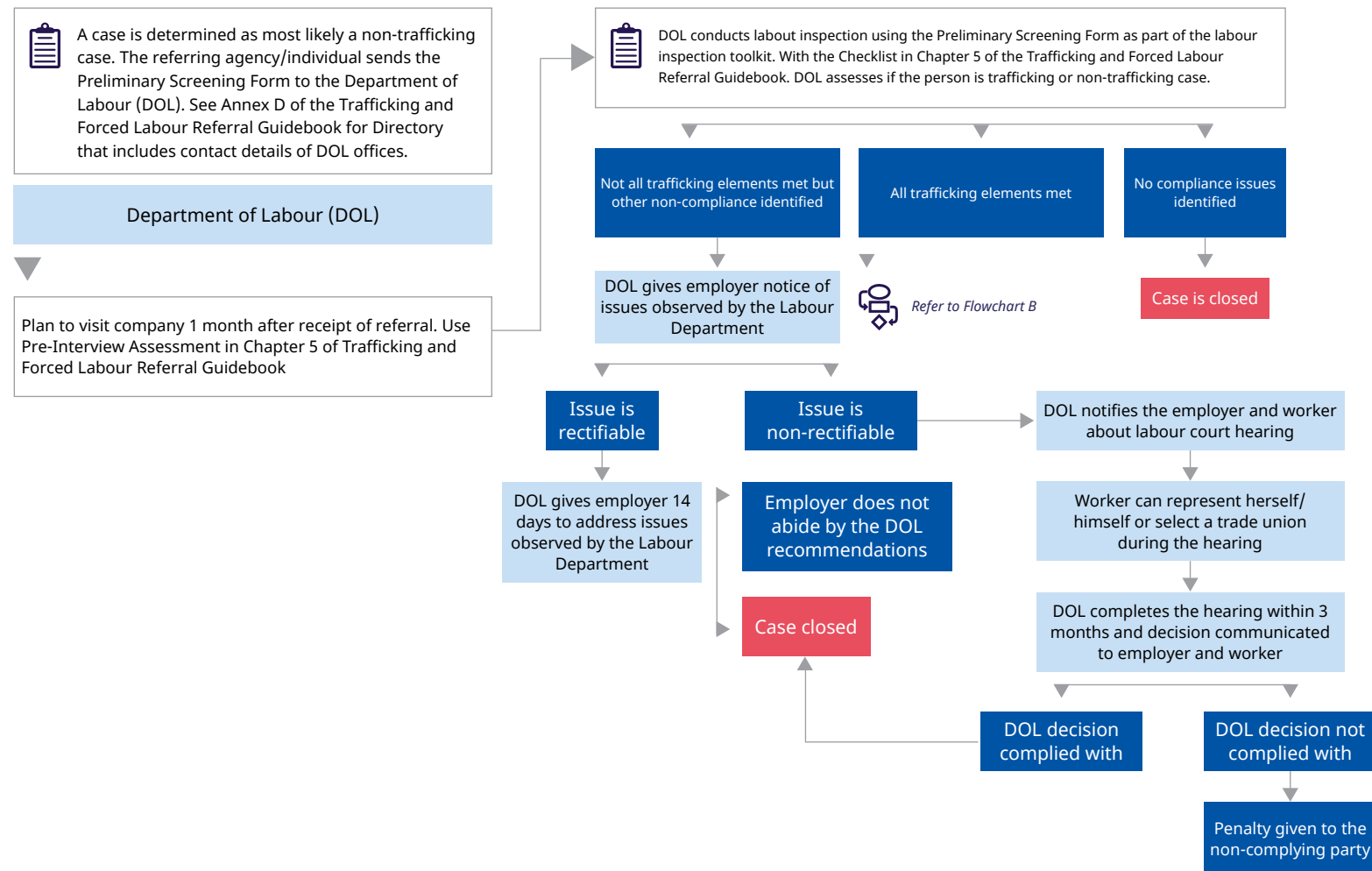
► **Flowchart B:** Actions undertaken if most likely a trafficking for forced labour case



► **Flowchart C:** Actions undertaken after investigation and Protection Officer's Reports are submitted (current practice applies only to trafficking cases)



► **Flowchart D: Actions undertaken if most likely a non-trafficking for labour exploitation case**
(current practice)



► 2.8 How can strategic compliance planning be used to prevent forced labour?

In today's world of work, the traditional enforcement model – reactive and routine inspection – is no longer sufficient to achieve effective and efficient enforcement and sustained compliance with national and international labour norms, including regarding forced labour. The number of workplaces subject to inspection dwarfs the resources available to inspect them, leading to a situation in which workers are potentially unprotected, and violators can operate with impunity, which contributes to unfair competition for compliant businesses.

The emerging **strategic compliance model** – proactive, targeted and tailored interventions engaging multiple stakeholders – provides the labour inspectorate with a new methodology to achieve compliance outcomes in light of limited resources, mismatched powers and a need to shoulder greater responsibility for promoting compliance in the ever-evolving world of work.

Achieving compliance requires looking beyond the traditional enforcement model, used historically by most labour inspectorates, toward a strategic compliance model. Transformational labour inspectorates are pioneering the use of proactive, targeted and tailored strategies, based on data-driven diagnoses of compliance influences, which more effectively target priority issues (such as forced labour) and high-risk occupations. They also engage stakeholders inside and outside of government, and combine deterrents, incentives, awareness raising and interventions to empower workers to exercise their rights and motivate employers to carry out their duty to comply.

Strategic compliance planning on forced labour should be part of the DOL's working methods at both the central and regional levels. Planning should ideally include sector-based inspection strategies. This can be done by identifying employers or business models in specific sectors most likely to use forced labour through, among other methods, the MAPO enforcement task force intelligence gathering. Other enforcement agencies should also be engaged in planning, sharing of data and joint operations – for example, with the Welfare Department focusing on child beggars or street children. Employer and worker organizations and NGOs can also be a valuable source of information for inspectors about potential target enterprises or existing and emerging trends in trafficking for the purposes of forced labour. As such, inspectors should be encouraged to engage in regular social dialogue with employer and worker representatives, to understand the features and underlying causes of forced labour in a given sector or geographic area, and to build partnerships aimed at combatting its occurrence.



Photo source: GettyImages

Beyond a data-driven, targeted approach to inspection planning, there should also be a broader consideration of the types of interventions to tackle forced labour. Given that there are multiple underlying causes of non-compliance, and that employers are influenced by varying factors regarding compliance, promoting compliance requires a diverse intervention mix. Exploring these interventions requires that the labour inspectorate avoid the traps of narrow thinking that leads to narrow action.

Enforcement actions remain an important pillar of labour inspection, and, as such, there is a need to increase the number of unannounced inspection visits. This can be enhanced by building the capacity of OSH inspectors to recognize the indicators of forced labour and the actions they may take to refer cases to the proper authorities. Beyond enforcement, labour inspectorates should also consider interventions such as awareness raising, education, communications, political action, and systemic interventions.

These last two interventions are not typical of labour inspectorates but can have a powerful and sustained impact in improving compliance. Political interventions, for example, are those that primarily seek to promote compliance by exerting political pressure on local political leaders, business associations or actors in a supply chain. Systemic interventions are those that primarily seek to promote compliance through the creation or expansion of barriers or access to entry, including leveraging certifications, permits and licenses; the creation or expansion of access to benefits and privileges, including government contracts, grants and loans; and the identification and remedying of gaps in law or practice.

In carrying out these interventions, inter-agency cooperation with other complementary stakeholders and private compliance initiatives can be key. This could include the Construction Industry Development Board (CIDB) in the construction sector; the Roundtable for Sustainable Palm Oil (RSPO) and MSPO in the oil palm sector; and the Responsible Business Alliance (RBA) in the electrical and manufacturing sector. The DOL should also strengthen its cooperation with the National Strategic Office-MAPO (NSO-MAPO) task force comprising personnel from the RMP, the DOI, the MMEA and RMC, to enhance the investigation and prevention of forced labour, and to utilize the skills and expertise of other agencies.

► 2.9 Exercises

Case studies

► Case study 1

Labosta Dewi Purnama Sakti is from Indonesia. She was recruited as a domestic worker in Malaysia. She did not have a passport and had never left Indonesia before, so the recruitment agent helped her obtain a passport and a work permit. Labosta's employer forced her to work from early morning until close to midnight. She worked at the employer's restaurant until 10. p.m., after which she helped with the chores at the employer's house. She was frequently beaten and was hospitalized on one occasion. After the first month, the employer told her that she would keep her salary for her every month, so she did not lose it, and she could have it all back after the first year upon the expiry of her contract of employment. Labosta agreed to this arrangement and continued working. At the end of the first year, the employer did not pay her but instead reasoned that, after deductions for the work permit, Labosta actually owed her money. As Labosta did not want to return home without a decent amount of money for her family, she continued to work for her employer for another two years. Her work permit expired but her employer failed to renew it. After three years, Labosta could not take the situation any longer and left the employer for good.

Identify the indicators of forced labour.

► Case study 2

Tak Leh Klepet is 20 years old, from a poor family in Cambodia. He is an unskilled labourer, looking for work in Malaysia. He heard that construction companies were always looking for temporary workers, and was given the name of a place where workers were recruited on a daily basis. He was soon hired for a week at a construction site in Kuala Lumpur. He was given very difficult work and was beaten often. He had to work day and night shifts on a number of occasions and was very tired at the end of the week. He never received a written employment contract and was not sure whether it was legal to work like this, but was too afraid to ask. At the end of the week, he received only 500 ringgit, much less than what other workers on the site made. He complained but the employer said he would not receive more than this amount as he was an unskilled peasant. He could not approach the authorities because he was not sure whether the paperwork the employer had given him was a proper work permit.

Is he a victim of forced labour? Please elaborate.

3

Child labour

3 Child labour

- 3.1. What is child labour according to applicable national laws?
- 3.2. What are some of the issues of child labour in Malaysia?
- 3.3. What are the labour inspectorate's mandates on child labour?
- 3.4. What are the challenges in conducting inspection for child labour and how to address them?
- 3.5. What can be done if you find a child labour?
- 3.6. How can strategic compliance planning be used to prevent child labour?
- 3.7. Exercises



Learning objectives

- ▶ To improve labour inspectors' understanding of allowable and unallowable work for children according to national laws.
- ▶ To improve labour inspectors' understanding of their mandate and role in removing children from child labour and improving the working conditions of those above minimum age.
- ▶ To increase labour inspectors' knowledge about actions to take when children are in child labour.
- ▶ To be able to include child labour prevention in the strategic compliance planning of the labour inspectorate.



Learning methodologies

- ▶ Lecture (with slide presentation)
- ▶ Case study



Supporting documents and recommended reading

- ▶ EA (for Peninsular Malaysia and FT Labuan)
- ▶ Sabah Labour Ordinance (for Sabah only)
- ▶ Sarawak Labour Ordinance (for Sarawak only)
- ▶ CYP A
- ▶ Child Act 2001
- ▶ Factories and Machinery Act 1967
- ▶ Occupational Safety and Health Act 1994
- ▶ Electricity Supply Act 1990
- ▶ ATIPSOM



Suggested duration

6 hours

► 3.1 What is child labour according to applicable national laws?

In Malaysia, child labour refers to the employment of a child or young person contrary to the CYPA and the Sabah and Sarawak Labour Ordinances. These laws govern child labour issues, with the CYPA only applicable to Peninsular Malaysia, and the Sabah and Sarawak Labour Ordinances applicable in Sabah and Sarawak, respectively.

During a workplace inspection, the labour inspectors must first determine whether the person employed is a child or a young person, as the applicable laws differentiate the permitted type of work for each category.

► **Table 1:** Definitions of child and young person

Jurisdiction	Applicable law	Definition of "child"	Definition of "young person"
Peninsular Malaysia	Children and Young Persons (Employment) (Amendment) Act 2019 (Act 350)	14 years old and younger	15–17 years old
Sabah	Sabah Labour Ordinance		
Sarawak	Sarawak Labour Ordinance		

However, the Child Act 2001 defines a child as a person under the age of 18. For the purpose of this module, **we will use the "child" and "young person" definitions under the CYPA and Sabah and Sarawak Labour Ordinances.**

► ILO Minimum Age Convention, 1973 (No. 138)

One of the most effective methods of ensuring that children do not start working too young is to set the age at which children can legally be employed or otherwise work. The aim of Convention No. 138 is the effective abolition of child labour by requiring countries to establish a minimum age for entry into work or employment, and the establishment of national policies for the elimination of child labour.

Article 2(3)

The minimum age specified in pursuance of paragraph 1 of this Article must not be less than the age of completion of compulsory schooling and, in any case, must not be less than 15 years.

Article 3(1)

The minimum age for admission to any type of employment or work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons, must not be less than 18 years.

Light work

Light work is among the allowable work for children. Understanding what "light work" means is important in determining if a child or young person is engaged in allowable work. Only the CYPA has light work provisions. The Sabah and Sarawak Labour Ordinances, however, do not define light work.

► **Table 2:** Light work provisions

Jurisdiction	Applicable law	Minimum age for light work (below this age, the child should not be working)	Definition of "light work"
Peninsular Malaysia	Act 350	13 years old	Any work performed by a child or young person that is not likely to be harmful to health or mental or physical capacity, or to prejudice attendance at school (includes any place that teaches religion), participation in vocational orientation or training programmes approved by the authorities, or the capacity to benefit from the instruction received.

Jurisdiction	Applicable law	Minimum age for light work (below this age, the child should not be working)	Definition of "light work"
Sabah	Sabah Labour Ordinance	Not indicated.	No definition.
Sarawak	Sarawak Labour Ordinance	Not indicated.	No definition.

Allowable and unallowable work for a child or young person

Labour inspectors must also understand what kind of employment is allowable and **unallowable** for a child or young person.

► **Table 3: Allowable and unallowable employment for a child**

Jurisdiction	Allowable employment for a child	Unallowable employment for a child
Peninsular Malaysia (Act 350)	Employment involving light work (as defined in the CYP A) suitable to the child's capacity in any undertaking carried on by the child's family – only for 13- and 14-year-olds. The following types of employment are also allowable: ► Employment in public entertainment, in accordance with the terms and conditions of a licence granted under this Act. ► Employment in work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel; or employment as an apprentice under a written apprenticeship contract approved by the Director-General of Labour, with whom a copy of the contract has been filed.	► Hazardous work (as defined in the next section). ► More than six days in a week. ► Work between the hours of 8 p.m. and 7 a.m. ► Work for more than three consecutive hours without a period of rest of at least 30 minutes. ► Work for more than six hours in a day or, if the child is attending school, for a period that, together with the time spent attending school, exceeds seven hours. ► Commencing work on any day without having had a period of not less than 14 consecutive hours free from work. ► Employment contrary to the provisions of the Factories and Machinery Act 1967 [Act 139], the Occupational Safety and Health Act 1994 [Act 514] or the Electricity Supply Act 1990 [Act 447].

Jurisdiction	Allowable employment for a child	Unallowable employment for a child
	► If ordered by the Minister of Labour, any employment not mentioned that is deemed not dangerous to life, limb, health or morals. (The Minister of Labour may at any time revoke or vary the order or may withdraw or alter the conditions.) The Minister may prohibit any of these types of employment if satisfied that the circumstances of the work would be detrimental to the interests of the child or young person.	► Public entertainment unless a license has been issued by the Director-General of Labour or by another authorized director-general. ► Any employment that offers children or young persons for prostitution. ► Any employment as a social escort, hostess or related activity. ► Any employment that requires children or young persons to be involved in the production or trade of alcoholic beverages. ► Any employment that requires children or young persons to work in any activity related to massage or reflexology services. ► Any employment that offers children or young persons for any work related to pornography. ► Any employment that requires children or young persons to be involved in the production or trade of drugs that are prohibited under the law.
Sabah Labour Ordinance	► Employment involving light work suitable to the child's capacity in any undertaking carried on by the child's family.	► More than six days in a week. ► Work between the hours of 8 p.m. and 7 a.m.
Sarawak Labour Ordinance	► Employment in public entertainment, with a license granted. ► Employment in work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel. ► Employment as an apprentice under a written apprenticeship contract. ► If ordered by the Minister of Labour, any employment not mentioned that is deemed not dangerous to life, limb, health or morals. (The Minister of Labour may at any time revoke or vary the order or may withdraw or alter the conditions.) The Minister of Labour may prohibit any of these types of employment if satisfied that the circumstances of the work would be detrimental to the interests of the child or young person.	► Work for more than three consecutive hours without a period of rest of at least 30 minutes. ► Work for more than six hours in a day or, if the child is attending school, for a period that, together with the time spent attending school, exceeds seven hours. ► Commencing work on any day without having had a period of not less than 14 consecutive hours free from work. ► Work for more than six days contrary to the provisions of the Factories and Machinery Act 1967 or the Electricity Supply Act 1990 or in any employment requiring work underground. ► Any public entertainment unless authorized by the Director of the DOL.

► **Table 4: Allowable and unallowable employment for a young person**

Jurisdiction	Allowable employment for a young person	Unallowable employment for a young person
Peninsular Malaysia (Act 350)	▶ Employment involving light work (as defined in the previous section) suitable to the young person's capacity (whether or not the undertaking is carried on by the young person's family). ▶ Employment in public entertainment, with a licence granted. ▶ Employment requiring work approved or sponsored by the Federal Government or the Government of any State, and carried on in any school, training institution or training vessel. ▶ Employment as an apprentice under a written apprenticeship contract approved by the Director-General of Labour, with whom a copy of the contract has been filed. ▶ Employment in any office, shop hotel, restaurant, stalls, godown, factory, workshop, store, boarding house, theatre, cinema or association. ▶ Employment in an industrial undertaking suitable to the young person's capacity. ▶ Employment on any vessel under the personal charge of a parent or guardian.	▶ Hazardous work (as defined in the next section). (Exception: if the young person is under the personal supervision of the artisan under an apprentice contract, or is undergoing vocational training.) ▶ Work between the hours of 8 p.m. and 6 a.m. (Not applicable to an agricultural undertaking or employment in public entertainment or on any vessel). ▶ Work for more than four consecutive hours without a period of rest of at least 30 minutes. ▶ Work for more than seven hours in any one day or, if the young person is attending school, for a period that, together with the time spent attending school, exceeds eight hours. (If the young person is an apprentice as described under paragraph 2(2)(d), the period of work in any one day must not exceed eight hours.) ▶ Commencing work on any day without having had a period of not less than 12 consecutive hours free from work. ▶ Work contradicting any provision under the Factories and Machinery Act 1967 (FMA), Occupational Safety and Health Act 1994 (OSHA) and Electricity Supply Act 1990 (Exception: if receiving a course of instruction at a Government technical school or other educational institution or not being under the age of 15 years old if serving a recognized apprenticeship.) ▶ Any employment that offers children or young persons for prostitution. ▶ Any employment as a social escort, hostess or related activity. ▶ Any employment that requires children or young persons to be involved in the production or trade of alcoholic beverages.

Jurisdiction	Allowable employment for a young person	Unallowable employment for a young person
	▶ If ordered by the Minister of Labour, any employment not mentioned that is deemed not dangerous to life, limb, health or morals. (The Minister of Labour may at any time revoke or vary the order or may withdraw or alter the conditions.) The Minister of Labour may prohibit any of these types of employment if satisfied that the circumstances of the work would be detrimental to the interests of the child or young person.	▶ Any employment that requires children or young persons to work in any activity related to massage or reflexology services. ▶ Any employment that offers children or young persons for any work related to pornography. ▶ Any employment that requires children or young persons to be involved in the production or trade of drugs that are prohibited under the law.
Sabah Labour Ordinance	▶ Employment involving light work suitable to the young person's capacity (whether or not the undertaking is carried on by the family).	▶ Work between the hours of 8 p.m. and 6 a.m. (Except employment in an agricultural undertaking or in public entertainment or on any vessel).
Sarawak Labour Ordinance	▶ Employment as a domestic servant. ▶ Employment in any office, shop hotel, restaurant, stalls, godown, factory, workshop, store, boarding house, theatre, cinema or association. ▶ Employment in an industrial undertaking suitable to the young person's capacity. ▶ Employment on any vessel under the personal charge of a parent or guardian. ▶ If ordered by the Minister of Labour, any employment not mentioned that is deemed not dangerous to life, limb, health or morals. (The Minister of Labour may at any time revoke or vary the order or may withdraw or alter the conditions.) The Minister of Labour may prohibit any of these types of employment if satisfied that the circumstances of the work would be detrimental to the interests of the child or young person.	▶ Work for more than four consecutive hours without a period of rest of at least 30 minutes. ▶ Work for more than seven hours in any one day or, if the young person is attending school, for a period that, together with the time spent attending school, exceeds eight hours. (If the young person is an apprentice, the period of work in any one day must not exceed eight hours.) ▶ Commencing work on any day without having had a period of not less than 12 consecutive hours free from work. ▶ Employment contrary to the provisions of the Factories and Machinery Act 1967 or the Electricity Supply Act 1990 or in any employment requiring work underground. ▶ If the young person is female, any employment in a hotel, bar, restaurant, boarding house or club, unless the establishment is under the management or control of her parent or guardian; if the place is not managed by her parent or guardian, there must be approval from the Director of the DOL. ▶ Any public entertainment unless authorized by the Director of the DOL.

Hazardous work

Under the CYPA, children and young persons are not allowed to be engaged in the following hazardous work (this provision is not available in the Sabah and Sarawak Labour Ordinances as of February 2021):

- ▶ Any work related to machines, installations and other equipment that may pose a high risk such as drilling machines, grinding machines, steam boilers, installations for pressure pipes, electricity equipment and electricity transmission lines.
- ▶ Any work that is conducted in a hazardous environment such as underground work, working at a height that could lead to serious bodily injury or working in an environment with noise or vibration the intensity of which exceeds permissible exposure limits.
- ▶ Any work of a certain hazardous nature and condition such as construction work; work in the timber industry, including s cutting, transporting and unloading trees; or any offshore work such as working on a petroleum platform.

Annex 6 provides the complete Schedule IV of the CYPA with the hazardous work list.

▶ Worst Forms of Child Labour Recommendation, 1999 (No. 190)

II. Hazardous work

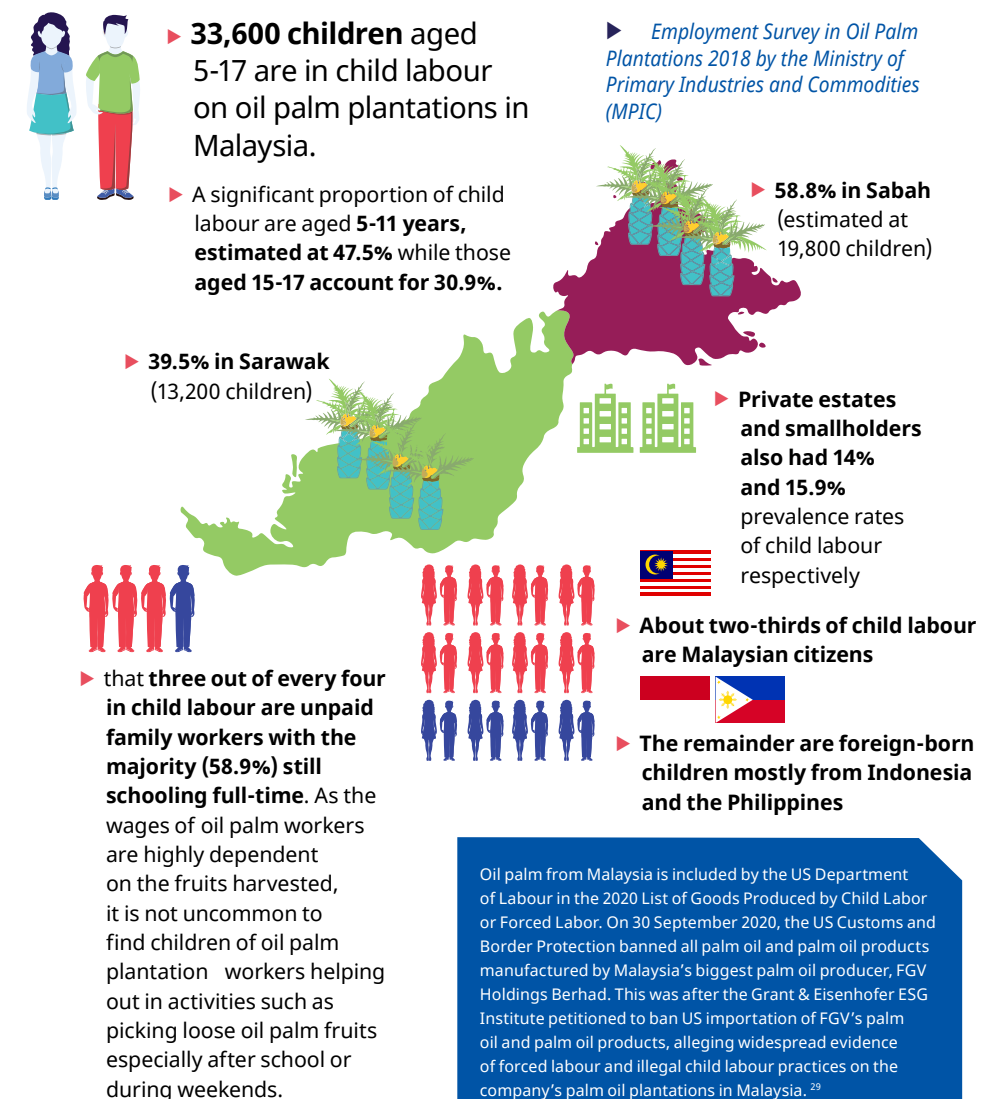
In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

- a. work that exposes children to physical, psychological or sexual abuse;
- b. work underground, under water, at dangerous heights or in confined spaces;
- c. work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- d. work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- e. work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity. **Note to Malaysian DOL, this is an important consideration for future review of hazardous work list.**

▶ 3.2 What are some of the issues of child labour in Malaysia?

There are no national statistics in Malaysia on child labour, although sectoral and anecdotal research is available.



²⁹ Grant & Eisenhofer, "U.S. Bans Importation of Malaysian Palm Oil Products Following Petition Filed by G&E's ESG Institute".

Forced begging among refugee children in urban and semi-urban areas in Peninsular Malaysia was reported by the US Department of State in its annual Trafficking in Persons Report, 2018. Refugee and stateless children were found to be the most vulnerable to organized begging activities. A report submitted by the Malaysian Child Resource Institute to the OHCHR ³⁰ and several academic research papers have highlighted cases of Rohingya refugee children (mail-order brides) being smuggled from Myanmar into Malaysia to be married to refugees. ³¹

Another research project conducted by a University Malaysia Sabah researcher in 2014 indicated that local as well as migrant children in Sabah worked in urban and rural areas. Children worked in fishing, agriculture and services such as selling plastic bags, fish, vegetables and cigarettes, and as porters. ³²

Gender issues among child labourers and trafficked children

“In many Asian societies, girls are expected to sacrifice their education and take on major responsibilities toward parents and other family members; concessions not expected of their brothers. It is also commonly accepted that one day girls will marry and leave home, bringing little or no money into their parents’ household. In these situations, girls are often seen as a relatively “poor investment” and sending them away to work may seem the better option. Girls are also sometimes regarded as expendable, or as burdens on poorer households. Laws and law enforcement, in addition to informal rules imposed by many cultural contexts, compound these expressions of gender inequality.”

- ILO’s Good Practices: Gender mainstreaming in actions against child labour

³⁰ A. Aziz and R. Suriati, “Working Children and Knowledge of the Right to Education: A Study of Child Labour in Sabah, Malaysia”, Asian Social Sciences, Vol. 9(8), 2013.
³¹ Malaysian Child Resource Institute (MCRI) and OHCHR, Preventing and Eliminating Child, Early and Forced Marriage, with a Particular Focus on Challenges, Achievements, Best Practices and Implementation Gaps, 2018. <https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/MCRI.pdf> [accessed 12 May 2019]. However, labour and OSH inspectors do not have a mandate under the Child Act. Part XIII of the Act provides the enforcement powers to the police (under the Police Act 1967) and protector, which refers to the Director-General of Social Welfare and the relevant officers. If such cases are found by the labour inspectorate, referral to the Social Welfare Department should be made.
³² Dzurizah and S. Jalilah, Child Labour in Sabah (Kota Kinabalu: University Malaysia Sabah Press, 2014).

3.3 What is the labour inspectorate’s mandate on child labour?

Section 9 of the CYPA provides that enforcement of the Act is the responsibility of the Director-General of Labour and officers appointed under the EA. In Sabah and Sarawak, the Director and officers appointed under the respective Labour Ordinances for those States are responsible for the enforcement of provisions regarding children and young persons. In terms of a child being a trafficking victim for labour exploitation, labour inspectors in Peninsular Malaysia, Sabah and Sarawak are responsible for enforcing the ATIPSOM. ³³

OSH inspectors, on the other hand, do not enforce the CYPA or ATIPSOM. However, as child labour is prohibited for hazardous work, the employment of any child or young person would also be subject to laws such as the FMA and OSHA, which are under the purview of OSH inspectors. Raising awareness among OSH inspectors of legal standards and the features of child labour (in hazardous work or otherwise) can help extend the surveillance by the inspection authorities of workplaces and for child labour. Processes for referring potential child labour cases to the DOL by OSH inspectors should therefore be institutionalized.

Applicable laws regarding child labour in Malaysia	
Enforced by the DOL	Enforced by other agencies
- CYPA (Act 350) – DOL - Sabah Labour Ordinance – DOL, Sabah - Sarawak Labour Ordinance – DOL, Sarawak - ATIPSOM (Act 670) – Five agencies under the MAPO - National Wages Consultative Council Act 2011	- Occupational Safety and Health Act 1994 (Act 514) – Department of Occupational Safety and Health (DOSH) - Child Act 2001 (Act 611) – Welfare Department and RMP - Section 32 – Prohibition on begging - Sections 17 and 18 – Child care, protection and custody

³³ As reported by the DOL, Sarawak, DOL officers in Sarawak enforce legislation through inspection at the place of employment, via routine and scheduled inspection carried out every two years. Any contravention of the provisions regarding the employment of children and young persons will be investigated.

The penalties for violation of these child labour laws:

- ▶ Under article 350 of the CYPA, for a first-time offence, one year's imprisonment or a fine of 5,000 ringgit, or both; in the case of a second or subsequent offence, not more than three years' imprisonment or a fine not exceeding 10,000 ringgit, or both.
- ▶ Under Chapter 67 of both the Sabah and Sarawak Labour Ordinances, not more than two years' imprisonment or a fine of 10,000 ringgit, or both.

The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

A person under the age of 18 years old who has been identified as a victim of trafficking is subject to the provisions of the ATIPSOM. Under section 14 of the Act, any person who traffics in young persons or children (aged 18 or younger, as defined in the Act) for the purpose of exploitation faces penalties of imprisonment for not less than three years but not exceeding 20 years, and a fine. Exploitation under the ATIPSOM means all forms of sexual exploitation, **forced labour or services, slavery or practices similar to slavery, servitude**, any illegal activity or the removal of human organs. Convention No. 182 considers forced labour, slavery or practices similar to slavery and commercial sexual exploitation of children as among the worst forms of child labour.

See Annex 6. Schedule IV of the CYPA for the list of work of a hazardous nature and condition.

▶ Article 3, Convention No. 182

For the purposes of this Convention, the term "worst forms of child labour" comprises:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Malaysia has developed the National Action Plan on Trafficking in Persons (NAPTIP) and the National Action Plans on Forced Labour and Child Labour. These National Action Plans require stronger enforcement and capacity building of the labour inspectorate on the issue of child labour.

▶ 3.4 What are the challenges in conducting inspection for child labour, and how can they be addressed?

Child labour in the informal economy

Child labour is common in the informal economy, and includes scavenging, street begging, mobile vending, work in small-scale or home-based industries and domestic work. As these types of work are considered "informal", appropriate regulation and a clear inspection mandate does not exist. As a result, inspecting child labour in informal workplaces is not as widespread as it should be. Labour inspectors tend to have little or no knowledge, or means of action, pertaining to informal employment premises, due to their unregulated nature.

- ▶ Consequently, it is imperative for labour inspectors to work closely with local trade unions, CSOs and agencies such as local social services and education authorities, along with the police, to utilize an integrated approach. This includes regular sharing of information with those agencies.

Awareness raising and work by social services are critical in this regard, as the inspection role is, admittedly, limited. The most meaningful mandate in these cases would likely fall to other agencies, and the role of inspectors would focus on raising awareness about the features and negative effects of child labour, with employers, workers and their organizations.

Remote workplaces

Labour inspectors face difficulties with logistics and travel to remote areas, but this does not negate the fact that inspection must cover areas that are under-reached because they are even more high-risk regarding labour violations.

- ▶ One of the ways to overcome this difficulty is by utilizing the existing task force of labour and OSH inspectors at the regional level. One example is the task force established in March 2020 for implementation of the Movement Control Order. The task force had unified inspection planning and specific inspection targets to be achieved. Collaboration with stakeholders included trade unions, employers' organizations and NGOs, which were of assistance in the inspection.



Photo source: GettyImages

Age verification

The issue of lack of documentation among children of migrants and refugees is common, particularly in under-regulated sectors and in remote areas. This poses a challenge for labour inspectors in identifying whether a worker is a child, a young person or an adult. In many cases, persons under 18 years of age may look like adults due to years of hard work. In some cases, physical features are not the best determinant of actual age.

- ▶ **Labour inspectors normally refer to personal documents such as identification cards or birth certificates, or to information gathered in interview regarding a young worker's schooling, for example, in an effort to determine age. If age cannot be established by that process, section 12 of the CYPA provides that the determination of age can be done by a medical officer. Therefore, a child or young person may need to be brought to a medical officer for examination, and section 12 must be read together with regulations 3 and 4 of the CYPA and the Child Act 2001. A social welfare officer must be involved, to ensure the welfare of the child or young person, and the labour inspector must explain in a proper manner to the child that a medical examination is needed in order to ascertain his or her age.**

Interviewing children

The following guidelines provide a useful tool for planning and conducting interviews with child workers:

- ▶ **Conduct the interview as soon as the child is ready to share his or her experience.** Remember that, as time passes, the child might not fully remember the experience. It is also important to remember that some workers take longer to recover from traumatic experiences. A child's story may be better understood once information has been gathered from all relevant sources, including perpetrators, co-workers and witnesses. If legally permitted, video or audio recordings can be used to reduce emotional distress for the child caused by recounting the experience during the investigation and criminal justice process. Preferably, a child should be interviewed by an interviewer of the same sex. Avoid causing intimidation by wearing civilian clothes, providing a comfortable interview room or an appropriate meeting space (for example, in an agricultural setting), providing paper and pencils so the child can draw what happened, and allowing breaks and extra time during the interview.
- ▶ **Have a personable attitude.** A child feels more comfortable in a friendly environment. For example, start by asking about his or her interests or likes. Listen and allow the child to talk uninterrupted.
- ▶ **Pay close attention to the child's behaviour, language and emotion.** Do not pressure or intimidate the child. If necessary, allow the child to be supported during the interview by an appropriate adult such as a parent or guardian, friend, social worker, psychologist or lawyer.
- ▶ **Ask the right questions.** With younger children, care must be taken to develop questions that are appropriate for their particular age and maturity level. Ask open-ended questions. Do not ask multiple questions at once. Children can be prompted to provide more details about their experience with questions such as: Then what happened? What happened next? What did you see? What did you hear?

Ethics in interviewing children or workers suspected to be children

(Adapted from The Bali Process: Assisting and Interviewing Child Victims of Trafficking: A Guide for Law Enforcement, Immigration and Border Officials.)

It is important that labour inspectors know how to conduct child-friendly interviews. The labour inspector must always think about the “best interest of the child”. The following guidelines are helpful in achieving this:

Before the interview

Risk to the child

When conducting an interview on a child's life and work, there is always a danger that the child interviewee may be put at risk due to his or her marginalized and vulnerable position in society (for example, many migrant child workers are undocumented). Ensure that the child is protected from further harm. Coordinate with other authorities in the locality, and coordinate with shelter houses, as necessary. Seek the permission of parents to interview the child if this is possible and suitable to the inspection circumstances.

Informed consent

Informed consent is a vital aspect of interviewing children. Labour inspectors, at all times, have an obligation of confidentiality to conceal certain information from employers or gang leaders who would otherwise not allow a given child to participate in an investigation. It is essential to ensure that the child understands the negative as well as positive consequences of agreeing to be interviewed. The consent should be voluntary and not forced.

The right to say no

It is equally important that children understand that they have the right to say “no” and that they can exercise this right at any time in the course of the investigation process. It is imperative that the child be made fully aware of his or her right to abstain from participating in an investigation with adults or with other children.

Issues during the interview

Language and logic

The labour inspector must acknowledge the fact that most technical terms, abbreviations and abstractions employed by labour inspectors and other agencies are not part of the vocabulary used by children. Moreover, an explanation that works for one child may not work for a child of another sex, ethnicity, age group or background. Creativity and flexibility in language and approach are required, as well as patience and understanding of the local

context in which the target groups and children interact. Using language and logic that the child will comprehend is not only essential for producing the desired result; it also ensures that each child grasps the purpose and content of the investigation he or she has agreed to take part in.

A matter of trust

A high-quality investigation is dependent on good relationships between informants and the labour inspectorate. Small talk, play, recurrent visits, patience and time are some of the major ingredients needed when obtaining reliable data from children on such delicate issues as family background or illegal labour activities. Interviews with children should be conducted in a neutral setting, and preferably in a place where they feel safe and comfortable.

An important point to bear in mind is the labour inspector's attitude during the interview. Maintain a positive attitude and a neutral expression when interacting with the child, avoiding expressions of shock, sadness, frustration or other emotions that could affect the child's willingness to give accurate information.

Misinformation as a coping strategy

When interviewing vulnerable children, especially those who have been abused by employers or have worked in the streets or been trafficked, it must be recognized that not telling the truth is one of the many coping strategies they rely on for survival in precarious situations.

Encouraging another person to tell the truth requires trust. In order to build up trust with children – as mentioned – it is best to conduct interviews in neutral settings and, if possible, in the absence of parents, employers, guardians or other persons whose presence may cause children to avoid telling the truth. As mentioned, and depending on the issues to be discussed, such as sexual abuse or trafficking, it is preferable to ensure that the interviewer and child interviewee are the same sex.

It is important to acknowledge that structures of power and fear exist among girls and boys and within groups of marginalized children on the streets and in society at large. As in all societies, power structures are manifested in all social relations, through gender, age, class and ethnicity. Against this background, it is necessary to consider the dynamics and survival strategies of girls and boys of local subcultures and working communities, in assessing the veracity of statements in this kind of investigation.

How to identify if a child or young person is in child labour

During labour inspection, interviewing the child or young person is necessary. The first questions that must be asked are about personal particulars: name, date of birth, current address, names of parents or guardians, names and number of siblings, information regarding education, and phone number (if applicable).

The second part of the interview relates to employment. This comprises questions on contract of service, type of work, date of starting the employment, wages and allowances, hours of work, and entitlement to leave, rest days, public holidays, annual leave and other kinds of leave provided by the employer. Questions can also be asked regarding treatment by the employee. Observation of the child is important to ascertain any form of physical or psychological harm to the child.

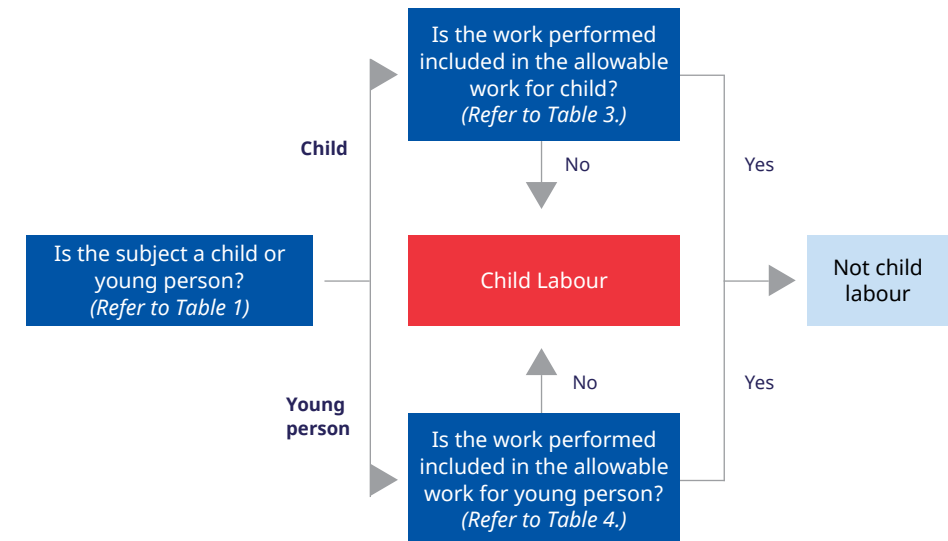
Observation of the workplace is imperative in determining whether it is hazardous to the child. Schedule IV of the CYPA should be referred to for the list of hazardous work for children.

► Sample questions

- What is your name?
- How old are you?
- Do you know your birthday?
- Where do you live?
- Who do you stay with?
- Are you free to go out at any time?
- Where do you come from?
- Do you know the name of your home town?
- Who is your father and mother?
- Do you go to school?
- What grade are you in?
- What kind of work do you do?
- How did you find this job?
- What equipment or tools do you use?
- How many days in a week do you work?
- What time do you usually start work?
- What time do you finish work?
- Is your work difficult? How difficult is it? Can you give examples?
- Who is your employer?
- Do you get paid for work? How much?
- How do you get paid? In money? Or in something else, like food?
- How many friends are working like you?
- When do you take a break from work?
- Have you ever been injured or got sick because of your work?
- Why do you work?

Analysing data collected to determine if there is child labour

The information collected during labour inspection must be analysed to determine whether sufficient evidence proves offences under the applicable laws.



Threats to labour inspectors' security

High-risk areas, such as those in remote locations, pose a security threat to the labour inspectorate when monitoring child labour issues. Examples of these are threats from employers and traffickers, local conflicts and unstable security situations.

- Working with local government authorities, police, NGOs and community-based organizations (CBO) can help reduce the risks and enable outreach to child labourers. At a minimum, a security and risk management plan should be prepared. If labour inspectors face persistent obstruction to their inspection activities (for example, employers denying access), or face violent threats, they should work with local law enforcement agencies to provide security during inspection visits or, if necessary, to undertake criminal investigations into illegal actions against inspectors. Inspectors should not undertake visits alone if there is a credible threat to personal safety. There should be protocols in place for assessing and addressing these potential risks to inspectors.

► 3.5 What can be done if you find a child labourer?

The first consideration, before sanctions, should be the welfare and removal of the child from the child labour situation. If there is a violation of the Child Act 2001, the labour inspectors should notify the Social Welfare Department, which is responsible for the care, protection, custody, medical examination, treatment and rehabilitation of child labourers.

If a child labourer has been found and identified, action must be taken if there is a violation of any provision under the CYPA or Sabah and Sarawak Labour Ordinances. Under the CYPA, an employer in violation of the Act can be fined not more than 50,000 ringgit or imprisoned for not more than two years. A subsequent offence carries penalties of a fine of not more than 100,000 ringgit or imprisonment for not more than five years. Violation of the Sabah and Sarawak Labour Ordinances carries penalties of a fine not exceeding 10,000 ringgit, or imprisonment for not more than two years, or both, for child labour offences.

If there is a suspected violation of the FMA or OSHA, OSH inspectors must investigate. If there are indicators that a child is trafficked for the purpose of exploitation, necessary action under the ATIPSOM must be taken and must follow the procedures under this Act.

ILO has developed a [Child Labour Monitoring Guide](#). It is a useful reference for the labour inspectors.

► 3.6 How can strategic compliance planning be used to prevent child labour?

As discussed in section 2.8, traditional enforcement approaches face limitations, not only because of resource constraints, but also because of the special challenges inspectors face in combatting certain labour law violations, such as identifying child labour. Consequently, a broader strategic compliance planning approach, coupled with a range of complimentary interventions and assistance from stakeholders, can help the labour inspectorate increase its impact in both identifying and addressing cases of child labour.

One approach is through prevention activities implemented through the MOHR or in collaboration with other organizations, including the local authorities, and particularly those that have outreach to areas that are most problematic. Prevention activities can come in the form of awareness raising, community- or school-based monitoring, educating parents and employers, requiring companies to have anti-child labour policies in place and to implement and report on them, including the anti-child labour provisions in Government requirements for licensing.

Another approach is evidence-based enforcement and focus on areas or high-risk sectors and enterprises where child labour is more likely to be found. This means increasing the DOL's capacity for making use of data from its departments, other Government agencies, media, CSOs and international organizations, and analysing this to strengthen the enforcement activities. This will enable a proactive and targeted approach to labour inspection. Additionally, integrated enforcement can be coordinated with the DOSH, the Social Welfare Department and the police. In order to achieve this, planning needs to be done not ad hoc but on a regular basis. It must be included in the action plan of concerned agencies and be implemented at the regional and central level.

During inspection, labour inspectors should also meet with a representative cross-section of workers, to discuss conditions of work and, in particular, recruitment, to determine whether safeguards exist to prevent and eliminate the engagement of children in the worst forms of child labour. The inspectors should check with managers about policies concerning child labour and its worst forms. They should examine these policies and inquire about specific measures used to prevent the recruitment or engagement of children in operations and by private employment agencies. They should also provide advice to the employer on how to protect children from child labour.³⁴

³⁴ ILO, "Checkpoints Eliminating and Preventing Forced Labour".

► 3.7 Exercises

Case studies

► Case study 1

Tuminah is a child from Indonesia. She came to Sarawak from West Kalimantan after being offered 300 ringgit for a job as a babysitter. She entered the country without proper travel documents and was picked up at the Sarawak border. The complainant was taken to work for the appellants, husband and wife, but there was no mention about wage. Initially she was treated nicely, but after three months she was physically and verbally abused. She was kicked for attempting to escape. She was at times made to stay outside of the house from 7 a.m. to 4 p.m. to cut grass and arrange loose bricks, and was without food the whole time. She eventually escaped and sought help from the Indonesian Consulate.

Is this child labour? Why?

► Case study 2

Armani Dogol is a 14-year-old boy from Kalabakan, Sabah. His parents worked on a small oil palm plantation. Normally he helped his parents with their work by collecting loose palm fruits and carrying heavy fruit bunches in a wheelbarrow. Sometimes his parents instructed him to collect and burn dead leaves. He had to use matches and, often, kerosene, to light the fires.

Is the work performed by Armani Dogol hazardous? Why?

► 4

Gender-based discrimination, violence and harassment in the workplace, particularly of women migrant workers

4 Gender-based discrimination, violence and harassment in the workplace, particularly of women migrant workers

- 4.1. What are the international and national legal frameworks on gender-based discrimination, violence and harassment in the workplace?
- 4.2. What are some of the issues of gender-based discrimination, violence and harassment in the workplace?
- 4.3. What are the labour inspectors' mandates on gender-based discrimination, violence and harassment in the workplace?
- 4.4. What are the challenges in carrying out labour inspection on gender-based discrimination, violence and harassment, and how to address these challenges?
- 4.5. What can be done if you find gender-based discrimination, violence and harassment in the workplace?
- 4.6. How can strategic compliance planning be used to prevent gender-based discrimination, violence and harassment in the workplace?
- 4.7. Exercises



Learning objectives

- ▶ To improve the understanding of labour inspectors on gender-based discrimination, violence and harassment in the workplace.
- ▶ To increase the understanding of labour inspectors of their mandate and role in preventing and identifying gender-based discrimination, violence and harassment in the workplace.
- ▶ To increase the knowledge of labour inspectors about actions to take when gender-based discrimination, violence and harassment in the workplace is found.
- ▶ To be able to include the prevention and identification of gender-based discrimination, violence and harassment in the workplace in the strategic compliance planning of the labour inspectorate.



Learning methodologies

- ▶ Lecture (with slide presentation)
- ▶ Case study



Supporting documents and recommended reading

- ▶ ILO C100 Equal Remuneration Convention, 1951 (No. 100)
- ▶ ILO C111 Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- ▶ ILO C190 Violence and Harassment Convention, 2019, (No. 190)
- ▶ UN Convention for the Elimination of Discrimination against Women, 1979 (CEDAW)
- ▶ ILO, Approach to Strategic Compliance Planning for Labour Inspectorates, 2017
- ▶ Factsheet on Labour Inspection in Indonesia: Guide, 2017.
- ▶ ILO, Labour Inspection and Gender Equality: Exercise Book, 2017.
- ▶ ILO and UN Women, Labour Inspection: Women Migrant Workers in ASEAN, 2015.
- ▶ International Training Centre of the ILO (ITC) and ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 13: Labour Inspection and Gender Equality", 2011.
- ▶ UN Women and ILO, The World of Work Handbook.
- ▶ SUHAKAM (Human Rights Commission of Malaysia), Report on The Status of Women's Rights in Malaysia, 2010.
- ▶ ILO and Regional Office for Asia and the Pacific (ROAP), Review of Labour Migration Policy in Malaysia, 2016.
- ▶ WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019.



Suggested duration

6 hours

► 4.1 What are the international and national legal frameworks on gender-based discrimination, violence and harassment in the workplace?

Labour inspectors play a vital role in promoting gender equality³⁵ and mainstreaming³⁶ and contributing toward the prevention and elimination of gender-based discrimination, violence and harassment in the workplace. An important part of effectively combatting gender-based discrimination is to understand the key definitions and legal frameworks on these topics, and the role of the labour inspectorate.

Key definitions

- **Sex:** At the cultural and legal levels, the terms “gender” and “sex” are used interchangeably, but the two terms have different meanings. Social scientists use the term “sex” to refer to a person’s biological or anatomical identity as male, female or intersex.³⁷
- **Gender:** The term “gender” refers to social and cultural identity associated with sexual identity.³⁸
- **Discrimination:** Discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. It also includes other distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.³⁹
- **Discrimination against women** means any distinction, exclusion or restriction made on the basis of sex, and which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴⁰

³⁵ Gender equality regarding employment and occupation refers to the enjoyment of equal rights, opportunity and treatment by people of different sexes and genders, of all ages, irrespective of their race, colour, national or social origin or health condition, in the world of work. ILO, Labour Inspection and Gender Equality in Indonesia: Guide, 2017, 9.

³⁶ Gender mainstreaming in the world of work requires assessing the different implications for people of different genders of any planned action, including legislation, policies or programmes, in the economy, or in HR and labour management. It is a strategy for making the concerns and experiences of workers of different genders an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all economic spheres, so that everyone benefits equally, and gender disparities and inequalities are not perpetuated. United Nations Economic and Social Council (ECOSOC), Agreed conclusions E/1997/L.30, 2; and ILO, Equality at Work: The Continuing Challenge, Report of the ILO Director-General, Report I(B), International Labour Conference, 100th Session, Geneva, 2011, in Labour Inspection and Gender Equality in Indonesia: Guide, 2017, 9.

³⁷ Labour Inspection and Gender Equality in Indonesia: Guide, 2017, 9.

³⁸ Labour Inspection and Gender Equality in Indonesia: Guide, 2017, 9.

³⁹ Article 1 of Convention No. 111.

⁴⁰ ILO, Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

- **Gender-based stereotypes** are generalized views or preconceived notions about attributes or characteristics that are or ought to be possessed by a gendered person or a particular gendered group concerning the roles they should perform, the value of their work and the status they should occupy in society. Sexism manifests in multiple forms – male privilege, patriarchy, gender discrimination, belittling of women, sexual objectification of women, violence and harassment against women.⁴¹
- **Gender-based violence and harassment** is a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes any harmful act directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.⁴²

International legal frameworks

Labour inspectors generally operate within the mandate provided by national laws. However, Malaysia is also subject to international standards and laws to the extent that external agencies routinely undertake global audits that measure Malaysian standards and performance, which may be compared against other countries. Malaysia is a signatory to some of these laws.

► **Table 5: Ratifications of international conventions on gender-based discrimination, harassment and violence at work**

International conventions on gender-based discrimination, harassment and violence at work	Ratified by Malaysia
UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes
ILO Equal Remuneration Convention, 1951 (No. 100)	Yes ⁴³
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	No
ILO Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities Convention, 1981 (No. 156)	No
ILO Maternity Protection Convention, 2000 (No. 183)	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (2003)	No
ILO Convention on Eliminating Violence and Harassment in the World of Work, 2019 (No. 190)	No

⁴¹ ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, “Module 13: Labour Inspection and Gender Equality” 2010.

⁴² Article 1 of Convention No. 190.

⁴³ ILO, Ratifications for Malaysia.

UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (1981)

Malaysia ratified the CEDAW in 1995, with reservations on selected provisions.⁴⁴ As a result, the Malaysian Government is obliged to fully implement the treaty as part of its legal and policy framework (Annex 5). The UN reviews the commitment and performance every four years through the Government’s submission of its periodic report to the CEDAW Committee.

The CEDAW defines **discrimination against women** as “any distinction, exclusion or restriction made based on sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁴⁵ Concerning employment, Article 11(1) and Article 11(2) of the CEDAW compel Malaysia to take all appropriate measures to eliminate discrimination against women in the field of employment, to ensure, on a basis of equality of men and women, the prevention of discrimination against women on the grounds of marriage, and to ensure their effective right to work.

CEDAW’s General Recommendation no. 26 notes that the protections under CEDAW are afforded to women migrant workers as well. Para 7 also states that:

Women migrant workers are also entitled to protection from discrimination on the basis of the Convention, which requires States parties to take all appropriate measures without delay to eliminate all forms of discrimination against women and to ensure that they will be able to exercise and enjoy de jure and de facto rights on an equal basis with men in all fields.

CEDAW General recommendation No. 26 on women migrant workers

⁴⁴ Malaysia maintains reservations on Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g) on the basis that these provisions are in conflict with the Federal Constitution, Islamic law and national policies. Ratified the CEDAW on 5 July 1995 with several reservations, mainly on Article 16 related to women and family.
⁴⁵ CEDAW, Article 1.

Relevant ILO Conventions

There are a number of international treaties aimed at addressing gender-based discrimination, harassment and violence. Although not all of these treaties are ratified by Malaysia, they provide guidance to labour inspectors on the applicable international standards on the elimination of gender-based discrimination, harassment and violence. The provisions in these treaties emphasize equality in the treatment of workers, including migrant workers, and their protection from discrimination, harassment and violence at work.

Table 6: Relevant ILO conventions on gender-based discrimination, harassment and violence

ILO Equal Remuneration Convention, 1951 (No. 100) ⁴⁶	Article 1 states, “the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex”. Article 2(1) has an oblique reference to inspection in which “Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.” Article 4 highlights that a broader partnership is needed to implement the principles of this Convention. It states, “Each Member shall cooperate as appropriate with the employers’ and workers’ organizations concerned for the purpose of giving effect to the provisions of this Convention.” The Equal Remuneration Convention (No. 100) requires ratifying countries to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The term “remuneration” is broadly defined to include the ordinary, basic or minimum wage or salary, and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment. Equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Article 1 states that “discrimination includes: (a) any distinction, exclusion or preference made based on race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with other appropriate bodies.” Article 2 states, “any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”

⁴⁶ ILO, Comments by the CEACR regarding this instrument and its implementation in Malaysia.

	Article 3 requires that "Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice (a) to seek the co-operation of employers and workers organisations and other appropriate bodies in promoting the acceptance and observance of this policy."
ILO Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities Convention, 1981 (No. 156)	Article 3: 1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. 2. For paragraph 1 of this Article, the term "discrimination" means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958. Article 11 provides that "Employers and workers organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention."
ILO Maternity Protection Convention, 2000 (No. 183)	Article 4 defines women worker's right to maternity leave as follows: 1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks. 2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention. 3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave. 4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers. 5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without a reduction in any compulsory portion of postnatal leave Article 12 requires that "This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice."
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (2003)	Article 70 requires that "States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity." Article 10 requires that "No migrant worker or member of his or her family shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." Article 17(3) requires that "Any migrant worker or member of his or her family who is detained in a State of transit or a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial."

	Article 68(1) requires "States Parties, including States of transit, shall collaborate to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include: (c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation." Article 68(2) requires that "States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures."
ILO Violence and Harassment Convention, 2019 (No. 190)	Article 1(a) defines "violence and harassment" in the world of work as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment". The provision provides a comprehensive definition of violence and harassment in the world of work, not just the workplace. Convention No. 190 recognizes the importance of a world of work free from violence and harassment, and the role of different stakeholders in ensuring that. Article 1(b) defines "gender-based violence and harassment" as "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment". Article 2 states that "without prejudice to subparagraphs (a) and (b) of paragraph 1 of this Article, definitions in national laws and regulations may provide for a single concept or separate concepts". Article 4(2) requires that "Each Member shall adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account violence and harassment involving third parties, where applicable, and includes:... (d) establishing or strengthening enforcement and monitoring mechanisms."

National legal framework

There are several provisions under Malaysian laws that protect workers against gender-based workplace discrimination, harassment and violence. Some of these provisions, like those covered in the EA and the Sabah and Sarawak Labour Ordinances, correspond to the core mandate of labour inspectors to enforce national labour laws.

Within the national legal framework, seemingly gender-neutral legislation, including laws that govern rights at work and workplace safety and health, may have differential effects on men and women workers, especially women migrant workers. Recognizing these effects will allow labour inspectors to understand how various factors such as gender-based stereotypes, gender-based division of labour or working conditions and workplace rules and practices may disadvantage one group of workers, leading to indirect forms of discrimination against women and increased risks of gender-based violence and harassment in the workplace.

Federal Constitution of Malaysia, 1957

Two aspects of discrimination are specifically addressed in the Federal Constitution. The first refers to the principle of equality before the law. This is provided by **article 8(1) of the Federal Constitution**, which requires that “all persons are equal before the law and entitled to the equal protection of the law”. The second, as provided by **article 8(2) of the Federal Constitution**, refers to the explicit rights of citizens against discrimination on various grounds, including by gender in employment, under public authority. It states: “Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”⁴⁷

Although article 8 of the Federal Constitution articulates the general right not to be discriminated against, its application in the context of employment is more restrictive. Article 8 only protects against the contravention of individual rights by a public authority – that is, the State or its agencies. In the case of *Beatrice Fernandez v. Sistem Penerbangan Malaysia & Anor* [2005] 3 MLJ 681, the Federal Court, in examining whether provisions in a collective employment agreement requiring female cabin crew to resign upon becoming pregnant, failing which the employer had the right to terminate their services, amounted to discrimination, held that article 8 does not protect against the infringement of an individual's right by another individual. This means that private-sector employers are not bound by article 8 of the Federal Constitution.⁴⁸

⁴⁷ However, women's rights activists in Malaysia consider article 8(2) of the Federal Constitution insufficient for defending gender equality for everyone in Malaysia. (Annex 1). WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, 119.

⁴⁸ In another case, *AirAsia Berhad v. Rafizah Shima binti Mohamed Aris*, 5 MLJ 318, 2014, the Court of Appeal held that a provision in a training agreement which does not restrain marriage or prohibit pregnancy if the training is completed in the manner stipulated in the agreement, is not discriminatory against the rights of women.

There is an assumption that individuals have the choice to walk away from agreements that infringe their constitutional rights.⁴⁹ Moreover, the application of article 8 is restricted to citizens. In the context of work, potentially marginalized or disempowered groups, such as women migrant workers, are not protected against discrimination by the State.

Sabah Labour Ordinance

Chapter XIA, Employment of Women, prohibits female employees, including women migrant workers from doing night work and underground work, and the Minister of Labour has the power to approve applications for exemption on the prohibition on the employment of female employees for night work.

Chapter XIB, Maternity Protection, provides maternity protection for women employees, including women migrant workers. It specifies that every female employee is entitled to maternity leave for an eligible period for each confinement, and to receive from her employer a maternity allowance.⁵⁰

Domestic worker is referred to as a “domestic servant” and is defined as “a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washer-woman, watchman, groom and driver or cleaner of any vehicle licensed for private use”.⁵¹ Under this legislation, domestic workers are excluded from many provisions that regulate the work conditions of employees, including on holidays, hours of work and maternity protection.⁵²

Sarawak Labour Ordinance

Chapter XIA, Employment of Women, prohibits female employees, including women migrant workers from doing night work and underground work, and the Minister of Labour has the power to approve applications for exemption on the prohibition on the employment of female employees for night work.

Chapter XIB, Maternity Protection, provides maternity protection for women employees, including women migrant workers. It specifies that every female employee is entitled to maternity leave for an eligible period for each confinement, and to receive from her employer a maternity allowance.

⁴⁹ Nurul Shamimi Zainul Ariffin v. Universiti Pertahanan Nasional Malaysia & Anor, 1 LNS 1740, 2017.

⁵⁰ Section 83(5) of the Sabah Labour Ordinance limits the entitlement to maternity allowance provided by an employer to an employee.

⁵¹ Section 2 of the Sabah Labour Ordinance.

⁵² Schedule [subsection (2) of section 2] of the Sabah Labour Ordinance.

Domestic worker is referred to as a “domestic servant” and is defined as “a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washerman or washer-woman, watchman, groom and driver or cleaner of any vehicle licensed for private use”. Under this legislation, domestic workers are excluded from many provisions that regulate work conditions of employees, including on holidays, hours of work and maternity protection.⁵³

Employment Act, 1955

The EA covers the general conditions and obligations between employers and employees. Employees should receive equal opportunity in employment and the provisions of the Act should apply equally, irrespective of factors such as sex, gender, marital status, race and nationality.

There are, however, several provisions within the legislation that govern and restrict the employment of women, or are likely to have a disproportionate effect on women workers, including women migrant workers. In this section, the manual will provide an overview of these provisions and explore how they may affect the context of employment for women workers, including women migrant workers in Malaysia.

► Working conditions (including night work and underground work)

Part VIII of the EA prohibits female employees, including women migrant workers, from doing night work and underground work. The Minister of Labour has the power to approve applications for exemption on the prohibition of employment of female employees for night work.⁵⁴

► Maternity protection

Part IX of the EA defines **maternity protection** for women workers,⁵⁵ including women migrant workers, in which every female employee is entitled to maternity leave for period of not less than 60 consecutive days for each confinement,⁵⁶ and to receive from her employer a maternity allowance. The law also restricts employers from dismissing female employees who are absent from work after the applicable maternity leave period as a result of illness due to pregnancy, as certified by a registered medical practitioner.⁵⁷



Photo source: GettyImages

EA applies to all conditions where workers are employed. This would include cases where the employers failed to provide a proper employment contract or register the women workers with the relevant authorities.

In practice, the application of maternity protection provided under the EA is limited by the following factors:

1. Current Malaysian regulations require temporary migrant workers, and during the first three years of employment, to pass a pregnancy test as a condition for receiving and keeping a work permit. If the test is failed, the woman migrant worker is subject to immediate deportation.⁵⁸
2. Domestic workers are excluded from maternity protection provided under the EA.
3. An employer cannot dismiss an employee for exercising her right to maternity protection under the EA. However, it is possible for an employer to terminate an employee’s employment for being pregnant if the employment contract expressly prohibits the employee from being pregnant or requires the employee to resign if she is pregnant.⁵⁹

There are no paternity leave provisions in the law.

► Domestic workers and the Employment Act, 1955

Domestic workers, as defined in the EA, are excluded from many provisions that regulate the work conditions of employees, including on holidays, hours of work and maternity protection.⁶⁰ This exclusion will disproportionately affect women workers, as many domestic workers in Malaysia are women and women migrant workers.

⁵³ Schedule [subsection (2) of section 2] of the Sarawak Labour Ordinance.

⁵⁴ Sections 34–36 of the EA. The prohibition of underground and night work for women are addressed in the proposed amendments to the Employment Act.

⁵⁵ The act is considered restrictive in its application and its protective measures according to SUHAKAM, The Status of Women’s Rights in Malaysia (April 2020), 61.

⁵⁶ Section 2 of the EA defines “confinement” to mean parturition resulting after at least 28 weeks of pregnancy in the issue of a child or children, whether alive or dead. It commences and ends on the actual day of birth and, if two or more children are born at one time, confinement commences and ends on the day of birth of the last-born of those children.

⁵⁷ Section 42 of the EA.

⁵⁸ Source: Foreign Workers Medical Examination Monitoring Agency referred to in the Fair Labor Association report “A. Pregnancy Discrimination on Paper: Explicit Discrimination”, Triple Discrimination: Woman, Pregnant, and Migrant, March 2018, 20.

⁵⁹ AirAsia Berhad v. Rafizah Shima bt Mohamed Aris, [2014] MLJU 606. In this case, the Court of Appeal of Malaysia held that a term in a training agreement and bond, whereby a female employee agreed that she would not get pregnant during a four-year training period, did not discriminate against the rights of women. This was because “all clauses contained in the agreement ... do not restrain marriage and/or prohibit pregnancy if the ‘employee’ had completed the training programme in the manner stipulated in the agreement”.

⁶⁰ First Schedule [section 2(1)] of the EA.

► Questions for discussion among labour inspectors

- What is the rationale of the prohibitions on night and underground work introduced in the Sabah and Sarawak Labour Ordinances and the EA? Are these restrictions still relevant today?
- How do limitations on night and underground work affect women workers, including women migrant workers, specifically in the manufacturing, agriculture and plantation sectors?
- What are the harmful results of the prohibitive measures concerning women workers' right to employment, especially for women migrant workers and those in casual or informal work?
- Describe the role of a labour inspector in combatting gender-based discrimination at work, given the existing legal framework.
- Describe the specific contributions inspectors can make to ensuring and promoting gender equality in the workplace, including addressing gender-based harassment and violence.

► Sexual harassment and the Employment Act, 1955

Part XVA of the EA prohibits sexual harassment in the workplace and requires employers to act against it. This provision defines sexual harassment as any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person, which is offensive or humiliating or is a threat to his or her well-being, arising out of and in the course of his or her employment. Under this section, employers are given guidelines for actions to be taken when they receive any complaint of sexual harassment. Specifically, **section 81** provides the following gender-sensitive actions to be taken:

► Duty of the employer

Section 81B requires the employer to carry out an inquiry upon receipt of a complaint of sexual harassment, in a manner prescribed by the Minister of the MOHR.

An employer may refuse to inquire into a complaint of sexual harassment if the complaint has previously been inquired into and no sexual harassment has been proven, or the employer is of the opinion that the complaint is frivolous, vexatious or is not made in good faith.

► Duty of the Director-General of the MOHR

An employee who is not satisfied with a refusal by the employer to inquire into a complaint of sexual harassment may report/refer the matter to the Director-General of the DOL.

Section 81D requires that when a complaint of sexual harassment is made to the Director-General, the Director-General must assess the complaint and may direct the employer to inquire into the complaint and submit a report to the Director-General within 30 days. If the alleged harasser is the employer, a complaint may be made directly to the DOL.

In addition to the EA, the MOHR launched a Code of Practice in 1999 to provide guidance to employers on how to establish mechanisms to respond to sexual harassment in the workplace.

► Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace

The Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (1999) was introduced to provide a guidance to employers, employees, trade unions and concerned parties on preventing and addressing sexual harassment at work. It encourages the development and implementation of policies and practices to ensure a safe working environment.

Under this Code of Practice, **sexual harassment** in the workplace is defined ⁶¹ as "Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment ⁶² that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her or his employment; or that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his or her well-being, but has no direct link to his or her employment."

In the context of this Code of Practice, sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationships. Situations in which employment-related sexual harassment may occur include, but are not limited to:

- at work-related social functions;
- in the course of work assignments outside the workplace;
- at work-related conferences or training sessions;
- during work-related travel;
- over the phone; and
- through electronic media.

Although the Code of Practice provides useful guidance, it does not have any force of law.

⁶¹ ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 13: Labour Inspection and Gender Equality", 2010–11, 45–46. Sexual harassment in the workplace is unwanted conduct of a sexual nature. It is considered a form of gender discrimination, a health and safety issue, and an issue of dignity and integrity. Numerous studies have shown that victims are most often women workers, and they suffer more due to sex and gender stereotypes, prejudices and their precarious employment position. Vulnerable women workers frequently targeted are women migrant workers, including young women, widowed or divorced women, women of racial minorities, disabled women and, in particular, those in low-paying, low-status jobs. A precarious employment position intensifies the fear of jeopardizing a job, and hinders victims from feeling safe to complain or seek support.

⁶² A complaint of sexual harassment can be made: (i) by an employee against another employee; (ii) by an employee against an employer; or (iii) by an employer against an employee.

The Penal Code

Labour inspectors should also be aware that gender-based harassment and violence may constitute offences under the Penal Code, in its provisions that deal with sexual violence in the form of harassment and rape.

- ▶ **Section 375A of the Penal Code** defines rape as “a man has sexual intercourse with a woman under circumstances as defined by the act”.⁶³
- ▶ **Section 509 of the Penal Code** defines harassment as “whoever, intending to insult the modesty of any person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or intrudes upon the privacy of such person, shall be punished with imprisonment for a term which may extend to five years or with fine or with both”.

When a complaint of sexual harassment is reported to the police, the following provisions may be invoked by the police in the process of criminal investigation: liability on assault (section 351); outraging of modesty (section 354); outraging of decency (section 377-D); criminal intimidation (section 503); and using words or gestures to insult the modesty of a woman (section 509).

Section 4.4 below discusses the challenges in labour inspection of gender-based discrimination, violence and harassment, and how labour inspectors can act to help victims and help gather evidence against possible perpetrators.

▶ 4.2 What are some of the issues of gender-based discrimination, violence and harassment in the workplace?

Women are a significant force in Malaysia's labour market and make important contributions to the country's social and economic well-being. Despite that, decent work for women, including equal rights and opportunities at work, are not guaranteed. Women continue to experience different direct and indirect forms of gender-based discrimination, as explained below.

⁶³ WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, 58. The definition of rape under the Penal Code is problematic for the following reasons: i) the exception to subsection 375 of the Penal Code that permits marital rape; and ii) 377CA, which considers rape with a body part other than the penis, or rape with an object, to be sex “against the order of nature” rather than rape.



Photo source: GettyImages

▶ Forms of gender-based discrimination

Discrimination can be an individual incident or part of systematic, pervasive and long-term practice. It is important to note that **protective measures** and **affirmative action** measures are not considered discriminatory as long as the evidence supports the need for them, and they are strategically designed to address inequality and discrimination. However, the following should be avoided:

- ▶ **Structural discrimination (or systemic or institutional discrimination):** This is deeply embedded in many cultures, policies and workplaces and is entrenched in social patterns, organizational structures and legal constructs that reflect and reproduce discriminatory practices and outcomes.
- ▶ **Discrimination in law (de jure):** Discrimination in laws, regulations and rules.
- ▶ **Discrimination in practice (de facto):** Discriminatory outcomes in real life.
- ▶ **Direct discrimination:** When unequal treatment between men and women stems directly from laws, rules or practices that make an explicit difference between women and men.
- ▶ **Indirect discrimination:** When rules and practices appear neutral, but in practice lead to disadvantages primarily suffered by persons of one sex, gender, race, colour or any other prohibited ground.

Gender-based discrimination in the labour market often reflects cultural and societal perceptions of gender roles, and manifests most clearly in gender-based division of labour, job segregations, or gender wage inequality.

► How does gender-based discrimination manifest in the labour market?

Gender-based division of labour is prevalent in the labour market. Gender-based division of labour means the social distribution of tasks according to a person's sex or gender identity. This has resulted in relocating members of different genders into different types of occupational roles and work, namely separate labour forces in the economy of paid employment. For example, women are disproportionately over-represented in the domestic work sector because labour markets operate on the assumption that women are traditional "caregivers" and work such as cleaning, cooking and caring for children or the elderly is often viewed as "women's work".

- **Gender-based vertical job segregation:** Male workers are concentrated in the higher-status and better-paid positions. For example, in manufacturing, management is dominated by men, while women mainly work on the assembly lines.
- **Gender-based horizontal job segregation:** Different sexes and genders work in different types of occupations and jobs. For example, the feminization of domestic work.

Labour market segregation alone may not equal discrimination in legal terms, as it could be driven by sociological and cultural factors. However, it is likely to have a negative effect on women's access to equal opportunities. Even as more women enter the job market, the jobs open to them tend to be for low-paid "female" occupations like domestic work and childcare. Discrimination against women can also be demonstrated by the continued resistance in the labour market to appointing women to certain positions, a reluctance to promote women to management posts, and an unwillingness to shorten workdays and implement paid maternity leave and parental leave.

The gendered dimensions of Malaysia's labour market are reflected in laws that regulate women's access to work and employment, such as restrictions imposed by the EA that relate to women's access to night and underground work, as explained in section 4.1 above. The gendered structure of the country's labour market extends to a number of key labour market indicators, including on labour market participation rates, remuneration and minimum wage coverage. According to the Department of Statistics of Malaysia (DOSM), Malaysia's female labour force participation rate stood at 55.6 per cent in 2019, significantly below the country's male labour force participation rate of 80.8 per cent and the national rate of 68.7 per cent.⁶⁴

Women's perceived caregiving roles have a significant effect on their ability to engage, remain and progress in paid employment.

⁶⁴ Department of Statistics Malaysia (DOSM), Labour Force Survey Report 2019, 9 August 2019. <https://www.dosm.gov.my>.

In Malaysia, women represent the majority (68.3 per cent) of those outside the workforce, with "housework or family responsibilities" being the most commonly cited reason for not seeking work. Among employed persons who worked less than 30 hours per week, 47.7 of women cited housework or family responsibilities as being the main reason. By comparison, only 3.5 percent of men cited housework or family responsibilities for being outside the labour force, reflecting the uneven distribution of unpaid care work between men and women. The lack of paternity leave provisions under the Malaysian employment laws is both a symptom and contributing factor for this gender-based division of roles. Similarly, women's salaries and wages across all skills levels are, on average, lower than their men counterparts according to a 2019 survey by the Department of Statistics of Malaysia.⁶⁵

Gender-based labour market segregation is also apparent in Malaysia's approach to the employment of migrant workers. The World Bank estimates that the number of migrant workers in Malaysia could be as high as 3 million, according to a report by the Institute of Labour Market Information Analysis (ILMIA) under the MOHR.⁶⁶ Malaysia employs migrant workers from 13 countries across 6 economic sectors, with most migrant workers concentrated in manufacturing (36 per cent), construction (19 per cent), plantations (15 per cent) and services (14 per cent). Indonesians make up the largest group of migrant workers in the country, accounting for 40 per cent of Malaysia's migrant workforce, followed by Nepalese (22 per cent) and Bangladeshis (14 per cent). Women migrant workers account for 20 per cent of migrant workers in Malaysia, and are employed mostly in domestic work, services and manufacturing, reflecting stereotypes of gender roles and sex-based division of labour.⁶⁷ Indeed, in Malaysia, only women migrants can apply to be migrant domestic workers.

According to the World Bank's Malaysia Economic Monitor on Immigrant Labour, immigration of women migrants has been driven by labour shortages, particularly of Malaysian women. Indeed, "housework" has been cited as the main reason hindering Malaysian women from entering the workforce.⁶⁸ Numerous reports indicate that the immigration of women migrant domestic workers to Malaysia has facilitated the higher participation of Malaysian women in the workforce, filling the gaps in low- and high-skilled positions.⁶⁹

⁶⁵ DOSM, Salaries and Wages Survey Report 2019, 2020.

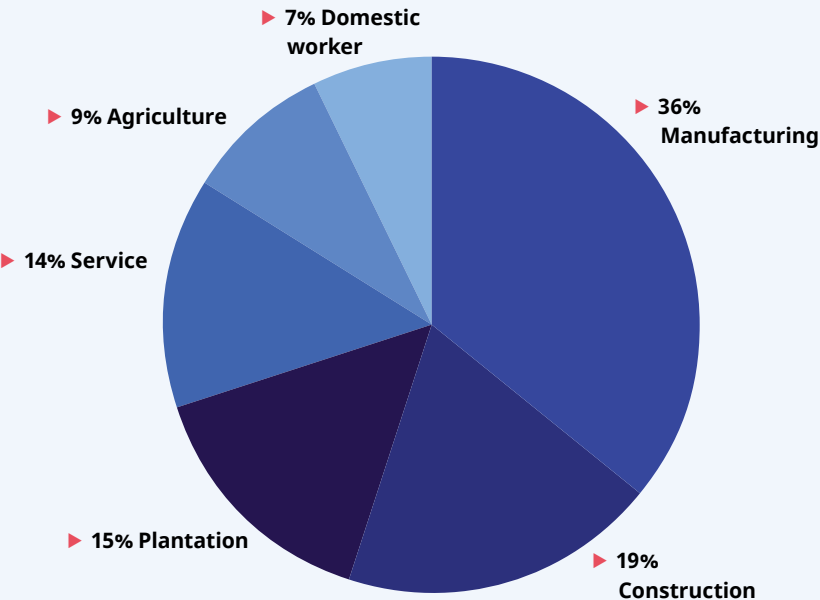
⁶⁶ Official estimates: A wide range of estimates are provided by different government sources: 1.8 million as of December 2017 estimated by the Ministry of Home Affairs (MOHA); 2.26 million by the Labour Force Survey (2017); and 3.3 million by the Population and Demography Department of the DOSM (2018). Unofficial estimates: Lee and Khor (2018) estimated a minimum number of about 3.85 million foreign workers, by multiplying the number of employed in the Labour Force Survey 2016 by a share of foreign workers in each sector identified by National Employment Returns data (2016). They suggest that the actual total number of foreign workers could be around 5.5 million. For further details, see H.A. Lee and Y.L. Khor, "Counting Migrant Workers in Malaysia: A Needlessly Persisting Conundrum", Issue: 2018 No. 25, ISEAS Yusof Ishak Institute. See World Bank, Who Is Keeping Score?: Estimating the Number of Foreign Workers in Malaysia, April 2020, 17–18.

⁶⁷ World Bank, Who Is Keeping Score?: Estimating the Number of Foreign Workers in Malaysia, April 2020, 20.

⁶⁸ WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, 244. In 2015, 60 per cent of women outside the labour force gave "housework" as their main reason for not seeking employment.

⁶⁹ World Bank, Malaysia Economic Monitor on Immigrant Labour, December 2015, 30.

► Sectoral distribution of migrant workers, 2018



Source: MOHR, May 2018

While violence and harassment in the workplace can affect all workers, it has a clear gender dimension and can affect certain groups more than others. In the context of work, violence and harassment may occur among co-workers, and workers are also at risk of violence from employers, customers, clients and others. Although statistics on violence and harassment at work are patchy, sexual harassment experience by women is among the most common complaints.⁷⁰ Increasingly, technology is exacerbating the risk to women, as harassment, bullying and intimidation occur in all kinds of digital platforms and media.⁷¹

⁷⁰ “Voices of Malaysian Women on Discrimination and Harassment in the Workplace” [Data], Vase.ai, 2020. <https://vase.ai/resources/womens-rights/>.
⁷¹ UN Women, “COVID-19 and Violence against Women: The Evidence Behind the Talk – Insights from Big Data Analysis in Asian countries”, 2021.

► Table 7: Statistics on violence against women, 2009–2016

Police Reports	2009	2010	2011	2012	2013	2014	2015	2016
Domestic violence	3 643	3 173	3 277	3 488	4 123	4 807	5 014	5 796
Rape	3 626	3 595	3 301	2 998	2 767	2 045	1 873	1 698
Incest	385	N/A	342	302	249	304	251	253
Abuse of domestic workers	N/A	N/A	78	29	28	28	N/A	N/A
Child abuse	203	257	242	285	295	328	N/A	N/A
Outrage of modesty	2 110	2 054	1 941	1 803	1 730	1 590	1 585	1 526
Sexual harassment in the workplace	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Source: Royal Malaysian Police and the Ministry of Women, Family and Community Development.⁷²

Women migrant workers – Vulnerability, gender-based discrimination, violence and harassment

Women migrant workers in Malaysia are exposed to gender-based inequalities, discrimination and risks of exploitation, violence and harassment - made worse by their status as women and as migrants.⁷³ This is evident in both formal policies that regulate the migration of women workers into Malaysia, and public attitudes toward migrant workers. For example, cultural assumptions or gendered norms often see cleaning and care work as “women’s work”, and, as such, only women migrant workers are allowed to be employed as migrant domestic workers. This gendered work segmentation may contribute to domestic work being undervalued and resulting in lower salaries for women domestic workers. Domestic workers are also exempt from minimum wage regulations afforded to workers in other sectors. As discussed above, the EA classifies domestic workers as “servants, maids and helpers” and also excludes them from many labour protection measures ranging from paid leave, rest days, set work hours, sick leave and rest time, to maternity protection.

⁷² The table is adopted from WAO, The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, 357.
⁷³ ILO, Public Attitudes Towards Migrant Workers in Japan, Malaysia, Singapore and Thailand, 2019.

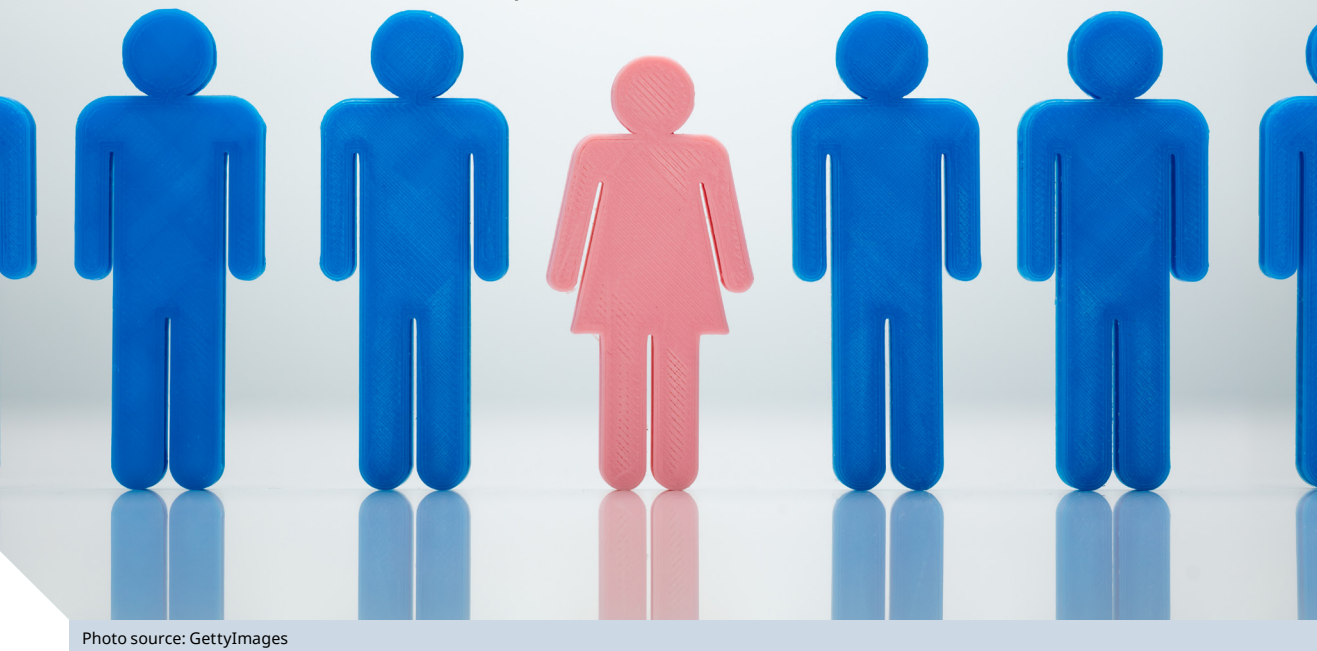


Photo source: GettyImages

An ILO-UN Women study on public attitudes toward migrant workers in Japan, Malaysia, Singapore and Thailand found that the majority of respondents from Malaysia were not in favour of granting equal labour rights for domestic workers and equal wages to migrant workers for doing the same job, or allowing pregnant women migrant workers to work.⁷⁴ This perception of gender roles, and the negative public attitudes, are mirrored in Malaysia's labour migration regulations and policies.

Women migrant workers are further subjected to additional gender-based regulations that determine their suitability for work. Immigration policies subject women migrant workers to pregnancy discrimination and sanctions during all phases of the migration experience: recruitment, employment and termination.

They are required to undergo a pregnancy test before departure from their home country, and to repeat it on an annual basis. If a woman migrant worker is found to be pregnant, she will be terminated from her employment and deported at her own expense.⁷⁵ Furthermore, the Malaysian Government imposes policies that prohibit migrant workers from establishing permanent residence, reuniting with their family members or marrying Malaysian citizens.

⁷⁶

► 4.3 What are the labour inspectors' mandates on gender-based discrimination, violence and harassment in the workplace?

Labour inspectors can prevent and address gender-based discrimination, violence and harassment in the workplace through the promotion, supervision and implementation or enforcement of national labour laws, international labour standards and OSH measures to ensure a safe working environment for workers.

The mandates of labour inspectors on addressing issues of gender-based discrimination, violence and harassment in the workplace in Malaysia are contained in:

- The EA, which gives a direct mandate to the Director-General of Labour and the officers of the DOL. The Sabah and Sarawak Labour Ordinances are yet to be amended to include sexual harassment provisions.
- The Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (1999). The obligations to comply are ensured through enforcement by labour inspectors.
- The ATIPSOM, on issues regarding TIP. Labour inspectors are empowered to enforce this law and to work with other enforcement agencies under the MAPO.

► 4.4 What are the challenges in doing labour inspection of gender-based discrimination, violence and harassment, and how to address these issues?

Difficulty in identifying gender-based abuses

Physical signs of violence and abuse are not always apparent, and those who have experienced violence may not report their experiences for various reasons, particularly in instances of sexual harassment and sexual violence and abuse.⁷⁷ In some instances, the effect of the abuse is psychological, and survivors face psychosocial risks.

⁷⁷ ILO, Forced Labour and Trafficking in Persons: Training Manual for Malaysian Law Enforcers, 2020, 42–43.

⁷⁴ ILO, Changing Attitudes and Behaviour Towards Women Migrant Workers in ASEAN: Technical Regional Meeting, 26–27 November 2018; and ILO, Public Attitudes Towards Migrant Workers in Japan, Malaysia, Singapore, and Thailand, 2019.

⁷⁵ ILO, Public Attitudes Towards Migrant Workers in Japan, Malaysia, Singapore, and Thailand, 2019, 30.

⁷⁶ ILO, Public Attitudes Towards Migrant Workers in Japan, Malaysia, Singapore, and Thailand, 2019, 5.

Psychosocial risks include work-related stress determined by psychosocial hazards arising from poor work organization, work design, working conditions and labour relations. This becomes a risk to health and safety, in which prolonged work-related stress can contribute to anxiety, burnout, depression, memory loss, peptic ulcers, inflammatory bowel diseases, musculoskeletal disorders, hypertension and, as a consequence, to the development of heart and cardiovascular diseases. It may also alter immune functions, which may, in turn, facilitate the development of cancer.⁷⁸

Women workers and women migrant workers are susceptible to these risks, particularly related to stress, concerns about job security and situations of sexual harassment or workplace violence.⁷⁹ The following tools are recommended reference materials for addressing challenges faced by labour inspectors:

- ▶ Sample Inspectorate Questionnaire on Sex Discrimination and Equality (Annex 5)
- ▶ Sample Interview Form on Sexual Harassment (Annex 6)

Lack of trust of authorities

A survivor-centred approach to enforcement can help address the vulnerabilities of survivors, and aims to build mutual trust between labour inspectors and survivors. Labour inspectors are mandated primarily to protect workers' rights, but there are various reasons why victims of violence might not report violence or harassment. These reasons include ongoing threats by the perpetrator, feelings of guilt or shame and a sense that the authorities will not do anything about the case. It is also not uncommon that justice systems sometimes blame the survivor and not the perpetrator, if the enforcers and prosecutors are not trained on gender-sensitive approaches to survivor protection. Additionally, survivors may not be able to afford the costs of accessing legal redress, or are not empowered to understand the legal process. The process of reporting a case to labour inspectors may also make the victim re-experience the trauma.⁸⁰ For some women migrant workers, their migration status may deter them from reporting experiences of violence and harassment. Those who are in irregular situations may be afraid to report directly to the authorities for fear of being arrested, detained or deported.

Labour inspectors have to understand that the survivors of violence and harassment may have suffered physical, sexual, emotional and psychological violence that can have a lasting impact on physical and mental health. Some of the consequences can be serious and may result in death, injury, shock, illness, disability, infections, eating and sleeping disorders or alcohol or drug abuse. Specific to women survivors, the consequences can include miscarriage, unwanted pregnancy and unsafe abortion. Labour inspectorates should be aware of public services and NGOs and CSOs that can provide support to survivors. Referral to other agencies should be made when labour inspectors have assessed that such support is needed.

Lack of capacity to deal with the survivor's circumstances

As well as the risks and consequences described above, it is quite common for survivors to experience depression, post-traumatic stress disorder, suicidal thoughts and behaviours, anxiety, fear, anger, shame, insecurity, self-hate and self-blame. Referral to other agencies should be made if it is deemed that additional support is needed to address these issues. The least a labour inspector can do is to empathize with the survivor and facilitate contact with an appropriate service provider, while also taking legal action against the abuser. A list of service providers that can support survivors' access to essential services can be found in Annex 10. Women's rights organizations like Women's Aid Organization and All Women's Action Society do not discriminate the nationality nor legal status of the workers.

Security risks

Survivors of gender-based discrimination, violence and harassment can feel insecure, threatened, afraid and unprotected, and may be at risk of further violence. Some abusers are involved in syndicates or gangs. It is not uncommon for unscrupulous employers to threaten women and their family members, especially trafficking survivors. Labour inspectors should collaborate with the police in ensuring the security of survivors irrespective of their immigration status, and provide shelter and legal services.

⁷⁸ ILO, "Psychosocial risks and work-related stress".

⁷⁹ ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 13: Labour Inspection and Gender Equality", 2010-11, 46-47.

⁸⁰ UN Women, slide presentation.

The abuser may not be the employer

Certain perpetrators in workplace gender-based discrimination, violence and harassment may be colleagues, recruiters or third-parties like clients or suppliers.

Under the EA, an employer must take several steps upon being informed of any instance of sexual harassment. Labour inspectors should ensure that employers comply with the provisions of that law. Indeed, the Director-General of the DOL has been given specific powers and responsibilities to require employers to investigate complaints of sexual harassment.

As part of survivor-centred enforcement, it is important to refer survivors to appropriate service providers, to address immediate needs and deal with the health and psychosocial consequences of the abuses mentioned in the previous section.

Gathering evidence to meet the legal threshold

Labour inspectors have to collect invidence of violence and harassment while they conduct the inspection. These evidence could be documents, testimonies, photos and signs of abuse such as bruises, injuries or psychological in nature. Where appropriate experts such as psychologists or social workers could help determine the mental state of the worker that may be attributable to the abuses he or she has endured. Some information may be withheld by the victims due to lack of trust from authorities. It would be essential to gain trust of the victims and ensure their security and safety. Labour inspectors need to be also skilled at interviewing to probe presence of indicators of violence and harassment at the workplace, including indicators of forced labour. Annex 6 contains the interviewing guide related to sexual harassment.

► 4.5 What can be done if you find gender-based discrimination, violence and harassment in the workplace?

Labour inspectors should place the rights and needs of survivors at the centre of strategy, and ensure compassionate and sensitive delivery of services, in a non-judgemental manner, to ensure the protection of victims of gender-based discrimination, violence and harassment violations.

The following principles of working with survivors of violence against women and girls should be applied:

► Overall principles of working with victims/survivors of violence against women and girls

► 1. A human rights-based approach

► 2. Advancing gender equality and women's empowerment

► 3. Culturally and age-appropriate and sensitive

► 4. Victim/survivor centered approach

► 5. Safety is paramount

► 6. Ensure perpetrator accountability

In particular, Principle 4 described above requires that:

- ▶ survivors should be treated with dignity and respect;
- ▶ survivors have freedom to choose the course of action;
- ▶ survivors' right to privacy and confidentiality should be respected;
- ▶ survivors should not be discriminated against; and
- ▶ survivors are provided with complete and clear information to inform their decisions.⁸¹

Trade unions and CSOs are often the first point of contact, documenting and recording complaints and gathering evidence. They help to improve the survivor's experience with the criminal justice system. Without CSO legal support, many cases of gender-based discrimination, harassment and violence would not make it through the courts.

Labour inspectorates should be aware of and, when possible, refer victims of violence and harassment to public services and CSOs that can provide them with support through the following range of measures:

Providing essential support	Finding housing, translation services, health services, forensic interviews and general social services for survivors.
Providing legal assistance	Helping connect with CSOs, trade unions and lawyers to pursue legal cases on behalf of survivors, to pursue prosecutions and obtain legal compensation.
Pursuing claims	Liaising with law enforcement and working with lawyers.
Preparing the survivor	Supporting the survivor to provide statements to the police, and to testify in court.
Witness protection	Protecting survivors and other witnesses who are often victimized by further threats and intimidation by perpetrators.

⁸¹ UN Women, slide presentation.

▶ 4.6 How can strategic compliance planning be used to prevent gender-based discrimination, violence and harassment in the workplace?

Recalling the national and international legal frameworks⁸² on gender-based discrimination, violence and harassment in the workplace, the labour administration and inspectorates could take the following actions:

- ▶ Promote gender equality by developing gender equality indicators; by regularly compiling, publishing and disseminating sex-disaggregated data on these indicators; and by setting up systems to measure and monitor progress towards agreed targets.⁸³
- ▶ Eradicate gender-based discrimination, violence and harassment by developing respective indicators, and setting up checklists and SOPs toward agreed targets. The national legal framework on gender-based discrimination, violence and harassment should be put into operation in labour inspection procedures, checklists and SOPs.
- ▶ Undertake special enforcement and awareness-raising campaigns related to these issues, to improve employer and worker understanding about the legal standards, as well as labour inspection actions, and the availability of other public or private support services.
- ▶ Recruit an equitable number of female and male inspectors, and assign women inspectorate specific functions, and capacitate them to deal with the special issues of women workers' and women migrant workers, including sectoral labour protection issues.⁸⁴
- ▶ Gather gender-disaggregated data where possible regarding general labour standards and OSH violations, in the course of inspection work, to better understand the circumstances of male and female workers, and to identify possible equality gaps or discriminatory trends that should be better addressed in law or in the practice of the inspectorate.
- ▶ Build capacity on and conduct gender analysis of vulnerable groups of workers, to better address gender issues.
- ▶ Collaborate with organizations that specialize in dealing with violence, harassment, forced labour, trafficking of women, and refer as needed.
- ▶ Institutionalize training for labour inspectors on conducting gender-balanced and gender-sensitive labour inspections.

⁸² The 1919 Treaty of Versailles establishing the ILO (Part XIII, Art. 427, Ninth) called on Member States "to make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed." According to the UN Women-ILO The World of Work Handbook, gender-responsive labour inspection can be achieved through hiring more women labour inspectors, promoting gender awareness throughout the inspection system, the introduction of gender equality indicators for inspection, and training to enable inspectors to identify and address violence and discrimination.

⁸³ ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 16: Labour Inspection in Domestic Work", 2010-11, 17.

⁸⁴ Article 8 of Convention No. 81, and Article 10 of Convention No. 129; and ILO, Tool Kit for Labour Inspectors (ILO Budapest 2006).

► 4.7 Exercises

► **Exercise 1:** Labour inspection, gender-based discrimination, violence and harassment, and women migrant workers in Malaysia

When	Do this exercise after section 4.6.
Duration	25 minutes of role play
Objective	To understand both the needs of women migrant workers and challenges in working with survivors of gender-based discrimination, violence and harassment in labour inspection.

Methodology

Case study
Participants should be given the Labour Inspection Form of the DOL. Instruct participants acting in the role of labour inspectors to pay attention to the women migrant workers’ needs; think about information gaps they may be seeking to address as a labour inspector; identify potential challenges concerning survivor identification of gender-based discrimination, violence and harassment, and the engagement, reaching out, interview, documentation and evidence gathering with the witness.

Role play
Acting in the role of labour inspectors. Participants should be given the Labour Inspection Form of the DOL.

► **Case study 1**

Cynthia was a domestic worker in Klang. When she applied for the job in Malaysia, from the Philippines, she signed a contract through a Filipino agency. Upon arrival in Malaysia on 5 August 2016, she was met by NJ, an agent from a local agency, and was made to sign a contract that stated a lower salary than what was agreed upon in the Philippines. When Cynthia complained about this, she was told that she had to pay 150,000 Philippine pesos to terminate her contract, as this was the amount spent by her employers for her. The agent took Cynthia’s passport and mobile phone. The employer gave her another mobile phone so that the employer could contact her, and this also allowed her to communicate with her family. Cynthia’s working conditions were very difficult, as she was made to work until very late at night and had to wake up very early each day. Cynthia’s family wanted her to return home, but as she did not have her passport, she was unable to do so. The family approached Ms. S, a CSO representative, for help.

On 15 September 2016, Ms. S informed the Philippine Embassy of the case. The embassy called the local agency and asked them to bring Cynthia to the embassy. On 17 October 2016, the agency brought Cynthia to the embassy for settlement of the claims. The embassy welfare officer personally interviewed Cynthia without the presence of the agent, to verify the complaint (which was filed as “substitution of contract”). Based on the facts, Cynthia did not sign a contract, but an undertaking that she would complete her contract for a salary equivalent to 1,600 ringgit per month, and with no rest day or day off. The employer, through the agent, paid the outstanding amount of 1,600 ringgit per month and for rest days totalling 4,307.69 ringgit. The deductions from Cynthia’s salary included a 1,500-ringgit cash advance while in the Philippines, levy of 631 ringgit, fee to the Foreign Workers’ Medical Examination Monitoring Agency (FOMEMA) of 201.40 ringgit, insurance of 100 ringgit, and processing fee of 212 ringgit. Cynthia paid 445 ringgit for her ticket back to Manila, and she flew home on 20 October 2016.

Source: WAO, *The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia*, 2019.

► **Discussion**

1. What are the woman migrant worker’s needs in the case study?
2. What are the information gaps the labour inspectors may be seeking to address?
3. Identify potential challenges concerning survivor identification of gender-based discrimination, violence and harassment in the case study.
4. Identify potential challenges concerning labour inspectors’ engagement in the investigation, including reaching out, interview, documentation and evidence gathering with the witness.

► Case study 2

Mohd Nasir Deraman v. Sistem Televisyen Malaysia Berhad (TV3), Award No. 480, 2010

The claimant was an executive broadcast journalist for TV3 (the company). He was accused of sexually harassing a practical trainee of the company, Ong Vincci (the victim) who alleged that the claimant laid his head in her lap despite her protests and rejection, while travelling to Port Dickson to produce a programme. The victim also alleged that the claimant made sucking sounds at her and, while looking at her breasts, asked if he could bite them. The claimant admitted that he laid his head in the lap of the victim and that it was done with the consent of the victim. He also contended that he had the habit of making sucking sounds due to a small space between his front teeth, and that he did not make these sounds with any malicious intent toward the victim. Regarding the "biting of breasts" he said that it was a general joke between them in the car. After perusing the evidence and statements of witnesses, the Industrial Court held that the victim's story was more reliable and corroborated by independent evidence. The court held that, "The Claimant's defence is a bare denial of the wrong doing and a blatant lie and not acceptable at all."

Source: Case study taken from Kamal Halili Hassan and Yee Zing Lee, "Sexual Harassment in the Workplace: Selected Court Cases and New Legal Provisions in Malaysia", Asian Social Science, Vol. 11, No. 16, 2015.

► Case study 3

Khoo Ee Peng v. Galaxy Automation Sdn Bhd, Award No. 656, 2009

The claimant stated that she was constructively dismissed by the respondent company's branch manager after she rejected his sexual advances. The company's reason for her dismissal was that she went on leave without filling in the leave application form. She, on the other hand, claimed that she had been sexually harassed by the manager a number of times, and that she did not lodge a police report over the previous incidents because she was concerned about her self-respect and losing her source of income for her family. She also testified that after the incident, her petrol allowance was withdrawn, and, although she was not demoted, she was assigned work she did not want to do. After considering the whole chronology of the case, the Industrial Court ruled that the claimant had successfully proved constructive dismissal against the company and that she did not voluntarily resign from her employment.

The Industrial Court considered the chain of events before concluding constructive dismissal of the employee, and ordered that the claimant be reinstated to her former position without any loss of seniority because the branch manager had resigned from the company and she would not have to endure further sexual harassment from him in the workplace.

Source: Case study taken from Kamal Halili Hassan and Yee Zing Lee, "Sexual Harassment in the Workplace: Selected Court Cases and New Legal Provisions in Malaysia", Asian Social Science, Vol. 11, No. 16, 2015.

► Discussion

1. What establishes a sexual harassment claim in the case study?
2. What are the information gaps the labour inspectors may be seeking to address?
3. Identify potential challenges concerning survivor identification of gender-based discrimination, violence and harassment in the case study.
4. Identify potential challenges concerning labour inspectors' engagement in the investigation, including reaching out, interview, documentation and evidence gathering with the witness.

►

Exercise 2: Sexual harassment

Adopted from ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 13: Labour Inspection and Gender Equality", 2010–11, 55–56.

Task

Individually, read the statements below and indicate if you agree with them or not, using a checkmark. Do so honestly.

Share your answers others in your group.

The facilitator will comment and discuss in plenary.

Time

10 minutes to read and fill in the form.

15 minutes to share answers in pairs.

30 minutes for feedback and discussion in the workshop

Statements on sexual harassment	I gree	I do not agree
In establishing a sexual harassment claim, the fact that the survivor made previous complaints about the same conduct is evidence that the conduct was, in fact, unwelcome.		
Behaviour such as joking, innuendo, flirting and asking someone to go on a date is innocent and cannot be considered as sexual harassment.		
A single incident does not constitute harassment. To qualify as sexual harassment, the behaviour must be deliberate or repeated over and over.		
There are so many critical problems in the workplace that sexual harassment cannot be considered as a priority.		
To detect and be able to deal with this issue, it would be appropriate to assign these duties to well-trained women inspectors.		
Sexual harassment only applies to persons of a different sex.		
Sexual harassment only applies if the survivor is in a subordinate and vulnerable position.		
Just displaying pornographic images in a workplace cannot be considered as sexual harassment.		
Generally, international instruments define sexual harassment broadly as a form of violence against women, and as discriminatory treatment, while national laws focus more closely on illegal conduct.		
A single incident constitutes harassment. For example, a case in which a supervisor fondled an employee's breasts would constitute a case of sexual harassment arising from a single incident.		

Annex 1

Brief for labour inspectors on the domestic work sector

► Annex 1: Brief for labour inspectors on the domestic work sector

Importance of the domestic work sector

Malaysia has a relatively low labour force participation rate among women. According to the DOSM, Malaysia's female labour force participation rate stood at 55.6 per cent in 2019, significantly below the country's male labour force participation rate of 80.8 per cent and the overall national rate of 68.7 per cent.⁸⁵ Women's perceived caregiving role has a significant effect on their ability to engage, remain and progress in paid employment. According to the World Bank, the employment of domestic workers, especially migrant domestic workers, has been instrumental in increasing the women's labour force participation rate. Migrant domestic workers, many of whom are women, provide childcare services and housework, bringing "a positive impact on employment of Malaysian women in the services sector, especially in finance, real estate, insurance, health and other high value-added services."⁸⁶

Definitions of domestic work and domestic worker, as per ILO Domestic Work Convention, C189:

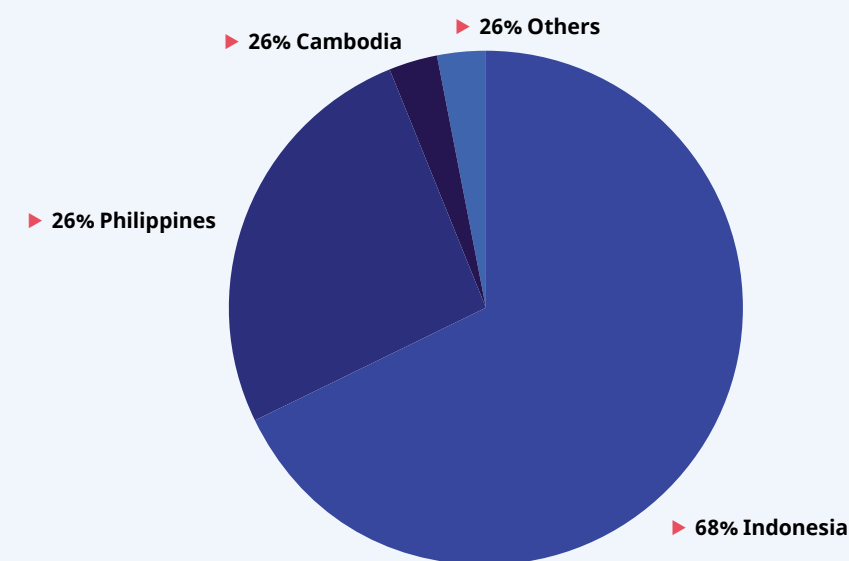
- **domestic work** means work performed in or for a household or households;
- **domestic worker** means any person engaged in domestic work within an employment relationship;

Labour situation overview

The domestic work sector in Malaysia is characterized by high levels of informality, private workplaces and exclusion from full labour law and social protections that apply to other sectors. Laws that govern the minimum wage in Malaysia also explicitly exclude domestic workers from coverage. As a sector of work, domestic work is highly gendered in nature; many domestic workers are women, and women migrant workers increasingly carry out domestic work. As of March 2020, the number of temporary employment passes issued by the DOI for domestic workers was 128,599.⁸⁷ Statistics from the Ministry of Home Affairs in 2014 indicated that women migrant domestic workers mainly come from neighbouring countries in ASEAN, mostly from Indonesia (68 per cent) and the Philippines (26 per cent).

The costs of hiring migrant women domestic workers are generally considered high for both employers and the migrant workers themselves, due to high recruitment fees charged by recruiters in the countries of origin. According to the ILOs Migration Cost Survey Among Indonesian and Filipina Domestic Workers in Malaysia, 2020, domestic workers from Indonesia and the Philippines pay an average of \$251 to migrate to Malaysia for work.⁸⁸ Many of them incur debts before migrating, and experience wage deductions during employment in Malaysia, to meet the cost of migration. This puts women migrant workers in the domestic work sector at risk of debt bondage.

► Figure 1: Migrant domestic workers' countries of origin, 2014



Source: World Bank, Malaysia Economic Monitor on Immigrant Labour, December 2015.

⁸⁵ DOSM, "Labour Force Survey Report 2019", 9 August 2019.

⁸⁶ World Bank, Malaysia Economic Monitor on Immigrant Labour, December 2015, 30.

⁸⁷ Communication Unit, Department of Immigration statistic, 2020.

⁸⁸ ILO, Migration Cost Survey Among Indonesian and Filipina Domestic Workers in Malaysia, 2020.

Given the limited labour law protections and the fact that their workplaces are usually private properties and sometimes isolated, women migrant domestic workers are exposed to additional risks of violence and harassment. The media has reported many abuses of domestic workers in Malaysia, with some perpetrators being prosecuted under the ATIPSOM. The following are examples of reported cases of abuses perpetrated against women migrant domestic workers:⁸⁹

- ▶ **Ida, 39 years old, from Indonesia.** Ida, who worked as a domestic helper for a family in Mont Kiara, was subjected to physical and mental abuse by her employers, even for petty mistakes. She reported that they often got mad at her for no apparent reason, and sometimes the wife would hit her and slap her in the face. On one occasion, she claimed, she was slapped for being unable to read the time on the clock correctly. She was so shaken up that she urinated on the spot.
- ▶ **Nora, 28 years old.** For five years, she claimed, her passport and part of her salary were withheld, and her employers made her work “night and day”. She also had to work at her employer’s shop in Klang after finishing her work as a domestic helper.
- ▶ **Nona, from Indonesia.** Nona filed a claim at the Labour Department office in October 2017 for a proportion of unpaid wages for a period of four and a half years. The DOL was unable to assist, as she did not have a valid work permit. Nona appealed to the Labour Court against the DOL’s decision. However, the court dismissed her claim for back wages because she was an undocumented migrant worker. The court stated that any claims by irregular workers against others automatically fail. Shah Alam High Court of Selangor State ruled that, “It is premature for the Labour Court to consider the valid (work) permit issue without first ascertaining whether there was any employment relationship between the appellant and respondent,” and ordered that the case be remitted back to the Labour Court for a full hearing of the merits of Nona’s claim for unpaid wages. The case is pending hearing in the Court of Appeal. A stay of proceedings has also been granted. As such, the Labour Court has adjourned the matter until disposal of the case.

Features of the sector

Section 57A of the EA requires the employer to notify the Labour Department within 30 days of any migrant domestic worker’s employment.

Limited legal protection for domestic workers in Malaysia leaves them at high risk of violence and harassment. The EA refers to domestic workers as “domestic servants” and excludes them from many of the basic labour protections, including work hours, rest days, public holidays, annual leave, sick leave, maternity leave and severance benefits. At the time of writing, they are also excluded from minimum wage rules, social security coverage, mandatory medical insurance and workers’ compensation benefits.⁹⁰

⁸⁹ FMT, “Domestic workers tell of ‘torture’ by employers”.

⁹⁰ According to The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia, 2019, current discrimination against domestic workers in the EA directly contradicts the CEDAW Committee’s General Recommendation No. 26 that obliges Member States to guarantee equal rights and protections to women migrant workers.

The isolated nature of the workplace – the private homes of employers – of domestic workers makes it challenging for labour inspectors to conduct ad hoc inspections. Many aspects of the domestic work sector are not subject to national labour laws, and this also limits the mandate of the labour inspectorate. Instead, administrative guidelines on labour standards for the domestic work sector guide employers, domestic workers and the labour inspectorate in Malaysia. The following are the administrative guidelines for the sector:

- ▶ Requirements for Hiring a Domestic Worker in Malaysia.⁹¹
- ▶ Guidelines and Tips for Employers of Foreign Domestic Helpers, launched by the MOHR in 2017. (Not legally binding and therefore ineffective for protecting the labour rights of women migrant domestic workers.)

Invisibility of the workforce. Unlike business establishments, private households are not easily monitored. Therefore, labour rights violations and the work and living conditions of domestic workers are usually hidden from the public eye. Many migrant domestic workers do not have freedom of movement and are not able to leave their place of work. Malaysian employment laws do not provide that domestic workers get a paid rest day or holidays. Many domestic workers are prevented from communicating with other people aside from the household members; have their mobile phones confiscated by the employer; or have their access to mobile devices limited by the employer. This makes it difficult for domestic workers to report instances of violence, harassment and labour rights violations.

Low level of awareness of labour rights among domestic workers. Generally, domestic workers are not provided with information regarding their employment rights, or where or how to access services or report instances of violence, harassment and labour rights violations.

Not organized, non-unionized. There are no national and sector-specific unions to organize domestic workers. The informal nature of domestic work also makes it difficult for domestic workers to participate in organizing and establishing trade unions.

Public perception. The ILO’s Review of Labour Migration Policy in Malaysia, 2016, pointed out that “gendered perceptions that domestic workers are members of the household who do not require formal legal protection are deeply engrained within Malaysian society”.⁹² There is also a pervasive perception that domestic workers should tolerate any hardships because they at least have a job.

⁹¹ Human Rights Watch, “Guidelines for Taking in a Foreign Domestic Worker in Malaysia”.

⁹² ILO-ROAP, Review of Labour Migration Policy in Malaysia, 2016, 21–22.

► What the international standards say on labour inspection in the domestic work sector

Convention No. 189 (which has yet to be ratified by Malaysia) and Recommendation No. 201 establish minimum labour standards for domestic workers but also highlight the importance of measures to ensure compliance with laws and regulations protecting them, including through labour inspection. Specifically, Article 17 of Convention No. 189 provides that:

Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

The general assumption that labour inspectorates are uniquely placed to take action against forced labour, as they can access workplaces at any hour of the day or night and can take immediate action, may not be so straightforward for domestic work. This is because the legal mandate of inspectors over domestic work, as well as the right of entry into private households, is often limited.⁹³ However, consultation with the labour inspectors indicates that the crux of the issue is not that mandate, but the ability to perform actual inspection.

► Challenges for enforcement

► Interconnected difficulties for inspection

- Invisibility of the workforce
- Lack of registries and evidence of abuses
- Absence of complaints
- Mistrust in public authorities from part of the workers and employers of domestic workers
- Restrictions to the inspection visit
- Lack of tailor-made approaches of labour inspection

► Features of the sector

- Informal employment
- Lack of coverage of labour law or less protective status of domestic workers
- Information deficits
- Often outside the mandate of labour inspection or other supervisory mechanisms
- Low coverage by social partners
- Cultural challenges (e.g. migrant domestic workers)

Source: ILO

Lack of registries and evidence of abuse. Even though section 57A of the EA requires employers to notify the Labour Department within 30 days of any migrant domestic worker's employment, most employers are unaware of this requirement.⁹⁴ As such, it contributes to the lack of information available to the labour inspectorate pertaining to domestic workers.

Abuses may come in various physical, psychological or administrative forms, and it may be difficult for labour inspectors to identify them and gather appropriate evidence. Bruises and other physical manifestations may not be seen if the domestic worker does not report right after the abuse happens. Psychologists and professional social workers are needed in order to determine the psychological effects on victims.

Labour inspectors also find it difficult to gather evidence on illegal contracts, wage violations, debt bondage or excessive overtime, as domestic workers may not have written contracts, payslips or time cards.

However, there are ways that the labour inspectorate can work to increase the effectiveness of its actions in the domestic work sector:

- Launch a sectoral compliance campaign to increase awareness among employers and domestic workers about the rights of domestic workers and the role of labour inspection, which might in turn increase the number of complaints submitted by workers.
- Cooperate with existing registries (such as social security, migration and taxes) that gather information on domestic work and that also have a related enforcement role.
- Collaborate in particular with employers and workers or their organizations that are present in the sector, and who can contribute to efforts (for example, by participating in a campaign) to improve compliance in the sector.
- Engage with or foster networks with all concerned actors with possible knowledge of the conditions of domestic workers, such as trade unions, NGOs, religious organizations and CBOs.

⁹³ NGO CEDAW, Shadow Report, for the Malaysian Government's Review by the CEDAW Committee, at the 69th CEDAW Session, February 2018.

⁹⁴ Similarly, section 57B of the EA requires employers to notify the Labour Department of any termination of employment of domestic workers. It is an offence to fail to do so. If employers hire migrant domestic workers, they must comply with section 60K of the EA.

► Documentation and registries

In some countries, employers have to deliver pay slips to workers showing the wage-rate, the total number of hours worked, any bonuses or allowances, the corresponding period, value of benefits in kind, the net wage and any discounts to be made (e.g. South Africa, France, Portugal, Zimbabwe). In others such as Jordan, the legislation requires employers of domestic workers to keep evidence of monthly payments. This provides to labour inspectors the tools they need to address individual cases of abuse.

In Finland, the employer must draw up a work schedule and keep a register of any emergency work and overtime which must be kept available for the occupational safety and health authority. On request, the employer must also provide the worker or his or her representative with a written report on these records. The work schedule must indicate the beginning and end of working hours, the break and daily rest period.

In the Philippines, employers are required to register their employees with the Barangay (local district). They are also obliged to keep copies of pay slips for a period of three years. In cases where the employment is facilitated through a private employment agency, the agency will keep a copy of all contracts of domestic workers which shall be made available for inspection by the DOLE (Department of Labour and Employment).

ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 16: Labour Inspection in Domestic Work", 2010–11.

Absence of complaints. The absence of complaints is also related to domestic workers' mistrust in public authorities, particularly among migrant domestic workers and those who are undocumented. The first line of reporting of complaints is usually migrant community-based organizations, CSOs and trade unions, which equally accommodate requests for assistance regardless of legal status.

Restrictions on inspection visits. The EA provides power to labour inspectors to inspect private residences where domestic workers are employed. Many domestic workers are migrants who live in the same household as their employers. Employers may obstruct labour inspectors from conducting inspections of private homes. In some instances, domestic workers may not give access to labour inspectors without the presence of the employer, in which case, labour inspectors may want to visit in the evening when the employers are more likely to be home. Normally, inspections are carried out on a reactive-based approach arising from complaints or reports from NGOs and trade unions.

The following methods may also be effective, and have been tried in other countries:⁹⁵

- In practice labour inspectors may be faced with legal implications from employers who may allege trespass, illegal entry or disrespect of privacy. Nevertheless, forced labour and trafficking cases are urgent matters, and action should be taken immediately upon receipt of a report, without going through the employer for consent. Under section 65 of the EA, there is no need to obtain consent from a house owner to enter premises.
- Maximize documentary evidence gathering that reduces the need to visit the workplace. Examples include:
 - requiring the employer to register domestic workers with the MOHR or other institutions;
 - requiring the employer to keep documents such as labour contracts, work schedules, payslips and risk assessment reports, and even to send them to the labour inspectorate;
 - summoning the employer for an interview or meeting with labour inspectors, to prove, via the document registries, compliance with the law; and
 - interviewing workers to compare their version of the facts with the documents provided by the employer.
- Enhance the role of the judiciary to facilitate labour law enforcement in domestic work settings.
- Organize raids in selected neighbourhoods, and randomly trying to identify abuses based on geographic risk mapping. This can be useful for mapping possible non-compliance and obtaining a better knowledge of the sector, on the basis of which to prepare alternative action. At the same time, this can work as an entry point to reach domestic workers and their employers (canvassing), build trust on labour inspection and provide advice on how best to comply with the law.

Regulating the role of private recruitment agencies is very important for the domestic work sector. Domestic workers are recruited by agencies on behalf of the employers. Each agency must be licensed under the Private Recruitment Agencies Act 1981. A licence can be revoked by the DOL if the agency fails to comply with the conditions of the licence. It is imperative that this Act is enforced strongly.

⁹⁵ ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, 2010–11.

► Access to the workplace

In South Africa, access to the household is possible under the condition that there is a consent of the owner or occupier, or authorization by the labour court on written application by a labour inspector who states under oath or affirmation the reasons for the need to enter the workplace. An expedite substitute consists on using a calling card system. Letters are distributed in mailboxes seeking permission from the employers to gain access to their households, but the response level is very low. Inspectors also try to secure appointments by carrying door-to-door campaigns. For serious violations constituting criminal offenses like child labour or forced labour access can be gained by the police department inspective of labour inspection.

In Western Cape Town, labour inspectors summon employers and domestic workers to come to neutral places for interview, mostly when investigating complaints.

In Ireland, NERA uses a similar method to invite employers by letter to allow access to their houses. In case of refusal they are required to provide an alternative place for the inspection which will consist then on interviews and documental analysis.

Source: ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, "Module 16: Labour Inspection in Domestic Work", 2010-11.

Support to migrant workers. As many domestic workers are migrant workers, labour inspectors may find it difficult to communicate in the language that the workers understand, or to build rapport during a labour inspection. To support migrant workers' needs, labour inspectors should aim to take the following actions:

- Engage at all stages of the migratory flow, thus providing information on the labour rights and obligations of migrant domestic workers and recruitment networks, before departure.
- Establish protocols between receiving and sending countries (including local consular offices) – for example, through sharing of information and referral of cases when migrant domestic workers need assistance for redress of their rights or return to the country of origin.
- Make 24-hour hotlines available, in migrant worker languages, to provide information on labour rights and available complaint mechanisms.
- Make preliminary contact with employers, informing them about the applicable legislation.
- Organize information programmes for employers of domestic workers, in which they are made aware of the existing labour regulations and exposed to their obligations as employers.

- Establish interview programmes with employers of domestic workers, before recruitment, to advise them on how to best comply with the labour legislation and avoid risks of non-compliance.⁹⁶
- Develop an information campaign for the general public about domestic work and the corresponding rights and obligations under the EA.

As recommended by the ILO and UN Women, Labour Inspection: Women Migrant Workers in ASEAN, 2015, pre-departure inspection is necessary, especially for migrant domestic workers. Exploitative recruitment practices often take place in the country of origin, resulting in migrant workers paying excessive migration fees, signing unfair contracts, receiving insufficient training or being trafficked into forced labour. A few ASEAN Member States have taken measures to ensure pre-departure inspections. The following good practices could be of reference for the Malaysian authorities:⁹⁷

- **The Indonesian Government** has identified inspection of labour sending agencies as a priority to ensure the quality of pre-departure training.
- **The Cambodian Government** has a separate regulation on the inspection of private recruitment agencies, including pre-departure training facilities.
- **The Philippines Government**, through its Overseas Employment Administration, has a particularly experienced and rigorous approach to pre-departure standards and control, inspecting recruitment agencies and establishments suspected of being engaged in illegal recruitment and human trafficking.⁹⁸

⁹⁶ ITC-ILO, Curriculum on Building Modern and Effective Labour Inspection Systems, 2010-11.

⁹⁷ ILO and UN Women, Labour Inspection: Women Migrant Workers in ASEAN, 2015, 6.

⁹⁸ "It should be noted that although many migrant women are domestic workers, amongst the ASEAN countries, only the Philippines has covered domestic work under their labour law (Republic Act No. 10361, Domestic Workers Act enacted in 2013)." International Organization for Migration, Labour Inspection for the Protection of the Rights of Migrant Workers, 8th ASEAN Forum on Migrant Labour (AFML), 2015, 16.

Annex 2

Brief for labour inspectors on the oil palm plantation sector

► Annex 2: Brief for labour inspectors on the oil palm plantation sector

Importance of the sector

Palm oil is a multi-billion-dollar industry that feeds into multiple global supply chains, from food to cosmetics. According to a presentation by the Malaysian Agricultural Producers' Association, export earnings for palm oil were 61.3 billion ringgit in 2013. Because of its importance, the oil palm sector is one of the 12 National Key Economic Areas (NKEAs) identified in the Malaysian Government's Economic Transformation Programme (ETP).⁹⁹

Labour situation overview

The palm oil industry in Malaysia relies heavily on migrant labour, which makes up 70 per cent of the plantation workforce. Even with the influx of migrant workers, the industry continues to face labour shortages.

► **Table 8:** Number of migrant workers registered under the temporary employment visa – VP (TE) – by sector, nationality and gender, as of 30 June 2019

Nationality	Plantation		Total	
	Male	Female	Male	Female
Indonesia	170 066	30 984	426 648	277 527
Bangladesh	30 925	13	567 684	1 245
Nepal	2 649	3	306 455	9 647
India	27 411	361	115 057	2 676
Myanmar	745	129	103 721	22 074
Pakistan	5 950	10	61 450	239
Philippines	2 446	665	15 153	37 257
Thailand	286	108	8 234	6 457
Sri Lanka	148	16	4 661	1 828
Cambodia	68	32	1 026	2 519
Total	240 721	32 358	1 626 165	376 262
Grand Total	273 079		2 002 427	
Percentage	13.6%		100%	

⁹⁹ ILO, Review of the Government-to-Government Mechanism for the Employment of Bangladeshi Workers in the Malaysian Plantation Sector, 11 March 2016.

According to the World Bank's Malaysia Economic Monitor on Immigrant Labour, December 2015, two thirds of migrant workers were concentrated in just three States: Sabah (33 per cent), Selangor (21 per cent) and Johor (11 per cent). The prominent role of agriculture has made Sabah a particularly attractive location for migrant workers, representing 35 per cent of all workers in Sabah, significantly higher than any other State.¹⁰⁰ Women migrant workers are allowed to be employed in the plantation sector in Malaysia. While male migrant workers are preferred in Peninsular Malaysia for harvesting, female migrant workers are recruited in Sabah and Sarawak in the plantation sector.¹⁰¹

According to the 2018 Employment Survey in Plantations of the Ministry of Primary Industries and Commodities, the prevalence of forced labour among palm oil plantation workers in Malaysia is 0.8 per cent or, alternatively, 8 out of 1,000 palm oil workers were in situations of forced labour. The prevalence of forced labour is the same in Government schemes, private estates or smallholder palm oil plantations, at 0.8 per cent to 0.9 per cent. The prevalence rates of forced labour were considerably higher in Sarawak (1.3 per cent) than in Peninsular Malaysia and Sabah, each at 0.6 per cent. The survey also estimated that 33,600 workers aged 5 to 17 are child labour. The prevalence rate for child labour out of the total number of children who are associated with palm oil workers is 11.5 per cent, with Sarawak being the highest at 15.3 per cent, followed by Sabah at 12.1 per cent. The prevalence rate of child labour in hazardous work is 8.3 per cent, involving about 24,200 children aged 5 to 17.

Other reports suggest that plantation workers, including women workers, suffer from hazardous working conditions and chronic exposure to harmful pesticides,¹⁰² precarious working conditions and discrimination in the workplace,¹⁰³ and substandard working and living conditions, ergonomics and exposure to pesticides.¹⁰⁴

¹⁰⁰ World Bank, Malaysia Economic Monitor on Immigrant Labour, December 2015, 35.

¹⁰¹ Under the Immigration Act 1959/63 [Act 155], it is within the Minister of Home Affairs' power to issue directions to the Director-General of Immigration on all matters related to Malaysia's immigration policy, including the permitted specific sectors for women migrant workers to be employed in.

¹⁰² Mageswary Sangaralingam, "Plantation Workers Face Poverty and Poison", Consumers' Association of Penang, 2006.

¹⁰³ Dileep Kumar M., Noor Azizi Ismail and Normala S. Govindarajo, "Way to Measure the Concept Precarious Working Conditions in Oil Palm Plantations", Asian Social Science, Vol. 10, No. 21 (2014), 1–10.

¹⁰⁴ Glorene A. Dass, "Women Workers in Palm Oil Plantations: A Neglected Sector of Malaysian Labour", Malaysiakini.com, 30 April 2018.

Features of the sector

► Relevant technical ILO Conventions aside from the fundamental Conventions

- Right of Association (Agriculture) Convention, 1921 (No. 11)
- Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
- Holidays with Pay (Agriculture) Convention, 1952 (No. 101)
- Plantations Convention, 1985 (No. 110) and the accompanying Recommendation, 1958 (No. 110)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the accompanying Recommendation, 1969 (No. 133)
- Rural Workers' Organizations Convention, 1975 (No. 141)
- Safety and Health in Agriculture Convention, 2001 (No. 184) and the accompanying Recommendation, 2001 (No. 192).

Gender issues particularly of women migrant workers in the plantation sector

According to The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, discrimination against rural stateless women workers in the plantation sector is still prevalent in Malaysia. Women migrant workers in the plantation sector, particularly those who are undocumented, are vulnerable to abuse. Working on isolated plantations, unable to obtain birth certificates for their children, they often remain undocumented in substandard working and living conditions.¹⁰⁵

As highlighted by the ILO and UN Women, Labour Inspection: Women Migrant Workers in ASEAN, "the nature of their physical and unskilled work increases their risk of work in hazardous conditions without training or proper equipment".¹⁰⁶

In addition, according to Finnwatch's Decent Work Research Report, discrimination against migrant workers' rights to privacy and marriage can also be found in the employment contracts offered by private companies in the oil palm plantation sector.¹⁰⁷

¹⁰⁵ WAO, The Status of Women's Human Rights: 24 Years of CEDAW in Malaysia, 2019, 216.

¹⁰⁶ ILO and UN, Women's Labour Inspection: Women Migrant Workers in ASEAN, 2015, 6.

¹⁰⁷ "For this report, Finnwatch conducted interviews with estate workers and estate management on the Malaysian peninsula in the states of Johor and Negeri Sembilan. Just as in 2014, the study examined working conditions at the IOI Group's Pamol Barat, Bukit Serampang, Bahau and Regent estates." Finnwatch, Decent Work Research Report: Working Conditions at the IOI Group's Oil Palm Estate in Malaysia – A Follow-Up Study, November 2016, 6, 13–14, 15, 19.

On oil palm plantations, gender-based job segregation is common practice. Poor working-class women make up nearly half the workforce on plantations, as herbicide sprayers. Employers hire them because of their perceived desperate situation, coupled with the sexist perception of them as “timid, docile and compliant workers, as they do not question management and are easy to manipulate”.¹⁰⁸ Meanwhile, men are usually assigned as fruit pickers or harvesters. Although all workers on oil palm plantations, including men, women and children, are susceptible to health and safety risks,¹⁰⁹ women herbicide sprayers are more at risk to OSH hazards, particularly those stemming from being exposed to strong agrochemicals for long periods of time. Paraquat usage in Malaysia has been a significant concern due to agrochemical poisoning.¹¹⁰

Remote and isolated locations. In an ILO study in 2018, interviewed stakeholders noted that the remoteness and isolation of plantations pose a challenge to inspection and monitoring, resulting in increased vulnerability of both documented and undocumented migrant workers to forced labour practices or other labour violations. This is coupled with increased difficulty regarding transportation and communications, which reduces workers' ability to access information or report violations and seek redress.¹¹¹

► Excerpt from the Strategic Compliance Plan to Improve Labour Law Compliance in Malaysia's Palm Oil Industry through Labour Inspection – ILO Labour Law Reform Project, 2019

Enforcement

While broader compliance interventions can help improve working conditions in the palm oil sector, enforcement remains a necessary and primary function of the inspection services, to identify, remedy and sanction (as necessary) unlawful behaviour. Regular, rigorous and publicized enforcement also sends a clear signal to employers that there are real costs for non-compliance, which can help incentivize compliant behaviour. Credible enforcement also provides a basis by which other inspection actions and incentives become more effective. (Education, communication and systemic incentives, for example, work best when the industry has a vested interest in compliance.)

Among the specific focuses of enforcement actions noted below, one strong message that emerged from the discussions was for better integration of inspection action between the different agencies – including the DOL, the DOSH and the Social Security Organization (SOCSO) – in addition to collaboration with the DOI and police when appropriate.¹¹²

¹⁰⁸ Mageswary Sangaralingam, “Plantation Workers Face Poverty and Poison”, Consumers' Association of Penang, 2006.

¹⁰⁹ Dileep Kumar M., Noor Azizi Ismail and Normala S. Govindarajo, “Way to Measure the Concept Precarious Working Conditions in Oil Palm Plantations”, Asian Social Science, Vol. 10, No. 21 (2014): 1–10. Canadian Center of Science and Education.

¹¹⁰ Sharifah Norkhadajah Syed Ismail, Emilia Zainal Abidin and Vivien How, “Pesticide Application, Dermal Exposure Risk and Factors Influenced Distribution on Different Body Parts Among Agriculture Workers”, Malaysian Journal of Public Health Medicine, Special Volume (1) (2017), 123–132. Faizah Mohd Shariff and Ayat K. Ab Rahman, “Chemical Weed Control in the Oil Palm Sector with Particular Reference to Smallholders and Nursery Operators”, Oil Palm Industry Economic Journal 8(2) (2008), 29–38.

¹¹¹ ILO, Background Study for the Development of the National Action Plan on Forced Labour, 2018.

¹¹² In addition to cooperation on planning and site visits, the previous ILO recommendations for better integration of the inspection information systems would greatly contribute to data-driven compliance interventions, and may lead to cost savings among the agencies. Those recommendations should be considered as part of the suggestion by inspectors for greater operational integration of the services.

Education

In order to overcome persistent and sometimes widespread non-compliance in the oil palm industry, inspectors have identified key education interventions targeting workers, employers and their organizations:

- Develop training of trainers – for MOHR, Malaysian Agricultural Planters' Association (MAPA) and National Union of Plantation Workers (NUPW) trainers – on chemical health risk assessment and chemical management, hazardous vehicle and machinery operation and maintenance, and ergonomic hazards, for the oil palm sector.
- Implement at least two training sessions per year for oil palm employers and workers, on the key OSH issues.
- Improve understanding of accident and incident reporting in the sector.
- Increase the knowledge of employers and their representatives on the Employment Social Security Act 1969 and Employment Insurance System Act 2017, and its application in the palm oil sector, to ensure proper social security registration and payment of contributions.
- Arrange briefings for employers and palm oil workers regarding the Sarawak Labour Ordinance, the Employees' Social Security Act, the OSHA and the FMA, with a focus on non-resident employees as well as private employment agencies. Conduct joint training twice per year, involving DOL, the DOSH and SOCSO.

The following communication actions will support the overall goal of improving compliance in the sector:

- Establish a communications coordination committee among the inspection authorities to design and implement communications work.
- Arrange a tripartite dialogue (three times per year) with other Government regulators and key social partners such as the Malaysian Trades Union Congress (MTUC), NUPW, the Malaysian Employers' Federation and MAPA, regarding permissible and illegal deductions under the EA and the Sabah and Sarawak Labour Ordinances, and share good labour practices based on a role model approach.
- Work with Indonesian consular officials to help publicize legal and worker protection advice to migrant workers, with a focus on salary calculation, safe vehicle and machinery operation and SOCSO protection.
- Disseminate awareness and education outputs through social media, particularly on the do's and don'ts for wage deductions.
- Create a national online portal for questions and answers regarding legal requirements and related compliance issues in the oil palm sector. This same portal can be used to transmit information on the ten key areas of compliance.
- Undertake an awareness campaign through radio and television for oil palm workers, employers, HR recruiters and the general public. Focus on communicating key messages around priority issues of non-compliance, wages, SOCSO registration and major OSH hazards.

Undocumented status

Particularly in remote areas beyond the regular reach of enforcement agencies, plantation workers may be undocumented and have very limited legal protections. These workers are of great concern. Intergenerational cycles of lack of documentation, an associated lack of access to identity, and, in some cases, statelessness, result in barriers to accessing formal education and employment opportunities, leaving these persons open to unscrupulous employers who take advantage of their undocumented status to pay very low wages. They are also vulnerable to arrest and deportation.¹¹³

► Addressing documentation issues in labour inspection – sample practices

Some countries develop indicators to compare and cross-check information gathered from several databases, and also from other information sources. Spain, for example, uses a creative technique to disclose temporary undeclared work during harvest seasons on orange plantations and vineyards. Labour inspectors compare the size of plantation with the number of working hours spent during harvest for the previous year, and the number of workers registered in the database of the social security institution per month. This is done by consulting land registries, along with information on the suggested number of days for the harvest, the size of the harvest from the previous year and the number of workers registered in the social security database. Initially, if there is a discrepancy between the data sets, the employer might be asked to submit further documents, including employment contracts. If this still does not resolve the discrepancy, an inspection might then be carried out, or the employer might be called in for a meeting at the labour inspectorate. Information on property lines is double-checked using Google maps, as plantations might be difficult to access or scattered over great distances. As a result of this approach, the registration of workers in social security databases increased by some 217 per cent in 2009 compared with 2007, and the number of work permit applications rose by 50 per cent.

Source: ILO, Good Practices in Labour Inspection: The Rural Sector with Special Attention to Agriculture, 3 June 2012.

Piece rate system

A productivity-based remuneration system is implemented in most plantations, under which workers are paid based on the quantity of work and output delivered in a particular period. The piece rate system affects the legal wages owed to oil palm workers and the ability of inspectors to make this determination. Additionally, this system, if not properly understood and monitored by labour inspectors for compliance with labour laws, could lead to parents bringing their children to help out with fruit picking and other tasks.

More serious issues such as forced labour

Due to various factors including the undocumented status of workers, under-coverage of labour inspection and geographic isolation, workers on plantations are extremely vulnerable to forced labour. Indicators such as passport retention, bad working and living conditions and abuse of vulnerability have been reported in the past.

► Carrying out enforcement regarding forced labour in the plantation sector

Among the key measures adopted by Brazil in the fight against forced labour is the creation of a Special Mobile Inspection Group (GEFM) in 1995, under the Ministry of Labour, combining the efforts of specially trained and equipped labour inspectors, labour prosecutors and police officers. All are volunteers, none of whom operate in their federal state of residence for reasons of personal safety and independence from local pressure. Their task is to investigate allegations of forced labour on fazendas (rural farm estates or ranches). Sometimes, labour judges are also part of the unit, so that prosecutions can be made swiftly and on the spot. Regular evaluations of the operations of this unit have pointed to two main criteria for effectiveness: centralized organization and absolute secrecy in planning. The investigative work of the mobile inspection teams has been replicated at the local and state level. The Brazilian Federal Government has rescued more than 36,000 workers since the creation of the Special Mobile Inspection Group in 1995. The Brazilian labour inspection secretariat also publishes the names of employers were convicted by courts as offenders regarding forced labour. The "Black List" has enabled public institutions to restrict access to credit, subsidies and social benefits, but has to be handled with care to avoid misuse and corruption.

¹¹³ ILO, Background Study for the Development of the National Action Plan on Forced Labour, 2018.

Annex 3

Brief for labour inspectors on the agro-processing and manufacturing sector

► Annex 3: Brief for labour inspectors on the agro-processing and manufacturing sector

Importance of the agro-processing and manufacturing sector

Agro-industry is an enterprise that processes bio-mass (agricultural raw materials) including ground and tree crops, as well as livestock and fisheries, to create edible or usable products, improve storage and shelf life, create easily transportable products, enhance nutritive value, and extract chemicals for other uses. As its products are both edible and non-edible, the agro-industry can be subdivided into agro-food industries (or food processing industries) and agro-non-food industries. This industry contributed 1,361.5 billion ringgit, or 7.3 per cent of Malaysia's gross domestic product (GDP), for 2018. Malaysia is an emerging global food exporter, with over US\$6 billion in produce being sent to more than 200 countries. Its main export markets are Singapore, the USA and Indonesia. Nearly three quarters of its food exports are processed food and beverage products.¹¹⁴

Manufacturing, on the other hand, is the production of products using labour, machines, tools and chemical or biological processing or formulation, and is the essence of secondary industry. The term refers to a range of human activity from handicrafts to high-tech manufacturing, but is most commonly applied to industrial design, in which raw materials from primary industry are transformed into finished goods on a large scale. Finished goods may be sold to other manufacturers for the production of other more complex products (such as aircraft, household appliances, furniture, sports equipment or automobiles), or distributed via the tertiary industry to end users and consumers (usually through wholesalers, who, in turn, sell to retailers, who then sell to individual customers). Manufacturing made up 22.4 per cent, or a total of 1,361.5 billion ringgit, of Malaysia's GDP for 2018.¹¹⁵

¹¹⁴ Department of Statistics Malaysia.

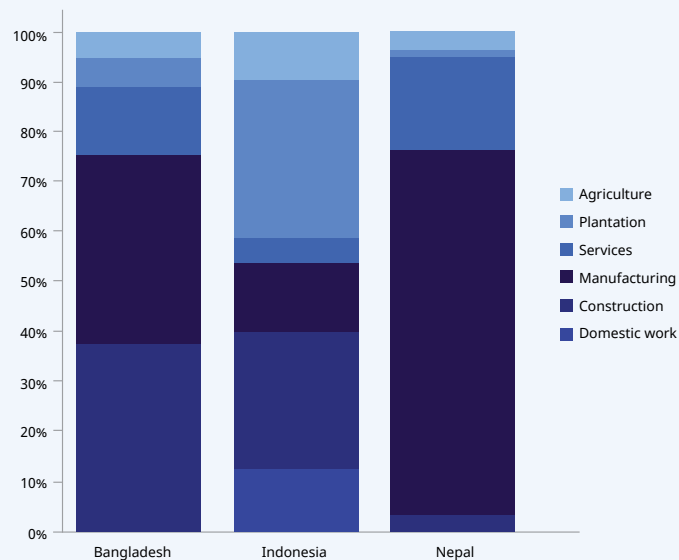
¹¹⁵ Department of Statistics Malaysia.

Labour situation overview

In 2020, over 2.2 million people, both Malaysians and migrant workers, were employed in Malaysia’s manufacturing sector. Many migrant workers are employed in manufacturing, especially in labour-intensive subsectors.

According to Ethical Trading Initiative’s (ETI) Human Rights Due Diligence in Malaysia’s Manufacturing Sector, 2019, only migrant workers from the following countries are permitted to work in the manufacturing sector: Cambodia, Indonesia (women only), Kazakhstan, Laos, Myanmar, Nepal, Pakistan, the Philippines (men only), Sri Lanka, Thailand, Turkmenistan, Uzbekistan and Viet Nam, and employers may only hire migrant workers who are nationals of a country that is permitted to work in their sector.¹¹⁶ The DOI’s statistics for 2015 indicate that male migrant workers from, Bangladesh, Indonesia and Nepal make up an increasing percentage of migrant workers in the manufacturing sector.¹¹⁷

► Figure 1: Migrant domestic workers’ countries of origin, 2014



Source: Immigration Department, Ministry of Home Affairs
Note: Data refers to immigrant workers with a Visit Pass (Temporary Employment)/PLKS

¹¹⁶ Ethical Trading Initiative (ETI), Human Rights Due Diligence in Malaysia’s Manufacturing Sector, December 2019, 12.
¹¹⁷ World Bank, Malaysia Economic Monitor on Immigrant Labour, December 2015, 35.

Migrant workers, especially women, face barriers to employment and are at greater risk of violence and harassment when employed. As in other sectors, women migrant workers in agro-industries and manufacturing must undergo mandatory pregnancy tests¹¹⁸ as a pre-requisite to obtain employment in Malaysia, and to renew their employment contracts. Women migrant workers are therefore at greater risk of termination of contract and repatriation to the country of origin, and to harassment and abuse by employers and authorities, and have little recourse to support if they become pregnant.

In Malaysia, the garment and textile industry and the electronics industry have a poor record of complying with legal standards on wages and working conditions for women migrant workers, which leads to exploitative conditions. In cases in which the employer provides accommodation, the movement of workers is often restricted, which is against regulations. In this situation, employees are under constant surveillance, and for those who become victims of violence at the hands of their supervisors, it is difficult to complain or escape.¹¹⁹ The rubber industry in Malaysia also has a poor record and has faced sanctions from the United States due to allegations of forced labour.¹²⁰

Key features of the sector

Heavy reliance on migrant workers

More than one-fifth of workers in manufacturing and agro-processing in Malaysia are migrant workers. Although migrant workers are employed across the entire skills spectrum, the highest percentage of migrant workers in the manufacturing sector are employed in positions requiring elementary skills.¹²¹

Contractors

When carrying out inspections, labour inspectors need to determine the number of contractors engaged by the principal (as the contractors also employ workers in these sectors) and ensure compliance by the contractors under the national labour law.

Housing provided to workers

Many workers in the manufacturing sector, especially migrant workers, live in accommodation provided by employers. This allows them to live close to manufacturing plants or factories but often means that employers can exert a high degree of control over workers’ living conditions and freedom of movement.

¹¹⁸ Such overt discriminatory practice against women migrant workers – the compulsory medical examination – has been embedded in the institutional recruitment process since the 1990s, before the FOMEMA, despite its legality.
¹¹⁹ Ethical Trading Initiative (ETI), Human Rights Due Diligence in Malaysia’s Manufacturing Sector, December 2019.
¹²⁰ The Guardian, “US bars rubber gloves from Malaysian firm due to ‘evidence of forced labour’”.
¹²¹ Khazanah Research Institute, “Covid-19: We Must Protect Foreign Workers”, 2020.

The Workers' Minimum Standard Housing and Amenities Act 1990 (Act 446) provides the national standards for housing and facilities that workers in employer-provided accommodation or centralized accommodation should have. In many instances, workers are provided with substandard living quarters without basic amenities, adequate privacy or space. This presents health and safety risks. Labour inspectors play a key role in ensuring that minimum standards on housing and amenities are met by employers.

Unclear employment relationship

The employer-employee relationship in agro-processing and manufacturing is often unclear as numerous contractors and subcontractors can be involved, especially in agro-processing. This results in workers being denied access to certain rights and benefits, and difficulty in accessing justice.

Gender issues

Gendered-division of labour in manufacturing or export processing zones: Labour inspectors should be aware that gendered-division of labour in manufacturing or export processing zones is driven by the perception that women and girls are "more tractable and subservient to managerial authority, less prone to organize into unions, more willing to accept lower wages ... and easier to dismiss".¹²²

Exploitation, substandard working conditions and violence: Export processing zones are often located in the country's border regions, and have limited social infrastructure. They target migrant workers, who are poorly paid and are subject to strict regulations on mobility, even with appropriate identity or permit documentation.¹²³ This means less access to legal remedies and support services for women workers experiencing exploitation, substandard working conditions and violence.

Feminization and defeminization within labour-intensive manufacturing industries: Between the early-1990s and 2007, the percentage of women in manufacturing employment declined from 51 per cent to 39 per cent. The fall in the percentage of women employed in the labour-intensive manufacturing industries in Malaysia has been associated with a shift of women's employment to the service sector, as well as substantial technological upgrading.¹²⁴

Annex 4

Brief for labour inspectors on the construction sector

¹²² ILO and UN Women, Labour Inspection: Women Migrant Workers in ASEAN, 2015, 6.

¹²³ ILO and UN Women, Labour Inspection: Women Migrant Workers in ASEAN, 2015, 6.

¹²⁴ David Kucera and Sheba Tejani, "Feminization, Defeminization, and Structural Change in Manufacturing", World Development (December 2014), 578.

► Annex 4: Brief for labour inspectors on the construction sector

Importance of the sector

The Malaysian construction sector is an important gear in the wheel boosting the Malaysian economy. It is playing a pivotal role in the transformation, industrialization and urbanization process of Malaysia from developing nation status to developed nation status as imagined in Vision 2020.

Between 1991 and 2010 the construction sector contributed an average 4.09 per cent of GDP, with a minimum 3 per cent and maximum 5.7 per cent of the national economy. Its employment contribution was also considerable during the same period: on average 8.56 per cent (with a minimum of 7.2 per cent and maximum 9.5 per cent) of Malaysia's total workforce.¹²⁵

Labour situation overview

Ministry of Finance and Ministry of Home Affairs statistics for 2015 indicate that migrants made up one third of the construction workforce.¹²⁶ The number of local workers in the construction sector is not only low but is decreasing drastically due to out-migration for better job opportunities in other sectors, with lower wages being paid by construction companies to migrant workers.

Malaysian women workers used to be an important component of the labour force in the construction sector, but with the influx of migrant workers (since 1985), predominately male, from Indonesia, Bangladesh and other countries, the number of women workers in the construction industry as a whole has declined. This trend reflects not only the increase of male migrant workers but the decline of women in this sector-specific workforce. Despite the small number of women, they face particular hazards and working conditions that deserve special attention, as explained in the following sections.

Drawing upon reports of the US Department of State and United Nations Special Rapporteur, the ILO and ROAP Review of Labour Migration Policy in Malaysia, 2016, points out that some migrant workers in the construction sector are subject to labour practices indicative of forced labour.¹²⁷ The review highlights OSH as one of the major concerns for migrant workers in this sector. Official data of the DOSH in 2014 indicated that the largest number of injuries and deaths at work occurred in the construction sector, more than in the manufacturing and agricultural sectors.¹²⁸

Key features of the sector

Heavy reliance on migrant workers

This sector depends heavily on migrant labourers, as Malaysians are not interested in this kind of work. Migrant workers include those with valid employment passes and those who are undocumented. Regardless of the legal status of workers, labour inspection should be done to prioritize protection rather than immigration or work permit status.

Housing provided to workers

Labour inspectors need to check employers' compliance with the newly-amended Workers' Minimum Standard Housing and Amenities Act 1990. This is pertinent, as non-conducive living conditions is one indicator of forced labour.

Multiple layers of subcontractors

Labour inspectors need to determine the number of contractors engaged by the project principal, as contractors also employ workers. The employer-employee relationship in the construction sector is often unclear, as numerous contractors and subcontractors are typically involved. This results in workers being denied access to certain rights and benefits, and to difficulty in accessing justice. Labour inspectors need to ensure compliance by contractors and subcontractors under the national labour law.

Construction cycle

It is important for labour inspectors to understand the construction cycle (for proper inspection planning purposes), what key issues to look for at that particular stage and how to time inspections. The construction cycle is generally made up of five stages: planning, design, tendering, construction, handover and evaluation.

¹²⁵ Raza Ali Khan, Mohd Shahrir Liew and Zulkipli Bin Ghazali, Malaysian Construction Sector and Malaysia Vision 2020: Developed Nation Status, 2014.

¹²⁶ ILO-ROAP, Review of Labour Migration Policy in Malaysia, 2016.

¹²⁷ ILO-ROAP, Review of Labour Migration Policy in Malaysia, 2016.

¹²⁸ ILO-ROAP, Review of Labour Migration Policy in Malaysia, 2016.

This section is adapted from ILO, *Conducting Labour Inspections on Construction: A Guide for Labour Inspectors*, 2017.

Planning inspection in the construction sector

Proper planning of inspection is crucial. Adequate preparation will ensure that all relevant matters are considered, thereby promoting compliance and, consequently, an improvement in working conditions. This preparation may involve the mapping of all actors who may be on site, as they might have important information to clarify how the site is organized, or provide information on factors that affect compliance.

These actors will include the client, the main contractors, the subcontractors, the project managers, the authorities that grant permits, the suppliers, the service providers (for example, security and catering) and the workers.

When planning the inspection visit, consideration must be given to whether other authorities should accompany the labour inspectors. These other authorities might include the tax authority, the police, other inspectorates (such as labour relations and social security), labour and safety inspectors, environmental inspectors and building control inspectors.

The topics to be covered during the inspection, and any previous information about the site, will have a bearing on whether other agencies should accompany the labour inspectors. When joint inspections are to be conducted with other agencies, it is vital that each agency be involved in the planning process and that all organizations are clear as to the objectives of the visit, the roles of each entity, the methodologies used, the person or body that takes the lead and the way in which information will be shared and reported.

► Table 9: Example of an inspection plan for a construction site

Inspection Plan	
Construction site to be inspected.	
Inspection to be conducted.	
Resource requirement (number of personnel and specific competencies).	
Joint inspection with other agencies? If so, identification of agencies and personnel.	
Transport to site via?	
Inspectorate’s records of duty holders expected to be on site. Do these records include instructions on action to be taken by duty holder following previous inspection/s? If yes, make a record of matters to be verified	
Topic to be covered (for example): 1. OSH and working conditions; 2. Full aspects of OSH or specific topics (work at height, transport, groundwork, etc.) 3. Full working conditions or specific topics (contracts, wages, working hours, etc.).	
Type of inspection? For instance: Pre-work inspection to discuss how the client will operate/manage the site; Site inspection of actual working conditions.	
National legislation/technical standards with regard to topics to be covered, and information obtained.	
With regard to the topics to be covered, obtain, relevant inspectorate policy and procedures of other guidance material for labour inspectors	
With regard to the topics to be covered, identify what documentation will need to checked on site, i.e. labour contracts, payment of salaries/wage slips, time sheets/hours of work, safety plans, accident records, etc.	
etc.	

Safety considerations when conducting an inspection visit

Labour inspectors should wear the standard PPE required on construction sites, including a hard hat, protective footwear and a high-visibility vest. These items should be supplied by the inspectorate, at no cost to the inspectors. ¹²⁹ All persons accompanying the inspectors (including officers from other organizations) must also wear the appropriate PPE. While making initial observations, labour inspectors may also be able to identify where site visitors are received and thus where they need to go.

¹²⁹ ILO, “Occupational Safety and Health Convention, 1981 (No. 155), Article 16(3)”.

Although labour inspectors should be wearing the appropriate PPE, they should not wander through the site unaccompanied, as they will be unaware of planned work activities and may place themselves in danger.

Labour inspectors may be able to quickly ascertain whether the wearing of PPE is enforced or not. If the site managers have put up signs regarding PPE, it shows that they are aware of the preventative measures required to reduce the risks to workers. However, if they do not enforce the wearing of PPE, it gives an indication as to the commitment regarding management of OSH issues. When recording systems of work, both before and during the visit, the labour inspectors should – whenever possible – record (photograph and document) both unsafe and safe systems. Sites often have several contractors, some of whom will comply with safety standards and others who will not. By making recordings of the work systems, labour inspectors will be able to question those in control of the site or specific work activities why differing systems are being allowed or used.

Obstruction of inspection action during a visit

After making preliminary observations, labour inspectors should be ready to enter the site. Some construction sites have security staff, and labour inspectors should present themselves to the security personnel, showing their warrants and formal identification, and ask to meet the person in control of the site; this could be the principal contractor or site owner. In some cases, security personnel may try to prevent labour inspectors from entering the site. The inspectors should explain their legal prerogative to enter the site without prior notice. Any refusal to allow labour inspectors to enter a site constitutes an obstruction and should be sanctioned in accordance with the national legislation. If conditions so allow, labour inspectors may obtain assistance from the police to enter a site. Once inside, those in charge of the site should be informed of the obstruction and the measures that will be taken as a consequence (in some countries, obstruction is a criminal offence). Support from the police may also be required to ensure the inspectors' security.

Inspecting welfare facilities

Construction workers are usually on site for a full working day and their work activities often require considerable physical effort. They may carry out tasks that contaminate their hands and forearms with potentially hazardous substances. Consequently, welfare facilities should be provided, to reduce the risks inherent in these activities. These facilities should include places to rest and eat meals, areas to store PPE, toilets and washing areas (which may need to include showering facilities) and, sometimes, sleeping accommodation.

If sleeping accommodation is provided, appropriate showering facilities should also be made available. Accommodation blocks should be kept clean, and sufficient space must be provided for all workers expected to live in them.

This accommodation should be away from the main work areas so that workers can rest without being disturbed by the construction activities. Workers who are able to use suitable toilet and washing facilities to wash their hands and forearms and to rest in a clean area when they eat their meals, will recuperate more effectively. Tired and dejected workers are more likely to lose concentration and be accident-prone. The rest facilities must be suitable for local climatic conditions; in some instances, air conditioning or heating will be necessary to ensure that workers are able to rest properly. An adequate supply of drinking water should always be available for all those expected to be on site, and it must be kept free from contamination. If the welfare facilities also include storage areas for the PPE supplied by the enterprise, workers will be able to leave their PPE on site, so that it will always be on hand when required.

Interviewing migrant workers

In many countries, migrants account for a large percentage of construction workers. They are often more vulnerable than other workers, as they may not share the same culture, may not speak or correctly understand the national language, or may be tied to an employer by visa requirements. Labour inspectors should be aware of the special vulnerabilities of these workers and should adapt the intervention and interview to their special needs.

In the case of a large construction site with many migrant workers, the labour inspectors should ensure that:

- ▶ selected inspectors are able to communicate with the workers in languages of common understanding;
- ▶ the informative materials distributed on site are translated; and
- ▶ the inspectors are aware of any cultural differences that may require them to adapt the way they interview or interact with the workers.

The main purpose of controlling the status of workers in a given country is to guarantee the protection of their rights, and not to enforce immigration laws. However, in their capacity as civil servants, inspectors will be required in most countries to report undocumented migrant workers to the immigration authorities.

Although forced labour may exist independently of nationality and status in the country, labour inspectors should pay special attention to possible signs of forced labour and human trafficking. Labour inspectors should also look into information on any recent incidents or cases concerning the use of forced labour.

Identifying the employer

Identifying the relationship between workers and employers is one of the many challenges labour inspectors face when inspecting construction sites. In many cases, workers themselves do not know exactly for which enterprise they work, especially if they stay for short periods on site and were recruited by external parties. Employment relationships are often disguised, and it is unclear who in the chain is the actual employer.

This information should be ascertained, if possible, before commencing the inspection visit, by checking social security registries and other sources. When starting the visit, labour inspectors should request the daily record of workers on site, and confirm with management who is working for each subcontractor. They should ask for confirmation of the nature of the contractual relationship, and for each individual worker's date of entry, occupation and social security status. This information should be cross-checked with workers during the visit.

Inspecting for child labour

If inspectors suspect that a site is using child labour, they will have to gain quick access to the site and concentrate on unearthing the evidence as soon as possible. The management will probably try to conceal this evidence by hiding or trying to remove any children or young workers.

- ▶ When verifying the issue of the minimum age of workers on site, inspectors will normally ask to see identity documents. In order to obtain all the relevant information from the workers themselves, inspectors will have use specific communication skills to persuade young workers or children to be cooperative.
- ▶ If the labour inspectors determine the presence of children at work, or the exposure of workers below the minimum age to hazardous working conditions, they should immediately order that those concerned be removed from the site – according to the law – and follow up the case with the appropriate institutions, to prevent their return to work.

How to assess the risks

The degree of risk is an important factor in determining what action labour inspectors can take, as demonstrated below:

1. If the risk is judged high or unacceptable, risk control or preventative measures must be implemented immediately, and the work activity must be stopped until they have been introduced. Labour inspectors may issue a stop notice or prohibition notice and, depending on other matters – such as previous advice having been ignored – may initiate other legal proceedings such as the imposition of sanctions.

2. If the situation is judged as medium risk, but still unacceptable overall, although not requiring immediate action, the inspectors may issue improvement notices.
3. If the situation is judged low risk and considered generally acceptable, any action required can be taken within a longer period. In this case it may be appropriate for labour inspectors to provide verbal or written advice.¹³⁰

Inspecting for gender issues

Due to the nature of their physical and unskilled work, without training and proper equipment, women, especially women migrant workers, who are employed in the construction sector face increased risks at work.

▶ **Table 10:** Needs of female workers in the construction industry that employers can provide for and that labour inspectors can include in inspection

Personal protective equipment and clothing (PPE and PPC)	▶ The design of PPE and PPC for women should be based on female measurements. ▶ Manufacturers of PPE and PPC should be encouraged by the construction industry to collect information on body sizes and shapes, and use this information to expand the range of sizes offered in both clothing and equipment. ▶ Union apprenticeship programmes should provide tradeswomen with resources on where to find equipment and clothing that fits. ▶ Employers should make sure that all workers, of all sizes, have well-fitting PPE and PPC for safe and efficient performance.
Sanitary facilities	▶ Gender-separate sanitary facilities should be provided on work sites. They should have inside and outside locking mechanisms. ▶ If changing rooms are provided on construction sites, they should also be gender separated and provided with inside and outside locking mechanisms ▶ Employees should be allowed to use sanitary or hand-washing facilities as needed. Toilet facilities should be kept clean and in good repair, with clean toilet paper within reach. Hand-washing facilities should exist within close proximity to toilet facilities.
Ergonomics	▶ It should be accepted that some workers need to use different lifting and material handling techniques.

	▶ Employers, unions, apprenticeship programmes and other training entities should review skills training programmes to ascertain whether alternative methods are included for getting work accomplished by workers of different sizes or strengths. All programmes should emphasize the importance of safe lifting. ▶ Workers need to hear from employers and unions that it is acceptable to ask for help and to explore alternative ways to lift and carry. ▶ All workers should be trained in the proper ways to lift and bend. ▶ Manufacturers should design tools and equipment with ergonomic considerations in mind.
Injury and illness data and research	▶ Collecting accurate data to measure OSH concerns is the only way to keep track of problems and enable progress. ▶ Employers should try to collect data by gender and pay attention to differences in reporting by men and women. ▶ Unions should try to keep track of complaints by men and women regarding OSH concerns.
Reproductive hazards	▶ Employers should post material safety data sheets for each chemical present on the work site. ▶ Workers should read all material safety data sheets and share the information with their physicians, if they are pregnant or planning to start a family. ▶ All workers should educate themselves about the potential reproductive risks from exposure to certain chemicals. ▶ Employers should make reasonable accommodations for workers in the later stages of pregnancy, rather than forcing them out of the workplace. ▶ During the later stages of pregnancy, women should consult with their physician about strenuous physical activities on the job.

Annex 5

Sample inspectorate questionnaire on sex discrimination and equality

► **Annex 5: Sample inspectorate questionnaire on sex discrimination and equality**

The sample questionnaire below is taken from the Labour Inspection and Gender Equality in Indonesia Guide, 2017, and is based on the laws and practices of Indonesia. It is provided here as a reference for Malaysia's labour inspectorate.

In Malaysia, the current labour inspectorate does not have an audit function. The questionnaire is included as a learning tool for inspectors to understand all the potential features of sex discrimination and gender equality within a workplace.

In its longer form, it could be beneficial for targeted inspections in enterprises where there are particular problems around this issue (such as a series of complaints or criminal investigations). It could even be adapted as a helpful tool for employers.

Labour inspectorate questionnaire on sex discrimination and equality

The following questionnaire covers a wide range of issues and can be helpful in analysing how discrimination manifests itself in the workplace and identifying best practices for promoting gender equality. Each section of the questionnaire focuses on a different subject. At the end of each section are indicators of discrimination that would warrant follow-up by the labour inspectors conducting a gender audit. All 11 sections of the questionnaire can be used together to conduct a comprehensive audit, or alternatively the different sections can be used separately if inspectors wish to focus attention on a particular area of concern such as discriminatory recruitment practices or workplace (sexual) harassment.

Section 1 - Company employment profile: Desk review

When conducting a gender enterprise audit, important data regarding gender and sex-based discrimination can be found by conducting a desk review of:

1. Company reports on the workforce such as the "manpower condition" and "manpower plans" filed with the Government of Indonesia.
2. Labour force statistics in the company, disaggregated by sex.
3. Types of positions and occupational categories in the company, disaggregated by sex.
4. Wages or salaries for different positions and job categories within the company.
5. Number and proportion of women and men on fixed-term and permanent contracts.
6. Number and proportion of women and men who work part-time and full-time.
7. Number and proportion of women and men in management or decision-making positions in the company.

8. Number and proportion of women and men who have been subcontracted.
9. Whether there have been any employment discrimination or (sexual) harassment cases, and how these were addressed and resolved.
10. Whether there is a trade union, workers' organization or workers' council, a safety and health committee or an equal employment opportunity (EEO), gender or women's committee, and the sex-composition, responsibilities and activities of these committees.

Indicators of discrimination

- If the company is not regularly reporting the workforce condition and plan, this makes it difficult to detect, analyse and address problems related to discrimination.
- If most of the fixed-term contracts, subcontracted jobs or part-time positions are filled by women, and most of the permanent contracts and full-time positions are filled by men, this is sex discrimination.
- If most of the managers, supervisors or trade union officials are men, this is likely the result of direct or indirect discrimination.
- If some categories of jobs are mostly filled by women and other categories are mostly filled by men, or most high-paid jobs are filled by men and most low-paid positions are filled by women, this sex segregation in the workforce is likely the result of discrimination.

Section 2 - Workplace policies on equality and non-discrimination

When assessing workplace policies on equality and discrimination, consider the following:

1. Does the company have written policies to ensure EEO? If so, describe the policy – for example, does it guarantee equal pay for equal work and for work of equal value, equal chances for promotion, and prohibitions against sexual harassment? What are the prohibited grounds of discrimination?
2. Does the EEO or gender equality policy adequately reflect national and international labour standards regarding equality and non-discrimination?
3. Is there an EEO or gender equality committee within the company? If yes, what is the number and proportion of women and men on the committee, and what is their mandate?
4. What is the process for regularly reviewing and updating workplace policies to ensure they conform to national and international labour standards?
5. How are workplace equality and non-discrimination policies communicated to employees?
6. Is there a complaints process for addressing violations of company policies?
7. Have there been any complaints of discrimination in the past year? If so, explain.

Indicators of discrimination

- Without a comprehensive EEO or gender equality policy, or an effective complaints mechanism, it is difficult to prevent or address discrimination.
- A lack of complaints may not mean that there is no discrimination. Instead it could indicate that the company's EEO policy and complaints mechanism is either ineffective or not well known among the workers. Conversely, the existence of complaints does not necessarily mean that there is a serious problem, but is an indication that the company has implemented and publicized a mechanism for resolving EEO-related problems, which is a positive step. Inspectors should follow up on all EEO-related complaints to ensure that management adequately addressed the problem in a non-discriminatory way.

Section 3 - Access to employment and recruitment

When assessing equality and discrimination in workplaces, consider the following questions on recruitment practices:

1. Recruitment policies and practices

- (a) If the company has an EEO or gender equality policy, what are the rules for non-discriminatory recruitment?
- (b) Have the staff members involved in recruitment received training on equality and non-discrimination?
- (c) Are employment agencies and other recruitment sources instructed to refer qualified applicants from both sexes for positions at all levels?
- (d) Are new employees recruited from a wide variety of sources including schools, universities, training institutions and workplaces?
- (e) Are any special measures taken to recruit qualified women and men into positions where they are under-represented? If yes, describe the measures.
- (f) Does the company avoid using "word of mouth" and "informal contacts" to recruit new staff?

2. Advertisements

- (g) Are job advertisements designed to be neutral and encourage members of both sexes to apply for vacancies?
- (h) Do job descriptions specify fair and non-discriminatory selection criteria that are genuine occupational requirements such as qualifications, skills and working experience; physical mental and psychosocial efforts; duties and responsibilities; and working conditions?
- (i) Do certain job advertisements specify the sex of job applicants?
- (j) In the exceptional cases that a specific personal characteristic such as sex is required for adequate job performance (for example, a woman to play a female movie role), does the advertisement clearly state the inherent requirement of the job that requires this characteristic?

3. Selection procedures, tests and interviews

- (k) Is there any sex requirement for certain positions in the company? If so, please describe the position and the reason for specifying a particular sex.
- (l) Does the company use neutral application forms that only ask questions related to the genuine job requirements?
- (m) Are placement tests non-discriminatory and free from bias against any particular group or sex?
 - (i) Is the content of placement tests job-related? Do differences in test performances correspond to a particular group or sex? If so, this should be investigated.
 - (ii) Is the administration of selection tests consistent and does it consider the needs of a particular group or sex that is under-represented in the job category being filled?
 - (iii) Are test instructions clearly given and test locations accessible, e.g. in close proximity to public transport?

- (n) Are interview questions job-related and designed to cover each applicant's relevant qualifications? For example:

- (i) Are the same or similar questions asked of each applicant?
- (ii) Are applicants' responses evaluated objectively? To avoid bias, it can be helpful if more than one person evaluates the candidate.
- (iii) Do interviewers avoid asking job applicants about their personal life, such as marital status or number of children?
- (ix) If questions do not obviously relate to the job, are applicants told why the questions are necessary?
- (x) Do interviewers take care not to intimidate or patronize any applicant regardless of his or her group or sex, and regardless of the position for which they are applying?
- (xi) Are records of interviews kept in a systematic manner and available for retrieval?

- (o) Are job candidates tested for pregnancy during health checks?

Indicators of discrimination

- ▶ Discrimination is likely to occur if recruitment staff and employment agencies are not trained on how to ensure equality and non-discrimination in the recruitment and hiring process.
- ▶ Restricting recruitment to a limited number of sources, or using mainly "word of mouth" or "informal contacts" to recruit new staff, is likely to lead to discrimination.
- ▶ Job advertisements that specify a particular sex are usually discriminatory. Unless it is an inherent requirement of the job, sex or gender must not be mentioned in job advertisements.
- ▶ Interview questions, placement tests and health checks that are not related to the requirements of the job (for example, questions about marital status, pregnancy, family situation) can lead to discrimination and must be avoided.
- ▶ Recruiting qualified women and men into positions where they are under-represented is not discrimination. Such positive measures will ensure a more diverse, satisfied and productive workforce and can increase the competitiveness of the company.

Section 4 - Equal remuneration

When assessing equal remuneration, consider the following:

1. Is the remuneration of male-dominated jobs generally higher than the remuneration of female-dominated jobs?
2. Do all male and female employees, whether on part-time or full-time contracts or on short-term or indefinite contracts, who perform the **same or very similar work**, receive equal remuneration?
3. Do all male and female employees, whether on part-time or full-time contracts or on short-term or indefinite contracts, who perform **work of equal value**, receive equal remuneration?
4. If not, has the employer justified these differences through objective criteria that are unrelated to sex?
5. Are women disproportionately given non-standard contracts, resulting in unequal remuneration?
6. Do female and male employees have equal access to family and housing allowances, social security and other benefits provided in connection with employment?
7. Are bonuses, incentives and gifts provided to all employees in a non-discriminatory manner?
8. Is there a difference between the pension age of women and men in the company?

9. Are minimum wage regulations applied in the company in practice? What are the gender differences: How many men and women receive less than the minimum wage, the minimum wage and more than the minimum wage?
10. What are the pay rates for subcontracted home-workers.

Indicators of discrimination

- ▶ If most men in the company are remunerated at a higher rate than most women, this indicates sex-discrimination and must be investigated.
- ▶ Active efforts must be made to ensure that women and men who are performing the same or similar work, or work of equal value are receiving equal remuneration. Determining the "value" of jobs requires conducting job evaluations based on objective criteria such as skills, working conditions, effort and responsibilities.
- ▶ If men and women do not have equal access to benefits including family, housing and transportation allowances, social security, bonuses, incentives and gifts – this is discriminatory.
- ▶ Assigning a different pension age to men and women is discriminatory.
- ▶ Subcontracted workers should be paid the same wages as employees performing comparable work on site at the enterprise.

Section 5 - Maternity Protection

Consider the following questions for assessing the adequacy of the employer's maternity protection policies:

1. Does the company apply the legal provisions on maternity protection and does it have specific policies related to maternity protection? If yes, what are they? Check provisions for maternity leave and benefits.
2. Are the maternity-related policies sufficient to guarantee the health of the pregnant woman and fetus and the mother and the baby?
3. Are the maternity-related policies over-protective or are they necessary to guarantee the health of the pregnant woman and the fetus?
4. Are women who miscarry given additional leave to recuperate?
5. Are workers given opportunities to reconcile work and family? What are the arrangements for parental leave? Do these apply equally to both women and men?
6. Are women treated less favourably than men on the grounds of marital status or pregnancy? For example, do women have to promise not to marry or become pregnant for a certain period, or forego employment when they do?
7. Are women who take maternity leave obligated to find a replacement during their leave?
8. Does the employer provide paternity leave to new fathers? If yes, how many days? Is the leave paid?
9. Does the company provide childcare facilities for workers with children?

Indicators of discrimination

- ▶ Refusing or neglecting to ensure adequate maternity leave and benefits discriminates against women.
- ▶ Treating women less favourably than men on the grounds of marital status or pregnancy is discrimination.
- ▶ Requiring women who plan to take maternity leave to find a replacement in order to keep their job is discriminatory.

- ▶ Providing sufficient paternity leave to allow fathers to bond with their newborn children and support their wife in childcare duties is a good practice and promotes equality for men and women.
- ▶ A lack of childcare options causes many women to leave the formal workforce, which contributes to the gender pay gap. Employer-sponsored or -assisted childcare allows women to maintain employment while ensuring their child is adequately cared for.

Section 6 - Workplace harassment

Consider the following questions for assessing whether (sexual) harassment is being adequately addressed in the workplace:

1. Has the employer provided training and awareness raising to prevent (sexual) harassment, bullying or other violence at the workplace?
2. Has the company established an internal complaints mechanism with qualified female and male staff to receive and handle complaints concerning harassment and discrimination at the workplace?
3. How are complaints of harassment and discrimination documented?
4. Do employees have access to information about what to do if they are (sexually) harassed at work?
5. What is the role of the trade unions or other types of employee representative groups in addressing issues of harassment in the workplace?
6. Have there been any complaints of sexual harassment in the past year? If so, explain.

Indicators of harassment

- ▶ If the company does not have an anti-harassment policy, has not trained managers and workers to recognize and address harassment, or has not implemented an effective complaints mechanism for reporting harassment – this indicates that the company does not take the problem of harassment seriously. Women are more often the victim of workplace harassment, thus lack of attention to this issue is discrimination based on sex and must be addressed.
- ▶ A lack of complaints may not mean that there is no harassment. Instead it could indicate that the company's anti-harassment policy and complaints mechanism is either ineffective or not well known among managers and workers. Conversely, complaints do not necessarily mean that there is a serious problem, but they are an indication that the company has implemented and publicized a mechanism for resolving harassment-related problems, which is a positive step. Inspectors should follow up on all harassment complaints to ensure that management adequately addressed the problem in a non-discriminatory way.

Section 7 - Working hours and leave

Consider the following questions for assessing equality and non-discrimination in terms of working hours and leave:

1. Does the company provide men and women with the same hours of work and leave arrangements?
2. Are men and women equally obligated to work overtime?
3. Are men and women given equal opportunities to voluntarily work overtime?
4. Are women and men given the same opportunities to choose their hours of work?
5. Are men and women given equal opportunities to work at night?
6. Do sick leave policies apply equally to women and men?
7. Does the employer provide family leave? If yes, what are the terms?

Indicators of discrimination

- ▶ If men and women are not given the same opportunities to work overtime, choose their hours of work or are not equally obligated to work overtime, this is discrimination.
- ▶ To avoid discrimination, sick leave and family leave must be equally available to men and women at the workplace.

Section 8 - Occupational Safety and Health (OSH)

When assessing equality and non-discrimination in occupational safety and health, consider the following:

1. Are there special safety rules related to pregnant workers? If yes, explain.
2. Are women and men given the same education and training regarding work hazards and safety?
3. Are men and women given equal access to safety equipment?
4. Does the company take into account physical differences between the sexes when issuing safety equipment (e.g. smaller gloves for women)?
5. If there is an OSH committee in the company, are women and men proportionally represented on the committee?

Indicators of discrimination

- ▶ Employers must take sufficient measures to ensure the health and safety of pregnant workers. However, unnecessarily protective measures that result in loss of opportunity for pregnant women are discriminatory and must be avoided.
- ▶ Neglecting to provide women and men with equal access to safety training and equipment is discriminatory. However, a "one size fits all" approach that ignores physical differences between women and men may also result in discrimination. Thus, when designing workplaces and issuing safety equipment, physical differences between the sexes must be taken into account to ensure that both men and women are equally able to avoid injuries at work.

Section 9 - Equal opportunities for career advancement

Consider the following questions to assess equal opportunities for career advancement:

1. Are all eligible men and women in the company informed when opportunities for promotion or training arise?
2. Do men and women have equal access to educational opportunities, on-the-job training and specialist preparation?
3. When selecting employees for training courses, does the company use fair and non-discriminatory selection criteria that only refer to candidates' character, experience, ability and diligence?
4. Does the employer use fair and non-discriminatory selection criteria when deciding on promotions?
5. Are members of specific groups given preference when deciding on promotion? If yes, what is the reason for the preference?
6. Has the employer adopted any positive measures to enhance the opportunities of underrepresented groups to compete for advancement in employment?

Indicators of discrimination

- ▶ Neglecting to provide women and men with equal opportunities for training and promotion is discriminatory.
- ▶ If there are fewer women than men in management and supervisory positions within the company, taking positive measures to increase the number of women in leadership is not discriminatory and indicates that the company is serious about promoting real equality in the workplace.

Section 10 - Security of tenure

Consider the following questions for assessing equality and non-discrimination in security of tenure:

1. Are members of some specific groups discriminated against regarding the duration of employment contracts or the length of probation periods?
2. Are members of some specific groups prioritized when deciding on dismissals?
3. Are dismissals based strictly on reasons connected to the worker's conduct, ability to perform the job or the necessities of operation, as stipulated in the laws and regulations?
4. Is the compensation offered to laid-off employees defined in a non-discriminatory manner?

Indicators of discrimination

- ▶ Treating women and men differently when deciding on duration of contracts, probationary periods, dismissals, retrenchment or compensation for lay-offs constitutes prohibited discrimination.

Section 11 - Industrial relations

Consider the following questions regarding workers' representation and gender equality:

1. Are there trade unions or other types of employee representative groups active in the workplace? If yes, what is their role in promoting equality in the workplace?
2. What is the proportion of women among members of the trade unions or other worker representative groups?
3. What is the proportion of women among leaders in the trade unions or other worker representative groups?
4. When or how often do management-employee consultations on equality in the workplace take place?
5. Are women adequately represented in management-employee consultations and meetings?
6. Is there a workers' council? If yes, what is its composition (e.g. only managers, managers and human resources staff, any workers' representatives, and how many men and women?)
7. Does the trade union or other employee group or the workers' council have an EEO or women's committee? If yes, what is the sex composition of the committee?

Indicators of discrimination

- ▶ Active trade unions with diverse memberships and leadership that reflects the proportion of men and women in the workforce are best able to demand true equality in the workplace.
- ▶ Women and men must be encouraged to play an active role in trade union EEO committees, and must be part of all management-employee consultations to ensure that the needs and concerns of women workers are addressed.
- ▶ Policy agenda, collective bargaining agreements and advocacy campaigns need to address the concerns and needs of both men and women workers and take up gender equality concerns.

Source: Labour Inspection and Gender Equality in Indonesia: Guide, 2017, 52–60.

Annex 6

Sample interview form on sexual harassment

► Annex 6: Sample interview form on sexual harassment

► **Interview form**

Use this form to investigate allegations of sexual harassment. Keep this form in a safe place to ensure confidentiality.

Complainant: _____ Date: _____

Interviewer: _____ Time: _____

► What happened?

► When and where did it occur?

► Who was involved?

► Were there witnesses?

► Did you talk with anyone else?

► Has it happened before?

► How long has it been going on?

► Was the person told the behaviour was unwelcome?

► What was the person's reaction to being told it was unwelcome?

Don't ask:

► "Why?" questions. They can be perceived as judgmental.

► Multiple-choice questions such as, "Were you touched on the arm, shoulder, face?"

Instead, ask open-ended questions such as "Where did the person touch you?" or "How did the person touch you?"

When talking with the alleged harasser:

► Do not reveal the complainant's identity.

Describe the circumstances and see if the alleged party shows acknowledgment.

► State the purpose of the meeting.

► Stay unbiased.

► Ask that the accused party respond to each allegation separately.

► If the accused party confesses, state that the behaviour must stop immediately.

► If the accusation is denied, make it clear that additional fact-finding will be conducted.

► Document the meeting.

► Take appropriate action based on findings.

When talking with a witness:

► Do not identify the accused party. Simply state, "Your name was given as a witness to a possible interaction."

► Ask the victim to describe the situation and location.

► Focus on witness statements of facts and not assumptions or opinions.

► Talk in private, in a timely manner, and maintain confidentiality.

Source: Labour Inspection and Gender Equality in Indonesia: Exercise Book, 2017, 69.

Annex 7

Fourth Schedule of the Children and Young Person (Employment) Act (CYPA) 1966 [Act 350]

► Annex 7: Fourth Schedule of the Children and Young Persons (Employment) Act (CYPA) 1966 [Act 350]

The Fourth Schedule of the CYPA provides three **categories** of hazardous work:

A. Work related to machines, installations and other equipment

- Includes machinery, steam boilers or internal combustion engines, hoisting and loading machinery, high-pressure vessels and heavy-duty machinery.
- Heavy-duty machinery such as tractors, rock breakers, graders, asphalt mixers, piling machines and agriculture machinery.
- Installations such as pressure pipes, electricity equipment, firefighting systems and electricity transmission lines.

B. Work conducted in a hazardous environment

- Exposure to physical hazards, underground work, height, high-voltage power lines, limited ventilation, welding machinery, extreme temperatures, noise or vibration, radioactive substances, ionizing radiation, dusty environments, electrocution, fire, explosion, manual handling of equipment and machinery, chemical hazards and biological hazards.

C. Work of a certain hazardous nature and condition

- Construction work, work in the timber industry, offshore petroleum platforms and water treatment plants.

Children and young persons are also prohibited from being employed in the following work (considered as immoral activities under the Fifth Schedule of the CYPA):

- using, procuring or offering children or young persons for prostitution;
- as social escorts or guest relations, and any related activities;
- in or related to the production or trade of alcoholic beverages;
- in or related to gambling and lottery activities;
- in or related to massage services or reflexology services;
- any kind of job related to pornography; and

- in or related to the production and trade of drugs, narcotics, psychotropic substances and other addictive substances that are prohibited under any written law in force.

Section 32 of the Child Act specifically prohibits children being used in begging activities, which includes receiving alms, whether or not by pretence of singing, playing, performing or offering anything for sale, illegal hawking, illegal lotteries, or any illegal activities detrimental to the health and welfare of a child.

Annex 8

Fifth Schedule of the Children and Young Person (Employment) Act (CYPA) 1966 [Act 350]

► Annex 8: Fifth Schedule of the Children and Young Persons (Employment) Act (CYPA) 1966 [Act 350]

Children and young persons are prohibited from being employed in the following work, which are considered as immoral activities:

- using, procuring or offering children or young persons for prostitution;
- as social escorts or guest relations, and any related activities;
- in or related to the production or trade of alcoholic beverages;
- in or related to gambling and lottery activities;
- in or related to massage services or reflexology services;
- any kind of job related to pornography; and
- in or related to the production and trade of drugs, narcotics, psychotropic substances and other addictive substances that are prohibited under any written law in force.

Annex 9

Step-by-Step Guide for referral of forced labour and humand trafficking cases

► Annex 9: Step-by-Step Guide for referral of forced labour and human trafficking cases

Definitions

Forced Labour

“All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [or herself] voluntarily”.

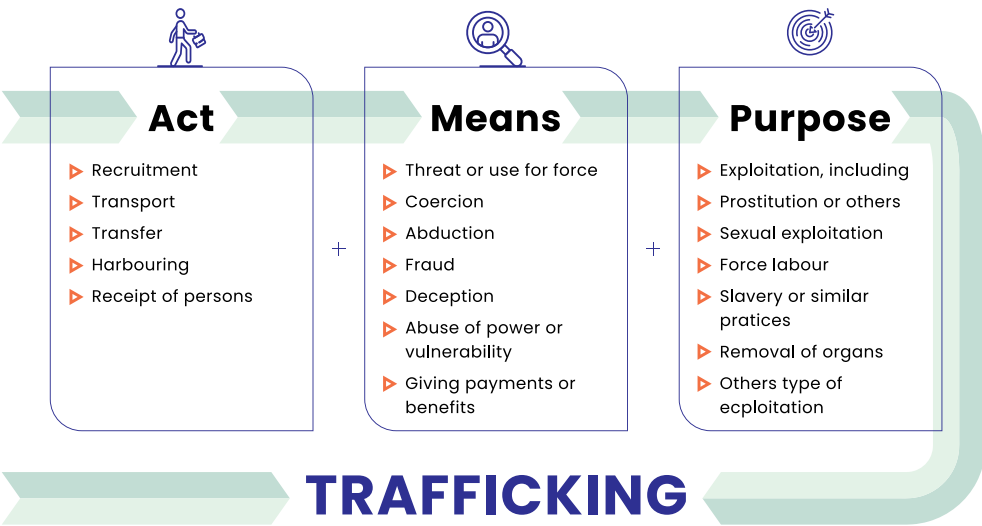
ILO Forced Labour Convention, 1930 (No. 29)



Trafficking

“Trafficking in persons” means all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act.

Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrant Act 2007 (Act 670) (ATIPSOM)



- If one condition from each element (means, act, and purpose) is met, the result is trafficking.
- If any one if the three elements is missing, then it will not be trafficking. However, if the person is under the age of 18 years, it is only necessary to show that any one or more of the defined actions has been used toachieve any one or more of the defined exploitative purposes. The means by which this has been achieved are considered as irrelevant and can be ignored.

Step 1. Reporting on Forced Labour and Human Trafficking

Who can report: Anyone

Report to whom?

- Police
- Department of Labour
- MAPO
- Trade Union
- Non-government organization (NGO)

Scan here for contact information
of agencies that could assist with
your complains:



Information you need to give when you report.

Anonymous reporting is an option but you may also provide your contact details if you prefer. The more details provided, the easier for follow-up action to be taken:

Information About Potential Victim

- Name
- Sex
- Age
- Nationality
- Current address (if known)
- Permanent address
- Phone number and/or email
- Languages spoken
- Current employment
- Working Condition encountered (refer list at the right)
- Dangers faced by the potential victim (narrative)

Report if you encounter at least one of the following

(investigation will be made if other indicators are present):

- Was given inaccurate information about nature of and conditions at work
- Passport, legal documents or other valuables withheld
- Physical or sexual violence
- Emotional or verbal abuse
- Threats of violence to self or family members
- Threatened to be reported to the authorities
- Threatened to be sent back home
- Threatened with non-renewal of work permit
- Threatened with more debt
- Threatened with being "blacklisted"
- Owing money to recruiters or employers with unfair terms of payment
- Excessive recruitment fees
- Wages withheld
- Unjust wage deduction
- Being made to do illegal work
- Dangerous work without personal protective equipment
- Being locked in
- Not allowed to communicate to family members or friends
- Excessive working hours
- Not allowed to take day off
- Degrading living conditions
- Not given enough food

Principles On Dealing With Victims

Respect for and protection of human rights

all assistance and protection efforts should seek to restore the victim's rights and prevent further violations without discrimination and re-victimisation. Some victims may have been involved in criminal activities as a part of their exploitation and others might have entered a country illegally as part of their trafficking and/or exploitation process. It is important that these victims of forced labour or trafficking are perceived not as criminals but as victims of crimes and they should not be detained, charged or prosecuted for involvement in crimes arising as a direct consequence of their trafficking experiences.

Unconditional support to Victims of forced labour and trafficking

The provision of care and protection included in ATIPSOM and other laws should not be made contingent on the willingness of the victims to cooperate with the investigation/ prosecution of the alleged offender.

Confidentiality and data protection

Potential victims must be informed about the purposes of collecting their information, how this information will be stored and used, their right to access and remove their personal information at any time. All information exchanged between a victim and a professional providing medical, psychological, legal or other assistance services is confidential and sharing of information should only be on a "need-to-know" basis, with the victim's informed consent.¹³⁷ The information must not include data that can expose the victim to further danger or discrimination or which do not concern the concrete work of the case.²³⁸

Non-discrimination

Victims must be treated fairly regardless of their race or ethnicity, sex, sexual orientation, age, disability, religious beliefs and practices, political affiliations, social and cultural background, and without prejudice related to the fact that they were exploited or forced to engage in illegal activities.³⁴⁰

Informed consent

All measures are implemented with the full and informed consent of the potential victims, after they have been advised about their rights, the possible courses of actions, and possible consequences for them and their family. The information must be provided in the victim's simple and accessible language.

Child protection

In the case of children, the best interests of the child are considered the primary consideration in all actions concerning the child irrespective of the nature of the body undertaking the relevant action(s) as set out in Article 3(1) of the CRC.

¹³⁷ Ibid; East Africa Guidelines. | ²³⁸ Bulgarian Guidelines. | ³⁴⁰ Bulgarian Guidelines; East Africa Guidelines.

Step 2. Collect Further Information from the Victim

Who does this?

Police, Department of Labour, Immigration, MAPO, NGO, trade union or other organizations which receive report of forced labour and human trafficking as per Step 1

Why? To enable the interviewer to assess both the factors surrounding the victim and the responses to the interview questions to make a more accurate identification of best referral pathway

Interviewing Techniques

Some useful pointers for effective and safe interviewing are set out below⁴ :

- Any approach to the victim should be a gradual and non-threatening process.
- Be sure the victim has some control in the situation (breaks, water, seating placement).
- Avoid interrogation methods and refrain from physical contact with victims.
- The screening interview should take place in a comfortable environment and be conducted by someone who was not directly involved with the victim in the raids or arrest.
- Due to fear and possible trauma on the part of victims, it is best to use a conversational approach rather than a rapid series of questions in order to obtain preliminary information. Remember that open-ended questions may elicit more information from victims than yes or no questions.
- Do not expect victims to go into detail about their trafficking experiences during the first interview. In fact, it might take many interviews to get the victims comfortable enough to share details of their trafficking. It will take time and trust to develop the facts of a case.
- Victims need to feel safe at all times. Interviewers should introduce themselves and explain their role at the beginning of every interview.

What to ask?

The following is non-exhaustive list of questions and should be adapted based on the circumstances of the potential victim. Carefully document the responses of the potential victim and during the course of interview ask for evidence to support such response.

⁴ <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/>

Interviewing the Victims regarding Presence of Potential Forced Labour Indicators

Indicators are not proof of the crime; they are the starting point for investigation.
Indicators of forced labour must be understood from the point of view of the victims.



Abuse of vulnerability

This includes the issue of dependency is difficult as some dependencies e.g. reliance on employer for food and lodging may be created by the law and could be systemic. For example, work permits tying workers down to one employer are also an example of dependency created by the legal framework.

Examples of questions to ask

Excessive dependency on the employer

- Does the victim hold her/his own money from wages?
- Can the victim freely choose where to buy her/his basic necessities?
- Does the victim have the option to choose her/his accommodation?
- Can the victim withdraw her/his own money anytime from bank account without asking permission from the employer?

Withholding of wages

This creates coercion that often acts to prevent a worker from exercising their right to leave an employer. Workers feel that they stand to lose wages if they leave.

Examples of questions to ask

- Does the worker have a regular employment contract? If not, how are wages being paid?
- Is there any illegal wage deduction?
- Has the worker received any wage at all?
- Does the victim receive little or no payment?
- What is the amount of the wage in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

Restriction of movement

A common means by which labour is extracted by duress from workers is through their confinement. Workers are locked up, guarded to prevent them from escaping, have their movements controlled outside the workplace. Communication with family and friends are also restricted.

Examples of questions to ask

- Does the victim have freedom of movement?
- Is the worker locked up at the workplace?
- Is the worker forced to sleep at the workplace?
- Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
- Is the worker constrained to leave the workplace?
- Does the worker have days off?
- Can the victim freely contact friends and family?
- How did the victim find the employer?
- Did someone use force/blackmail to get the victim to work for the employer?
- Has the worker attempted to run away?
- Are the living area and workplace heavily guarded?
- Has the victim contacted family members or friends?

Physical violence

Forced labour is frequently exacted from workers by the threat and application of physical or sexual violence. Some physical abuses by their employers can potentially amount to torture. Some sexual violence by their employers can potentially amount to rape

Examples of questions to ask

- Does the worker have any sign of maltreatment, such as bruises?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion or traces of violence?
- Do supervisors/employers demonstrate violent behaviour?

Unsuitable accommodation and amenities

Examples of questions to ask

- Pertaining to the dimension and provisions of the housing, does it comply with the Minimum Housing Standards and Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019 (Act 446)?
- Are there separate rooms for male and female workers?
- Are there available clean drinking water?
- Is the accommodation, unhealthy and overcrowded?
- Does the victim have privacy in the housing?

Debt bondage

Occurs when a person becomes a security against a debt or loan; or when debts are inflated to cause the person to continue working.

Examples of questions to ask

- Does the worker have to repay high/inflated recruitment or transportation fees? If so, are these deducted from the salary?
- Is the worker forced to pay excessive fees for accommodation, food or working tools and safety gear that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer? (Exorbitant interests)
- Has there been any complaint about the employer before?

Threats and intimidation

Workers are threatened denunciation to the authorities, loss of wages or access to accommodation, further worsening of working conditions or withdrawal of "privileges" such as the right to leave the workplace. Verbal and emotional violence, constant insult, isolation, denial of a private life and individual autonomy, prohibition of communication with their family and various forms of daily harassment and reproaches undermine the victim's sense of self-efficacy and personal dignity and increase their sense of vulnerability. This is just as effective as physical violence but much more difficult to identify.

Examples of questions to ask

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)?
- Does the worker show anxious behaviour?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion?

Retention of passport/ identification document

Retention of identity or travel documents is a common form of coercion

Examples of questions to ask

- Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why?
- Does the worker have access to the documents at all time?

Step 3. Assess Immediate Needs

Who does this?

Police, Department of Labour, Immigration, MAPO, NGO, trade union or other organizations which collect further information as per Step 2

Why? To ensure that the victim will be taken out of the immediate situation of exploitation and given access to some support

Guiding questions⁵ :

- **Is someone in immediate danger?** Those in danger can include other victims or relatives and friends of the victim. Circumstances where a presumed victim has been seriously assaulted or raped and suggest both high levels of severity and likelihood of injury, psychological trauma etc.
- **Are there outstanding presumed victims?** Outstanding victims could increase overall risk levels in a number of ways, primarily the risks to the presumed victims themselves. Exactly what the level of risk is will depend on the answers to other questions here. Have traffickers previously threatened or used violence? Factors that would affect the risk rating include the nature of the violence (severity) and frequency (likelihood). If there is evidence of previous violence or threats the risk level is likely to be higher.
- **What knowledge do the traffickers have?** Do the traffickers know the victim's home/work address or telephone number or details of those of his or her family? Knowing this type of information will raise the likelihood of risk.
- **What support services, including physical protection, are available?** Good support services such as health care, counselling and secure accommodation can reduce the likelihood of risks such as attacks on victim-witnesses, withdrawal of testimony, etc. Those support services also reduce the severity of risk, for example by improving the chance of recovery to health.
- **What is the victim's social network?** Is he/she married? Does the victim have any children? A social network may help a victim recover (reducing the severity of risk) or provide an informal victim protection (reducing the likelihood of risk) and thus the overall risk rating. In other cases suspected traffickers may have the ability to intimidate the family or social network, increasing both the severity of risk (for example by persuading the victim-witness not to testify) and the likelihood of it occurring.
- **Do the traffickers know (or claim to know) the locations of safe houses for victims of trafficking, home addresses of family etc?** Actual knowledge will increase the likelihood of risk to victims. Claimed knowledge, even if not true, impacts on risk because it may be difficult to assess the likelihood of them knowing this information and the severity of risk increases because it may have the effect of intimidating the witness.
- **Who do the traffickers have the ability to attack?** Does it appear they have associates in place in locations that could enable them to attack the victim, his or her family or friends, thereby increasing the likelihood of a risk of injury to someone or preventing a witness from testifying.
- **How "secure" is the investigation?** Threats to the security and integrity of the investigation may come in a number of ways. Traffickers with a previous history of bribing public officials would

⁵ https://www.unodc.org/documents/human-trafficking/TIP_module5_Ebook.pdf

Risk on repatriation

- What social support services are available in the country of return to support the victims to recovery?
- What is the level of physical protection that could be provided to the victim against the traffickers and his associates by the government of the receiving country?
- Are there any social, cultural or religious factors that may make repatriation dangerous, i.e. is the victim being sent back to a family that sold him/her in the first place or does the nature of exploitation (i.e. sexual exploitation) put the victim at risk by reason of his/her religious inclination if he/she is repatriated as a trafficked victim?
- What NGO or other victim service providers exist in the country of destination and/or the country of origin that can either support the return of the victim or allow them to delay a return or not return at all?

Step 4. Preliminary Assessment and Referral Whether Potential Trafficking or Non-trafficking Case

Who does this?

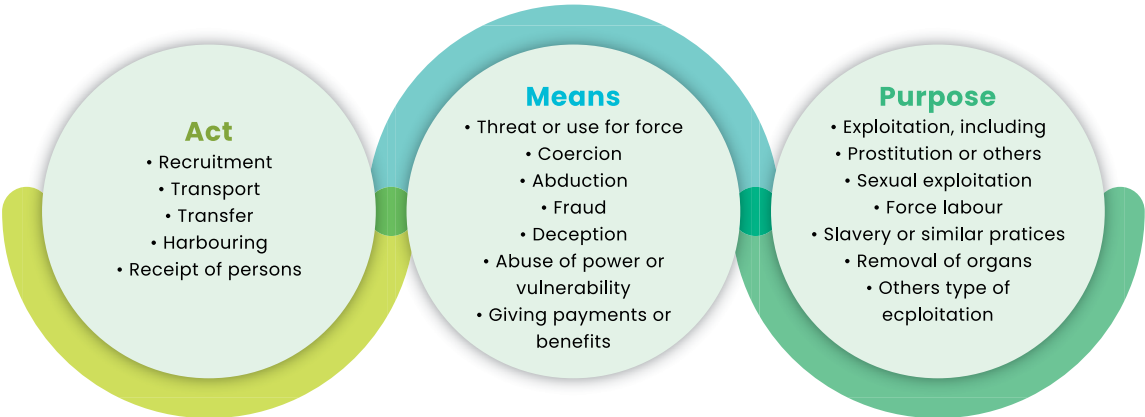
Police, Department of Labour, Immigration, MAPO, NGO, trade union or other organizations which collect further information as per Step 2

Why? To have an initial analysis of the information collected and refer the case to either Police (for trafficking) or Department of Labour (non-trafficking)

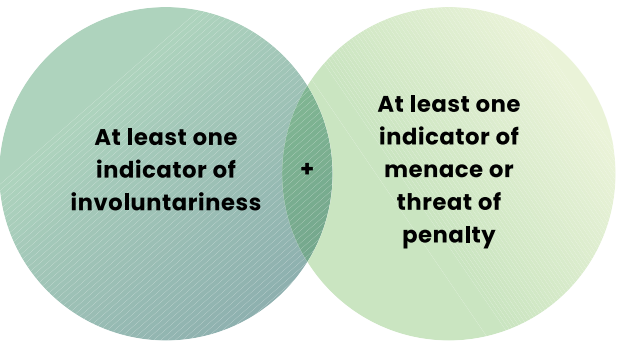
How to assess?

Based on the information collected, do you meet the following for it to be considered:

Potential Human Trafficking



Potential Forced Labour



Whom to refer?

- If meets all trafficking elements: refer to the Police (step 5)
- If does not meet all trafficking elements: refer to the Department of Labour (Step 6)

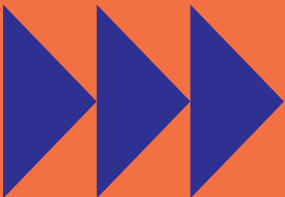
Step 5. Taking Action on Referred Potential Human Trafficking for Forced Labour Case

Who does this?

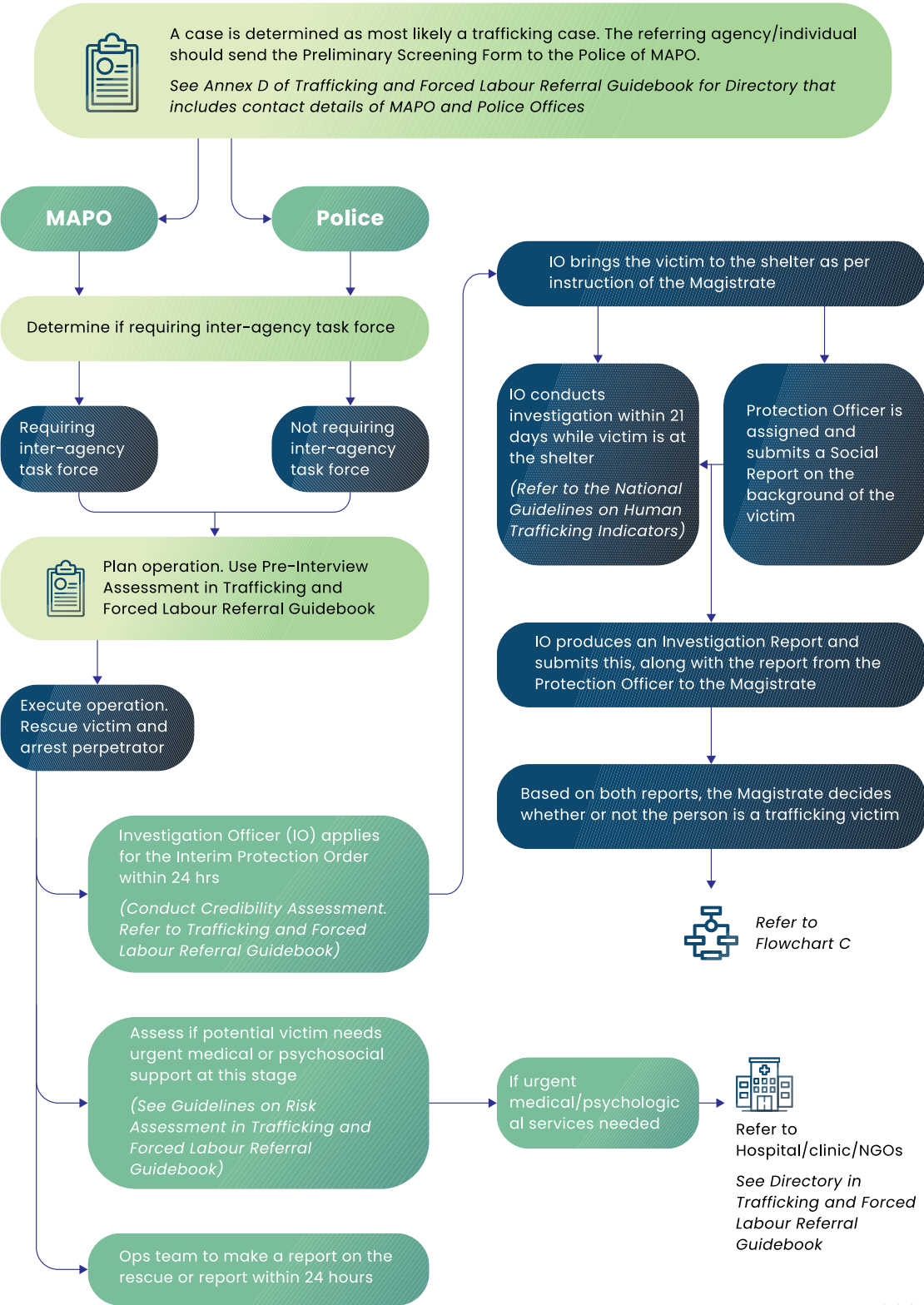
Investigation Officer, Prosecutor, Protection Officer, MAPO and Magistrate

What action?

Flowchart A: Actions undertaken **if most likely a trafficking for forced labour case**

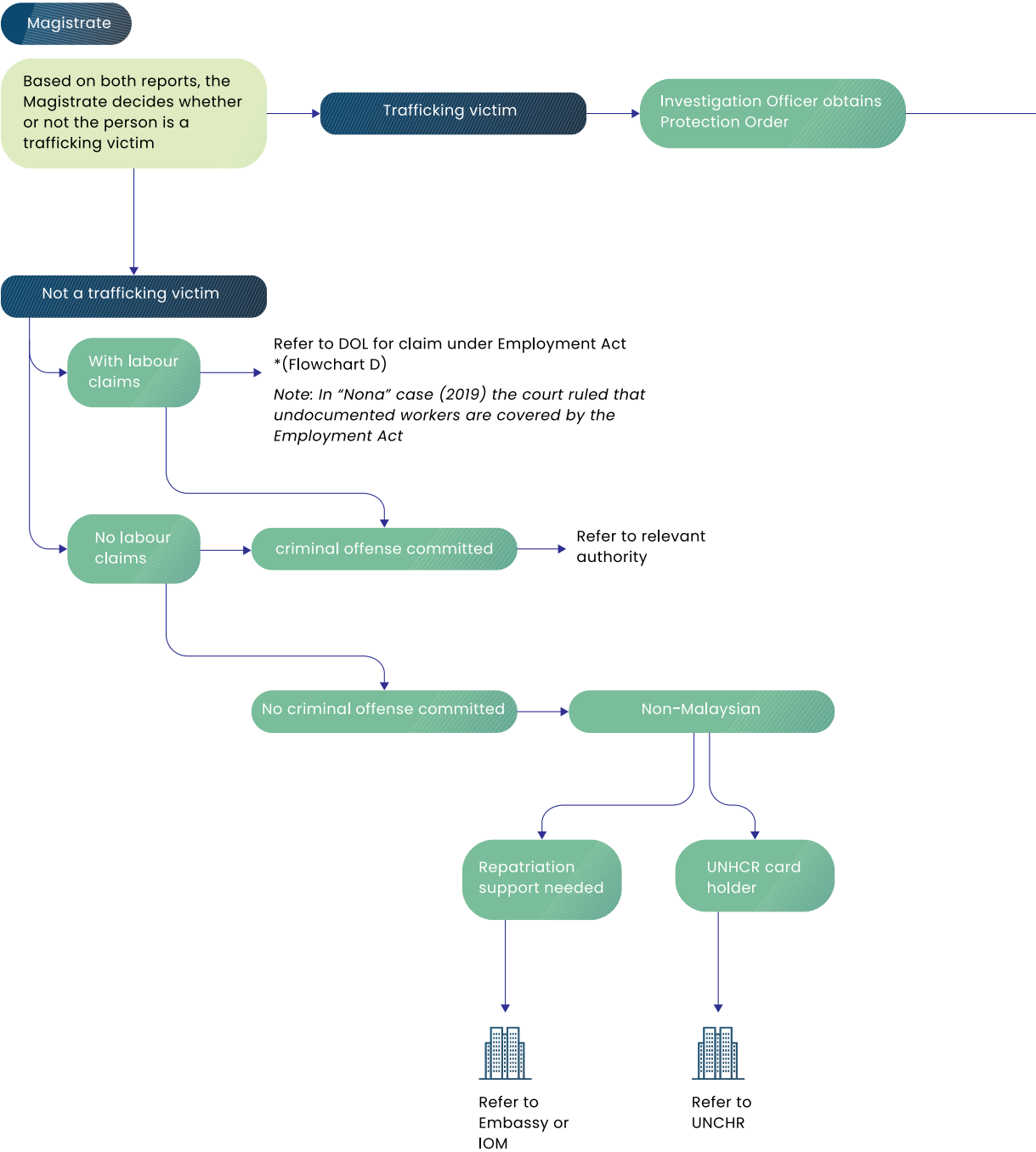


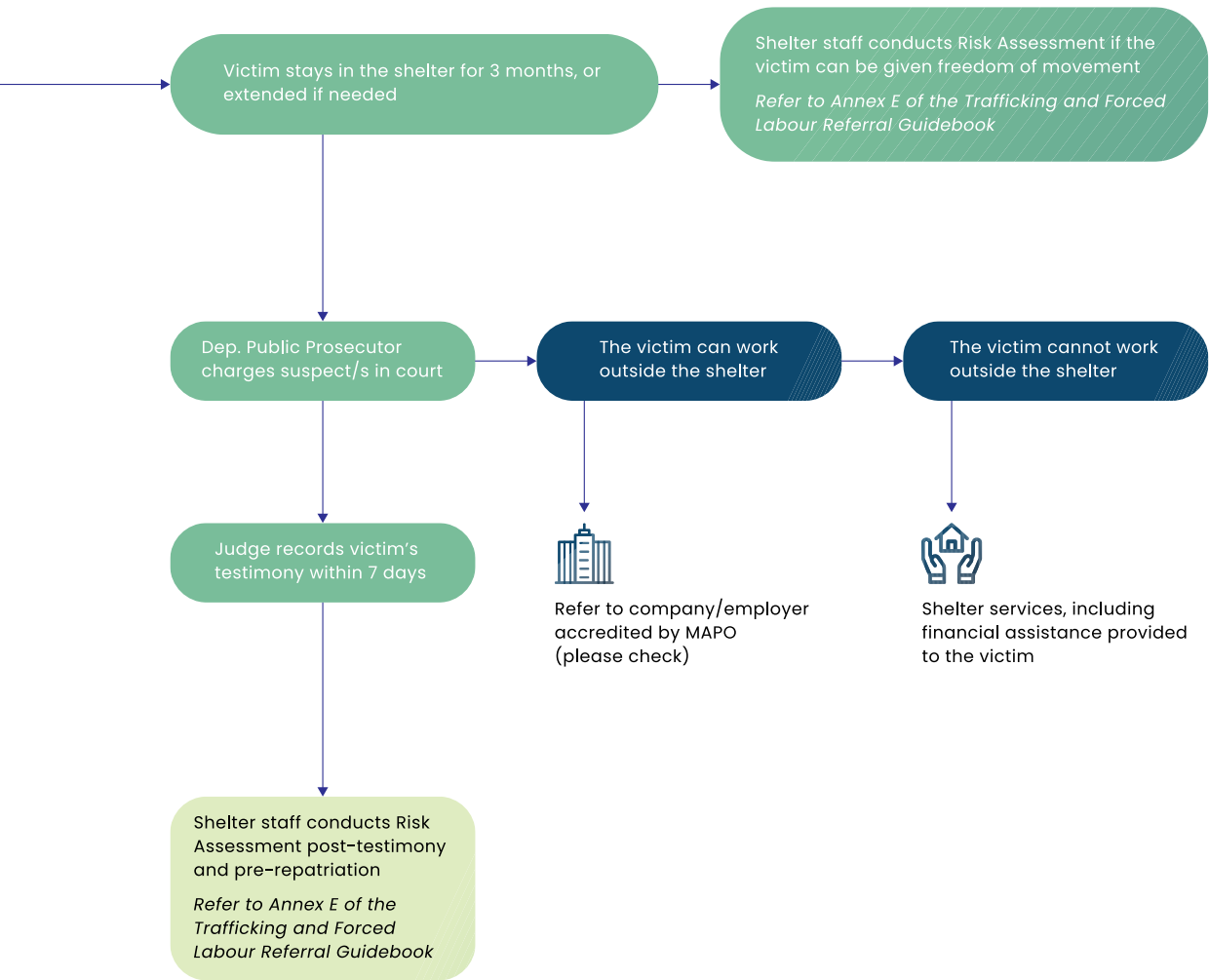
Flowchart A: Actions undertaken if most likely a trafficking for forced labour case



Refer to Flowchart B

Flowchart B: Actions undertaken after investigation and Protection Officer's Reports are submitted (current practice applies only to trafficking cases)





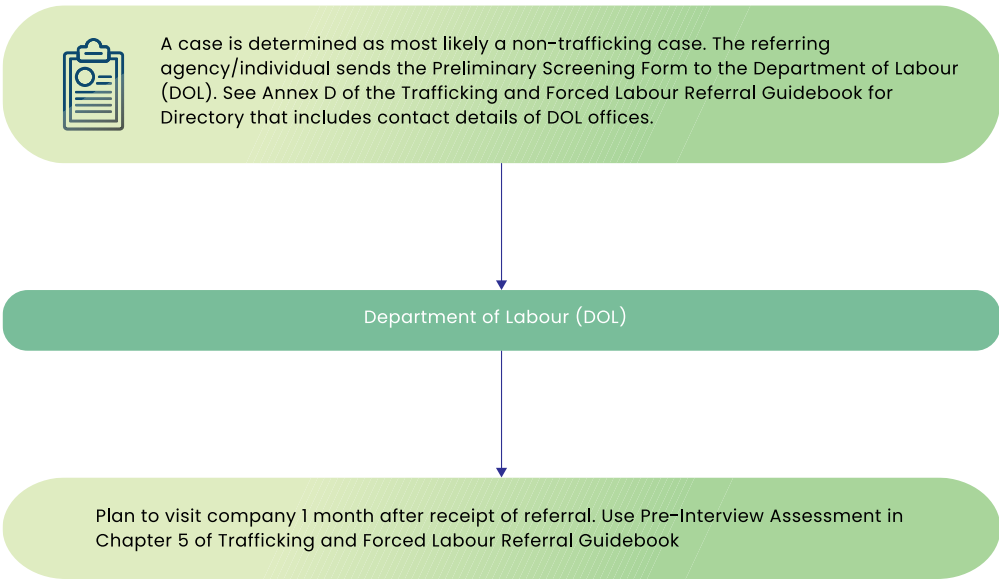
Step 6. Taking Action on Referred Non-Human Trafficking Case

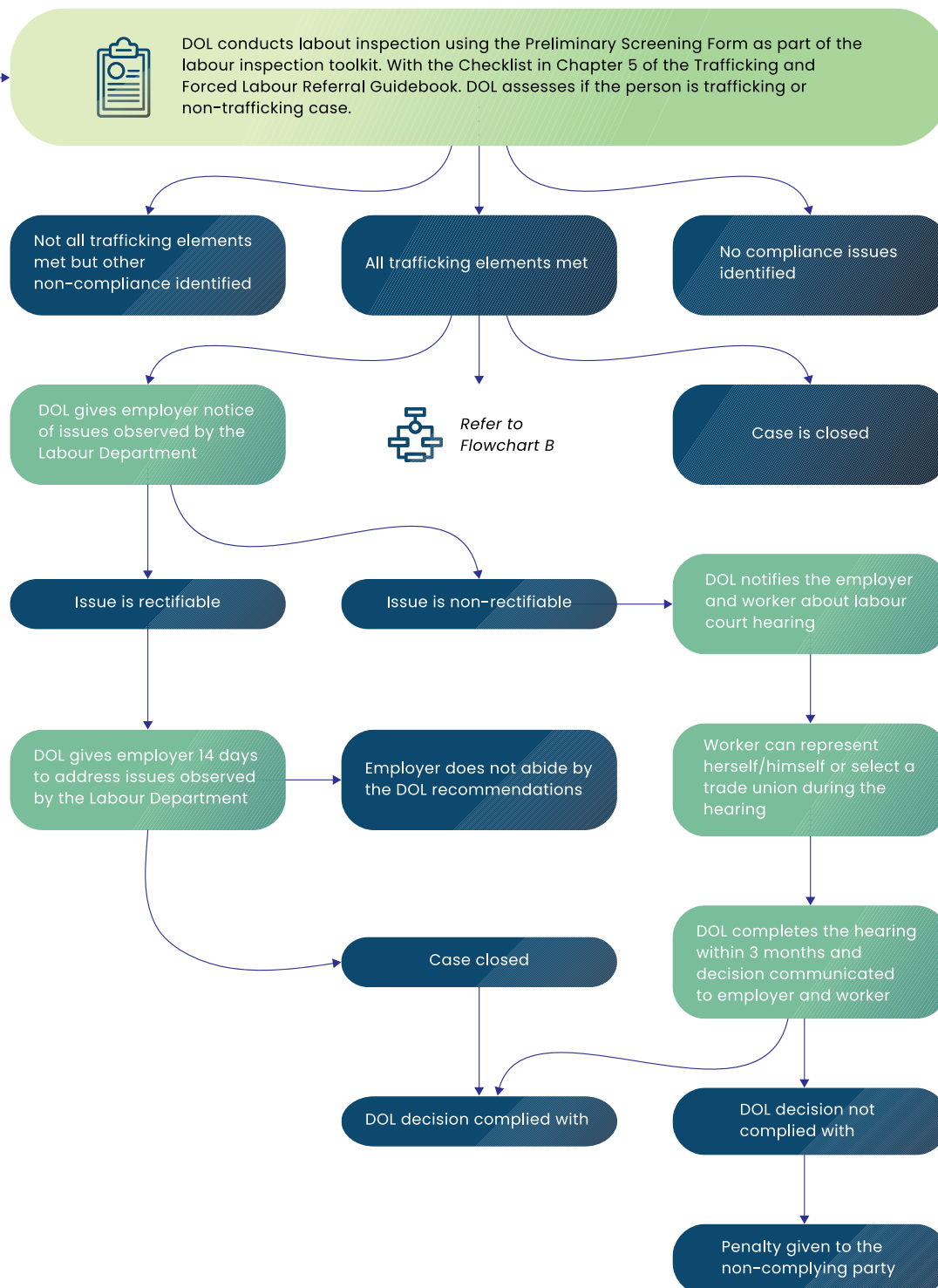
Who does this?

DOL as mandated under labour laws

What action?

Flowchart C: Actions undertaken if most likely a non-trafficking for labour exploitation case (current practice)





Annex 10

Directory of service providers for referral of potential victims of forced labour and human trafficking

► Annex 10: Directory of service providers for referral of potential victims

Shelter	
Consulate General of the Republic of Indonesia (Johor) Address: No. 46, JI. Taat, Off Jalan Tun Abdul Razak, 80100, Johor Bahru, Johor	Tel: 07-2274188 Email: johorbahru.kjri@kemlu.go.id
Consulate General of the Republic of Indonesia (Kuching, Sarawak) Address: Lot 86, Section 53, Jalan Central Timur, 93100 Kuching, Sarawak	Tel: + (60)-82- 460734, 46173 Email: Kuching.kjri@kemlu.go.id/ kjrikuching@gmail.com
Consulate General of the Republic of Indonesia (Penang) Address: 467, Jalan Burma, Taman Selamat, 10350, George Town, Pulau Pinang	Tel: 04-2274686 Email: penang.kjri@kemlu.go.id
Embassy of the Republic of Indonesia Address: 233, Jalan Tun Razak, Imbi, 50400, Kuala Lumpur	Tel: 03-21164000 Email: kualalumpur.kbri@kemlu.go.id/ info@kbrikualalumpur.org
Embassy of the Republic of the Philippines Address: 1, Jalan Changkat Kia Peng, 50450, Kuala Lumpur	Tel: 03-21484233 Email: owwamalaysia@yahoo.com.my
Global Shepherd Berhad Address: c/o Villamaria Good Shepherd, Lorong Setiabistari 2, Medan Damansara, 50490, Kuala Lumpur	Tel: 03-20117406 Email: info@globalshepherds.my
Human Trafficking Watch Services Address: Jalan PJS6/5D, Apartment Desa Mentari Blok 2/9/25, Petaling Jaya, Selangor	Tel: 03-78655491/ 013-6055999 Email: dewikholifah999@gmail.com
Malaysian Anti Trafficking Council Address: Kompleks D, Pusat Pentadbiran, Kerajaan Persekutuan, 62546, Putrajaya	Tel: 03 80008000 Email: pro@moga.gov.my
Migrant Care Address: 2A2 Vistana Residence, 32, Jalan Taiping, Off Jalan Pahang, 50400, Kuala Lumpur	Tel: 019-6001728/ 010-7632161 Email: alexmigrantcare@gmail.com
Perak Women for Women Society (PWW) Address: 52, Jalan Sultan Azlan Shah, 30250, Ipoh, Perak	Tel: 05-2469715 Email: perakwomenforwomen@gmail.com
Tenaganita (Headquarters) Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor	Tel: 03-77703691 Email: general@tenaganita.net

Tenaganita (Penang) Address: 4k, Lorong Delima 20, Island Glades, 11700, Penang	Tel: 04-6681753 Email: tnitapenang@tenaganita.net
Women's Aid Organization (WAO)- call to request for appointment Address: P.O. Box 493, Jalan Sultan, 46670 Petaling Jaya, Selangor	Tel: 03-7957 5636 / 0636 Email: info@wao.org.my
Health and medical care assistance	
A Call to Serve (ACTS)/ Kumpulan ACTS Address: Kumpulan A.C.T.S Berhad No. 16, Jalan 5/7, Petaling Jaya, Selangor	Tel: 03-22722585
Catholic Diocesan Centre (Penang) Address: 290, Jalan Macalister, Georgetown, 10450, Penang	Tel: 04-2292742/2292761 Email: admin@pgdiocese.org
Consulate General of the Republic of Indonesia (Johor) Address: No. 46, JI. Taat, Off Jalan Tun Abdul Razak, 80100, Johor Bahru, Johor	Tel: 07-2274188 Email: johorbahru.kjri@kemlu.go.id
Consulate General of the Republic of Indonesia (Kuching, Sarawak) Address: No. 21, Lot 16557, Block 11, Jalan Stutong, MTLD, 93350, Kuching, Sarawak	Tel: 082-460734 Email: Kuching.kjri@kemlu.go.id/ kjrikuching@gmail.com
Consulate General of the Republic of Indonesia (Penang) Address: 467, Jalan Burma, Taman Selamat, 10350, George Town, Pulau Pinang	Tel: 04-2274686 Email: penang.kjri@kemlu.go.id
Embassy of Cambodia Address: 46, Jalan U Thant, Taman U Thant, 55000, Kuala Lumpur	Tel: 03-42571150 Email: camemb.mys@mfa.gov.kh
Embassy of the Republic of Indonesia (Kuala Lumpur) Address: 233, Jalan Tun Razak, Imbi, 50400, Kuala Lumpur	Tel: 03-21164000 Email: kualalumpur.kbri@kemlu.go.id/ info@kbrikualalumpur.org
Embassy of Nepal Address: Wisma Paradise (Level 1, 3 and 9), No. 63, Jalan Ampang, 50450, Kuala Lumpur	Tel: 03-20201898/ 03-20201899 Email: eonkualalumpur@mofa.gov.np
Embassy of the Republic of the Philippines Address: 1, Jalan Changkat Kia Peng, 50450, Kuala Lumpur	Tel: 03-21484233 Email: owwamalaysia@yahoo.com.my
Global Shepherd Berhad Address: c/o Villamaria Good Shepherd, Lorong Setiabistari 2, Medan Damansara, 50490, Kuala Lumpur	Tel: 03-20117406 Email: info@globalshepherds.my
Human Trafficking Watch Services Address: Jalan PJS6/5D, Apartment Desa Mentari Blok 2/9/25, Petaling Jaya, Selangor	Tel: 03-78655491/ 013-6055999 Email: dewikholifah999@gmail.com

Malaysian Anti Trafficking Council Address: Kompleks D, Pusat Pentadbiran, Kerajaan Persekutuan, 62546, Putrajaya	Tel: 03-80008000 Email: pro@moga.gov.my
Migrant Care Address: 2A2 Vistana Residence, 32, Jalan Taiping, Off Jalan Pahang, 50400, Kuala Lumpur	Tel: 019-6001728/ 010-7632161 Email: secretariat@migrantcare.net
Seahut Address: No. 17, Jalan AU2A/6, Taman Keramat, 54200, Kuala Lumpur	Tel: 012-3114644 Email: azizbeeeye@gmail.com
Tenaganita (Headquarters) Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor	Tel: 03-77703691 Email: general@tenaganita.net
Tenaganita (Penang) Address: 4k, Lorong Delima 20, Island Glades, 11700, Penang	Tel: 04-6681753 Email: tnitapenang@tenaganita.net
Women's Aid Organization (WAO) – call to request for appointment Address: P.O. Box 493, Jalan Sultan, 46670 Petaling Jaya, Selangor	Tel: 03-7957 5636 / 0636 Email: info@wao.org.my
Case management services	
Ampo-Sentro Address: A-2-7, Pusat Perdagangan Seksyen 8, Jalan Sungai Jernih 8/1, 46050, Petaling Jaya, Selangor	Tel: 018-2580242 Email: ammpokl@gmail.com
Archdiocesan Office for Human Development (AOHD) Address: No. 5, Jalan Bukit Nanas, 50250, Kuala Lumpur	Tel: 03-20780239
Catholic Diocesan Centre (Penang) Address: 290, Jalan Macalister, Georgetown, 10450, Penang	Tel: 04-2292742/2292761 Email: admin@pgdiocese.org
Consulate General of the Republic of Indonesia (Johor) Address: No. 46, JI. Taat, Off Jalan Tun Abdul Razak, 80100, Johor Bahru, Johor	Tel: 07-2274188 Email: johorbahru.kjri@kemlu.go.id
Consulate General of the Republic of Indonesia (Penang) Address: 467, Jalan Burma, Taman Selamat, 10350, George Town, Pulau Pinang	Tel: 04-2274686 Email: penang.kjri@kemlu.go.id
Consulate General of the Republic of Indonesia (Kuching, Sarawak) Address: No. 21, Lot 16557, Block 11, Jalan Stutong, MTL D, 93350, Kuching, Sarawak	Tel: 082-460734 Email: Kuching.kjri@kemlu.go.id/ kjrikuching@gmail.com
*Department of Labour (Peninsular Malaysia) Address: Aras 5, Blok D3, Kompleks D, Pusat Pentadbiran Kerajaan Persekutuan, 62530, Putrajaya	Tel: 03-8000 8000 Email: jtksm@mohr.gov.my

*Department of Labour (Sabah) Address: Tingkat 1, Blok C & D, Bangunan KWSP, Peti Surat 14557, Jalan Karamunsing, 88852 Kota Kinabalu, Sabah	Tel: 088 - 238 755 Email: jtknsabah@mohr.gov.my
*Department of Labour (Sarawak) Address: Tingkat 13 Bangunan Sultan Iskandar, Jalan Simpang Tiga, 93532, Kuching, Sarawak	Tel: 082-242261 Email: jtknsarawak@mohr.gov.my
Embassy of Cambodia Address: 46, Jalan U Thant, Taman U Thant, 55000, Kuala Lumpur	Tel: 03-42571150 Email: camemb.mys@mfa.gov.kh
Embassy of Nepal Address: Wisma Paradise (Level 1, 3 and 9), No. 63, Jalan Ampang, 50450, Kuala Lumpur	Tel: 03-20201898/ 03-20201899 Email: eonkualalumpur@mofa.gov.np
Embassy of the Republic of Indonesia (Kuala Lumpur) Address: 233, Jalan Tun Razak, Imbi, 50400, Kuala Lumpur	Tel: 03-21164000 Email: kualalumpur.kbri@kemlu.go.id/ info@kbrikualalumpur.org
Embassy of the Republic of the Philippines Address: 1, Jalan Changkat Kia Peng, 50450, Kuala Lumpur	Tel: 03-21484233 Email: owwamalaysia@yahoo.com.my
Consulate General Republic of Indonesia (Kota Kinabalu Sabah) Lorong Kemajuan, Karamunsing P.O. Box 11595, 88817 KOTA Kinabalu Sabah	Tel: 088 - 219 110, 088 - 218 600 Email: kotakinabalu.kjri@kemlu.go.id
Global Shepherd Berhad Address: c/o Villamaria Good Shepherd, Lorong Setiabistari 2, Medan Damansara, 50490, Kuala Lumpur	Tel: 03-20117406 Email: info@globalshepherds.my
Human Trafficking Watch Services Address: Jalan PJS6/5D, Apartment Desa Mentari Blok 2/9/25, Petaling Jaya, Selangor	Tel: 03-78655491/ 013-6055999 Email: dewikholifah999@gmail.com
International Organization for Migration (IOM) – Repatriation services Address: 570, Jalan Bukit Petaling, 50460, Kuala Lumpur	Tel: 03-92355400 Email: IOMKualaLumpur@iom.int
Malacca-Johore Diocese Migrant Ministry Diocesan Migrants & Itinerants Ministry, Melaka-Johor Diocese Majodi Center, 2101 Jalan Masai, Plentong, 81750 Masai, Johor	Tel: +6 07 3871208; +6 0168341211 Email: mjmigrantmajodi.org
Malaysian Trades Union Congress (MTUC HQ) Address: 10-5, Jalan USJ 9/5t, Subang Business Centre, 47620, Subang Jaya, Selangor	Tel: 03-80242953 Email: sgmtuc@gmail.com
Malaysian Trades Union Congress (MTUC Johor) Address: No. 12-A, Jalan Mata Kucing, Kampung Pasir, 81200, Johor Bahru, Johor	Tel: 03-80242953/2955 Email: malaysiantuc.mrc@gmail.com

Malaysian Trades Union Congress (MTUC Penang) Address: No. 12, Second Floor, Tingkat Kikik 7, Taman Inderawasih, 13600, Seberang Perai, Penang	Tel: 04-3900402 Email: malaysiantuc.mrc@gmail.com
Migrant Care Address: 2A2 Vistana Residence, 32, Jalan Taiping, Off Jalan Pahang, 50400, Kuala Lumpur	Tel: 019-6001728/ 010-7632161 Email: secretariat@migrantcare.net
North South Initiative (NSI) Address: A-2-7, Pusat Perdagangan Seksyen 8, Jalan Sungai Jernih 8/1, 46050, Petaling Jaya, Selangor	Tel: 03-79310741 Email: liberationx@gmail.com/ ns.initiative@gmail.com
Our Journey Address: Unit 5.05, Level 5, No.63, Wisma Paradise, Jalan Ampang, 50450, Kuala Lumpur	Tel: 019-5122852 Email: ssk010@gmail.com
Persatuan Sahabat Wanita Selangor (PWSW) Address: 11a, 1, Jalan Restu, Taman Restu, 43000, Kajang, Selangor	Tel: 03-87378380 Email: sahabatwanita@gmail.com
*Royal Malaysian Police (HQ) Address: Bukit Aman, 50560, Kuala Lumpur	Tel: 03-22662222 Email: rmp@rmp.gov.my
Seahut Address: No. 17, Jalan AU2A/6, Taman Keramat, 54200, Kuala Lumpur	Tel: 012-3114644 Email: azizbeeeye@gmail.com
Serantau Address: A-2-7, Pusat Perdagangan Seksyen 8, Jalan Sungai Jernih 8/1, 46050, Petaling Jaya, Selangor	Tel: 016-2097904 Email: serantau@buruhmigran.or.id
Tenaganita Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor	Tel: 03-77703691 Email: general@tenaganita.net
Tenaganita (Penang) Address: 4k, Lorong Delima 20, Island Glades, 11700, Penang	Tel: 04-6681753 Email: tnitapenang@tenaganita.net
Women's Aid Organization (WAO) - call to request for appointment Address: P.O. Box 493, Jalan Sultan, 46670 Petaling Jaya, Selangor	Tel: 03-7957 5636 / 0636 Email: info@wao.org.my
Counselling and psychosocial support	
Global Shepherd Berhad Address: c/o Villamaria Good Shepherd, Lorong Setiabistari 2, Medan Damansara, 50490, Kuala Lumpur	Tel: 03-20117406 Email: info@globalshepherds.my
Health Equity Initiative (HEI) Address: 26-1A, Jalan Vivikenanda, Brickfields, 50470, Kuala Lumpur	Tel: 03-22724957 Email: admin@healthequityinitiatives.com

Suka Society (for children) Address: P.O.Box 013 Jalan Sultan, 46700, Petaling Jaya, Selangor	Tel: 03-78774227 Email: enquiry@sukasociety.org
Tenaganita Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor	Tel: 03-77703691 Email: general@tenaganita.net
Tenaganita (Penang) Address: 4k, Lorong Delima 20, Island Glades, 11700, Penang	Tel: 04-6681753 Email: tnitapenang@tenaganita.net
Women's Aid Organization (WAO)- call to request for appointment Address: P.O. Box 493, Jalan Sultan, 46670 Petaling Jaya, Selangor	Tel: 03-7957 5636 / 0636 Email: info@wao.org.my
Legal aid	
Johor Legal Aid Center Address: 5, Jalan Tun Abdul Razak Susur 1/1, Wadi Hana, 80000, Johor Bahru, Johor	Tel: 07-2763888
KL Legal Aid Center Address: No. 2, Leboh Pasar Besar, City Centre, 50050, Kuala Lumpur	Tel: 03-26911121 Email: legalaidkl@gmail.com/ legalaid@kllac.com
Penang Legal Aid Center Address: No. 21 (Ground Floor) Green Hall, 10200, Penang	Tel: 04-2617451
Selangor Legal Aid Center Address: No. 41, Jalan Bola Jaring 13/15, Section 13, 40100, Shah Alam, Selangor	Tel: 03-55107007

* Enforcement agencies

Advancing social justice,
promoting decent work

The International Labour Organization is the United Nations agency for the world of work. We bring together governments, employers and workers to drive a human-centred approach to the future of work through employment creation, rights at work, social protection and social dialogue.

This Training for Malaysian labour inspectors on forced labour, child labour and gender-based discrimination, violence and harassment in the workplace: Facilitator's manual is developed to build the capacity of the labour inspectorate to enforce national labour standards on these issues, and advise employers and workers on how to improve compliance.

ILO Regional Office for Asia and the Pacific
United Nations Building
Rajdamnern Nok Avenue
Bangkok 10200, Thailand
Tel.: +662 288 1234
Fax: +662 280 1735
Email: BANGKOK@ilo.org

