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**Pre-situational Analysis Report**

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# **Acronyms**

ACORD Agency for Cooperation and Research in Development

ADIG Association pour le Développement Intègre du Guidimakha/Association for the Comprehensive Development of Guidimakha

AFCF Action Française contre la Faim/Action against Hunger France

ANLSESILP Agence Nationale pour la Lutte contre les Séquelles de l’Esclavage, l’Insertion et la Lutte contre la Pauvreté/National Agency for the Fight against the Vestiges of Slavery, Integration and the Fight against Poverty (Mauritania)

ANTUF All Nepal Trade Union Federation

ASI Anti-Slavery International

ATIPSOM Anti-trafficking in person and smuggling of migrants act 2010 (Malaysia)

CAS Committee on the Application of Standards (ILO)

CATP Central Autonomía de Trabajadores de Perú/Autonomous Centre for Peruvian Workers

CDHAH Commissariat aux Droits de l’Homme et à l’Action Humanitaire/High Commissioner for Human Rights and Humanitarian Action

CDLM Comité pour la Défense des Libertés en Mauritanie/Committee for the Defense of Freedom in Mauritania

CDO Chief District Officer (Nepal)

CEACR ILO Committee of Experts on the Application of Conventions and Recommendations

CGTM Confédération Générale de Travailleurs de Mauritanie/General Confederation for Mauritanian Workers

CGTP Confederación General de Trabajadores de Perú/General Confederation for Peruvian Workers

CHS Alternativo Human Social Capital Alternative (NGO – Peru)

CLPRA Child Labor Prohibition and Regulation Act (Nepal)

CLTM Confédération Libre des Travailleurs de Mauritanie/Free Confederation of Mauritanian Workers

CNDH Commission Nationale des Droits de l’Homme/National Commission for Human Rights (Mauritania)

CNLCTF Comisión Nacional para la Lucha contra el Trabajo Forzoso (National Commission for the Fight against Forced Labor (Peru)

CNSS La Caisse Nationale de Sécurité Sociale/National Social Security Fund

CSO Civil Society Organization

CWIN Child Workers in Nepal (NGO)

CWISH Children and Women in Social Services and Human Rights (Nepal)

CYP Children and Young Persons (Employment) Act (Malaysia)

DoFE Department of Foreign Employment (Nepal)

DWCP Decent Work Country Program

EIEU Electronics Industry Employees’ Union Coalition (Malaysia)

EIWU Electrical Industry Workers’ Union (Malaysia)

ENAMJ l’Ecole Nationale d’Administration de Magistrature et de Journalisme/National School of Administration of Magistracy and Journalism (Mauritania)

EU European Union

FEA Foreign Employment Act

FET Foreign Employment Tribunal (Nepal)

FONADH Forum des Organisations Nationales de Droits Humaines/Forum of Human Rights Organizations (Mauritania)

FPRW Fundamental Principles and Rights at Work (Department of the ILO)

GEFONT General Federation of Nepalese Trade Unions

ICLS International Conference of Labor Statisticians

ILAB Bureau of International Labor Affairs

ILC International Labor Conference

ILO International Labor Organization

INEI Instituto Nacional de Estadísticas e Informáticas/National Institute of Statistics and Informatics (Peru)

IOE International Organization of Employers

IOM International Organization for Migration

IRA Initiative for the Resurgence of the Abolitionist Movement in Mauritania

ITUC International Trade Union Confederation

GIZ German Development Agency

HTAT Human Trafficking Assessment Tool (Nepal)

HTTCA Human Trafficking and Transportation Control Act

KLFN Kamaiya Liberation Front Nepal

KLPA Kamaiya Labor Prohibition Act

KNOMAD Global Knowledge Partnership on Migration and Development

LIC Labor Inspectors and Controllers

MAIEO Ministre d’Affaires Islamiques et de l’Enseignement Originel/Minister for Islamic Affairs and Original Education (Mauritanie)

MAPO Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Malaysia)

MASEF Ministère des Affaires Sociales, de l’Enfance et de la Famille/Ministry for Social Affairs, Children and the Family

MEF Malaysian Employers Federation

MFI Microfinance institution

MFPTMA Ministry of Public Services, Labor and the Modernization of Administration (Mauritania)

MININTER Ministerio del Interior/Ministry of Internal Affairs (Peru)

MINNJUS Ministerio de Justicia y Derechos Humanos/Ministry of Justice and Human Rights (Peru)

MOHA Ministry of Home Affairs (Malaysia)

MOHR Ministry of Human Resources (Malaysia)

MoLE Ministry of Labor and Employment (Nepal)

MoLRM Ministry of Land Reform Management (Nepal)

MoWCSW Ministry of Women, Children and Social Welfare (Nepal)

MPIC Ministry of Plantation Industries and Commodities (Malaysia)

MRC Migrant Resource Centers (Malaysia)

MRG Minority Rights Group

MRO Mauritanian Ouguiyas (currency)

MTPE Ministerio de Trabajo y la Promoción del Empleo/Ministry of Labor and the Promotion of Employment (Peru)

MTUC Malaysia Trade Union Confederation

NAP National Action Plan

NGO Non-Governmental Organization

NMP National Master Plan

NPA National Plan of Action (Nepal)

NPC National Planning Commission (Nepal)

NTUC Nepal Trade Union Congress

OHCHR Office of the United Nations High Commissioner for Human Rights

ONS Office National de la Statistique/National Statistics Bureau

PANE Plateforme des Acteurs Non-Etatiques/Platform for Non-State Actors

PANETE-RIM Plan d’Action pour l’Elimination du Travail des Enfants/National Plan of Action on the Elimination of Child Labor

PNCLTF Plan Nacional de Lucha contra el Trabajo Forzoso/National Plan for the Fight against Forced Labor (Peru)

PNP Policía Nacional del Perú/Peruvian National Police

PSA Public Service Announcement (Nepal)

RETA Trata de Personas Sistema de Registro/Human Trafficking Registration System

RHMSF Rastriya, Haliya, Mukti, Samaj Foundation (Nepal)

SDG Sustainable Development Goal

SET Special Enforcement Team for ATIPSOM (Malaysia)

SISTRA Sistema de Información Estratégica sobre la Trata de Personas/Strategic Information System for Human Trafficking (Peru)

SNAJ Stratégie Nationale d’Accès à la Justice/National Strategy for Access to Justice (Mauritania)

SNGM Stratégie Nationale de Gestion de la Migration/National Strategy for Migration Management (Mauritania)

SNPE Strategie Nationale de Protection de l’Enfance/National Strategy for Child Protection (Mauritania)

SUNAFIL Superintendencia Nacional de Fiscalización Laboural/Superintendence of Labor Inspection (Peru)

TdH Terres des Hommes

TOT Training of Trainers

TPP Trans Pacific Partnership Agreement

TVPRA Trafficking Victims Protection Reauthorization Act (Malaysia)

UN United Nations

UNICEF United Nations International Children’s Emergency Fund

UNODC United Nations Office on Drugs and Crime

USAID United States Agency for International Development

USDOL United States Department of Labor

VDC Village Development Committee (Nepal)

# **Introduction/Executive Summary**

This pre-situational analysis report for the Bridge Project aims to highlight the current status of global and country level efforts to combat forced labor. Findings from the report will help inform the interventions to be carried out under the Bridge Project, and provide a high-level overview to feed into the monitoring and evaluation process. A post-situational analysis will be undertaken close to the end date of the project in 2019.

Information presented in this report was sourced primarily from desk reviews of existing literature and data on the forced labor situation at the global level and in the four priority countries under the project, namely Mauritania, Nepal, Peru and Malaysia. Key informant interviews were also undertaken in Nepal and Malaysia to supplement the information obtained through the desk review.[[1]](#footnote-1)

**Key Findings:**

The 2014 Protocol to the Forced Labor Convention of 1930 brought International Standards in line with modern times. At the beginning of 2017, only 13 countries had ratified the Protocol. In order to assist Member States with the ratification process, the project will organize numerous regional events and launched the 50 for freedom campaign to increase awareness around the Protocol.

Though all four pilot countries have ratified the Forced Labor Convention, 1930 (No. 29) and three countries, with the exception of Malaysia[[2]](#footnote-2), have ratified the Abolition of Forced Labor Convention, 1957 (No. 105), Mauritania is the only country to have ratified the Protocol of 2014 to the Forced Labor Convention. The project will support Mauritania in implementing the Protocol and will support Malaysia, Peru and Nepal in the process of ratifying it.

Laws to address forced labor and human trafficking are available in all three countries. Peruvian legislation did not have penal provisions that specifically suppress and punish the crime of forced labor until the recent approval of Legislative Decree No. 1323 in January 2017. Nepal’s Constitution prohibits forced labor and its legal framework deals with the issue of forced labor and trafficking through the Kamaiya Labor Prohibition Act of 2002 and the Human Trafficking and Transportation Act of 2007. However, Nepal does not have a specific law defining forced labor and covering all forms of forced labor. Most notably, there is no specific legal protection for Hilaya and Haruwa/Charuwa bonded laborers. The government is in the process of reviewing these laws in accordance with the ILO Protocol but there is no indication of when the amendments can be expected. Mauritania has defined and prohibited slavery in law with the latest amendment being the Anti-slavery Act No. 2015-031. Trafficking is defined as a separate issue to that of slavery in accordance with the Anti-Trafficking Act No. 025-2003 but neither law covers forced labor in accordance with the ILO definition. Malaysia does not have a specific law on forced labor law, and there is no country definition for forced labor. However, existing laws do cover the different issues around forced labor. Examples include ATIPSOM which addresses coercion and forced labor as a form of exploitation as well as the Passport Act which addresses the withholding of passports.

Although numerous tools for addressing forced labor are available, gaps still exist. One specific gap is the need for guidelines to support ILO constituents and other stakeholders in developing, implementing, and monitoring gender and age sensitive National Actions Plans on forced labor. Malaysia has an Anti-Trafficking Action plan but no national plan specific to forced labor. The three other priority countries have National Action Plans and Policies that address forced labor but face challenges in their implementation. In Nepal most notably, the referral mechanisms are exclusively for the Kamaiya communities leaving the Hilaya and Haruwa/Charuwa bonded laborers vulnerable. In the same vein, Trafficking in Nepal is the responsibility of the Ministry of Women, Children and Social Welfare as it is considered to be primarily an issue of women and girls. It is therefore clear that the three inter-related ministries that deal with different aspects of forced labor and human trafficking need to work in close collaboration to ensure a coordinated response. Peru’s National Action Plan for the fight against forced labor will be in force until December 2017, and there is considerable commitment on the part of the government to design and implement a new NAP to build upon the progress made over the last five years. In Mauritania, Tadamoun, the agency mandated to prevent forced labor, has drawn up a Roadmap of 29 measures to fight against slavery which has been regarded as an imperfect and yet potential milestone, concerns being the lack of victim participation and that of front-line NGOs.

In terms of statistics, research carried out on the prevalence of forced labor around the world has been intensified following the ILO’s first global estimate of forced labor in 2005. To date, fourteen countries have completed pilot surveys on forced labor, although since the ILO’s publication of the “Hard to see, harder to count” report on lessons learnt from some of the surveys, efforts to research forced labor and present statistics are expected to increase. In relation to the four countries covered under the Bridge project, all lack data on forced labor prevalence. While Mauritania does not have any reliable studies or surveys, Malaysia, Nepal and Peru have undertaken specific sectoral studies. Peru was able to highlight key priority sectors in studies undertaken as part of the previous project implemented with the support of the ILO and these findings will help to coordinate further interventions. Nepal has also carried out studies that provide general data on the prevalence of forced labor in certain regions. In Malaysia, Verité conducted a study on Forced Labor in the Production of Electronic Goods in 2014.

With the changes to national laws and progress made in relation to statistical analysis, the process for identifying victims is expected to improve in all four countries. In Nepal specifically, efforts to tackle forced labor are being extended to Haliya and Haruwa/Charuwa communities although a misunderstanding of forced labor indicators remains an issue. In Mauritania it is considerably more complicated as it is highly unlikely that victims of slavery would speak out against their masters without the support of key organizations due to the deeply rooted aspect of their relationships and their vulnerability to further exploitation once they are freed. The NGO SOS Esclaves has developed a database with 250 cases of forced labor and the Bridge Project aims to support the institutionalization of this database. In Peru, there are two official national databases on human trafficking victims (RETA and SISTRA). With the new legislation that criminalizes forced labor, it is expected that the forced labor cases will also be added to these databases, providing essential information about alleged victims, affected regions, and other important forced labor characteristics. In Malaysia, it appears that the current identification initiatives are reactive rather than proactive, a complaint triggers an intervention and review of cases by MAPO.

In all four countries, the aspect of ethnic marginalization plays a key role in the prevalence of forced labor. Peru’s indigenous population, especially in remote areas, is particularly vulnerable to forced labor as victims are unaware of their rights. In Nepal, awareness raising campaigns have made progress but there is still confusion between forced labor and poor working conditions in general. In Mauritania actions taken by Tadamoun, tend to focus on poverty, health and education but do not specifically target victims of slavery. There is also resistance on certain ministry levels to accept that slavery even exists in Mauritania and NGOs working on the ground to prevent slavery have been subject to harassment and even imprisonment for organizing marches and other awareness-raising activities. Prevalence data on child labor and forced labor in Malaysia does not exist. In Malaysia, Indigenous, stateless and migrant workers and children are particularly at risk and affected by forced labor. Malaysia has a rapidly expanding economy, which coupled with increasing urbanization and relatively low-level of labor force participation among women, continues to create a major demand for migrant workers.

In terms of measures to protect victims of forced labor, all four countries have specific agencies or programs offering services but in Peru, Malaysia and Mauritania these do not specifically target victims of forced labor. All four countries also face the challenges including the lack of resources and poor coordination between actors. Further capacity building is required to ensure that these programs reach all beneficiaries and that response is sufficiently appropriated to each case. In Nepal there are some initiatives to provide freed Kamaiyas and Haliyas with skills to increase their employment opportunities but due to a lack of resources, many continue to fall victims to forced labor and trafficking. There is also no evidence of plans to extend services to Haruwa-Charuwa communities. In Mauritania, no official program for providing livelihood support targeted specifically at victims of slavery is currently in place. In Peru, some existing programs and public services could be used to benefit forced labor and/or human trafficking victims. However, a proper identification system of the victims or vulnerable population at risk of forced labor is needed.

Access to remedies and justice for victims exists but is limited in all four countries. In Peru, the recent criminalization of forced labor is an opportunity to enhance victim protection efforts and to strengthen access to remedies. The Judiciary, Public Ministry, National Police and Ministry of Justice and Human Rights have all expressed their interest in strengthening the capacity of their institutions and their respective staff. On an institutional level, Mauritania has made considerable progress in the fight against slavery and slavery-like practices. The government has developed an extensive legal framework and has tried to improve access to justice by establishing three specialized courts. Since these courts were established, however, only two perpetrators have been prosecuted and this was after substantial pressure by human rights associations. There also remains a substantial need for capacity building for judges, lawyers and other law enforcement. In Nepal, access to remedies for victims of forced labor is challenging due to the lack of a comprehensive law specifically on forced labor. The existing laws have their limitations to reach forced labor victims and penalties imposed on perpetrators are weak or nominal. The fact that different actors are responsible for the jurisdiction of each law is another challenge. In Malaysia, the limited coverage of several laws for domestic workers and undocumented migrants impede their ability to access justice. For instance, undocumented migrants are subject to immediate arrest and detention if caught by authorities and face strict sanctions for violating the Immigration Act. Also, since permission to stay and work in Malaysia is strictly tied to an employer, threat of retaliatory dismissal is sometimes used to coerce migrant workers.

# **Chapter 1: Global Analysis**



## **1.1 International Standards on forced labor**

The International Labor Organization (ILO) has adopted two conventions on forced labor, which are legally binding instruments open to ratification by ILO member States:

**Forced Labor Convention, 1930 (No. 29)[[3]](#footnote-3)**

As the first convention on the subject, it provides the definition of forced labor as “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2(1). Five exceptions to this definition are explicitly mentioned in the Convention.[[4]](#footnote-4) States ratifying Convention No. 29 are under the obligation “to suppress the use of forced or compulsory labor in all its forms” (Article 1(1)) and to ensure that penal sanctions are strictly applied on those who imposed forced labor (Article 25).

**Abolition of Forced Labor Convention, 1957 (No. 105)[[5]](#footnote-5)**

The ILO adopted a second convention on forced labor, Convention No. 105, which does not revise Convention No. 29 but aims at complementing it, focusing on five practices that had emerged following the Second World War, including forced labor as punishment for the expression of political views, for the purposes of economic development, for participation in strikes, as a means of racial or other discrimination or as labor discipline. Convention No. 105 primarily concerns forced labor imposed by state authorities.

In 2014, the ILO adopted two new instruments on forced labor: the Protocol of 2014 to the Forced Labor Convention, 1930[[6]](#footnote-6); and the Forced Labor (supplementary measures) Recommendation 2014 (No. 203)[[7]](#footnote-7). These two new instruments bring ILO standards into line with the modern era by creating specific obligations to prevent forced labor, to protect its victims and to provide access to remedies, and by emphasizing the link between forced labor and human trafficking. The Protocol also reaffirms the importance of prosecuting perpetrators of forced labor.

**Protocol to the Forced Labor Convention, 1930**

The Protocol is a legally-binding instrument that requires States to take measures of prevention, protection and remedy in giving effect to the Convention’s obligation to suppress forced labor. It supplements Convention No. 29, so only ILO member States that have ratified the Convention can ratify the Protocol.

**Forced Labor (Supplementary Measures) Recommendation, 2014 (No. 203)**

Recommendation No. 203, which supplements both the Protocol and Convention No. 29, provides non-binding practical guidance concerning measures to strengthen national law and policy on forced labor in the areas of prevention, protection of victims and ensuring their access to justice and remedies, enforcement and international cooperation. It builds on the provisions of the Protocol and should be read in conjunction with it.

ILO Member States that have ratified the instruments on forced labor must submit a report every 3 years on measures they have taken to implement both Convention No. 29 and No. 105, as well as the Protocol, which are examined by the ILO supervisory bodies. The ILO supervisory bodies assess the conformity of the national law and practice with these instruments. This assessment and the technical assistance that the ILO can provide will facilitate full implementation of the instruments thus ensuring the suppression of forced labor. The ratification status of these instruments are shown below:

|  |  |  |
| --- | --- | --- |
| **International Standards:** | **Number of ratifications** | **Percentage of ILO Member States** |
| Forced Labor Convention, 1930 (No. 29) | 178 | 98.2% |
| Abolition of Forced Labor Convention, 1957 (No. 105) | 175 | 93.6% |
| Protocol of 2014 to the Forced Labor Convention, 1930 | 13[[8]](#footnote-8) | 5.3% |

Non-ratifying members are also required to report by participating in an annual reporting and review process. According to the 1998 Declaration on Fundamental Principles and Rights at Work[[9]](#footnote-9), all ILO member States, including non-ratifying members, have an obligation arising from the very fact of membership in the Organization, to respect, promote and realize the principles concerning fundamental rights which are the subject of these Conventions, including the elimination of all forms of forced or compulsory labor.

These ILO’s forced labor instruments provide all actors with a comprehensive strategy and set of tools to address the challenge of the elimination of all forms of forced labor. They complement and strengthen existing international law, including the UN Slavery Convention of 1926[[10]](#footnote-10); the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956[[11]](#footnote-11); and the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children of 2003 (the Palermo Protocol)[[12]](#footnote-12).

### **Findings**

Addressing the problem of forced labor is a growing international concern but there is still limited public awareness on the issue. If widely ratified and implemented, the Protocol and Recommendation promise to act as a catalyst for achieving the vision of a world without forced labor. To date, 13 ILO member states have ratified the Protocol to the Forced Labor Convention.

### **Risks and assumptions**

The Protocol calls for member states to offer victims of forced labor (regardless of their legal status) the same protection and access to remedies as any national citizen. Given the current global migration crisis and the move by some governments towards protectionist measures with a focus towards tighter border controls and security, the political will to protect migrant workers may be lacking. These developments could present obstacles in increasing the number of ratifications of the protocol.

### **Roles and recommendations for the Bridge Project**

Increasing the number of ratifications of the Protocol will require both political and public support which will only be possible with increased advocacy, knowledge, and awareness. The Bridge project will aim to support the ratification process of the Protocol by:

* contributing to awareness-raising campaigns;
* capacity building to strengthen the role of employers’ and workers’ organizations; and
* advising governments on the development and implementation of relevant laws, policies and programs.

## **1.2 Global tools available for addressing forced labor**

In addition to the ILO’s forced labor instruments highlighted in the previous section, this section describes a non-exhaustive list of key tools available to support stakeholders in combatting forced labor. These tools include handbooks, guidelines, toolkits, good practices and databases:

1. **Combating forced labor: A handbook for employers and business*,*** *ILO, 2015[[13]](#footnote-13)*

This newly revised edition of the Employers’ Handbook on forced labor, produced jointly by the International Organization of Employers (IOE) and the ILO, offers updated guidance to employers on what forced labor is, how to detect it and effective ways to combat it, thereby ensuring that business operations remain free of such practices.

The handbook is addressed to employers’ organizations and a broad spectrum of business actors that include small and medium sized enterprises, multinational enterprises, export-oriented companies and those operating within global supply chains.

1. **Reducing Child Labor & Forced Labor: A Toolkit for Responsible Businesses,** *U. S. Department of Labor (DOL), Bureau of International Labor Affairs (ILAB), 2012[[14]](#footnote-14)*

This online Toolkit is a guide for business developed by the U.S. Government focusing on child labor and forced labor practices. It focuses on the need for companies to create social compliance programs that integrate the ILAB’s policies and practices to ensure the business entity acts to prevent child labor and forced labor throughout its supply chain. The Toolkit provides step-by-step guidance on the following eight critical elements to aid companies that do not currently have social compliance systems in place or those interested in strengthening existing systems: 1) engaging stakeholders and partners; 2) assessing risks and impacts; 3) developing a code of conduct; 4) communicating and training across the supply chain; 5) monitoring compliance; 6) remediating violations; 7) ensuring independent review; and 8) reporting performance.

1. **Toolkit to Combat Trafficking in Persons**, *United Nations Office for Drugs and Crime (UNODC) 2nd edition, 2008[[15]](#footnote-15)*

UNODC's Toolkit to Combat Trafficking in Persons provides practical guidance (1) to prevent and combat trafficking; (2) to protect and assist its victims; and (3) to promote international cooperation. In pursuit of these goals, the Toolkit seeks to facilitate the sharing of knowledge and information among policy makers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. The Toolkit contains 123 tools and details a range of practices and methods currently in use throughout the world. These include checklists to help identify trafficking victims as well as guidance on interviewing victims and victim protection. Other tools help police to undertake cross-border investigations and advise government officials on how to ensure the safe repatriation of victims. These and many other current "best practices" are available for immediate use and adaptation worldwide.

1. **How to Combat Forced Labor and Trafficking: A Manual for Trade Unions,** *International Trade Union Confederation (ITUC), 2009[[16]](#footnote-16)*

The purpose of this manual is to provide trade unionists with a useful tool for increasing awareness of what forced labor is and how it can be effectively challenged. It draws on the expertise and direct experience of a range of trade unions to provide practical examples of action that has been taken, at a local and international level, which has proved effective in combating forced labor.

1. **Hard to see, harder to count: survey guidelines to estimate forced of adults and children,** *ILO, 2012[[17]](#footnote-17)*

These guidelines share the experience gained and lessons learned by the ILO between 2008 and 2010 through quantitative surveys of forced labor and human trafficking undertaken at country level. They aim to provide comprehensive information and tools to enable national statistical offices and research institutes to undertake national surveys on forced labor of adults and/or children. More specifically, they:

* present an operational definition of what constitutes forced labor, and indicators with which to identify it;
* list the steps to be followed by countries wishing to implement a survey on forced labor;
* describe sampling techniques that may be suitable for surveying specific situations of forced labor;
* propose a minimum set of questions necessary to assess forced labor;
* provide guidance on data analysis; and
* present some ethical considerations with regard to research on forced labor, including considerations specific to children.

While the guidelines specifically address the design and implementation of quantitative surveys on forced labor, they can be employed equally for qualitative research as well for the design and processing of databases.

1. **Human trafficking and forced labor: Guidance for legislators and law enforcement,** *ILO, 2005[[18]](#footnote-18)*

This guide has been designed to provide lawmakers and law enforcement authorities with practical aid to understand and implement international standards on human trafficking and to take action accordingly. The ILO's own experience shows that law enforcement alone cannot be an effective remedy for these problems. There is always a need for a dual approach, combining prosecution and law enforcement with employment-based and other social measures for prevention and the rehabilitation of victims.

1. **Forced labor and human trafficking: handbook for labor inspectors*,*** *ILO 2008[[19]](#footnote-19)*

The handbook is a tool for training. It seeks both to inform labor inspectors of the facts and trends of modern forced labor and the challenges before them, and to promote discussion as to how labor inspectorates worldwide could be harnessed more effectively to global efforts against forced labor and trafficking. It identifies cases of good and innovative practice, such as the Special Mobile Inspection Unit of labor inspectors and federal police officers in Brazil.

1. **ILO Indicators of Forced Labor,** *ILO, 2012[[20]](#footnote-20)*

This booklet presents an introduction to the ILO Indicators of Forced Labor. These indicators intend to help “front-line” criminal law enforcement officials, labor inspectors, trade union officers, NGO workers and others identify people who are possibly trapped in a forced labor situation and those who may require urgent assistance. The indicators are derived from theoretical and practical experience of the ILO’s activities in combating forced labor and are illustrated by real-life examples.

1. **Natlex**, *ILO[[21]](#footnote-21)*

Natlex is the ILO database covering national labor, social security and related human rights legislation. The database contains more than 88,000 entries covering 196 countries, providing full texts or abstracts of legislations and electronic sources.

1. **Human Trafficking Knowledge Portal**, *UNODC[[22]](#footnote-22)*

The Human Trafficking Knowledge Portal is an initiative to facilitate the dissemination of information regarding the implementation of the UN Convention against Transnational Organized Crime and specifically the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The online portal provides information on human trafficking issues, court decisions and practices from different countries:

* Case Law Database - Provides immediate, public access to officially documented instances of trafficking in persons. The database contains details on victims and perpetrators nationalities, trafficking routes, verdicts and other information related to prosecuted cases from across the world (94 countries). In doing so, it provides not only mere statistics on numbers of prosecutions and convictions, but also the real-life stories of trafficked persons as documented by the courts.
* Database of Legislation- An electronic repository of laws relevant to the requirements of the organized Crime Convention and the protocols thereto. Most of the legislation included in this database has been enacted specifically to counter the relevant crime type, including trafficking in persons. Legislations are available for 101 countries.

1. **Global Modern Slavery Directory,** POLARIS[[23]](#footnote-23)

An interactive, publicly searchable map and database of organizations and agencies across the globe that address the issue of modern slavery and human trafficking. The Directory includes organizations 2176 organizations from 174 countries that address all types of human trafficking, including sex trafficking, forced labor and debt bondage, forced marriage and child marriage, the sale of children, organ trafficking, and trafficking within international adoption and international marriage brokering mechanisms. The Directory also provides a visualization of the global safety net so that stakeholders may observe where there are gaps in services for these vulnerable populations.

### **Findings**

Although numerous tools for addressing forced labor are available, gaps still exist. One specific gap is the need for guidelines to support ILO constituents and other stakeholders in developing, implementing, and monitoring gender and age sensitive National Actions Plans on forced labor.

### **Risks and assumptions**

Despite the availability of numerous tools, it is difficult to ascertain the extent to which stakeholders and implementers are aware of them and are utilizing them. In addition, some of these tools may be old and in need of revision. Given the vast number of stakeholders dealing with the issue of forced labor, it is difficult to ensure complementarity amongst the tools being developed.

### **Roles and recommendations for the Bridge Project**

The Bridge project will develop new tools such as a guidance tool to develop, implement, monitor and evaluate gender and age sensitive National Action Plans on forced labor. The project will also utilize the existing key tools available in implementing activities aimed at:

* supporting the victims of various forms of forced labor, such as slavery, bonded labor, and human trafficking;
* building the capacity key stakeholders to address forced labor, including governments, employers’ and workers’ organizations, justice system actors, journalists and NGOs;
* revising national policies, action plans and legislation on forced labor; and
* undertaking research on forced labor

## **1.3 Global networks and partnerships on forced labor**

In September 2015, a summit of heads of state adopted the Sustainable Development Goals (SDGs) which will frame the global development agenda for the next 15 years. In Target 8.7 leaders committed to: “Take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms”.[[24]](#footnote-24)

Member States recognized that these targets, along with others across all 17 SDGs, could not be achieved alone and prioritized the role of global partnerships with the inclusion of multi-stakeholder actors. Since the adoption of the SDGs a number of new global alliances and partnerships have been taking shape aimed at supporting member States efforts to make progress on the SDG targets.

**Alliance 8.7**

Globally, there are numerous actors, from the smallest grassroots groupings to UN agencies, working to end child labor and modern slavery. Each of them can use their experience, their outreach and their resources to deliver results that can move societies closer to ending these two basic human rights violations.

A major challenge however will be to strengthen and better coordinate on-going efforts and pool resources in order to scale up successful interventions and monitor progress towards achieving the SDG Target 8.7. To this end the ILO and partners took the initiative to establish and launch Alliance 8.7 in September 2016. The goal of the alliance is to achieve a significant decrease in the number of persons in child labor and forced labor, by focusing on accelerating timelines, conducting research and sharing knowledge, driving innovation, and increasing and leveraging resources.

**Ending Forced Labor in Supply Chains**

In July 2016, a panel discussion on “Partnerships to End Forced Labor in Supply Chains” took place during the UN’s High Level Political Forum. It was co-organized by the Permanent Mission of Argentina, the United States Mission and the ILO. The panel discussed ways of ensuring that supply chains create quality jobs as well as sustainable and inclusive social and economic development. Creating partnerships to combat forced labor was a considerable part of the discussions.

The event also discussed the creation of the ILO Business Network on Forced Labor. The aim is to create a network for employers’ and businesses to discuss issues of concern related to forced labor, share best practices and lessons learned in combatting forced labor.

### **Findings**

Achieving SDG 8.7 will require strengthened coordination among stakeholders as well as the pooling of resources in order to scale up successful forced labor interventions and monitor progress. Emerging partnerships, such as Alliance 8.7 will aim to achieve this coordinated approach.

### **Risks and assumptions**

The number of entities working on forced labor issues has created a crowded space with numerous initiatives and partnerships. This has led to a certain degree of fatigue and has created an environment of heightened competition leading to a number of organizations becoming extremely territorial and protective of their own initiatives and partnerships.

### **Roles and recommendations for the Bridge Project**

The Bridge project should embrace and contribute to these emerging partnerships which will be essential to effectively combat forced labor. The project will contribute to the goals of Alliance 8.7 through research and the sharing of knowledge. In collaboration with the IOE and in consultation with USDOL, the project will also aim to organize a forum on supply chains. This event will provide an opportunity for companies to discuss their challenges in addressing forced labor, while sharing lessons learnt.

## **1.4 Global research on forced labor**

In 2005, the ILO published the first global estimate of forced labor, along with its research methodology. It estimated that 12.3 million were in forced labor worldwide. Following the publication of these estimate, some countries expressed their willingness to test new tools to estimate forced labor. As a first step in response to this request, the ILO worked with the European Commission on the design of lists of observable criteria of forced labor and trafficking in persons, leading to the publication of four lists of indicators of trafficking respectively for children and adults, in sexual and labor exploitation[[25]](#footnote-25). Subsequently, several countries requested support in order to design and implement national surveys on forced labor. Moldova was the first to pilot the tools, with a survey to estimate forced labor among returned migrants. To date, fourteen countries[[26]](#footnote-26) have completed pilot surveys on various forms of forced labor.

In 2012, the ILO published “Hard to see, harder to count”, which described the lessons learned from the first ten pilot surveys on forced labor. A revised global estimate of forced labor was also published in 2012, which estimated the number of victims of forced labor at 20.9 million worldwide.

In 2013, the 19th International Conference of Labor Statisticians (ICLS) adopted a Resolution recommending: “that the Office set up a working group with the aim of sharing best practices on forced labor surveys in order to encourage further such surveys in more countries. The working group should engage ILO constituents and other experts in discussing and developing international guidelines to harmonize concepts, elaborate statistical definitions, standard lists of criteria and survey tools on forced labor, and to inform the 20th International Conference of Labor Statisticians on the progress made.”[[27]](#footnote-27)

**ILO Data Initiative on Modern Slavery**

In response to this decision, as well as the Recommendation No. 203 which calls on member States to collect reliable statistics on forced labor, the ILO has initiated the “Data Initiative on Modern Slavery”, a multi-stakeholders process to harmonize data collection worldwide and generate better prevalence data on modern slavery. The Data Initiative is a global research program to take stock of national and international initiatives measuring forced labor, human trafficking and slavery; to discuss strengths and limitations of existing methodologies and build a consensus on concepts, statistical definitions and standard criteria, survey tools and estimation methodologies which could be used to develop surveys in the future.

The ILO’s targets under this initiative are:

* to submit recommendations on the measurement of forced labor to the 20th International Conference of Labor Statisticians in 2018;
* to publish new global estimates of forced labor by 2017 and present them at the recurrent discussion on Fundamentals Principals and Rights at Work to be held at the 106th Session of the International Labor Conference;
* to complete at least 20 statistical surveys all regions by 2020, in collaboration with ILO constituents; and
* to have a Global Slavery Observatory fully operational by 2017. In response to the needs expressed by various actors from governments, civil society, workers, the business community, and donors, the ILO has designed a Global Slavery Observatory as a key instrument to manage and share knowledge on forced labor, in partnership with other organizations that collect similar data.

### **Findings**

In recent years the ILO, other international organizations and NGOs, have started to collect and analyze data on forced labor practices through qualitative and quantitative surveys, leading to the publication of several estimates. At the same time, a debate on operational definitions has emerged within the community of researchers and in the media. The multi-stakeholders data initiative on modern slavery will aim to harmonize data collection worldwide and generate better prevalence data on modern slavery.

### **Risks and assumptions**

Despite ongoing efforts, data collection on forced labor is still not harmonized and prevalence data is weak and rare. This situation creates challenges in better understanding the nature and the extent of the problem, including its causes and consequences, which are needed to inform policy-makers and other stakeholders involved in actions against forced labor.

### **Roles and recommendations for the Bridge Project**

The Bridge project will support the Data Initiative on Modern Slavery by organizing at least two technical workshops with countries and research entities with the goal of developing guidelines on statistical indicators and survey methods for forced labor research. The project will also strengthen and disseminate information housed on the ILO’s Global Slavery Observatory, which contains a number of country profiles, with national laws, legislations, policies, as well as statistics where available.

The project will complete numerous surveys and studies, including:

* Statistical surveys on the prevalence of forced labor in selected countries including Mauritania, Thailand, Nepal and Peru (the final selection of the countries will be decided in collaboration with USDOL).
* A study to build a typology of working relationships in the context of slavery and slavery-like practices in Mauritania.
* A rapid assessment through qualitative and quantitative research methods to unveil the scenario of bonded/forced labor situation in non-traditional sectors in Nepal
* A study on forced labor focused on a specific national border in Peru.

## **1.5 Global awareness campaigns on forced labor**

Addressing the problem of forced labor is a growing international concern, but there is still limited public awareness on the issue. By ratifying the Protocol, member states will be required to implement two different types of awareness-raising measures:

1. Members must educate and inform the general public – and especially those considered particularly vulnerable to forced labor – in order to prevent their becoming victims (Article 2(a)). Targeting these groups can prevent them from being caught up in forced labor situations, while sensitizing the general public can both help to prevent and encourage the identification of forced labor situations.
2. Members must educate and inform employers in order to prevent their becoming involved in forced or compulsory labor practices (Article 2(b)). For example, providing employers with information about possible indicators of forced labor may help to prevent forced labor situations from arising in the first instance.

Ratification of the Protocol by ILO member States is therefore an essential step towards securing the rights embodied in the Protocol. However, increasing the number of ratifications will require both political and public support which will only be possible with increased advocacy, knowledge, and awareness around the issue. This is a process that will require strong public support to work with governments and social partners, to ensure that the fight against forced labor remains a priority. It is crucial to build such support through materials that clearly explain the scope and application of the Protocol and Recommendation. A cornerstone of ILO’s activities towards ratification is a campaign entitled “50forFreedom”.

**The 50forFreedom campaign**

The ILO, in partnership with the International Organization of Employers (IOE) and International Trade Union Confederation (ITUC), launched the 50 for freedom campaign[[28]](#footnote-28) in June 2015. The campaign aims to mobilize public support and influence at least 50 countries to ratify the Forced Labor Protocol by 2018.

**Awareness raising campaigns:**

In practice, the most widespread prevention activity on forced labor is awareness raising. The majority of campaigns aim to raise awareness of forced labor and trafficking in persons among the general public or particular vulnerable groups. Several countries have focused awareness efforts on the transport networks used by migrant workers, such as the campaign in China targeting young women migrants at bus and train stations, and in Argentina, where public service announcements on trafficking are shown on long distance buses. Some awareness and education efforts target schools. In Anhui Province, China, the Department of Education has distributed a textbook to over 9 million students on life skills, including information on trafficking risks and protection. Primary school textbooks in Ethiopia include instruction on the prevention of child labor and trafficking. In Senegal, the Ministry of the Family has conducted programs to sensitize religious leaders to the fact that Islam does not sanction the practice of forced child begging.[[29]](#footnote-29)

**Social and Economic Empowerment:**

Social and economic empowerment initiatives can increase individual and community resilience to forced labor and trafficking. Targeted action can benefit specific vulnerable groups, for example through education and skills training, employment opportunities and social protection. Brazil is running a pilot project for the promotion of employment in rural areas designed to eliminate the role of informal intermediaries. The Government of India is employing a “convergence-based approach” to enable migrant brick kiln workers to receive various household entitlements and benefits which, as inter-state migrants, they were previously denied. The aim is to break the cycle of poverty and indebtedness which can lead to bondage.

**Partnerships:**

Social partners have played an important role in awareness raising campaigns on forced labor. The 2014 ITUC Congress in Berlin confirmed the struggle to eliminate modern slavery as one of the three “frontline” campaigns of the global trade union movement by promoting broad ratification of the Forced Labor Protocol; supporting local trade union organizations in modern-slavery hotspots to drive change; and holding governments and companies to account wherever they carry responsibility for the persistence of modern slavery in the global economy.

The media also plays a key role. In recent years, there has been growing international media attention on forced labor aboard fishing vessels in Southeast Asia, including investigative reports by the New York Times, Al Jazeera, The Guardian, South China Morning Post, and the Associated Press. This reporting by international media has helped raise awareness of forced labor in the fishing industry among governments, businesses, and consumers.[[30]](#footnote-30)

### **Risks and assumptions**

Currently, a great deal of reporting on trafficking and forced labor still consists of myths and misconceptions or misinformation. The definition of forced labor is also misunderstood and often linked solely to sex trafficking. This leads to a lack of understanding of the real problem and phenomenon.

### **Roles and recommendations for the Bridge Project**

The project will focus on increasing the number of ratifications of the Protocol by ILO member States through:

* The development of the 50forFreedom web platform. The online platform will inform visitors about the issue of forced labor and identify support for the Protocol through maps and visualizations of anonymized user data in addition to personalized messages and statements. It will also serve as an information hub for the campaign, where users can track the Protocol’s ratification around the world and engage their networks through use of the online content.
* Organizing regional events in Latin America, and Asia, as well as a global event. Beyond promoting ratification and implementation of the Protocol, these events will provide an opportunity for the sharing of lessons learnt and good practices, as well as any new data that may be have been collected.

The project will also aim to raise public awareness of forced labor though partnerships with social partners, the media, public-private partnerships and other key stakeholders. At the global level, partnerships with media will be built to improve reporting on forced labor with the aim to produce reliable stories which can be widely disseminated and have a strong impact on public perception. The project will also produce a training kit for journalists, which will aim to enhance better reporting of challenges and progress in the fight against forced labor, taking into account ethical concerns and safety issues.

The project will work closely with Employers’ and Workers’ organizations. A network will be created for employers’ and business to discuss issues of concern related to forced labor, share best practices and lessons learned in combatting forced labor. The project will also include ITUC as an implementing partner to raise awareness on the issue of forced labor in Paraguay, Mauritania and Malaysia.

Support will also be provided to national and local governments and other key partners in three of the priority countries, specifically, Mauritania, Nepal, and Peru, to implement prevention and remedy-related interventions, offering livelihoods and education programs for people at risk and victims of forced labor.

# **Chapter 2: Mauritania Analysis**



## **2.1 International Standards on forced labor**

Mauritania has ratified the following ILO International Standards on Forced Labor:

|  |  |
| --- | --- |
| **International Standards** | **Ratification date:** |
| Forced Labor Convention, 1930 (No. 29) | 20 June 1961 |
| Abolition of Forced Labor Convention, 1957 (No. 105) | 03 Apr 1997 |
| Protocol of 2014 to the Forced Labor Convention, 1930 | 09 Feb 2016 |

**Other important International Standards:**

In addition to the ILO International Standards, Mauritania has also ratified the following Conventions, Protocols and Regional Charters:

* The Worst Forms of Child Labor Convention, 1999 (No. 182)the International Convention on the Elimination of All Forms of Racial Discrimination;
* The International Covenant on Economic, Social and Cultural Rights;
* The International Covenant on Civil and Political Rights;
* The Convention against Torture and Other Cruel Inhuman, Degrading Treatment or Punishment;
* The Convention on the Elimination of All Forms of Discrimination against Women;
* The Convention on the Rights of the Child;
* The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
* The African Charter on Human and Peoples’ Rights (which prohibits slavery);
* The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; and
* The African Charter on the Rights and Welfare of the Child.

**Awareness, Publication and dissemination of International Instruments**

Certain Human Rights associations and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have published and partially disseminated these Instruments, however in general they are not known among stakeholders in Mauritania.

### **Findings**

There is limited awareness of these International Instruments at all levels, including among government officials, police, judicial system actors and civil society. The Special Rapporteur on contemporary forms of slavery has urged the Government to publish the anti-slavery conventions in the official gazette, “Journal Officiel de la Mauritanie”. In 2017, the Office of the High Commissioner on Human Rights, with the Ministry of Justice and the Commissariat aux Droits de l’Homme agreed to publish all international norms related to slavery in a special edition of the “Journal Officiel de la Mauritanie” (*edition spéciale*).

**Risks and Assumptions**

The entry into force of the Protocol in 2017 and its dissemination, together with the other international standards, is an opportunity to renew the commitment of the government and other stakeholders to eliminate forced labor. However, the dissemination of this material may only be partial and may not reach important stakeholders such as civil society organizations, worker organizations and employers in the most vulnerable regions.

### **Roles and recommendations for the Bridge Project**

The Bridge project will contribute to raising the awareness of international standards through:

* the dissemination of the Special Edition of the “Journal Officiel” targeting key stakeholders in the most vulnerable regions; and
* the inclusion of International Standards in the planned trainings and awareness raising activities for officials, employers’ and workers’ organizations, as well as for civil society.

## **2.2 National laws addressing forced labor**

Mauritania’s legal framework makes the distinction between forced labor and trafficking and the country has different National Action Plans for forced labor, human trafficking and child labor. The 025/2003 law on trafficking in persons (*traite des personnes*) includes forced labor in the definition of trafficking, while Article 3 of the Anti-slavery Act No. 2015-031 defines **practices similar to slavery** including debt bondage, serfdom, forced marriage, any form of forced labor.

**Background:**

The legal system in Mauritania is a mix of the colonially inherited French Civil Law legal system and of Sharia Law. The judicial organization established after Independence created a system of courts comprising of Cadis courts which function alongside a conventional court system including courts of first instance, labor courts, Superior Court of Appeal and a Supreme Court. While Cadis Courts used to apply only Sharia law, all the other courts had an internal structure of two chambers, one for Islamic law and the other for modern law. With the Arabisation and Islamisation policies of the country in the 1980s, a 1983 law on judicial re-organization abolished the separation of Islamic and modern chambers in courts and established a unified system that was to apply predominantly Sharia law. Similarly, there were major efforts to reform all substantive laws to make them reflect Sharia law. However, this theoretical predominance of Sharia law has not fundamentally altered the Civil Law foundation upon which the legal system has been developed. Sources of Mauritanian law are the Sharia, the Constitution, legislations (organic laws, ordinary laws, ordinances and decrees) and treaties.

**The Constitution:**

The Constitution was revised in 2012 to recognize cultural and linguistic diversity and to address slavery-like practices and torture as crimes against humanity. Article 13 of the 1991 Constitution was amended with Constitutional Act No. 2012-015 of March 2012, to define slavery as an imprescriptible crime against humanity. This strengthened Act No. 2007/48 of August 2007 which for the first time defined slavery and slavery-like practices as an offence and allowed any legally recognized human rights association to report crimes detected and to offer assistance to victims. This was a significant step forward, which exposed those who might go against the law to public condemnation. Constitutional amendments have also institutionalized the National Human Rights Commission (CNDH) and have given a higher status to international law over national legislation.

**Laws and decrees on forced labor**

Anti-slavery Act No. 2015-031 (2015):

In September 2015 a new anti-slavery Law (No. 2015-031) came into effect, repealing the previous Law 2007/48. From 2007 to 2015 only one court ruling had been issued showing the difficulties for victims in asserting their rights with regard to both the administrative and the judicial authorities. The new law reproduces the main provisions of the previous law by declaring slavery a crime against humanity. It increases prison sentences to 20 years and allows human rights organizations that have been legally registered for five years, to file cases on behalf of victims. It also provides for the establishment of collegial courts to hear cases relating to slavery and slavery-like practices and ensures that the courts are bound to maintain the compensation rights of victims.

Legal Aid Act No. 2015–030 (2015)

On the same date as the Anti-slavery Act, the Legal Aid Act No. 2015–030 also came into effect. It gives the right to victims to receive legal aid to from the State that will cover the costs normally borne by the parties if an applicant proves his/her situation of poverty or that he/she has a limited annual income (see Art. 3). This legal aid system will potentially enable victims of forced labor to benefit from free legal services.

Decree No. 2016-002 (2016)

Decree No. 2016-002 has established the seat and jurisdiction of three Specialized Criminal Courts, exclusively to try slavery cases. The courts are based in Nouakchott, Nuadibouh and Nema.

Anti-trafficking Act No. 025/2003 (2003)

Another relevant text is the Law No. 025/2003 against trafficking in persons. All forms of trafficking, except hereditary slavery, are prohibited by the 2003 Law, which prescribes penalties of five to ten years’ imprisonment for violations. These penalties exceed those prescribed for other serious crimes, such as rape.

Ordinance No. 2005-015 (2015)

Ordinance No. 2005-015 covers the protection of children. Under criminal law it provides that any person who forces a child to beg or who directly employs a child to beg shall be liable to imprisonment of one to six months and fined 100,000 Mauritanian ouguiyas (MRO).

### **Findings**

Important efforts are being made to provide the country with a strong legal framework to address slavery. The establishment of the three special criminal courts constitutes an essential element in the fight against slavery; the courts have a preventative, deterrent and repressive role. The Government also plans to reformulate the anti-trafficking Act 025/2003 to be better aligned with International Standards including provisions to cover witness protection and legal support for victims.

The pace of legal reform and legislative changes have been quick in contrast to the much needed changes at the institutional and social level. Most government officials, police, judicial system actors and civil society actors still have limited knowledge and awareness of existing laws and International Standards.

### **Risks and Assumptions**

To date, slavery prosecution rates have been low in Mauritania. However, the Government, especially the Ministry of Justice, remains committed to an effective implementation of the 2015-31 Act, by providing the courts with the necessary personnel and adequate materials and logistical resources for this purpose. The Special courts should therefore see an increase in slavery cases. This increase, coupled with magistrates that can fully apply the anti- slavery law as well as increased victim support from civil society, security forces and lawyers, should result in an increased number of prosecutions.

### **Roles and recommendations for the Bridge Project**

The project will work with the Ministry of Justice to encourage the publication of the law on the criminalization of slavery and slavery-like practices in the Official Journal of the Islamic Republic of Mauritania, so that judges can refer to it when cases of slavery and slavery-like practices are brought to the special courts. The project will also assist the Ministry of Justice in drafting decrees for the application of the law.

The Bridge Project will support all actors involved in law enforcement, contributing to ensure proper ownership and understanding of the law, in particular through the development and distribution of a compendium of relevant legislation on slavery.

The project will also support the translation of the law on the criminalization of slavery and slavery-like practices into local dialects to allow for all Mauritanians to understand their rights. Streamlined versions of the law will also be produced and disseminated, with audiovisual versions of the law being disseminated through the radio and television for illiterate audiences.

## **2.3 National policies and action plans aimed at suppressing all forms of forced labor**

In March 2014, the Government of Mauritania adopted a Road Map to eradicate the vestiges of slavery and the President of the Republic signed a decree to establish an Inter-ministerial Committee to develop a Plan of Action and oversee policies and actions to implement the Road Map. Later in the year, the Committee developed a draft plan of action, assigning responsibilities and deadlines to various ministries to implement activities. As part of the priorities of the Roadmap the Government created the National Agency for the Fight against the Vestiges of Slavery, Integration and the Fight against Poverty (ANLSESILP), also called Tadamoun.

The Roadmap includes 29 measures aimed at eradicating slavery “in two years maximum” (sic). These measures range from the amendment of the Act. No. 2007/48, the promotion of projects for the integration of victims, including compensation from the perpetrators of slavery, awareness raising activities for the media and citizens, access to land ownership for victims, and the execution of court decisions.

### **Findings**

The Government’s political will to fight against the consequences of slavery has led to the adoption of concrete measures at all levels of government, in particular in the context of the implementation of the recommendations of the Roadmap. A recent joint evaluation report[[31]](#footnote-31) published by national experts and international civil society actors found that the Roadmap could be a milestone in the fight against slavery in Mauritania and is regarded as positive and effective if fully applied.

However, there is still need for a more comprehensive and coherent strategy to address all aspects of slavery. Many organizations also recommend greater participation of victims in the development of projects. One other weakness of the present road-map is the almost non-existent participation of front-line actors such as workers’ and employers’ organizations and human rights organizations (with the exception of SOS–Esclaves).

A specific NAP to combat trafficking in persons is currently being developed by the Commissariat aux Droits de l’Homme et l’Action Humanitaire (CDHAH)[[32]](#footnote-32) .

### **Risks and Assumptions**

While the Roadmap broadly incorporates most of the recommendations of the Special Rapporteur on contemporary forms of slavery in her 2014 mission, the Roadmap also appears to be a partial and incoherent set of actions, lacking specificity and involving a very large number of government departments and agencies. The coordination and collaboration between different government ministries and agencies cannot be taken for granted. The Tadamoun agency and the Commissariat aux Droits de l’Homme et l’Action Humanitaire (CDHAH) are powerful institutions, independent and well-funded, with low incentives to cooperate with other governmental actors. There are also concerns around the government’s capacity and continued commitment to fully implement the Roadmap.

### **Roles and recommendations for the Bridge Project**

The Government has requested the ILO’s support in reviewing the world of work component of the Roadmap, to evaluate progress in its implementation, and to make recommendations. In January 2016, the Ministry of Public Service, Labor and the Modernization of Administration (MFPTMA) also requested the ILO’s support in its implementation.

The Bridge Project will promote cooperation between the different government agencies and actors in implementing the recommendations of the Roadmap. The project will also encourage stakeholders to include a greater involvement of victims in the development of projects, as well as the participation front-line actors such as workers’ and employers’ organizations.

The Bridge Project will also work closely with other international cooperation initiatives on institutional strengthening: for instance the EU project to strengthen the justice sector which includes direct technical assistance; the GIZ technical support to the CDAH action plan; and the OHCHR support of the Ministry of Justice’s action plan.

## **2.4 Statistical data on forced labor**

In 2014, the Special Rapporteur stated that it would be crucial for the full implementation of the roadmap to conduct thorough evidence-based studies on the history and nature of slavery in Mauritania and to present the results in regular public reports. The Roadmap however does not mention specific mechanisms or plans to regularly collect nationwide disaggregated data and the National Statistics Office (ONS) has so far not been in contact with the Inter-ministerial Committee coordinating the implementation of the Roadmap. This Committee therefore has no access to reliable information necessary to identify target groups. Data is also needed for decision making, for designing policies and for monitoring the efforts of all stakeholders participating in the implementation of the Roadmap.

In addition to the lack of data on slavery-like practices, methodologies used in collecting and presenting data is another concern. Quoting the recent mission statement of 11 May 2016 of the Special Rapporteur on extreme poverty and Human Rights, “the refusal to disaggregate data in terms of ethnicity, language and other key dimensions, makes it extremely difficult to obtain an accurate and consistent image of most areas of social life.”

### **Findings**

The Tadamoun agency, the National Commission on Human Rights (CNDH), and the National Statistics Organization (ONS) have not yet produced reliable studies or surveys on the total number of slaves or victims of slavery-like practices living in Mauritania.

Information and databases on forced labor victims produced by specialized NGOs such as SOS Esclaves and AFCF are partial, limited to their beneficiaries and are not sufficiently standardized.

### **Risks and Assumptions**

The National Statistics Office (ONS) will be in some way associated with the Inter-ministerial Committee coordinating the implementation of the Roadmap. This Committee will be interested in producing reliable information necessary to identify target groups, for decision making and for designing policies and for monitoring the efforts of all stakeholders participating in the implementation of the Roadmap.

The Bridge Project relies on the continued collaboration from Government and social actors but there are risks that it may not receive the same political commitment at all levels. This is due to the projects political nature, especially concerning research and statistical data on slavery and slavery-like practices.

### **Roles and recommendations for the Bridge project**

The project will work with the National Statistics Office (NSO) to bridge the research gap by developing statistical surveys on the typology and prevalence of forced labor in Mauritania.

The information gathered during the survey should make it possible to identify:

* The type of relationship between employers and workers: vulnerability factors that facilitate the establishment of an exploitative relationship, including hereditary slavery and other factors that make children and youth vulnerable to forced labor when they reach adulthood.
* Mechanisms that facilitate and perpetuate this operating relationship.
* The profile of people, sectors and areas at risk of slavery/slavery-like practices in Mauritania. Particular attention will be paid to the study of existing irregularities, in particular the employment relationships, between slaves/ex-slaves and masters/ex-masters.

The project will also conduct a study on recruitment mechanisms and define the different types of employment including forms similar to the practice of slavery.

## **2.5 Challenges and measures to identify victims of forced labor**

The identification and rehabilitation of forced victims from a deeply rooted legacy of indoctrinated submission to their masters is a complex and multifaceted process demanding the support of competent and trained professionals. Information on the new Antislavery Act and the rights of victims needs to be accessible and understood by people living in these conditions. It is unlikely that victims would speak out and report crimes committed against them by their masters to the authorities without being supported by expert organizations or institutions.

### **Findings**

**Lack of civil status of victims:** Many forced labor victims do not have national identity cards and their children lack birth certificates. If they cut the relation of dependence with respect to their masters, they would still be vulnerable to other types of trafficking. The Special Rapporteur on contemporary forms of slavery called for programs that restore the rights of children of ex-slaves by focusing on providing the children with “birth registrations that include their national identity, reuniting children with their families and ensuring access to schooling.” A number of recommendations in the Roadmap refer to these specific vulnerabilities of women and children (R10, 12, 14, and 15), by promoting affirmative action, “facilitating access to civil status for persons without affiliation”, promoting compulsory education for children and vocational training for adults.

**Absence of identification mechanisms:** Currently, no defined government strategy exists to identify forced labor victims. There is no explicit commitment from the Government to create identification and referral mechanisms of forced labor victims, to provide them and their children with birth registrations and identity cards and ensuring their effective access to essential services. However, the identification of victims by administrative authorities and police is also crucial. The 2015 Anti-Slavery Law imposes imprisonment and a fine to judicial police that fail to investigate slavery cases that are brought to their attention.

**The labor inspection system** falls under the General Direction of Labor of the Ministry of Public Service, Labor and the Modernization of Administration (MFPTMA). The ministry has recently extended the geographical coverage of labor inspectorates to cover the 13 regions (Wilayas) in which 52 labor inspectors and 19 labor controllers are distributed. Though the Government has emphasized the substantial improvements made recently in terms of office equipment and working conditions of the labor inspection, many forced labor victims live in remote and isolated areas while labor inspectors have inadequate transport facilities to cover these large areas. Labor inspectors need to gain a better understanding of slavery and forced labor issues and by virtue of their mission and responsibilities develop strategies to better contribute to identify and protect forced labor victims of abuse and exploitation.

**Involvement of worker organizations in the identification of victims:** In general, worker organizations in Mauritania lack awareness of issues around forced labor and slavery-like practices, the problem of forced labor is therefore not sufficiently prioritized in their agendas and tripartite dialogue. However, two workers’ organizations, the General Confederation of Mauritanian Workers (CGTM) and the Free Confederation of Mauritanian Workers (CLTM), both affiliated with the International Trade Union Confederation (ITUC) are actively involved in the fight against slavery-like practices. CGTM and CLTM have used their scarce resources to identify and support victims, bringing their cases to the courts.

**Involvement of civil society:** SOS Esclaves has developed a database with presently more than 250 cases of forced labor. AFCF has developed a database of hundreds of minors working as domestic laborers and that could eventually be identified as victims of trafficking. These databases receive support from Anti-Slavery International (ASI) with USAID funding or Terre Des Hommes Switzerland (TdH). Most other CSO actors have no experience in dealing with these cases from the perspective of international standards and the implementation of the anti-slavery law 2015-31.

### **Risks and Assumptions**

The identification of the victim is critical in order to ensure that they receive appropriate support. However, given the complex nature of the problem, there is the risk that government officials, worker organizations, national CSOs or local NGOs may poorly manage the identification processes, putting the victims or the eventual judicial process at risk.

Some key actors will engage in the delicate process of victim identification following international standards and national laws and procedures. However, other actors involved in the identification process may prefer to take on a politically neutral attitude aimed at solving social problems, and traditional conciliation procedures, instead of generating structural solutions through the implementation of Law 2015-31 and International Standards.

Awareness raising activities will encourage victims to engage with stakeholders who intend to support them and accompany them through the judicial process and socioeconomic integration process until they are fully integrated into society.

### **Roles and recommendations for the Bridge Project**

The project will carry out an assessment of the main challenges and needs that security forces (Police, Gendarmerie, and the National Guard) face when enforcing laws on the criminalization of slavery and slavery-like practices. Consequently, the project will organize trainings to address the challenges identified in the assessment of these three security institutions whose contribution is essential. A special focus will be placed on handling victims of slavery practices, especially to ensure a safe, supportive, and gender sensitive environment for victims seeking legal services.

Labor inspectors and trade unions will also be trained on the identification of slavery and slavery-like practices, paying special attention to the issue of gender equality and domestic work.

The Bridge project will coordinate with these actors and advocate for the institutionalization of the victim identification mechanisms. All stakeholders will be brought together to interact in workshops and meetings in order to confront, discuss and construct a new and shared understanding of the challenges and measures to identify forced labor victims. Information on forced labor identification needs to be verified and validated based on a common and agreed approach.

## **2.6 Challenges and measures to prevent forced labor**

Measures to prevent forced labor require a multi-sectoral approach. Currently, several ministers, institutions and social actors are involved in prevention activities. In this sense, the Roadmap makes recommendations to all stakeholders to initiate “awareness programs about the de-legitimization of slavery” and proposes actions like the “organization of awareness campaigns in favor of the leaders of civil society and the media on the anti-slavery legislation, the development and implementation of a communication strategy and the formation of networks and press associations on the fight against the legacy of slavery”. Recommendations 23 of the Roadmap undertakes to “publicize the texts on slavery and raise awareness through displays, debates, slogans and broadcasting”, and Recommendation 25 calls to “establish a day of the struggle against slavery.”

### **Findings**

The relationship between the victims and their master is multidimensional in terms of psychological, economic and social dependence. This wide range of situations therefore requires a complementary set of measures including awareness-raising activities that reach victims and their masters. The objective is to deconstruct the pattern of dependency in which these victims are living. The multi-sectoral approach to prevention and the inter-ministerial coordination that has been put in place for this purpose is very positive. To date, numerous actors and groups have been involved in awareness raising with varying degrees of success:

* The Commissariat aux Droits de l’Homme et à l’Action Humanitaire (CDHAH)[[33]](#footnote-33) has organized two awareness-raising workshops for civil society and the media on anti-slavery legislation and established a network of journalists “specialized in the struggle against the vestiges of slavery”, in partnership with the Ministry of Relations with Parliament and Civil Society.
* The CDHAH together with the Ministry of social affairs (MASEF) also organized awareness raising activities and caravans on the vestiges of slavery in some of the regions with adwaba villages (Haratine populations). Caravans provided information related to the role of women and traditional leadership, to identify community needs, provide nutritional and health advice, and to support income generating activities.
* Following the recommendation of the Roadmap, the Ministry of Islamic Affairs and Original Education (MAIEO) organized a national seminar in March 2014 to raise awareness that slavery and slavery-related acts have no connection with Islam and that they should be eradicated. The Council pronounced a fatwa[[34]](#footnote-34) asserting that all forms of slavery and slavery-like practices are forbidden under Islam. The Government has announced plans to provide Islamic teaching and weekly sermons, as well as to scholars on anti-slavery discourse, although this has not been fully implemented yet.
* El Emel Weel Amel is a humanitarian faith based organization supported by the GIZ that has recently implemented a program to inform religious leaders of the single fatwa against slavery in partnership with the National Union of Mauritanian Imams. They produced a paper on the misconceptions concerning slavery-like practices, noting that this phenomenon has no religious or legal basis.
* Mayors have also organized their own network to fight slavery: Reseau des Maires de Mauritanie contre l’esclavage (RMCE). This network organized two events in 2014 and 2015 in the communes of Aleg and Cheggar in the region of Brakna. The objective of the meetings was to organize a popular mobilization to gather information on slavery practices. The mayors declared “the absence of slaves in their communes”. While the Bridge Project does not share the approach of the mayors, the leaders of municipalities are considered to be the state institution with the closest ties to the population. In Mauritania, the state is fragile, its governance practices are weak, especially in rural areas where public services are insufficient. In the absence of other representatives or state structures that protect the rights of citizens, municipalities are essential to support the implementation of Law 2015-31.
* SOS-Esclaves in partnership with Antislavery International (ASI) and Minority Rights Group (MRG) has been leading the fight against slavery in Mauritania for over 14 years and has received support from USAID to organize monthly community awareness-raising/outreach meetings. It seeks to expose the realities of the practice, to challenge the widespread acceptance of slavery and to defend the rights of those seeking to escape slavery. It also works to end discrimination faced by people of slave descent. SOS Esclaves is a member of the technical committee to follow up on the road-map and regularly participates at the institutional level.
* The Initiative for the Resurgence of the Abolitionist Movement in Mauritania (IRA) also plays a role in preventative activities in Mauritania. IRA activists campaign against slavery and raise awareness on the rights for people of slave descent. However, the IRA has been requesting official authorization for their organization since 2008 and it is has still not been recognized by the Mauritanian authorities. In January 2015, the Court of Rosso sentenced the IRA’s president and a second leader to two years in prison for belonging to an unrecognized organization, participating in an unauthorized assembly and assaulting security officers. The Supreme Court released the anti-slavery activists on 17th May 2016 after 18 months in jail. 13 more IRA anti-slavery activists were imprisoned in July 2016.
* The Labor Union CLTM (almost only Haratine members) has also focused their public communication efforts on raising awareness around slavery issues, informing members on the new legal context and on their rights. However, the administrative authorities do not authorize their public meetings as they are considered to be political in nature.
* The EU is partnering with National School of Administration, Journalism and Magistracy (ENAMJ) under the project “Strengthening the Rule of Law”, in order to strengthen the capacity of the school and to improve its curriculum. The Bridge Project plans to work with this project to develop training modules on forced labor.

PANE and CDLM are two leading representative civil society platforms with an important mobilization and advocacy capacity. The platform of non-state actors (PANE - Plateforme des Acteurs Non Etatiques) is close to the Government and includes the more outspoken network FONADH, as well as a variety of human rights associations, with the capacity to raise politically sensitive issues. FONADH includes well-known Human Rights organizations such as SOS Esclaves, Association Mauritanienne des Droits de l’Homme (AMDH), l’Association des Femmes Chef de Famille (AFCF).

### **Risks and Assumptions**

Slavery and slavery like practices are still not the primary focus of awareness raising activities organized by the Government, who tend to place emphasis on the vestiges of slavery and poverty, targeting vulnerable populations in general and not specifically the victims of slavery. SOS-Esclaves has indicated that “information caravans organized under the Roadmap are instructed to inform the population that slavery does not exist”. The Government should support or at least tolerate awareness raising activities of all stakeholders in the context of the implementation of Law 2015-31. However, given the political sensitivity of this issue in Mauritania, awareness raising activities may be interpreted by some authorities or political motivated actors as promoting sectarianism or radicalization. This position affirmed in the follow up report of the Roadmap of November 2014 and other official declarations of prominent government officials: they consider that these kind of outreach activities are illegal and they do not contribute to the fight against slavery-like practices: “these claims are counter-productive, they stir up hatred between communities, incite rebellion and fuel sectarianism and radicalization”.

Participation, coordination and an inclusive approach of relevant actors is also not always achieved. Worker organizations, employers and key front-line actors are not represented in institutions like Tadamoun or the technical committee for the implementation of the roadmap. The International Trade Union Confederation (ITUC) has, in the Observations made to the Committee of Application of Standards (CAS), denounced the obstacles placed in the way of certain trade unions or social movements fighting against slavery. The Authorities may prevent some actors from organizing awareness-raising activities like demonstrations, marches, sit-ins, etc. In the case of the IRA this can even imply harassing some of their leaders (arrests, imprisonment, etc.).

### **Roles and recommendations for the Bridge project**

The Bridge Project will encourage employers’ and workers' organizations, as well as civil society organizations to have an increased and more effective participation in policy-making in regards to the fight against slavery and forced labor. The Bridge Project will support these actors to be represented, for example, within the Tadamoun Agency and within the technical committee responsible for the implementation of the Roadmap.

The project will contribute to the coordination of activities undertaken within state structures and with civil society. This coordination must be accompanied by greater communication and visibility of the actions carried out and the results obtained so that the society as a whole feels included in the fight against slavery and its aftermath. The project will develop and implement a national communication strategy consisting of: a national awareness raising campaign; “school kits” on slavery and slavery-like practices; a workshop for the media; and activities for the annual national commemoration day of the struggle against slavery.

In Mauritania, religion plays an important role in society. The fatwa asserting that all forms of slavery and slavery-like practices are forbidden under Islam is an important awareness raising tool in order to dispel the misperception that practices of slavery are linked to Islam. Four roundtable discussions will be organized with religious leaders Ulema (scholars) and Imams (preachers) to discuss the Fatwa and the Act criminalizing slavery and slavery-like practices, and how to address issues of slavery and slavery-like practices within the communities they serve.

The project will also develop a specific training module in the area of slavery and slavery-like practices and will work with the National School of Administration, Journalism and Magistracy (ENAMJ) to integrate it in the training curriculum for administrators, journalists, and magistrates.

## **2.7 Challenges and measures to protect victims of forced labor**

Tadamoun[[35]](#footnote-35) is the specialized institution officially mandated to design and to implement programs preventing slavery-like practices and protecting victims. Its objectives are to monitor and to eradicate the legacy of slavery, to promote the insertion of returned Mauritanian refugees and to lead the fight against poverty. The agency directly carries out infrastructure projects in Adwabas in relation to health, education and access to water, but has a low profile in taking action against underlying causes of marginalization and exclusion of the poor, linked to ethnicity or to slavery-like practices.

Although Tadamoun is entitled to lodge complaints against alleged perpetrators of slavery-like practices by suing for damages on behalf of the victims, since its inception in 2013 it has only exercised that entitlement in a few cases. It has brought civil actions in 5 cases, two in Zouerate in 2014 and 2015, and three cases in Nema in 2015.

**The National Plan of Action on the Elimination of Child Labor 2015–20 (PANETE–RIM)**

The National Plan of Action on the Elimination of Child Labor 2015–20 [[36]](#footnote-36) (PANETE–RIM) adopted on 14th May 2015 identifies the presence of child victims of trafficking in Mauritania, including children who are victims of the vestiges of slavery, Talibé children and foreign children. PANETE–RIM forms part of the implementation of the roadmap for combating the vestiges of slavery, and taking action against child labor.

**MASEF**

The Ministry of Social Affairs, Childhood, and the Family (MASEF) runs seven centers for the protection and social integration of children. These centers provide psycho-social assistance and short-term protection for children victims of trafficking for labor or sexual exploitation. There is no indication as to whether these children are victims of hereditary slavery or slavery like practices (worst forms of child labor). These centers also refer victims to NGOs who provide protection services.

**SNPE - Stratégie Nationale de Protection de l’Enfance**

PANETE is part of the national Child Protection Strategy (SNPE - Stratégie Nationale de Protection de l’Enfance). The SNPE has set up of 30 communal child protection systems in 10 *wilayas* (regions) coordinated by the MASEF, supported by UNICEF and participated by leading public officials, essential service providers and national and international NGOs. These roundtables offer information and promote the coordination of all the service providing structures, local and regional administrations, and NGO’s, enabling the different institutions to provide care for 10,782 victims of child labor.

**Labor Inspection:** The Ministry of Labor (MFPTMA) has recently launched a project to strengthen the human resources and material capacities of Labor Inspections, linked to the implementation of the National Strategy of Migration (SNGM) with support from the EU and IOM. To this end, the MFPTMA will train about 30 Labor Inspectors and Controllers (LIC) responsible for the protection of workers' rights. The planned training will focus on the protection of rights of migrant workers who may be victims of all forms of exploitation in the workplace (trafficking, forced labor, the worst forms of child labor, etc.). Similarly the ILO will contribute to these activities through trainings on the identification of worst forms of child labor and victims of slavery and slavery like practices to support the National Plan of Action on the Elimination of Child Labor 2015–20 (PANETE–RIM) and the implementation of Law 2015-31.

**NGO and Human Rights organizations:**

A standardized identification and referral system to protect victims of slavery and slavery-like practices does not exist in Mauritania. NGO care providers and Human Rights organizations like SOS Esclaves and AFCF [[37]](#footnote-37) use their own approaches with support from their international partners, including UN agencies like IOM and UNICEF. For instance NGOs provide legal assistance, psycho-social care and reintegration services to victims of trafficking and some alleged slaves. All actors, however, agree that the needs and vulnerabilities of victims strongly overlap and that there is a need to apply international standards and norms to identify victims of slavery, slavery like practices and trafficking. Such a referral mechanisms needs to include victims’ children, their household, their community and the state, operating at all levels.

The Bridge project has identified other potential partners who provide livelihood services to very vulnerable populations in rural areas with Adwabas and Haratine population. These actors include: ACORD[[38]](#footnote-38) ; ADIG[[39]](#footnote-39) and TdH[[40]](#footnote-40) Discussions with these actors are ongoing to agree on developing a joint identification and referral mechanism for providing services to victims.

**Livelihood support from the ILO**

ILO has experience in Mauritania in providing employment services to the most vulnerable populations. Besides the technical training modules delivered by national public and private centers of professional training and labor insertion (vocational schools[[41]](#footnote-41)), the ILO has developed complementary training programs on soft skills in employment. The Bridge project’s National Project Coordinator based in Mauritania and local consultants will carry out a training of trainers approach to adapt the sessions to the specific needs of victims of slavery or slavery like practices in Mauritania.

The existing modules consist of three main areas:

* Employability and inclusion: professional orientation, identifying educational and training needs, type of employment (wage or self-employment), work place etiquette,
* Financial education: financial literacy, personal financial management and communication with the family about financial issues, financial products and services (savings and credit services at MFIs), and
* Social Solidarity Economy: functional literacy, basic accounting, marketing / access to markets, entrepreneurship.

Another existing ILO initiative in Mauritania, which will be adapted to integrate victims of forced labor, is the “Workshop school.” This program is based on the methodology of learning-by-doing and a “dual training” approach. This dual training focuses on apprenticeships in a company and vocational education at a vocational school. The “workshop school” conducts 6 month training programs awarding a scholarship and health insurance coverage from the social security (CNSS) to the trainees for the duration of the program. Upon completing the course, a “certificate of competences” (CC) is provided to participants. The trainings are linked to urban and rural labor market opportunities such as the building sector and to the needs of Adwabas (Haratine villages), rural roads maintenance, and rehabilitation of water harvesting infrastructure such as small dams. The first “workshop school” started in 2016 in the building and construction sector with a particular emphasis on the maintenance of rural roads.

**Ministry of Employment and Vocational Training**

Young people who have completed a diploma or vocational skills training can benefit from support to create income-generating activities through self-employment. They can request support from the Government or NGO programs of the National Agency for the Promotion of Youth Employment (ANAPEJ) through their integration and micro finance programs. Participants must be qualified in an identified profession (for example a carpenter, welder, plumber, mason, electrician, gardener, mechanic, sheet metal worker, etc.), or must complete a short training to have the basic skills for a profession.

### **Findings**

No official program for providing livelihood support targeted specifically at victims of slavery is currently in place in Mauritania. The Government strategy implemented by Tadamoun focuses on generic poverty reduction and access to education as key elements in the fight against slavery and its aftermath in the regions with the most vulnerable populations. In 2014, the Special Rapporteur on contemporary forms of slavery recommended to bring Tadamoun in line with the recommendations of the Roadmap. The workers’ organizations through their international body ITUC have also expressed their regret at the International Labor Conference Committee on the Application of Standards (CAS) in regards to Tadamoun’s focus on poverty reduction to the detriment of other aspects of its mandate, and that trade unions and associations engaged in combating slavery are excluded from its activities. In May 2016, the Special Rapporteur on extreme poverty and human rights urged that less attention should be placed on infrastructure projects and that the focus should be to ensure assistance, protection and redress for slavery victims, and to promote access to employment and livelihood opportunities for their effective reintegration. The argument stated by Tadamoun officials is that “*it is preferable not to isolate specific groups*” (sic) in combating poverty, referring to the non-specific targeting of victims of slavery in their programs. Tadamoun has also asked for more support in terms of resources, training and expertise to fill this implementation gap.

### **Risks and Assumptions**

The Law 2015-31 gives the capacity to civil society actors to file complaints on behalf of victims but does not specify responsibilities with regards to the protection and redress of victims. However, the ratified forced labor Protocol of 2014 is also a legally-binding instrument that requires Mauritania to take measures regarding prevention, protection and remedies to suppress forced labor. The Government and stakeholders should start a dialogue to set up an institutionalized mechanism in compliance with the Protocol. The effective engagement and mobilization of labor inspectors, workers organizations, front-line human rights activists, mayors and religious leaders in the identification of victims would help increase the number of complaints filed, the prosecution efforts of the judicial system and the compensation demands of victims.

### **Roles and recommendations for the Bridge project**

The project will develop, in coordination with the Government, a directory of organizations and institutions that can provide services to victims of slavery and slavery-like practices. Areas where former slaves and slave descendants are present will be targeted in order to link victims with specific programs identified in the *Directory* to help provide assistance to escape from any form of dependence or stigma. Bridge Mauritania and its partners will also assess the possibility of developing a service provider referral system for identified forced labor victims based on the child protection round tables which exist in 10 wilayas (regions) coordinated by the Ministry of Social Affairs (MASEF) and supported by UNICEF.

In the same process, a proposal will be developed to put in place a mechanism for caring for alleged victims as soon as they make a complaint or are identified. This mechanism should allow, where necessary, to bring the victim out of his/her environment so that no pressure can be exerted on him/her. To support this approach the planned research on recruitment mechanisms and slavery-like practices will identify socioeconomic reintegration measures through access to professional trainings in specific economic sectors so that victims are able to reconstruct their lives, to prevent the victim from continuing to be dependent of their ancient masters, being stigmatized and becoming even more vulnerable to abuse than before.

The Bridge project will also provide livelihood opportunities to victims:

* The project will develop partnerships with official vocational schools and training centers of the Ministry of Employment to provide identified forced labor victims with core and soft skills vocational training for socio-economic (employment) integration and livelihood support. Victims will be identified through the judicial system or through the organizations and institutions that already help victims of slavery and slavery-like practices. The mapping of organizations and institutions that can help the victims of slavery and slavery-like practices will also provide the sources to be used to identify the victims.
* The project will test the ILO “workshop school” with forced labor victims. A number of identified victims will benefit from the dual training approach consisting of apprenticeships in a company and parallel vocational education at a vocational school. These 6 months programs award a scholarship and provide health insurance coverage from the social security (CNSS) to the trainees for the duration of the program.

## **2.8 Challenges and measures to provide victims with access to remedies and justice**

On the institutional level, Mauritania has made considerable progress. The government has developed an extensive legal framework and has tried to improve access to justice by establishing three specialized courts and the development of a national strategy for an improved access to justice (Stratégie Nationale d’Accès à la Justice, SNAJ). Access to justice is considered a fundamental right which embodies the principle of equality before the law.

In May 2016 two slave-owners were sentenced to five years in prison, with one year to be served and four years suspended. This was the country’s second prosecution for slavery and the first by a new court established alongside the new 2015 anti-slavery law. Given that previous attempts never resulted in a conviction, this case raises expectations on progress that can be made in future cases and will set the framework for developing the implementation decrees of the Antislavery Act 2015-031. The two slave-owners were also ordered to pay compensation to the two female slaves who had brought the case before the courts with the support of the local NGO SOS Esclaves and Anti-Slavery International (ASI). The judge of the Nema special court imposed a fine of 100,000 ouguiya (about $285) and ordered the perpetrators to pay 1million (about $2,850) ouguiya in compensation to each of the women.

Despite these recent cases, capacity building for judges, lawyers and other law enforcement actors is still needed to effectively try cases, secure convictions, and provide victims access to justice and compensation. The Special Rapporteur on contemporary forms of slavery has recommended that Judges and representatives of local authorities, gendarmeries (military force charged with police duties), police, media, and NGOs should go through specialized training seminars, which focus on awareness raising and the new legislative framework.

**Human rights associations**

The new anti-slavery law authorizes human rights associations that have been legally established and operating for at least five years to present slavery lawsuits on behalf of victims. This will help to overcome the systematic reluctance to identify victims among police and administrative authorities and hopefully increase the number of cases brought to court.

In practice however, allegations of slavery and slavery-like practices are often not effectively investigated and prosecuted. ITUC has voiced their concern at the administrative and police authorities’ reluctance to investigate cases of slavery brought to their knowledge by associations. Similarly, the investigatory authorities have a tendency to shelve cases without follow up, and the judicial authorities to re-classify the facts to avoid the application of provisions criminalizing slavery. Cases have only been taken up by the authorities after sustained pressure by human rights associations, and a large proportion of previously reported instances never proceed to court because the *wali (regional governor)*, the *hakem* (departmental prefect), *arrondissements* (district chiefs), and judicial police do not cooperate in investigations. Published testimonies of victims confirm that they may in fact themselves be intimidated or abused by police officials to force them to withdraw their accusations. [[42]](#footnote-42)

**National Human Rights Commission of Mauritania (CNDH)** [[43]](#footnote-43)

The CNDH is an independent advisory organization created by court order in July 2006 and by a law in March 2010. The CNDH has consultative status for the monitoring and evaluation of the respect of human rights and humanitarian law and for promoting research and education on human rights. The fight against slavery in all its forms and the fight against child labor is part of its regulatory mandates through advice, observation, warning, mediation and evaluation in terms of compliance with human rights and humanitarian law, including the ratification and follow up of international human rights standards. CNDH has an important role in the implementation of the roadmap and to contribute to ensure the execution of court decisions and compensations of victims of slavery. On the other side, several civil society organizations question the true independence of the leadership of this body. The harassment and imprisonment of anti-slavery activists was not contested by the CNDH, nor the illegal status of some of the organizations.

**Paralegal programs**

The Ministry of Justice with support of the German Development Agency GIZ has recently launched a paralegal development program as an effort to promote and support the legal empowerment of poor and vulnerable communities[[44]](#footnote-44). In particular, this work focuses on developing, training, and institutionalizing the work of community-based paralegals in some of the poorest areas in Mauritania, including Haratine populated areas. Community-based or grass-roots based paralegals, living and/or working with the communities they serve, use their knowledge of the formal justice system, alternative means of resolution such as mediation, and community-education practices to help the poor and marginalized resolve their legal problems. A network of civil society actors has jointly developed and approved the common agreed regulations for paralegals providing legal support services in Mauritania[[45]](#footnote-45).

**Findings**

A large proportion of the cases that are successfully registered with police and administrative authorities never reach the court. Most victims lack protection and redress by prosecutors and judges because of the reluctance of prosecutors to investigate despite sufficient evidence, or to observe proper procedure. These obstacles impede the cases being presented to the courts. If charges are brought against the master or mistress, courts may allege an inability to locate the slave, or masters are released on bail after their initial arrest, or simply the charges are re-classified as work-related conflicts.[[46]](#footnote-46)

The CNDH is supposed to serve as an interface between NGOs operating in the field of human rights and the relevant administrations. In spite of this, there is very limited collaboration between the CNDH and well-known and respected Human Rights associations in Mauritania.

### **Risks and Assumptions**

Despite the law and the existence of special courts, Judges do not always have access to the necessary records and prosecutors may not be effective at their jobs because the laws are not fully understood or applied. The situation may improve exponentially with the new courts in Nouadibouh and Nouakchott, but the risk remains that some of the filed cases will not be properly judged. Everyone needs to contribute to the application of the law and public support is essential, individuals who are aware of victims of slavery need to bring forward this information.

The task of identifying cases and supporting victims of slavery is challenging. Victims remain hidden throughout the territory and do not file complaints because they fear the authorities or they feel it is a waste of time.

### **Roles and recommendations for the Bridge Project**

Given the importance of identifying situations involving slavery and assessing the facts, the project will undertake the following activities with regards to capacity building:

* The Bridge Project will engage with the Ministry of Justice to strengthen the capacity of officials (police, gendarmerie, administrative authorities, public prosecutor and magistrates), lawyers and civil society to support the proper functioning of the courts. An analysis of the needs for strengthening the capacity of the special courts and training workshops for judges and judicial officers on the Act and its implementing decrees will also be carried out.
* The project will involve the special criminal justice magistrates in advocacy activities on the law, assessing the establishment of a specialized prosecutor's office in the handling of slavery cases and, where appropriate, specialized units in the police force (gendarmerie).
* The Project will also engage with mayors associations like the Reseau des Maires Contre l’Esclavage RMCE, and provide an analysis of the needs of administrative and municipal authorities in the field of the application of the law, which will then be followed by trainings.
* Worker organizations and civil society actors will also be involved. The unions together with a number of organizations will be trained on building effective legal cases on slavery and slavery-like practices for submission to the courts and on the proper management of the judicial complaints.

# **Chapter 3: Nepal Analysis**



## **3.1 International Standards on forced labor**

Nepal has been a member of ILO since 1966 and has ratified 11 conventions including 7 core Conventions. With regards to forced labor, Nepal has ratified the following ILO Conventions:

|  |  |
| --- | --- |
| **International Standards** | **Ratification date:** |
| Forced Labor Convention, 1930 (No. 29) | 3 Jan. 2002 |
| Abolition of Forced Labor Convention, 1957 (No. 105) | 30 August 2007 |

### **Findings**

Nepal has already ratified the forced labor convention No.29, making it eligible to ratify the Protocol. Support to a number of victims of forced labor is being provided, particularly for bonded laborers (Kamaiyas, Haliyas.

### **Risks and Assumptions**

Some other ILO conventions are already in the pipeline for ratification (No. 87). These may overshadow the ratification process of the Protocol.

### **Roles and recommendations for the Bridge Project**

The project will promote the ratification by Nepal of the Forced Labor Protocol and will support Nepal in taking steps towards implementing the measures contained in the Recommendation, in collaboration with relevant government ministries.

## **3.2 National laws addressing forced labor**

Nepal has adopted the following National Laws which specifically ban or discourage forced labor and trafficking:

|  |  |
| --- | --- |
| **Laws and related articles** | **Major provisions** |
| The Constitution of the Republic of Nepal, 2015 (Article 29) | Protects Rights against exploitation; Protection from discrimination based on religion, custom, tradition or any other grounds; Protection from being trafficked or held in slavery and servitudes; Compensation to victims of trafficking and slavery/servitude by the perpetrator as per the law. |
| Nepal Civil Code, 1964  (Chapter 11 (1- 3)) | The Civil Code prohibits taking a person out of the country for sale (Chapter 11(1)) and also prevents slavery and bonded labor (Chapter 11(3)). The chapter on “Cheating” also includes several offences that commonly arise in the context of foreign employment, such as fraud, deception, and misrepresentation. |
| Citizen’s Right Act, 1954 (Article 12) | Contains a clause prohibiting forced labor, except in accordance with existing legal provisions |
| Child Labor (Prohibition and Regulation) Act (CLPRA), 2000 (Article 4) | States that no child shall be engaged in work as a laborer against his/her will by way of persuasion, misrepresentation or by subjecting him/her to any influence or fear or threat or coercion or by any other means |
| Foreign Employment Act (FEA), 2007 | The FEA has provisions to protect Nepalese migrant workers. Although the act does not categorically stipulate provisions to protect from forced labor, it indirectly establishes clauses to regulate foreign employment and to protect the victims in the countries of destination. |
| Human Trafficking and Transportation Act (HTTCA), 2007 | Defines Human Trafficking and Transportation and bans all acts of trafficking and transportation; Obliges the Government to rescue victims and to investigate cases against perpetrators; Provides for State punishments to be imposed on perpetrators; and the right to compensation and rehabilitation for the victims. |
| Kamaiya Labor (Prohibition) Act (KLPA), 2002 | Defines Kamaiya Labor (Bonded Labor) and bans it; Bonded laborers set free from debt-bondage; Establishes provisions for the rehabilitation and resettlement of freed bonded laborers and measures to provide legal remedies, compensation and penalties to the perpetrators. |

Nepal’s legal system differentiates forced labor from trafficking. All the above laws have provisions to ban forced labor and/or trafficking, however the scope and jurisdictions of certain laws are confined to particular sectors or groups. For example, the KLPA and its provisions are confined to the Kamaiya system of bonded labor and does not cover the debt-bondage of workers in any other sectors. Similar limitations have been found with the FEA which does not have provisions for eliminating forced labor practices but regulates the recruitment process in foreign employment[[47]](#footnote-47), with particular focus on regulating foreign employment recruitment agencies.

All these laws have provisions for punishing/applying penalties on perpetrators, though these provisions are weak. Government agencies also lack sufficient resources to monitor the compliance of these laws. Monitoring the compliance of labor rights falls under the jurisdiction of the Ministry of Labor and Employment (MoLE), which is yet to create and implement a labor inspection system.

Of the above laws, the government is in the process of reviewing the CLPRA, FEA, HTTCA and KLPA to ensure all these laws are coherent with the new constitution of the country:

* CLPRA: The review of the CLPRA will include the definition of child labor as per international instruments and will also provide the mandate for monitoring child labor compliance for the local bodies (Village Development Committees (VDCs) and Municipalities).
* FEA: The FEA revision will aim to further elaborate and ease foreign employment procedures.
* KLPA: The Ministry of Land Reform and Management (MoLRM) is in the process of reviewing the KLPA with the intention to cover other sectors of bonded labor.
* HTTCA: Likewise, the Ministry of Women, Children and Social Welfare (MoWCSW) is in the process of reviewing the HTTCA.

A coordinated and holistic approach of bringing together the three ministries involved in these amendments would be required in order for better implementation of the jurisdiction, enforcement and protection mechanisms for the victims of trafficking and forced labor.

### **Findings**

Though Nepal’s legal system differentiates forced labor from trafficking, forced labor is not specifically defined in any law. Punishment provisions are weak and in general there is a lack of public awareness of the laws.

Four of the laws (CLPRA, FEA, HTTCA and KLPA) are in the process of being reviewed, to ensure that they are coherent with the new Constitution.

### **Risks and Assumptions**

Bringing the three line Ministries (MoLRM, MoLE and MoWCSW) together to re-define their roles and responsibilities and improve their coordination will require a high level of political commitment. This is further challenging in the Nepalese context as the jurisdiction/portfolios of different ministries keep changing.

### **Roles and recommendations for the Bridge Project**

While the project will focus largely on the implementation of existing laws, it will also provide technical assistance with regards to ongoing amendments regarding bonded labor and human trafficking laws.

## **3.3 National policies and action plans aimed at suppressing all forms of forced labor**

Nepal’s national policies and action plans to fight forced labor and trafficking are divided among the three Ministries – MoLRM, MoLE and MoWCSW – responsible for work on bonded labor, labor and child labor and women trafficking issues respectively. The National Planning Commission (NPC) is the apex advisory body of the Government of Nepal for formulating a national vision, periodic plans and policies for development, including issues on labor, child labor and trafficking. The recent approach paper[[48]](#footnote-48) of the government’s fourteenth plan provided the following mission and objectives:

* Combat trafficking and transportation;
* Resettle freed bonded laborers (Kamaiya, Haliya and Haruwa-Charuwa);
* End all forms of child labor; and
* Provide justice and alternative livelihood options to the victims of returnee migrant workers.

Strategies also include actions towards law/policy review to strengthen prevention and support to victims.

The MoWCSW has a ten-year National Plan of Action (NPA) against Trafficking in Persons which was prepared in 2012. Trafficking is under its jurisdiction since in Nepal, trafficking is considered to be primarily an issue of girls and women trafficked for sexual exploitation. The plan includes strategies and programs with responsible agencies and collaborating institutions for five priority areas - Prevention, Protection, Prosecution, Capacity Building and Co-ordination. The ministry has a network of women development officers in all 75 districts of Nepal.

Similarly the MoLE has a National Master Plan (NMP) to combat child labor, with particular focus on the worst forms of child labor. The NMP has undergone revisions and a newer version with targets and priorities for the next 10 years (2016 – 2026) has been drafted and is awaiting the approval from the Cabinet. The MoLE has also initiated the drafting of two important Bills that cover the workforce: 1) a Bill to amend and integrate labor-related laws; and 2) a Bill to manage the provision of social security, including in the informal economy. Both of these bills are in parliament awaiting adoption. If adopted and enforced, the MoLE will have to develop and implement a labor inspection system which currently does not exist in Nepal.

The MoLRM’s mandate is focused around the rehabilitation of forced laborers particularly that of freed Kamaiyas, Haliyas and Haruwa-Charuwas. Following the liberation of the Kamaiyas, the Haliyas organized themselves and put up similar demands to be freed. As a result, the Government announced their liberation in September 2008 and the MoLRM approved the National Plan of Action (NPA) for the Rehabilitation of Freed Haliyas in June 2014. The freed Kamaiya rehabilitation is almost completed while the rehabilitation of Haliya is on-going. But much more needs to be done, especially regarding the Haruwa-Charuwa system, with their rehabilitation yet to start.[[49]](#footnote-49)

### **Findings**

The MoLRM, MoLE and MoWCSW have National Action Plans that address bonded labor, forced labor, and child labor and women trafficking issues respectively.

The MoLE has also initiated the drafting of two important Bills that cover the workforce. If these are promulgated, they will provide a clear direction and mandate for effective labor market regulation and for improving industrial relations, including the development and implementation of a labor inspection system which currently does not exist in Nepal.

### **Risks and Assumptions**

The implementation of the new Bills will undoubtedly be challenging especially given the lack of human and financial resources allocated to the MoLE. The MoLE will also face challenges with regards to coordination, namely due to the high turnover of government staff and the high number of governmental reforms currently underway.

### **Roles and recommendations for the Bridge Project**

The Bridge project will work in close collaboration with Ministries responsible for implementing National Plans on forced labor. This will include working with the MoWCSW to undertake a mid-term review of Nepal’s implementation of their NPA against Trafficking in Persons.

## **3.4 Statistical data on forced labor**

In 2009, a sample survey was conducted by the ILO to estimate the prevalence of forced labor in agriculture. The report of this survey, which was piloted in 12 districts in far-western hill and mid-terai, identified two types of agrarian bonded labor – Haliya and Haruwa-Charuwa. The survey estimated that 12% of households were affected by forced labor in the 12 surveyed districts. While a large majority (94%) of the Haliya and Haruwa-Charuwa households were found to be affected by forced labor.

For the purpose of providing shelter and livelihood options to the victims of forced labor, particularly for freed-Kamaiyas and freed-Haliyas, the MoLRM has collected information on their families and family size. According to the MoLRM records, a total of 15,152 families with 83,375 family members of freed Kamaiyas were identified in 1995, and 16,953 families of freed Haliyas were identified in 2014.

In addition to the traditional types of bonded laborers in agriculture – there are other sectors where bonded and forced labor practices are often reported but where research on forced labor is lacking. They can be categorized into two sectors:

1. The service sector (Domestic Work, Transportation, Hotels and Dance Bars),
2. The production sector (Brick Kilns, Stone Quarries, Bidi (local cigarette) Making, Carpet Weaving and Sari Embroidery).

Another employment sector with frequent cases of forced labor and trafficking of Nepalese workers is the Foreign Employment sector. Nepal is a country of origin for migrant laborers, en route particularly to India and Gulf countries as well as Malaysia. Actual data/figures of the migrant laborers are not easily available, particularly due to the fact that: migration from Nepal takes place through undocumented[[50]](#footnote-50) channels; and Nepal has a large border with India and Nepalese do not require a visa to enter India. Many of the trafficking and forced labor cases of Nepali workers are thought to have left Nepal via India.

### **Findings**

With the exception of a few sector-specific studies that have been carried out on the prevalence of forced, data and statistics on forced labor more generally are lacking. If forced labor indicators were to be included in the National Labor Force Survey, general data on the prevalence of forced labor in Nepal would become available.

### **Risks and Assumptions**

The extensive capacity development of the Central Bureau of Statistics for understanding forced labor indicators and survey methodologies is required in order to produce accurate estimates. There is a chance that the recourses made available for this training may not be sufficient in filling the knowledge gaps and for developing a training of trainers approach.

### **Roles and recommendations for the Bridge project**

The project will support data collection in Nepal by strengthening the government’s capacity to estimate figures on forced labor, bonded labor and child labor. The project will also support the inclusion of forced labor questions in the Labor Force Survey in order to estimate the prevalence of forced labor in Nepal.

## **3.5 Challenges and measures to identify victims of forced labor**

The identification of victims of forced labor, particularly the traditional types of bonded laborers in agriculture sector (Kamaiya, Kamlahari, Haliya and Haruwa-Charuwa), in Nepal is linked with the social movement to have them freed in early 2000’s. The laborers, traditionally working as Kamaiya, Kamlahari and Haliya or Haruwa-Charuwa as agriculture or household laborers in the farm/houses of land-lords were considered bonded laborers. After the government declared them to be free from their debt, the issue of their resettlement and livelihood programs became a priority. The law (Kamaiya Labor (Prohibition) Act) and its regulations were passed to resettle them and provide them with livelihood options. For the purposes of providing resettlement and economic assistance, the government has established two criteria to identify and certify the victims. The first being their economic status/wellbeing and the second the decisions taken by judiciary or semi-judicial institutions such as the Chief District Officer (CDO), Labor Offices and the Department of Foreign Employment (DoFE) under the MoLE. The verification of these parameters is undertaken by a committee formed by the government under the MoLRM which also consists of representatives of the victims (Kamaiya and Haliya). After the verification procedure, the eligible Kamaiyas and Haliyas were grouped into four categories:

* A-having no land and housing,
* B-having a house but no land,
* C-having land but no house,
* D-having both land and a house.

This categorization is intended to assess the socio-economic need of the victims prior to providing them with support.

### **Findings**

Identification of victims of forced labor is limited to Kamaiya and Haliya communities as defined in the KLPA. There are no systems for identifying forced labor victims in other sectors, as not enough research in the other sectors has been conducted to understand the prevalence of forced labor. Nor are there provisions for a labor inspection system that could include measures for the identification of forced laborers and the regular collection of data/figures on forced labor. Victims of trafficking are identified by certain NGOs working on trafficking issues (such as Maiti Nepal and Shakti Samuha) and cases are brought before the courts by the Nepalese police.

### **Risks and Assumptions**

Due to a lack of proper understanding of the forced labor indicators, many victims of forced labor still remain unidentified. In addition to this, due to the freedom of movement agreement between Nepal and India, any efforts to identify Nepalese-born victims of trafficking in India and trafficked elsewhere via India would need to extend beyond the capabilities of the Nepalese government.

### **Roles and recommendations for the Bridge Project**

The project will work with the MoLE and Nepalese police to train labor officials, and DoFE special investigators through a Training of Trainers (TOT) approach. The TOT will include elements on how to identify cases of forced labor, bonded labor and human trafficking, as well as how to file a claim in the first instance and to raise awareness of the relevant laws.

## **3.6 Challenges and measures to prevent forced labor**

In Nepal, the initiatives of government and other the stakeholders in fighting against forced labor are concentrated towards banning debt-bondage practices and the resettlement of victims, particularly the Kamaiyas, Haliyas and Haruwa-Charuwas. However, with the lack of prevention policies and programs, the next generations of freed Kamaiyas and Haliya family members are at the risk of being trafficked, exploited or forced to work in precarious conditions. The government, in collaboration with development partners has been implementing livelihood programs for ex-Kamaiyas through skills training program, cooperatives, and income generating activities. However, the same kind of initiatives are yet to be initiated for ex-Haliyas and Haruwa-Charuwa.

Preventive measures to protect a large number of informal economy workers from trafficking and exploitation remains a big challenge in Nepal. With the lack of decent employment opportunities inside the country, Nepalese workers looking to improve their livelihood have predominantly looked for foreign employment opportunities. However, potential migrant workers lack awareness about the consequences of foreign employment. They have low skills, limited education and little access to adequate information about foreign employment, all of which are key elements to preventing forced labor and reducing a person’s vulnerability to forced labor.

The MoWCSW is responsible for policy development and action plan implementation towards fighting human trafficking. It has been active in raising awareness amongst women’s groups through its networks in the districts. The ministry has created a network of women and other stakeholders with the intention to raise awareness on women’s rights, gender violence and trafficking issues. However, they lack resources to mobilize these networks and effectively run the prevention programs.

The MoLE is responsible for protecting labor rights and promoting the decent work agenda.

However, given that the Labor Act of 1992 did not provide for a labor inspection system to be established, the ministry is yet to set up an inspection system for monitoring labor rights compliance, a key strategy and basic requirement in preventing trafficking and forced labor.

### **Findings**

Preventive measures to protect a large number of informal economy workers from trafficking and exploitation remains a big challenge in Nepal. The prevention measures will require adequate policies and interventions that can boost decent employment opportunities inside the country. There is also the needs for a strong enforcement of labor legislations in all sectors including the informal economy in Nepal.

### **Risks and Assumptions**

Due to a lack of decent employment in Nepal, victims of forced labor are highly vulnerable to trafficking and other forms of forced labor after they are freed. The spectrum of poor working conditions more generally in Nepal is expected to hinder the process of eliminating forced labor and reducing the risks of trafficking.

### **Roles and recommendations for the Bridge project**

The project will collaborate with key stakeholders to form a common advocacy platform for change. Stakeholders will include: bonded labor groups such as the National Haliya Mukti Samaj Federation (RHMSF), the Kamaiya Liberation Front Nepal (KLFN); trade unions such as GEFONT, NTUC, and ANTUF; as well as Dalit groups; and other NGOs that have actively contributed to the process of release and rehabilitation of bonded laborers. While the intended area of focus of the advocacy platform would be the elimination of traditional forms of bonded labor, groups that are active in the elimination of other forms of forced labor would also be invited to join. The platform will serve the joint purpose of promoting change while encouraging solidarity between the different groups.

In addition to the development of the advocacy platform, the project will identify and produce stories on the “least addressed” forms of bonded labor for the 50FF campaign. The campaign will include the development of at least one public service announcement (PSA) for the general population.

The project will also train selected journalists on how to report forced labor issues and work with them to carry out media campaigns to promote the Protocol.

## **3.7 Challenges and measures to protect victims of forced labor**

The jurisdiction for the protection of forced labor victims is divided amongst the three ministries (MoLRM, MoWCSW and MoLE) as per the legal provisions of KLPA, HTTCA and CLPA laws respectively.

The MoWCSW has been running 8 rehabilitation centers for trafficking victims and 17 service centers that provide shelter and services to victims of gender violence. In many centers, both types of victims are kept together due to the lack of separate facilities. The MoWCSW has reported that a total of 1,697 trafficking survivors (all women) stayed in these rehabilitation centers during the last fiscal year (July 2015 – July 2016).

In addition to the government-owned centers, some NGOs also provide protection services to trafficking and forced labor victims. Several NGOs are working to combat trafficking and promote safe migration, in close collaboration with the government to protect the victims through rehabilitation centers. The Human Trafficking Assessment Tool (HTAT) report of the American Bar Association states that about 21 National NGOs and 12 international organizations including ILO and UNICEF work closely together on this issue.[[51]](#footnote-51)

The MoLRM, under the provisions of the KLPA law, has been providing support to the freed bonded laborers. It has the mandate to protect the victims of bonded labor in the agricultural sector because of its links with land ownership and the wealth distribution system in Nepal. The MoLRM begun the task of providing support to the victims of traditional types of bonded labor in Nepal in 2008 once the Kamaiya Labor (Prohibition) Act, 2002 and its Regulation 2008 was passed. According to a government report, a total of 27,570 freed Kamaiyas were identified and verified as being eligible to receive livelihood support, out of which 26,440 were reported to have received a livelihood package by July 2016. Support for the remaining 1,130 will be provided in 2016-2017.

The resettlement and livelihood programs for freed Haliyas started from 2014 and is ongoing. Out of the total 16,953 identified Haliyas, 11,013 were verified and 8,888 were provided with ID cards during the 2014/15 fiscal year. By July, 2016, the government reported that 487 families were provided with land, 335 homes were built and 586 houses were renovated. The government is also in the process of issuing a directive for the rehabilitation of freed Haruwa-Charuwas that would pave the way for their verification process by the end of 2016 and the provision of support packages in the years to come.

The MoLE has been working actively on child labor elimination policies with the worst forms as priority. However, it has neither the mechanisms nor the resources to provide support to the victims of worst forms of child labor. When the MoLE (child labor cell) rescues significant numbers of child laborers, they must request the support of NGOs in providing support to the victims. Some key NGOs in providing child laborers with rehabilitation supports are – CWIN, CONCERN, CWIS and GoodWeave.

The protection of victims of forced labor in Nepal is organized on an ad-hoc basis. The capacities and service qualities vary in each center and there are occasional reports of abuses particularly that of children in orphanages. Standardizing the services and methods of rehabilitation is essential. The regular monitoring and quality control of the rehabilitation centers run by several NGOs is equally important in providing the victims with improved protection services.

### **Findings**

The government and development agencies are working to protect the victims of forced labor with their limited resources. The government is providing land and houses to the Kamaiyas and Haliyas but is very slow in pace. Some NGOs and UN agencies are providing livelihood support and skills training to victims of forced labor on a small scale. The plans for protecting the Haruwa-Charuwa, another form of bonded labor, are yet to be announced.

### **Risks and Assumptions**

The support proposed under the Bridge Project will provide livelihood interventions in two districts, however the freed Haliyas are present in all 12 districts. The government is in the process of providing land and/or houses to all verified victims in all 12 districts but the process is slow and it is not necessarily a priority. This may impact the effectiveness of the Bridge livelihood program which should ideally only be implemented after the government’s resettlement process.

### **Roles and recommendations for the Bridge project**

In order to provide a real opportunity for freed bonded laborers, the project will offer livelihood trainings for the most vulnerable victims, in particular those who were not officially recognized under the Kamaiya Labor Prohibition Act and risk being forced to return to work for their perpetrators because they have no alternative livelihood support. To ensure sustainability, the project will implement these activities in close consultation with the Ministry of Land Reform and Management (MoLRM) and through service contracts with competent service providers.

The livelihood support programs will be implemented in two far western districts in Nepal (Kanchanpur and Bajura). The districts were selected based on the results of a survey ILO undertook in 2009 on “Forced Labor of Adults and Children in the Agricultural Sector in Nepal” and the consultative meeting held with the MoLRM and concerned stakeholders in December 2015.

## **3.8 Challenges and measures to provide victims with access to remedies and justice**

Access to remedies and justice to the victims of forced labor are guided by the laws dealing with forced labor. The KLPA authorizes the Chief District Officers (CDO) to handle cases of bonded laborers in their districts. The KLPA has provisions for a Committee chaired by the CDO to monitor the compliance of the laws/regulations and provide victims with assistance including the livelihood training options.

In the cases of trafficking under the HTTCA, investigations and prosecutions are undertaken by the Nepal police through District Courts where the government will act as the plaintiff. The government is also responsible for providing the victims with financial remedies using the national budget and the funds created specifically for these acts (the KLPA and HTTCA both have provisions for the establishing funds at the district level to support the victims).

Access to remedies for the victims of trafficking and forced labor in foreign employment, falls under the jurisdiction of MoLE which has a special department, the Department of Foreign Employment (DoFE), to regulate labor migration. The DoFE has the semi-judicial authority to hear the cases of foreign employment under the provisions of the Foreign Employment Act (FEA). The Foreign Employment Tribunal (FET) under the DoFE, has been active in providing access to remedies to the migrant workers who travelled abroad for foreign employment through licensed foreign employment agencies. A recent report published by the MoLE states that the FET has settled 213 cases during the 2014/15 fiscal year. However, the MoLE has limitations when dealing with the undocumented employment cases. A recent report published by Open Society Foundation unveils that the DoFE does not deal with the cases of forced labor and trafficking resulting from un-registered foreign employment agencies. Even if they took these cases, due to the lack of documentation or very weak evidence, justice for the victims of trafficking without proper documents through the FEA is incredibly difficult.

The MoLE (Labor Offices) also have semi-judicial authorities to resolve labor disputes and provide justice to workers as per the Labor Act, 1992 and its rules. In addition to the labor offices, Nepal has also a Labor Court set up to hear the cases of labor rights’ violations.

### **Findings**

Access to remedies to the victims of forced labor is challenging due to the lack of a comprehensive law specifically on forced labor. The existing laws (KLPA, FEA and HTTCA) have their limitations to reach forced labor victims and penalties imposed on perpetrators are weak or nominal. The fact that different actors are responsible for the jurisdiction of each laws is another challenge: the KLPA authorizes the Chief District Officers (CDO) to handle cases of bonded laborers in their districts; the investigations and prosecutions for cases of trafficking are undertaken by the Nepal police through District Courts; while foreign employment cases fall under the jurisdiction the Department of Foreign Employment (DoFE) under the MoLE.

Judicial authorities also require proper guidance and training on dealing with forced labor cases brought before them.

### **Risks and Assumptions**

When it comes to providing legal redress to victims of trafficking at the hands of unregistered foreign employment agencies, the inevitable lack of evidence and paper trails hinders law enforcement efforts. A training program for judges and law enforcement officers to learn from best practices on how to deal with trafficking gangs and limited evidence is therefore required.

### **Roles and recommendations for the Bridge project**

The project will work with the National Judicial Academy of Nepal to develop training sessions and knowledge-sharing of experiences regarding how to provide better access to justice and effective remedies for forced labor victims. The training will clarify the advantages to lodging a complaint under the HTTCA (such as a reverse burden of proof, and a right to have a lawyer present) as well as practical barriers to claims (such as reliance on circumstantial evidence and what to do if the employer is in a foreign country).

The project will also organize an information sharing dialogue with stakeholders who are normally the first point of contact for forced labor victims - including labor lawyers, representatives of major trade unions, and key NGOs. The dialogue will provide a platform to share lessons learned, challenges, concerns and issues that prevent forced labor victims from contacting relevant authorities (Chief District Office, Labor Office, Nepal Police or other authorities) in order to file a complaint. The findings will be documented and submitted to concerned stakeholders with the objective of addressing the main barriers to reporting forced labor cases.

# **Chapter 4: Peru Analysis**



## **4.1 International Standards on forced labor**

Peru has ratified the following ILO International Standards on forced labor:

|  |  |
| --- | --- |
| **International Standards** | **Ratification date:** |
| Forced Labor Convention, 1930 (No. 29) | 01 February 1960 |
| Abolition of Forced Labor Convention, 1957 (No. 105) | 06 December 1960 |

**Other important International Standards related to forced labor:**

* Indigenous and Tribal Peoples Convention, 1989 (No. 169), ratified in 1994.
* Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labor (No. 182) ratified in 2000.
* Universal Declaration of Human Rights (1948), ratified in 1959.
* International Covenant on Civil and Political Rights (1966), ratified in 1978.
* International Covenant on Economic, Social and Cultural Rights (1966), ratified in 1978.
* Protocol to prevent, suppress and punish trafficking in persons, especially women and children (“Palermo Protocol”) (2000), ratified in 2002.
* Regional instruments
* American Convention on Human Rights (Pact of San José) (1969), ratified in 1978.
* Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), ratified in 1995

**Regional instruments**

* American Convention on Human Rights (Pact of San José) (1969), ratified in 1978.
* Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), ratified in 1995

**Findings**

Peru has ratified all eight fundamental Conventions, including both related to forced labor. However, it has not yet ratified the Protocol to the Forced Labor Convention.

### **Risks and Assumptions**

Government commitment is essential in the process of ratifying the Protocol, which would enable the discussion in and approval by Congress. However, this support is not unanimous and may prove to be an obstacle in the ratification of the Protocol.

### **Roles and recommendations for the Bridge Project**

The project will promote the Protocol ratification and will disseminate information to raise awareness around it. Technical meetings will also be held for actors that could play a key role in the promotion and ratification of the Protocol in Peru.

## **4.2 National laws addressing forced labor**

Peru has ratified ILO forced labor Conventions, as well as the Palermo Protocol. Under the national legislation both forced labor and human trafficking have been regulated separately. It is clear for national actors that human trafficking exploitation includes labor exploitation, sexual exploitation or the removal and trafficking of organs. It is also becoming clearer for national actors that forced labor and human trafficking are not always linked and that they are covered by separate National Action Plans and Policies in Peru.

**Constitution of Peru**

The Peruvian Constitution prohibits slavery, servitude and trafficking in human beings in all its forms (art. 2, § 24b)). It also states that no one should be made to work without giving his or her consent and without remuneration, which should be fair and sufficient (art. 2). Moreover, article 3 of the Constitution guarantees the protection of fundamental human rights. The Constitution also establishes that:

* Work is a right and a duty, it is the foundation for social welfare and a means of self-realization (Art. 22);
* No working relationship can limit the exercise of constitutional rights, nor disavow or disrespect the dignity of workers and no one is obliged to work without pay or without their free consent (Art. 23); and
* The worker is entitled to an adequate and fair compensation that ensures both himself and his family material and spiritual well-being (Art. 24).

**The Penal Code**

Article 153[[52]](#footnote-52) of the Penal Code defines human trafficking following the definition under the Palermo Protocol. However, it also incorporates certain elements that are not covered by the international instrument. It includes “retention” as one of the typical behaviors of human trafficking, understood as the deprivation of liberty of a person, whether he remains in the national territory, enters it, or exits it. It also incorporates under the definition of human trafficking: the sale of children; subjection to begging and extraction or trafficking of human organs or tissues.

Peruvian criminal legislation did not have penal provisions that specifically suppress and punish the crime of forced labor, until the recent approval of Legislative Decree No. 1323 (06/01/2017). This legislation incorporates forced labor in article 168-B of the Penal Code, under the chapter of “crimes against freedom of work”, and sanctions anyone who subjects or forces someone else, by any means or against his or her will, to carry out a work or service, whether paid or not.[[53]](#footnote-53) Legislative Decree No. 1323 has also regulated the crime of ‘slavery and other forms of exploitation’, which sanctions anyone who forces someone else to work in slavery or debt bondage conditions, or reduces or maintains him or her in those conditions, with the exception of the circumstances of the crime of sexual exploitation[[54]](#footnote-54).

Other relevant laws include:

* The General Law of Labor Inspection (Law No. 28806), regulated by D.S. No 019.2006-TR.
* The Law against human trafficking and smuggling of migrants (Ley Nº 28950, modified by Law No. 30251)

### **Findings:**

Peru has made significant progress in its national criminal law in compliance with Convention No. 29. Peruvian legislation did not have penal provisions that specifically suppress and punish the crime of forced labor, until the recent approval of Legislative Decree No. 1323 which has provisions to sanction anyone who subjects or forces someone else, by any means or against his or her will, to carry out a work or service, whether paid or not.

**Risks and Assumptions**

Since the criminalization of forced labor was approved within the framework of the delegated legislative powers, it is still susceptible to a constitutional review by the Congress. Certain Ministries of the Executive branch (such as the MTPE and MINJUS) as well as the Judiciary will promote and support the implementation of the Legislative Decree No. 1323.

### **Roles and recommendations for the Bridge Project**

The project will strengthen national stakeholders’ capacity to defend and promote the criminalization of forced labor, as well as its effective implementation by justice operators such as judges, prosecutors, police and public lawyers.

## **4.3 National policies and action plans aimed at suppressing all forms of forced labor**

**National Policy**

The national policy on forced labor in Peru is directly linked to the National Plan for the fight against forced labor (PNCLTF). The plan related practices against forced labor include instruments such as the “Inter-agency Protocol against Forced Labor” and the “Inter-agency Protocol for the prevention, and prosecution of the crime, and the protection, assistance and recovery of victims of human trafficking”. The Peruvian national policy on forced labor is complemented by the National Policy on Human Trafficking which prescribes the actions to be undertake by the State in order to respect, protect and guarantee fundamental rights through prevention, prosecution and victim assistance.

Peru has faced numerous challenges in implementing the national policy instruments against forced labor and human trafficking including insufficient financial resources; the lack of reliable data; the constant change in government personnel (members of the commissions, and key positions government) and the lack of effective coordination among key stakeholders at both national and regional levels to address both crimes under an integrated policy framework. However, the beginning of a new government (August 2016) represents an opportunity towards placing the eradication of forced labor and human trafficking on the public agenda, and consequently ensuring a budget and coordinated activities for the effective implementation of the national policies.

**The National Plan for the Fight against Forced Labor (PNLCTF)[[55]](#footnote-55)**

The PNLCTF was adopted in June 2013. It was developed through a participatory process including representatives from the regions particularly affected by forced labor, such as Ucayali, Madre de Dios, Cusco, Loreto and Puno. Employers’ and workers’ organizations participated actively in the process.

The National Plan includes a definition of forced labor in accordance to the ILO Forced Labor Convention No. 29 and establishes, as a general objective, the eradication of forced labor in Peru. According to the PNLCTF, forced labor is a situation where there is an infringement in freedom of work, which implies an illegal restriction in the capacity of a person to decide whether to work, or not, for whom to work and under which conditions to do so.

The PNLCTF includes a set of coordinated actions that the national government institutions have established in order to prevent and eradicate forced labor. It is based on a set of guiding principles that support state policy on the prevention and eradication of forced labor. Its three strategic objectives are:

1. Training and sensitization on the definition, causes of forced labor, groups and regions affected;
2. The establishment and implementation of an integrated system that will identify, protect and reintegrate victims by structuring and coordinating the roles, procedures and tools of the various entities concerned; and
3. The identification and reduction of the vulnerability factors inherent to forced labor.

Some important advances have been made under objective (i) such as the design of a communication strategy on forced labor, dissemination activities, and the development of specific studies focused on certain economic sectors. In relation to objective (ii) the most important milestone was the approval of the Inter-agency Protocol against forced labor (October 2014), the endorsement of a draft law that would criminalize forced labor by the National Commission for the Fight against forced labor (CNLCTF); training for justice system operators; and the strengthening of labor inspection.

Pending activities under the PNLCTF include the generation of statistics on forced labor in high risk economic sectors; the effective criminalization of forced labor; strengthening of the coordination with key stakeholders at national and regional levels; and the implementation of the integrated system of joint and coordinated action for the prevention, identification, protection and recovery of victims. One of the main obstacles in implementing the PNCLTF has been the lack of adequate resources (both financial and of human resources).

The PNLCTF will be in force until 2017, consequently there will be an important opportunity to provide technical assistance for its evaluation, identification of lessons learned and supporting the elaboration process of a new national plan.

**Inter-agency Protocol against Forced Labor** (D.S. No. 011-2014-TR)**[[56]](#footnote-56)**

The Peruvian Inter-agency Protocol against Forced Labor provides a scheme for the inter-institutional and coordinated action of the main key public actors involved in combating forced labor. Its approval represented a first national step to set up a general framework for integrated interventions on: promotion, prevention, detection and recovery. Its scope is focused on cases of labor exploitation that might or might not be consequences of human trafficking.

Other relevant and linked normative frameworks include:

* **The mandatory policy for the national government (D.S. 027-2007-PCM modified by DS No. 052-2011-PCM).** It establishes the development of policies focused on decent employment, whose supervision is under the Ministry of Labor and Promotion of Employment (MTPE). National employment policies includes, among others, the promotion of formal labor and productive insertion into decent work; the promotion of technical and professional vocational training; as well as training for labor reconversion, in accordance with the labor market.
* **Social and Labor Policy Guidelines 2012-2016 (RM. 227-2012-TR)** It includes nine policy guidelines applicable to the MTPE, one of them (Policy 1) establishes the promotion of a democratic system of labor relationships, with emphasis on the respect of fundamental rights at work.
* **The National Action Plan against Human Trafficking 2012-2016** (D.S No. 004-2011-IN)[[57]](#footnote-57) includes the actions to be undertake by the State in order to respect, protect and guarantee fundamental rights through prevention, prosecution and victim assistance.
* **The National Plan on Human Rights 2014-2016 (D.S. No. 005-2014-JUS)[[58]](#footnote-58)**. Objective 12 of the Plan proposes the increase of decent work in Peru. To do so, the Plan includes activities such as improving legal regulations and adopting a Protocol to eradicate forms of forced labor in Peru, with special emphasis on illegal mining and illegal logging.
* **The National Policy on Human Trafficking and its forms of exploitation** (D.S. No. 001-2015-MINNJUS)[[59]](#footnote-59) is the guiding framework of criminal policy on this issue, it establishes general and specific criminological guidelines for the efficient prosecution and punishment of the crime of trafficking and all those linked to the exploitation of persons; as well as the protection and full recovery of victims.
* **Inter-agency Protocol for the prevention, prosecution of the crime, protection, assistance and recovery of victims of human trafficking** (D.S. No. 005-2016-IN), Is an national instrument that aims to guide the implementation of the joint actions among different stakeholders who are responsible in the fight against human trafficking, and the protection and recovery of victims.

**The National Commission against Forced Labor (CNLCTF)**

In 2007, the National Commission for the Fight against Forced Labor was established (CNLCTF). The CNLCTF acts as the main permanent coordinating body for policies and actions against forced labor in various sectors, at both the national and regional levels. Its members include the Ministries of Interior, Public, Justice and Human Rights, Foreign Trade and Tourism, Agriculture, Education, Health, Women and Vulnerable Populations, Environment, Culture, Energy and Mines, Production; the Judiciary, Superintendence of Labor Inspection (SUNAFIL); the National Institute of Statistics and Informatics (INEI); representatives of workers’ and employers’ organizations; the Ombudsman (as observer) and the Ministry of Labor and Employment Promotion, that presides it.

**The Permanent Multi-sectoral Commission against Trafficking in Persons and Migrant Smuggling**

The Commission was created in 2016 to replace the Permanent Multi-sectoral Working Group against Trafficking in Persons (created in 2004). It is chaired by the Ministry of Interior (MININTER) and is composed of representatives from the Ministries of Interior, Women and Vulnerable Populations, Health, Justice and Human Rights, Education, Labor and Employment Promotion, Foreign Affairs, Foreign Trade and Tourism, Transport and Communications, the National Institute of Statistics and Informatics (INEI), and the Public Ministry. It also involves the Judiciary, Ombudsman and two representatives from civil society institutions of civil society specialized in the field of human trafficking.

Its main functions includes: proposing policies, standards, plans, strategies, programs, projects and activities against trafficking in persons and smuggling of migrants; and conducting follow-up and monitoring of the implementation of policies, plans and actions in the different levels of government.

**Regional Commissions**

The only regional commission for the fight against forced labor was created in Ucayali (2012), but it ceased to carry out activities mainly due to the lack of both political will and financial resources.

Peru also has Regional Commissions against human trafficking in most of the regions nationwide (21 regions out of 25). Some have already approved their Regional Plans against human trafficking (for instance Cusco, Tumbes, and Madre de Dios). They represent an opportunity to address human trafficking and forced labor in a coordinated manner, avoiding duplication of activities in order to achieve effectiveness in combating both crimes at the regional level.

The ILO in coordination with the MTPE and MININTER have promoted activities to combat forced labor with six Regional Commissions against human trafficking in high risk regions (Loreto, Piura, Ayacucho, Madre de Dios, Ucayali and Cusco). As a result, the Regional Commissions have expressed their commitment to initiate coordinated actions to prevent forced labor and carry out training activities with the support of the national government and the technical assistance of the ILO.

### **Findings:**

Overall, the national institutional framework in Peru sets out the basis for an integrated approach to address forced labor, including the actions required for its elimination and the means for effective coordination between the different stakeholders. However, there are still many challenges for its effective implementation.

The Regional Commission against human trafficking in Ucayali has expressed its interest in coordinating activities with the Bridge Project. This could present an opportunity to include forced labor in the regional plan.

### **Risks and Assumptions**

The National Plan for the fight against forced labor will be in force until December 2017, and the government and other key actors have shown their commitment to the development and implementation of a new action plan that will build on the progress made over the last five years.

### **Roles and recommendations for the Bridge Project**

The project will provide technical assistance to the CNLCTF in the evaluation process of the PNLCTF in order to assess the fulfilment of objectives, the progress made and the pending challenges at national and regional levels. The results of the evaluation should serve as basis for the development of the new National Plan.

## **4.4 Statistical data on forced labor**

Peru does not have information on the prevalence of forced labor and/or human trafficking. Knowledge of the scale and types of forced labor is weak, fragmented and not based on adequate methodologies. Some pending challenges including agreeing on an operational definition and indicators for forced labor and human trafficking. In addition, the National Institute of Statistics and Informatics (INEI) requires capacity strengthening to implement a survey on these issues.

Despite the lack of data on prevalence, numerous studies on forced labor and human trafficking have been undertaken in Peru. ILO research suggests that the main pattern of forced labor in Peru is through debt bondage, whereby temporary workers are recruited through informal and unlicensed intermediaries who entice them with advanced payments, and then make profits through a series of inflated charges. This process may take place either within or across national borders. A study published by the ILO in 2005,[[60]](#footnote-60) estimated that in the logging industry alone, 33,000 people were affected by forced labor, the majority belonging to different ethnic groups in the Peruvian Amazon.

Recent research on forced labor was carried out in the sectors prioritized in the National Plan against Forced Labor 2013-2017. Specific studies provide updated and new information on the characteristics of forced labor and the risk factors associated to it. They also include recommendations for the design of specific policies to prevent forced labor, focusing on vulnerable populations. The ILO in coordination with the Ministry of Labor and Employment supported the development of the following specific studies on forced labor:

* *Characterization of forced labor conditions in gold mining in Madre de Dios  
  and an initial approach to risk factors*: that contributes information to assist in the identification of cases and the characterization of working conditions in illegal gold mining in the Madre de Dios region. It mainly shows that harsh working and living conditions characterize the work in illegal gold mining camps in Madre de Dios, particularly with regard to inadequate occupational health and safety conditions, excess hours worked during the week, exposure to illnesses, accidents and other risks, inadequate food, as well as lack of water, electricity and sanitation. It also shows that in some cases, workers were deceived about the tasks to be performed or the working conditions. In other cases, workers who wanted to leave the camp could not do so because they were kept under surveillance, locked in their workplace or living quarters, because their employer had threatened them, or because they had to repay alleged debts.
* *Precariousness and forced labor in the timber extraction. A study in rural areas of the Peruvian Amazon:* it aimed to help understand the dynamics of forced labor in timber extraction activities in three rural communities of the Ucayali region, located in the Peruvian Amazon. It showed that the situation is characterized by poverty, low level of education, informality and precariousness, and identifies a high percentage of workers in conditions of work and life under duress. The results showed that in the cases studied, forced labor is a continuum (and not an isolated situation) of conditions of precariousness and exploitation that characterize their environment.
* *Changes in the situation of the paid domestic work in Peru:* it analyses changes in the situation of paid domestic work over the last decade in Peru. The study describes and characterizes the changes in the supply of paid domestic work; and the changes in demand for paid domestic work. Moreover, the research discusses the potential risks of precarious domestic work and outlines ways that could facilitate the measurement of child and forced labor from household surveys. This study was the basis for the qualitative study on forced labor and domestic work.
* *Qualitative study on domestic work and forced labor: characteristics and labor conditions in domestic work and revision of the institutional services offered in Cusco and Cajamarca:*  it analyses the situation of a group of 44 (current and ex) domestic workers in Cusco and Cajamarca to generate information tasks performed at home, modalities of recruitment, labor and living conditions; and it also explores their perceptions regarding the work, personal and professional expectations, and their knowledge about labor rights and membership in organizations or unions. In addition, the study includes an analysis of the institutional assistance available for domestic workers who are possible victims of forced labor in both regions

Other organizations have also undertaken studies related to forced labor:

* *“Risk Analysis of Indicators of Forced Labor and Human Trafficking in Illegal Gold Mining in Peru”* (VERITE, 2013)[[61]](#footnote-61), which found a large number of indicators of forced labor, as well as child labor, risks to workers’ health and safety, and sex trafficking in illegal gold mining in Madre de Dios, Cusco, Puno, and Arequipa. The most severe exploitation was found in Madre de Dios.
* *“Human Trafficking for labor exploitation: the case of the gold mining and the illegal timber logging in Madre de Dios*” (Novak, 2009)[[62]](#footnote-62). It concludes that the factors that cause human trafficking for labor exploitation in the Madre de Dios are related to geographical features of its territory, difficult access and circulation; the lack of the presence of the State in areas of exploitation; corruption or indifference of certain authorities and the lack of respect of national legislation; the existence of potential workers in surrounding regions with high levels of poverty; low levels of education of the population and in particular of the native and indigenous communities who live within the region (communities non contacted or of recent contact); and the existence of historical-cultural patterns which have allowed for the continuation of exploitation schemes.

### **Findings:**

Although Peru does not have statistical data on forced labor, the studies developed within the framework of the previous project, implemented by the ILO in coordination with the government, showed the characteristics of the problem in specific sectors (illegal mining, illegal timber extraction).

The MTPE plans to sign a collaboration agreement with the National Institute of Statistics and Informatics (INEI) to carry out a specialized survey on forced labor, as well as the development of planned activities for the survey.

### **Risks and Assumptions:**

The collaboration with the INEI to undertake a survey on forced labor could take more time than planned due INEI plans to also undertake a National Census in 2017.

### **Roles and recommendations for the Bridge project**

The project will provide technical and financial assistance in the design and implementation of a survey to measure the risk and possible cases of forced labor in a selected territory (territory-based approach) and economic sector during a two year period.

The project will also support the development of a specific study about forced labor at a determined national border, in coordination with public key stakeholders.

## **4.5 Challenges and measures to identify victims of forced labor**

In Peru the identification of victims of forced labor faces many challenges mainly associated to the illegality of the exploitation and the criminal environment where victims are often threatened; moreover workplaces may be in remote or hidden locations, as in the case of the illegal mining or timber-logging camps. Even once potential victims are found and are willing to talk, some problems appear linked to the probing phase, which requires a fully understanding of victims’ situations in order to determine whether they are suffering from direct or indirect coercion. An additional problem was the lack of criminalization of forced labor in the Penal Code, which prevented the direct intervention of some justice operators to identify victims. With the recent incorporation of forced labor as a crime in the penal code, and the improvement of databases, important progress is expected in the identification process.

In the case of human trafficking the situation is almost the same, there is underreporting of the crime since victims normally are afraid of their future situation. In addition, the complaint process and subsequent intervention of the justice system discourage victims from complaining, as they may be exposed in the process to dangerous or traumatic situations, creating a context of re-victimization.

Certain cultural characteristics also contribute to the under-reporting of cases. Factors such as the discrimination against indigenous peoples, cultural permissiveness towards various forms of child exploitation, and the cultural acceptance of violence against women means that many practices associated with forced labor and/or human trafficking are not properly recognized as crimes.

The official national databases on human trafficking victim identification are:

1. the System of Registry and Statistics of the Human Trafficking Crime and Related Issues (RETA) managed by the Peruvian National Police (PNP) and
2. the Strategic Information System for Human Trafficking (SISTRA) under the Prosecution Office.

These databases provide information of “alleged victims” and still face some problems related to the underreporting of cases, dual registration of victims in some cases, and inclusion of victims of other related crimes. Moreover, despite having taken some initial steps, the process of consolidating these databases and others (such as the one of the Judiciary) is still pending.

Peru also has a hotline to report cases of human trafficking, which is managed by MININTER. The hotline covers three areas: corruption; human trafficking and organized crime. Though advances have been made through the training of operators, challenges remain including the weakness to properly identify cases and refer victims; the impossibility of many victims to access the service; and the limited hours at which that hotline is accessible (Monday to Friday from 08:00 to 20:00 and Saturday from 09:00 to 13:00).

**Labor Inspectors**

One of the actors that may be the first to make contact and identify victims are the labor inspectors. In Peru a special labor inspection unit to combat forced labor was created in August 2008, composed of a supervisor and fifteen inspectors. In addition, the National Superintendence of Labor Inspection (SUNAFIL) was created in 2013 as a technical specialized organization under the Ministry of Labor and Promotion of Employment (MTPE). SUNAFIL is charged with performing all functions of the MTPE related to the supervision and the monitoring of compliance to social and labor standards established under the General Labor Inspection Act. To the date SUNAFIL has 9 regional offices (Ancash, Cajamarca, Huánuco, Ica, La Libertad, Loreto, and Moquegua y Tumbes).

### **Findings:**

Peru faces many challenges in the identification of victims of forced labor including the criminal environment and the remoteness of certain workplaces where victims may be found. An additional problem was the lack of criminalization of forced labor in the Penal Code, which prevented the direct intervention of some justice operators to identify victims. With the recent incorporation of forced labor as a crime, and the improvement of databases, important progress is expected in the identification process. It is expected that the Public Ministry and the National Police will begin to register these crime in their databases (SISTRA and RETA). In time this should offer more information about alleged victims, affected regions, and other important forced labor characteristics.

### **Risks and Assumptions**

The delay in the appointment of high-level authorities, such as the Superintendent of the SUNAFIL, will delay the implementation of planned activities designed to strengthen the capacity of labor inspectors.

Currently, both SISTRA and RETA databases are running separately, although they are in the process of being merged.

### **Roles and recommendations for the Bridge Project**

The project will provide training activities for justice system operators (police, prosecutors, judges) in order to strengthen their capacities for the identification of forced labor cases and the prosecution of perpetrators. In addition, the project will carry out training activities for SUNAFIL, specifically for the specialized group in charge of forced labor inspection.

The project will also provide specific training activities on forced labor issues targeted at workers’ organizations. The trainings will be developed based on the Guideline for the Prevention and Identification of Forced Labor, which was elaborated by the Brazil/Peru forced labor project on the basis of the International Trade Union Confederation manual on forced labor. As a result, workers’ organizations will be better equipped to identify and assist victims, as well as process and submit the victims’ complaints to the competent authorities and in some cases provide judicial assistance.

## **4.6 Challenges and measures to prevent forced labor**

There is limited public knowledge and awareness on forced labor issues in Peru, including the definitions, the attributes and consequences; the demographic and socioeconomic characteristics of victims; and the international and national tools available to prevent and combat forced labor. There is also insufficient knowledge on the social and economic context that leads to forced labor, with no reliable information about the risk factors on specific economic sectors and regions. Moreover, there is limited dissemination of tools to promote increased awareness and knowledge on these issues.

There is also a lack of awareness in regions with a high incidence of forced labor and human trafficking, since many victims are from vulnerable populations that live in rural areas where there is limited or no access to basic services. A particular vulnerable population in Peru are the indigenous people, who in most cases speak in their own dialects and share different values and traditions. An additional vulnerable group are students in the last years of high school, particularly in high- risk areas, because they are often deceived through false job offers and fall victim to forced labor and human trafficking in activities such as illegal gold mining.

Civil society and local actors have not yet played a key role in awareness raising on issues related to forced labor. This is explained by the fact that civil society in Peru is not as strong as in other countries in the region, with only one NGO, Alternative Social and Human Capital (CHS), that focuses on human trafficking. CHS has launched a campaign called “Jail", which seeks to raise awareness among tourists and domestic and foreign travelers about the risks of penalties for those who sexually exploit girls, boys and adolescents in the city of Iquitos, Loreto region.

Certain Ministries that have been active in raising awareness to prevent forced labor in Peru include the Ministry of Justice and Human Rights (MINJUS) and the Ministry of the Interior (MININTER). The MINJUS and the Regional Commission against Human Trafficking in Cusco designed and implemented a campaign to eradicate forced labor and human trafficking. The campaign was carried out in Urcos (Cusco) in October 2015. Radio spots in Spanish and Quechua were one of the components of the campaign, which were disseminated during 12 days via Radio Salkantay. A short story “Esto pasa en nuestro pueblo” (“This happens in our hometown”) including typical cases of forced labor that occur in the area was developed. In addition a play was performed to show a case of two young friends deceived and taken to a mining camp in Madre de Dios where they became victims of forced labor.

The MININTER promotes the campaign “Blue heart” to express solidarity with the victims of human trafficking and reports on the consequences of this crime in the most vulnerable sectors of population.

**Involvement of Employers Organizations**

Even though there is a general consensus that forced labor is unacceptable, there are some disagreements with regards to the forced labor definition among employers’ organizations in Peru, mainly due to the risk of perceiving forced labor as being synonymous to excessive overtime. Despite efforts developed to disseminate information on the definition and indicators of forced labor, there are still many challenges to strengthen the participation of the employers’ organization in prevention activities.

**Involvement of Trade Unions**

Overall, in Peru there is a low level of participation from workers’ organizations regarding forced labor issues. There is a little commitment from these organizations due to lack of resources and low prioritization of the topic within their strategies. In addition, since the 1990’s trade unions have been weakened as a result of the implementation of different government structural reforms which were oriented towards labor flexibility.

The ILO however has worked closely with representatives from with two worker organizations to address issues related to prevention of forced labor, the *Central Autonóma de Trabajadores de Perú-* CATP (Autonomous Workers’ Central of Peru) and the *Confederación General de Trabajadores de Perú*- CGTP (General Confederation of Peruvian Workers). As a result, guidelines on forced labor for workers' organizations (*“Guía para la Prevención e Identificación del Trabajo Forzoso dirigida a organizaciones de trabajadores”*) were developed. The guidelines focus on issues related to the main role of workers’ organizations in the combat against forced labor; they provide useful tools to help them accomplish their roles in prioritized sectors; they explain risks factors and elements to take into account to prevent and identify forced labor victims; they describe the necessary procedures to submit a complaint, and offer examples of good practices from other countries that could be adapted to Peru.

**Findings**

Despite advances in combating forced labor in Peru, the problem still persists and is directly related to pervasive instances of discrimination (in particular against indigenous persons), as well as the lack of economic opportunities and poverty. Victims are also generally unaware of their rights and the protection against forced labor offered by the State.

### **Risks and Assumptions**

Government institutions have expressed their interest in addressing forced labor and human trafficking in an articulated way in order to sensitize the population about contemporary forms of slavery. However, confusion remains with regards to the distinction between forced labor, human trafficking and poor working conditions.

### **Roles and recommendations for the Bridge project**

The project will support the development of a media campaign on forced labor addressed at vulnerable populations in at least one selected high risk region in the Amazon (Ucayali or Loreto) to provide information with regards to the risk of falling into exploitative labor situations, basic labor rights, root causes of forced labor, and mechanisms for combatting it.

The project will also support the implementation of the educational material “Educational Manual on Forced Labor for the VI Cycle of Regular Basic Education” for students in their 3rd, 4th and 5th years of high school in high risk areas.

Partnership initiatives with stakeholders will enhance the efforts to increase awareness of forced labor among vulnerable populations. To achieve this, the project will build upon the Brazil/Peru forced labor project, to support the implementation of partnerships initiatives with Regional Commissions on Human Trafficking, regional institutions and the MINJUS to carry out communicational campaigns which include the development of materials such as posters, brochures, cartoons, radio spots, dramatization, and videos.

Since workers in economic sectors such as mining tend to be transported by road from their hometowns to the mining camps, the project will promote an initiative with the Ministry of Transport and Communications, or related institutions, to improve awareness along these transport corridors.

## **4.7 Challenges and measures to protect victims of forced labor**

According to the PNLCTF and the National Policy on human trafficking, poverty is one of the major factors behind forced labor and human trafficking in Peru. It increases the vulnerability of a significant portion of the population, making them easy victims of labor exploitation.

Vulnerable people fall under or are vulnerable to forced labor conditions -in a large part- because of lack of alternative livelihood. The main factors behind this are: deficient education; low self-esteem explained by a past of violence and exclusion; insufficient vocational training, and no access to formal employment opportunities.

At the policy level, there are a only a limited number of interventions regarding the recovery of vulnerable groups, mainly focused on sheltering victims of human trafficking for sexual exploitation. Moreover, even though there have been two Inter-agency Protocols approved – one on forced labor and the other on human trafficking - there is still a lack of an effective strategy (focusing on gender, age and ethnicity) for the recovery of victims of human trafficking and forced labor.

There is no national program to reintegrate victims of forced labor and human trafficking. Social programs that exist in Peru (such as the conditional cash transfer program called “JUNTOS”, programs of employment and education) do not incorporate victims as possible beneficiaries and their inclusion will require not only political will but also a change in regulations and institutional budgets.

There is also a lack of specific knowledge on vulnerable groups and an accurate identification of victims remains a barrier for the effective provision of services. The two main databases on human trafficking -RETA (PNP) and SISTRA (Prosecution Office) - provide information on alleged victims and still face some problems related to underreporting of cases, dual registration of victims, and the inclusion of victims of other related crimes.

### **Findings**

The national and regional institutions involved in forced labor and human trafficking eradication agree on the importance of prioritizing protection measures as the next step of intervention. There are some existing programs and public services that could be used to benefit of forced labor and/or human trafficking victims. However, a proper identification system of the victims or vulnerable population at risk of forced labor is needed, as well as the development of tools for victims to be incorporated as beneficiaries of these programs.

### **Risks and Assumptions**

The MTPE will support the design and implementation of a pilot program for victims of forced labor, through FONDOEMPLEO and social programs that promote employability. The lack of experience in this kind of programs may delay the negotiation with FONDOEMPLEO as well as the implementation of the program. Lack of adequate financial and human resources may also contribute to the delay in the implementation of the pilot programs endorsed by the MTPE.

### **Roles and recommendations for the Bridge project**

The project will provide technical assistance in the design of a pilot program to incorporate alleged victims of forced labor, human trafficking and vulnerable workers as beneficiaries of employment programs under the MTPE, such as “Jóvenes Productivos” and/or using the platform of FONDOEMPLEO. “Jóvenes Productivos” provides training in productive activities that are in high demand in the labor market and facilitates labor insertion through partnerships with the private sector. The aim of the pilot program will therefore be to promote employability and labor insertion of alleged victims and vulnerable populations at risk of forced labor and human trafficking through vocational training.

## **4.8 Challenges and measures to provide victims with access to remedies and justice**

An important issue that restricted the capacity to combat forced labor in Peru was the fact that there were no specific provisions for forced labor in the national Penal Code. In order to reduce forced labor, it is essential that the perpetrators of such practices be punished by sufficiently dissuasive penalties, the absence of any penal provisions that specifically suppress and punish forced labor in Peru was therefore a significant obstacle to the initiation of criminal proceedings against perpetrators.

In addition, compensation, as a measure for the recovery of the victim, is not contemplated as a remedy in cases of human trafficking. Other obstacles that prevent victims from accessing remedies are language/dialect (in the case of indigenous people) and the costs of the judicial process.

Judiciary figures show that in the case of human trafficking, only 633 judicial cases were processed between 2001 and 2013. In contrast, a considerable number of judicial cases were processed for other crimes such as encouraging the prostitution of persons (2,693 cases) and procurement (1,170 cases).[[63]](#footnote-63)

The ILO has provided technical assistance to strengthen capacity building of the CNLCTF members, public officials and regional governments in high risk areas of forced labor (Ucayali, Piura, Cusco, Ayacucho, and Madre de Dios). As part of the technical assistance, the following materials have been developed:

Guideline on forced labor addressed to public officials (“Lo que necesitas saber sobre el Trabajo Forzoso. Una Guía de Apoyo para el Servidor Público”)

Normative handbook including international and national normative related to forced labor (“Compendio de normas sobre Trabajo Forzoso”)

Guidelines on Criminal Law and forced labor for justice actors (“Derecho Penal y Trabajo Forzoso en Perú. Módulo de Orientación para operadores de Justicia”)

Specific ILO trainings also targeted justice system actors including crime and labor judges, prosecutors, and national police in Lima and regions. These trainings increased their knowledge on forced labor, and provided tools to help identify forced labor victims and increase efforts to punish the perpetrators of this crime.

### **Findings**

The recent criminalization of forced labor offers a positive scenario to enhance the protection to victims and their access to remedies. The Judiciary, Public Ministry, National Police and Ministry of Justice and Human Rights have expressed their interest in strengthening the capacity of their institutions and officials, so they can help victims’ access justice and start their process of restitution and recovery.

### **Risks and Assumptions**

The Judiciary could support the development of a binding agreement that includes minimum guidelines for judging cases of forced labor and human trafficking including guidelines for adequate reparation for victims. The approval of judicial remedies such as compensation may however require a normative modification.

### **Roles and recommendations for the Bridge project**

The project will continue to provide specific training on forced labor addressed at justice system actors in order to strengthen their roles in combating forced labor.

The project will also support the increased awareness of “peace judges” (juez de paz) on the issue of forced labor. Peace judges are not required to only apply the national law but can also apply their own justice and equity criteria. These peace judges only exists in far locations without easy access. In Peru there are currently about 5,800 peace judges nationwide.

# **Chapter 5: Malaysia Analysis**

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## **5.1. International Standards on forced labor**

Malaysia has ratified five of the eight Fundamental Conventions including the Forced Labor Convention, 1930 (C029) while the Abolition of Forced Labor Convention, 1957 (C105) was denounced[[64]](#footnote-64).

|  |  |  |
| --- | --- | --- |
| **Convention** | **Status** | **Date Ratified** |
| **Fundamental Conventions** |  |  |
| **C029** - Forced Labor Convention, 1930 | In Force | 11 Nov 1957 |
| **C098** - Right to Organize and Collective Bargaining Convention, 1949 | In Force | 05 Jun 1961 |
| **C100** - Equal Remuneration Convention, 1951 | In Force | 09 Sep 1997 |
| **C105** - Abolition of Forced Labor Convention, 1957 | Denounced on 10 Jan 1990 | 13 Oct 1958 |
| **C138** - Minimum Age Convention, 1973 | In Force | 09 Sep 1997 |
| **C182** - Worst Forms of Child Labor Convention, 1999 | In Force | 10 Nov 2000 |
| **Governance Conventions** |  |  |
| **C081** - Labor Inspection Convention, 1947 | In Force | 01 Jul 1963 |
| **C144** - Tripartite Consultation (International Labor Standards) Convention, 1976 | In Force | 14 Jun 2002 |
| **Other relevant Conventions / Protocols** |  |  |
| UN Convention on the Rights of the Child | Ratified | 17 Feb 1995 |
| UN Convention against Transnational Organized Crime | Ratified | 24 Sep 2004 |
| Convention on the Elimination of All Forms of Discrimination against Women | Ratified | 05 Jul 1995 |

To-date, the following Conventions have not yet been ratified but are also relevant to the protection of all workers from forced labor:

* C087- Freedom of Association and Protection of the Right to Organize, 1948
* C097- Migration for Employment Convention, 1949 (ratified only by Sabah)
* C111 - Discrimination (Employment and Occupation) Convention, 1958
* C143 - Migrant Workers (Supplementary Provisions) Convention, 1975
* C189 - Domestic Workers Convention, 2011
* C181 - Private Employment Agencies Convention, 1997
* C129- Labor Inspection (Agriculture) Convention, 1969
* UN Slavery Convention, 1926 and 1956

### **Findings**

There are positive developments in the application of the Conventions ratified by the country but gaps remain. For instance, under C029, CEACR recognizes certain measures have been taken to protect migrant workers, such as the establishment of a Special Enforcement Team (SET) to enhance enforcement activities to combat forced labor issues; conducting nationwide awareness raising on the Minimum Wages Order of 2012 in order to prevent labor exploitation of migrants; the signing of a Memoranda of Understanding (MoU) with eight countries of origin (Bangladesh, China, India, Indonesia, Pakistan, Sri Lanka, Thailand and Viet Nam) in order to regulate the recruitment of migrant workers; and the signing of a separate MoU on the recruitment and placement of domestic workers with the Government of Indonesia. However, these MoUs do not cover all the main countries of origin of migration, such as Nepal. The CEACR also urges the Government to strengthen the measures to ensure that migrant workers, including migrant domestic workers, are fully protected from abusive practices and conditions that amount to forced labor. It also highlights the need to strengthen the government’s efforts to prevent, suppress and combat trafficking in persons, and to take the necessary measures to ensure that all persons who engage in trafficking and related offences are subject to investigation and prosecution. Strengthening the capacity of law enforcement bodies should also include appropriate trainings to improve the identification of victims of trafficking and ensure greater coordination among these law enforcement bodies.

The provisions in the Children and Young Persons (CYP) Act (1966) are not aligned with C138; children under the age of 14 are allowed to perform light work in Malaysia. The CEACR recommends amending the CYP Act to establish a minimum age of 13 for light work activities. It further encourages the government to collect sufficient up-to-date statistical data on working children.

Necessary measures to ensure that the hazardous types of work prohibited for children under the age of 18 are yet to be determined through tripartite consultations to comply with C182. Immediate and effective measures to ensure that the use, procuring or offering of a child under the age of 18 for the production of pornography or for pornographic performances is prohibited, has to be resolved as a matter of urgency. Effective and time bound measures to protect children of migrant workers from the worst forms of child labor, in particular in the palm oil plantations, should also be defined.

The application of ratified C081 is very important to the application of forced labor and child labor Conventions. There is room for improvement in enhancing the labor inspection system to effectively monitor the implementation of labor laws so as to receive, investigate and address complaints of alleged violations of child labor and forced labor.

The stakeholders consulted for this assessment were knowledgeable about the ILO Conventions (ratified and unratified) however dissemination to other staff members and to the general public seem to be lacking.

### **Risks and assumptions**

**Entry points for ratification**

Economic development, in particular through improving trade and competitiveness are among the current main priorities of the Malaysian Government. The government takes pride in their tier upgrade in the U.S. Government’s Trafficking in Person (TiP) Report and sets their sight to achieving Tier 1 in the upcoming years. They are also paying particular attention to the USDOL’s *List of Goods Produced by Child Labor or Forced Labor* (List) that includes goods from countries that ILAB has reason to believe are produced by child labor or forced labor in violation of International Standards, as required under the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 and subsequent reauthorizations.

**Commitment for ratification**

The binding nature of ratification of ILO Conventions is a concern to some of the key officials in the government, although there are also potential champions for the ratification of the Forced Labor Protocol. During the consultation for the ILO Decent Work Country Program for Malaysia, MOHR suggested that the ratification targets of specified instruments, including Forced Labor Protocol, may go beyond the 2020 deadline of the Decent Work Country Program (DWCP) due to many factors that may affect ratification targets. Nevertheless, MOHR has agreed to develop, with ILO support, a Roadmap towards the ratification of the Forced Labor Protocol by 2018.

**Application prior to ratification**

Malaysia’s application of C029 has been on the agenda of the ILC’s Committee on the Application of Standards in 2013 and 2014, with CEACR citing loopholes in the current application while also providing recommendations for closing these loopholes. The recommendations are in direct alignment with specific provisions of the Protocol on Forced Labor and its accompanying Recommendations (R 203). Assuming that the government will comply with the comments provided on the application of C029, they would in effect be applying the Protocol and Recommendation (R 203).

### **Roles and recommendations for Bridge project[[65]](#footnote-65)**

Bridge will produce communication materials on foreign workers’ housing, health and freedom of movement rights as well as good practices on victim protection and the provision of legal remedies. Trainings, workshops, and awareness raising campaigns will be utilized to increase the public and target groups’ knowledge about the relevant ILO Conventions and to promote the 50ForFreedom campaign at the country level. Partnership with groups working on innovative solutions to increasing public awareness should also be a priority.

With reference to the CEACR comments, the U.S. State Department’s TIP and ILAB’s TDA/TVPRA report recommendations, the project will engage with the tripartite constituents and the civil society organizations in conducting a Gap Analysis to review existing mechanisms on prevention of forced labor, protection and access to legal remedies and other services of the victims of forced labor. The findings from the Gap Analysis will inform the development of the Roadmap toward the ratification of the Forced Labor Protocol and the National Action Plan on Forced Labor.

The project, in collaboration with the International Trade Union Confederation (ITUC) and local trade unions, will engage with the government on the ratification of the ILO Forced Labor Protocol and, more specifically, the development of the Roadmap toward ratification of the Forced Labor Protocol by 2018, and the overall elimination of forced labor in Malaysia.

The project will support an assessment to measure recruitment costs from selected countries to Malaysia, in collaboration with existing ILO migration projects, and will advocate for effective strategies at reducing migration costs, as recommended in the study, since existing recruitment practices are seen as causing excessive recruitment costs that result in migrant workers’ indebtedness and vulnerability to forced labor.

The ILO country initiatives in Malaysia are consolidated through the Decent Work Country Program (DWCP), which is currently being negotiated with the government. Linkages between forced labor, migration, labor law reform, and industrial relations are strengthened in the DWCP. Since it is a country program, the tripartite constituents’ commitment to supporting its implementation and becoming part of the reporting and evaluation process will be an important feature of the DWCP. The Bridge project will incorporate its key outcomes and targets into the DWCP[[66]](#footnote-66) including the ratification of the Forced Labor Protocol and addressing the gaps in the application of C029, C182 and C138.

## **5.2. National laws addressing forced labor and child labor**

**Background**

|  |  |  |  |
| --- | --- | --- | --- |
| 1957 Federal Constitution (amended 1963) | No person shall be held in slavery. All forms of forced labor are prohibited, but Parliament may by law provide for compulsory service for national purposes. (Article 6) | | |
| **Law** | **Description** | **Focal agency for implementation** | **Findings about this particular law and how it relates to forced labor** |
| Anti-Trafficking in Persons and Anti–Smuggling of Migrants Act in 2010 (ATIPSOM) | Defines trafficking to include all actions involved in acquiring or maintaining the labor or services of a person through coercion. Forced labor is included in the definition of exploitation under this Act. The law criminalizes all dimensions of trafficking and establishes stringent penalties of up to twenty years imprisonment and fines for those convicted. There is also a specific internal guideline that has been prepared that includes non-payment of salary for three months as labor exploitation. The Amendment to this Act included provisions for freedom of movement and work, which came out of consultations with NGOs.  The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) is responsible for implementing ATIPSOM. An anti-trafficking unit has been created under the Royal Malaysian Police. There are also specialized positions established at the Immigration Department and Attorney General’s Chamber to implement this law in particular. An anti-trafficking unit has been set up within MOHR. | Ministry of Home Affairs (MOHA) | Pursuing cases under this Act places redress under the framework of criminal law. After informing migrant workers that they may not receive their due wages soon if ever in following through with such a case, most opt to seek financial remedy through a negotiated settlement so that they can return home. If they do decide to go through with a trafficking case, they run the substantial risk that it will not be resolved within three months, which is the maximum period of time that migrants are permitted to stay in Malaysia while they have a court case pending and this duration is often insufficient. |
| Employment Act 1955[[67]](#footnote-67) | Provides minimum protection to employees with regard to their terms and conditions of service consisting of working hours, wages, holidays, retrenchment benefits, leaves, etc. The scope of this law extends to foreign workers. However, defined as “domestic servants” within the Employment Act, domestic workers are excluded from many of the basic labor protections afforded to other sectors.  This law stipulates the requirement for an employment contract between the employee and the employer.  The law provides that foreign workers are first to be terminated before local workers, in case when an employer loses its capacity to retain its current manpower. | Ministry of Human Resources (MOHR) | The use of the term “domestic servant” is derogatory and not aligned with ILO Conventions. Also, there are many sections of the law that are not applied to Domestic Workers: Section 12 (Notice of termination of Contract), 14 (Termination of Contract for Special Reasons), 16 (Employees on Estates to be provided with minimum number of days’ work in each month), 22 (Limitation on advances to employees), 61 (Employers Duty to Keep Register), 64 ((Employers Duty to display notice boards), Part IX (Maternity Protection), Part XII (Rest Days, Hours of Work, Holidays And Other Conditions of Service) and Part XIIA (Termination, Lay-Off And Retirement Benefits.  The “Foreign Workers First Out” policy in this Act contradicts the Constitutional provision for equality of protection among all workers.  The amendment of this Act will be covered by another USDOL-funded ILO project on Labor Law and Industrial Relations. |
| Immigration Act (amended 2002) | Provides the rules for admission and stay of migrant workers in Malaysia. Amended Act criminalizes migrants who do not comply with Malaysian immigration policies relating to entry, stay and work, making them subject to arrest if caught by authorities or the People’s Volunteer Corps (RELA). It also introduced stringent punishments for employers hiring undocumented migrants, and irregular migrants themselves through fines, imprisonment, caning or fast-track deportation | Immigration Department, MOHA | The Immigration Act gives the employer the power to unilaterally obtain, renew and cancel the work permit. This is clearly problematic when migrants seek to pursue cases against their employers as employers can (and commonly do) react by cancelling the work permit thereby rendering the migrant ‘undocumented’ and vulnerable to arrest, detention and deportation. The migrant, however, has an allowance to apply for a ‘special pass’ at the cost of RM100 per month at the discretion of the immigration officer. |
| Passports Act 1996 | Provides control over the possession and production of travel documents by persons entering or leaving, or travelling within, Malaysia and for matters connected therewith. This law prohibits employers’ retention of workers’ passport | Immigration Department, MOHA | Implementation of this law is very poor. Verité found that an incredible 94% of the migrant workers they polled reported that their sponsors were in possession of their passports, and that 71% said they had little or no access to these documents. Workers told the organization that their passports are seized as soon as they land in Malaysia, and are only returned to them following the end of their two or three year-long contracts. In some cases, workers were charged exorbitant sums to access their documents while in others, agencies simply refused to return documents to workers even in situations like hospitalization. |
| Workmen’s Compensation Act | Provides payment of compensation for injuries sustained in accidents during employment. In general, this Act covers foreign workers who are legally employed in this country. | MOHR | Compensation for workplace injury paid in lump-sum to migrant workers is lower than social security benefits given to nationals as in the case of Sarawak and Sabah according to CEACR comments. |
| Occupational Safety and Health Act 1994 | Provides regulations to secure the safety, health and welfare of persons at work against risks associated with the activities of persons at work and providing industrial codes of practices to maintain or improve the standards of safety and health. | MOHR | According to the MOHR Policy Division, the CYP Act and hazardous work list for children will be referred to this OSH law. |
| National Wages Consultative Council Bill 2011 (Act 732) | Provides regulations in determining the mechanism to impose minimum wage. Two different rates apply – one rate for Peninsular Malaysia; and another for Sabah, Sarawak and the Federal Territory of Labuan. | MOHR | The minimum wage does not apply for domestic workers. Bilateral agreements between Malaysia and other governments however are a means to set the minimum wage for domestic workers. However, this opens up issues of discrimination based on nationalities. |
| Workers Minimum Housing Standards and Amenities Act of 1990 (Act 446) | Prescribes minimum standards of housing, provision of nurseries for workers and their dependents, to require employers to allot land for cultivation and grazing in the place of employment, to require employer to provide medical and social amenities. | MOHR | The Act does not apply for construction workers. It is currently applied to estate/farm and mine workers.  The Act also does not apply to any place of employment or part thereof within the area of a city council, municipal council or Federal Territory. |
| Private Employment Agencies Act 1981 | Recruitment agencies are required to obtain a license to operate from the Ministry of Human Resources (MOHR) and an additional endorsement is required for placement of workers overseas. The Act is expected to be subsumed by the Private Employment Agencies Bill, a draft of which was shared publically 2014 but appears to have stalled out in the legislative process. MOHR has stated that the new legislation will extend to recruitment of foreign workers and improve enforcement particularly for recruitment of domestic workers. However, it does not address the issues of outsourcing agencies[[68]](#footnote-68) operating administratively through the MOHA. Instead, it will make it mandatory for outsourcing companies to be registered under the Private Employment Agencies Act 1981. | MOHR | Excessive recruitment costs lead many workers to be in varied forms of forced labor. Workers reportedly pay agents more than US$1,000 to come to the country aside from extra fees often for visas, passports and airfares that workers also normally bear, although legally, employers are supposed to provide for these. The recruitment fees paid by employers are also high, especially for small and medium enterprises (SMEs). At present, employers who hire fewer than 50 workers are required to recruit their workers through outsourcing agencies. Some employers share that this is one reason why passports of workers are kept by some employers in fear of losing their investments. |
| Penal Code | The Penal Code is a law that codifies most criminal offences and procedures in Malaysia. Its official long title is "An Act relating to criminal offences." The sole jurisdiction of Parliament of Malaysia is established over criminal law in Malaysia. | MOHR | This law provides a definition for compulsory labor as “labor against the will of that person.” Also it sets the penalty to compulsory labor to imprisonment for a term which may extend to one year, or with fine, or with both. Section 377E prohibits any person from inciting a child (under the age of 14) to any act of gross indecency |
| Children and Young Persons (Employment) Act, 1966 | Provides regulations to protect children and young persons who are engaged in employment in terms of working hours, type of work, abuse and etc. The Government is currently in the process of reviewing this Act with a view to determine the types of hazardous work prohibited to persons under the age of 18 (pursuant to section 2(6) of CYP and to set the minimum age for light work. | MOHR | The existing provisions are not aligned with C138 such that a person below 14 years old is allowed to perform light work. CEACR recommends amendment of the CYP Act to establish a minimum age of 13 years for light work activities. It further encourages the government to collect sufficient up-to-date statistical data on working children. The project has reiterated these CEACR comments to MOHR. According to them, these recommendations are taken into account in the amendment of the CYP Act. The draft is undergoing internal discussions among relevant government agencies at the Federal and State level.  This Act does not contain any specific prohibition on the use, procuring or offering of a child under 18 years for the production of pornography or for pornographic performances. According to the MOHR Policy Division, the CYP Act and hazardous work list for children will be referenced in the OSH law. |
| Dangerous Drugs Act, 1952 | Offences related to trafficking of drugs by any person shall be punished with the death penalty | MOHA, National Anti-Drugs Agency | Children used by adults for the production and trafficking of drugs should be treated as victims as stated by CEACR |

Malaysia does not have a specific forced labor law, and does not have a country definition for forced labor. The legislative framework does however, address issues related to forced labor across multiple laws. Below is the list of most common indicators or conditions of forced labor in the country and the specific law that relates to each directly:

|  |  |
| --- | --- |
| **Forced Labor Conditions/indicators** | **Law** |
| Coercion, and forced labor as a form of exploitation | ATIPSOM |
| Withholding of passport | Passports Act |
| Contract substitution | Employment Act |
| No freedom of movement (also includes withholding of passport) | ATIPSOM |
| No freedom to change employer | ATIPSOM |
| Withholding or non-payment of proper wages[[69]](#footnote-69) | Employment Act  National Wages Consultative Council Bill 2011 |
| Non-compensation during sickness/injuries | Workmen’s Compensation Act  OSH Act |
| Excessive recruitment fees and levies (cause for debt bondage)[[70]](#footnote-70) | Private Employment Agencies Act |
| Non-renewal of work permit by the employer | Employment Act |
| Threat of imprisonment for undocumented migrants | Immigration Act  ATIPSOM (provides for investigation for trafficking) |
| Dire living conditions (isolated, unhygienic housing and amenities) | Workers Minimum Housing Standards and Amenities Act |
| Recruitment of children for child labor | CYP Act  Dangerous Drugs Act |

According to the ILO study on “Access to Justice for Migrant Workers in the Southeast Asia”, nearly 45% of the migrant workers’ cases that are resolved were assessed as situations of forced labor. These determinations were made by case managers providing legal assistance, as forced labor can be difficult for victims to identify on their own.

It is important for the labor exploitation issues be properly addressed in the enforcement of ATIPSOM and as such for MOHR to take the lead in addressing migrant workers’ issues by developing a comprehensive labor migration strategy for the country.

The Federal Constitution is clear that all persons have to be equally protected but many of the provisions in the laws discriminate against local and migrant workers such as the “Foreign Workers First Out” policy.

Necessary measures to ensure that the hazardous types of work prohibited for children under the age of 18 are being discussed among government agencies and between the Federal and State Labor Department. Immediate and effective measures to ensure that the use, procurement or offering of a child under the age of 18, by anyone, for the production of pornography or for pornographic performances is prohibited, has to be resolved as a matter of urgency. Effective and time bound measures to protect children of migrant workers from the worst forms of child labor, in particular in the palm oil plantations should be defined.

Enforcement of the laws is very weak, from conducting investigations, filing of cases or charges, to getting convictions. A Special Enforcement Team (SET) for ATIPSOM has been organized and is receiving capacity building support from UNODC.

### **Risks and assumptions**

**11th Malaysia Plan**

According to the 11th Malaysia Plan, the country will place greater emphasis on increasing productivity to achieve a more sustainable, inclusive, and high rate of economic growth. Notably, the 11th Malaysia Plan specified “improving management of foreign workers” as an important part of the agenda. Despite the Malaysian government’s desire to phase out the need for migrant workers, this is unlikely to happen soon. Demand for workers in the Malaysian economy and supply of workers from neighboring countries is set to continue at high levels.

**Future of Work and Industry 4.0**

Malaysian policy makers, MEF and MTUC have been talking about the Future of Work initiative of the ILO and Industry 4.0[[71]](#footnote-71), which the country, including the labor sector, should anticipate and plan for. Low-skilled jobs, where most of the migrant workers and victims of forced labor are working, will be largely affected. It is assumed that the government will use the Future of Work lens in reviewing its current legislations.

**Undocumented migrants**

MOHA’s current policies and actions on trafficking are punitive and they are tackling the trafficking issue mostly from the security angle by arrest, imprisonment or deportation of undocumented migrants.

**Recruitment and workers’ registration**

The issue of outsourcing the recruitment and registration of workers through selected companies is widely scrutinized by the media and other groups, with allegations of corruption at different levels. The government, however, has been denying such allegations of corruption related to outsourcing recruitment and has yet to present concrete actions to look into these issues.

### **Roles and recommendations for the Bridge project**

The project will coordinate with the ILO regional office in Bangkok to ensure support to the Future of Work initiatives of the government to incorporate forced labor issues.

The project will focus on supporting the amendment of the Workers’ Minimum Housing Standards and Amenities Act of 1990 (Act 446), Children and Young Persons Act, and Private Employment Agencies Act; and the development of implementing regulations for the Passport Act, and the development of the hazardous work list for children. The Employment Act and industrial relations laws will be covered through another ILO-implemented USDOL-funded project on Labor Law and Industrial Relations Reform. The Bridge Project will align its support to the legal reform process of the government on these laws while advocating for amendment of the laws that may not be included in the legal reform agenda of the government. For a more coherent approach to addressing the legislative and capacity building gaps, the project will work with other ILO projects in Malaysia[[72]](#footnote-72) to support specific relevant components with a comprehensive ILO labor law reform agenda, migration strategy, and labor inspection strategy. This will enable efficient use of project resources and better impact as integration of various efforts are managed at a strategic-level.

The project will also provide technical assistance in the development of the list of hazardous work for children and will provide sessions to relevant departments on the ILO Step-by-Step Guide on the Determination of Hazardous Child Labor. The project will support MOHR in disseminating and raising awareness about the hazardous work list through a national workshop for sectoral representatives.

The project will provide support to the MOHR and Ministry of Women, Family and Community Development in developing a National Action Plan on Child Labor in line with C182 recommendations. The Plan will also link to the ASEAN Roadmap on the Elimination of the Worst Forms of Child Labor and SDG Target 8.

The ILO Recommendation No. 203 calls for the protection of workers from abusive and fraudulent recruitment practices as a key means of protecting workers from forced labor. In Malaysia, unethical recruitment practices that increase workers’ vulnerability to forced labor include excessive recruitment fees, withholding of passports and other identification documents, and the lack of employment contracts. These practices may further lead to debt bondage, contract substitution, restriction to the movement of workers due to the lack of documentation, and intimidation/threat by employers. The Bridge Project will collaborate with other ILO migration focused projects to advocate for employers, intermediaries, and authorities to use ethical recruitment mechanisms to prevent workers from entering into situations of forced labor.

The Bridge Project will collaborate with the Migrant Workers Empowerment and Advocacy Project and other related migration projects to conduct a Study of Migration Costs from selected countries to Malaysia, in order to shed light on the full spectrum of fees and provide suggestions on how and where migration cost could be reduced. An enhanced understanding of migration costs may provide an analytical framework with which to determine the effectiveness of national policies in establishing a fair and safe migration governance system. The results will guide the development of recommendations for the regulation of migration costs, and how to reduce them in both countries of origin and destination. The recommendations will also be presented to the Malaysian government for consideration as it develops the Malaysian guideline for the recruitment, employment and repatriation of migrant workers. The study will also set a baseline against which to measure reductions in migration costs in the future.[[73]](#footnote-73)

## **5.3 National policies and action plans aimed at suppressing all forms of forced labor**

**2016-2020 National Action Plan on Trafficking**

This National Action Plan aims to improve preventive measures, protection services and social awareness on trafficking. The MAPO is responsible for overseeing the implementation of these initiatives. Objectives, outcomes and activities for the Committees under MAPO have been identified in the Action Plan.

The Special Committee on Labor Trafficking was established on 28 May 2009 under the MAPO and is chaired by the MOHR. The objective of this Committee is to resolve problems and cases involving labor trafficking. This Special Committee is tasked to identify and categorize policies and procedures in handling foreign workers’ complaints; to discuss and propose the best mechanism for processes and procedures in handling and resolving foreign workers’ cases; to discuss and propose mechanisms to handle labor trafficking issues; to monitor and propose improvements for investigation and enforcement activities; and to monitor the implementation of improvement proposals.

**11th Malaysian Plan 2016-2020**

The strategy aims to improve the management of migrant workers in the country by reducing the dependence on low-skilled migrant workers, and by streamlining the recruitment process for migrant workers. The government plans to formulate “a comprehensive immigration and employment policy for foreign workers... taking into account the requirements of industry and the welfare of foreign workers.” The 11th Malaysia Plan also names the Human Resources Ministry as the sole ministry entrusted with migrant worker management. The government is also committed to “eliminating the role of outsourcing companies and intermediaries”. In place of private agencies, the government has undertaken to establish a One Stop Centre under the Ministry that will determine the requirement of migrant workers by sector, verify and approve applications for migrant worker, and monitor and respond to all matters related to the welfare of migrant workers.

**SDG Roadmap**

Currently in its final draft form, the Roadmap is the main reference for the SDG work in Malaysia. It shows Malaysia’s commitment to Agenda 2030 and the SDGs, and provides clear direction on Malaysia’s approach towards achieving their aspirations. Malaysia will be pursuing the agenda over three phases in five year intervals between 2016 and 2030. In this first version of the roadmap, focus is on the work and preparations that need to be completed in the initial years, i.e. 2016-2020 (Phase 1). In this phase, the task is to align the aspirations of Agenda 2030 and the SDGs to policies, plans, programs and strategies in the 11th Malaysia Plan, the current five-year national development plan, as well as existing sector plans.

### **Findings**

**2016-2020 Anti-Trafficking Action Plan**

Noticeably, the plan is lacking in terms of addressing issues on labor exploitation and makes no reference on child labor except trafficking in general. The NAP on trafficking is also inconsistent in terms of format such that indicators are only specified for the Media and Publicity Committee. The activities and timeline are broad, which could make operationalization of the plan a challenge.

**Forced Labor National Action Plan**

There is no Forced Labor Action Plan to-date as confirmed by MOHR. However, the roles given to the Special Committee on Labor Trafficking imply a necessity to develop a plan to address issues under its mandate. MOHR has confirmed their desire to develop a National Plan of Action on Forced Labor, and all other respondents during the pre-situational assessment expressed their support to this initiative. MAPO expressed the view that there is the possibility of incorporating the NAP on Forced Labor with the Trafficking in Persons (TiP) NAP 2021-2025. The current TiP NAP is for 2016-2020. An interim NAP on Forced Labor for 2018-2020 is currently being discussed and could be an opportunity for the government to gain experience in developing and implementing NAP on Forced Labor, and as a guide to deciding whether subsuming it under the TIP NAP later will be more appropriate and practical or not.

**Implementation of the 11th Malaysian Plan**

The labor component of the 11th Malaysian Plan 2016-2017 is lagging in implementation. The MOHR, despite having been designated as the sole ministry entrusted with migrant worker management, continues to share this role with MOHA which unfortunately views migrants’ issues more from a security perspective. Outsourcing of recruitment is still very much the norm and pending amendments to relevant laws provides for stronger regulations. It is unclear whether the government will pursue the Government to Government mechanism to address the outsourcing issues.

**SDG Roadmap**

The SDG Roadmap mentions that “Malaysia will likely conduct more studies on forced labor and use international best practices to collect data in order to independently show if there are forced labor situations in its midst. Taking early action will ensure that injustices are identified and action taken.”

### **Risks and assumptions**

Moving forward, the development and implementation of the national plans of actions would need to be more participatory. The CSOs, workers and employers need to be well-represented in the discussions. These stakeholders are assumed to be willing to participate in national processes and to be able to share inputs that represent the collective views of their constituencies.

The government is also assumed to be open to consult with the mentioned stakeholders. There is a medium risk though that the implementation may be influenced by external parties including those with personal or political interests.

The agency taking the lead in the implementation of the Trafficking Action Plan is MOH, while the Economic Planning Unit leads on the 11th Malaysian Plan and the SDG Roadmap. The government has agreed to develop and implement a Forced Labor Action Plan with the ILO, under the Special Committee on Labor Exploitation to be led by MOHR. The aim is for these three agencies to improve their current level of coordination such that there is an integration of different plans of action and that appropriate resources would be allocated.

### **Roles and recommendations for the Bridge project**

The project will provide technical and financial assistance to the development of the Forced Labor Action Plan to the government. Coordination among MOHR, MOHA and EPU will also be strengthened for integration of different plans of action and access to resources for the implementation of the Forced Labor Action Plan. The interventions identified in the Roadmap toward the ratification of Forced Labor Protocol will be incorporated in the National Action Plan.

The project will contribute to the increase of MAPO’s knowledge in handling forced labor cases within the ambit of trafficking by facilitating knowledge sharing activities and supporting participation of key members of MAPO.

## **5.4 Statistical data on forced labor**

Aside from anecdotal evidences, various agencies have shared data related to forced labor in Malaysia, such as:

* *Verité* – The report “Forced Labor in the Production of Electronic Goods in Malaysia, A Comprehensive Study of Scope and Characteristics” confirmed that there are real problems with working conditions, employment and recruitment practices - particularly in relation to migrant workers - that need to be urgently addressed.
* *Government* – in their response to CEACR comments and the TiP report from previous years, the government shared quantitative data gathered through the enforcement bodies on the rescue and protection of the victims and prosecutions and convictions of perpetrators. Additionally, the Ministry of Plantation Industries and Commodities (MPIC) conducted a Preliminary Survey on the Labor Situation in Malaysian Oil Palm Plantations in 2014 that reported no systematic condition of forced labor in the Malaysian oil palm plantation and smallholdings. The study findings were not accepted by international organizations.
* *ILO* – ILO has an extensive knowledge base about migrant workers in Malaysia through the publication of the studies entitled “Review of Labor Migration Policy in Malaysia”, “Access to Justice for Migrant Workers in South East Asia”, “Protected or Put in Harm’s Way” on gender-based migration restriction, “Worker, helper, auntie, maid?: Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia” and other migration-related studies.
* *Others* – Other studies have been produced by agencies such as World Bank, IOM, OECD, and Migrant Workers Right to Redress Coalition, etc. but with a focus on migrant workers in general.

### **Findings**

**Quantitative forced labor data lacking**

There is no regular and systematic collection of forced labor data in Malaysia. Aside from the Verité study, most of the forced labor data is anecdotal and comes from front-line service providers who are directly engaged with communities and migrants or refugees. Information gathered from field workers are important as they become the basis for determining that forced labor does exist and affect mostly certain groups such as migrant workers and refugees. This could then inform future research initiatives.

**Forced labor and child labor survey in palm oil plantations**

The Malaysian Cabinet has agreed to allocate RM5 million for the MPIC to conduct a survey on alleged use of child labor[[74]](#footnote-74) in the palm oil sector. The Minister of MPIC mentioned that the study is in response to USDOL listing the Malaysian palm oil sector on the Trafficking Victims Protection Reauthorization Act (TVPRA) list. In later consultations, MPIC also stated that the findings from the study will be used to develop a plan to address forced labor and child labor issues in the plantations.

**Engagement with academics**

UNICEF Malaysia engages academics to conduct studies in their areas of work. Research is a huge component in University education in the country and capacity has been developed among the schools in terms of managing and coordinating such studies. The cost for conducting studies through academes are also below what research institutions are charging.

### **Risks and assumptions**

Advocacy to the government to address forced labor issues needs to be evidence-based. As shared by the CSOs interviewed during this inception period, this has been their major challenge in calling the government to act on other issues. It is assumed however that on the issue of forced labor the government is willing to act, despite limited data available, primarily because the forced labor issue relates to trade relations.

One possible issue prior to the development of the Forced Labor Action Plan, is the baseline. This could also raise questions as to how big the problem is, given that there is no national estimate. However, there is an assumption that the government will be willing to increase the forced labor knowledge base as an outcome of the National Action Plan on Forced Labor, which would be necessary for monitoring implementation of the Action Plan.

### **Roles and recommendations for the Bridge project**

The ILO, through the Bridge project has agreed to support MPIC in developing a suitable sampling design and measurement framework for the Malaysian Government’s Forced Labor/Child Labor Study in the Oil Palm Plantations. The project will also provide guidance in the form of training to enumerators, and review of data analysis and the report to ensure that the study is rigorous and transparently conducted.

The National Action Plan on Forced Labor would identify ways on how the country could “regularly collect, analyze and make available reliable, unbiased and detailed information and statistical data, disaggregated by relevant characteristics such as sex, age and nationality, on the nature and extent of forced labor to allow an assessment of progress made,” consistent with the ILO Recommendation 203.

The project will support the ITUC in commissioning research to map working conditions in multi-national corporations’ supply chains. Such a study will include specific questions focusing on pay, working conditions and access to collective bargaining and their coverage.

The project will also conduct an assessment to measure recruitment costs from selected countries to Malaysia, using an ILO-World Bank methodology developed under KNOMAD. The findings will be used to advocate for mechanisms on recruitment that will reduce the recruitment costs.

## **5.5 Challenges and measures to identify victims of forced labor**

The following are the existing means of identifying victims of forced labor:

**Labor inspection** - The labor inspection functions as per Article 3(1) of Convention No. 81 consist of enforcing legal provisions relating to conditions of work and protection of workers while engaged in their work, supplying technical information to employers and to workers on how to comply with legislation, and bringing to the attention of the competent authority defects or abuses not covered by existing legal provisions. Moreover, the functions of labor inspectors are to enforce labor laws, not other kinds of regulation, such as immigration law. In relation to migrant workers the exclusive role of labor inspectors should consist of enforcing their labor rights and to refer to the appropriate authorities areas of non-compliance with immigration law.

**Other enforcement officers under MAPO** – Aside from the labor officers/inspectors, the Royal Malaysian Police, Immigration and Malaysian Maritime Enforcement Agency comprise the enforcement team under MAPO. Their tasks include identification of trafficking victims. Under the ATIPSOM Act, enforcement officers are required to “investigate into the circumstances of the person’s case for the purpose of determining whether the person is a trafficked person.”  The UN special rapporteur noted that the above entities “have a primary responsibility for identifying trafficking in collaboration with each other.”

**Workers’ Organizations** – The Malaysian Trade Union Congress (MTUC) manages Migrant Resource Centers (MRC) in Kuala Lumpur/Selangor and Penang. Their role in the identification process is to receive complaints and determine whether the indicators of forced labor are met. There is no apparent active workplace monitoring where MTUC members are engaged at the moment.

**CSOs** –Tenaganita is managing MRCs in Johor, Kuala Lumpur/Selangor and thus inform and educate the communities about trafficking issues, conducts rescues and provides services for protection and access to legal remedies to victims. They, however, do not engage in active identification of forced labor victims. Other CSOs are providing trainings to local Malaysians about trafficking touching on issue of forced labor. Some of them include topics on the identification of trafficking victims.

### **Findings**

**Forced labor victim identification**

In terms of identification of victims of forced labor, it appears that the current initiatives are reactive rather than proactive. A complaint triggers the above interventions on rescue and review of whether the cases fall into the category of forced labor. The CSO efforts on raising community awareness about trafficking would need to be strengthened to highlight identification of forced labor victims and referring cases to appropriate agencies.

**Trainings on forced labor identification**

Trainings are being provided by different international and local agencies to enforcement officers, MTUC and CSOs on trafficking and migrants’ rights. Such trainings could be adapted to highlight forced labor issues including victim identification.

**Labor inspectorate**

The ability of labor inspectors to carry out each role, and in effect identify if forced labor is happening in enterprises is affected not only by its technical capacity but also by internal task management. In Malaysia, the inspectors from the Labor Department are engaged in additional duties that interfere with the effective discharge of their primary duties. This applies to the administration of Workmen’s Compensation in the case of the Labor Departments. Although these functions can still be ensured by these services, they should not be a task for labor inspectors. There is no clear labor inspection policy for OSH and labor relations, namely in enforcement criteria and investigation of complaints. This may result in lack of transparency and trust from external stakeholders and inconsistent action by different offices and staff when it comes to enforcement procedures to be followed and sanctions to be imposed.

At the Ministry level, co-operation is said to take place between the Labor Department and the Department of Occupational Safety and Health. It appears, however, that while there is good-will between the Departments, this co-operation is not institutionalized and is not apparent at the working or field level. Shared work planning is uncommon, joint inspection visits or compliance campaigns are rare, and the sharing of data is not systematic. While not a problem in itself, such functional separation tends to reduce opportunities for collaboration, making it more difficult to engage in joint policy planning, sharing of resources, coordinated action and information sharing on things like enterprises liable to inspections, visits carried out, and the results of those visits. Improving co-operation can contribute to improved efficiency of the inspection function and consequently improved compliance outcomes[[75]](#footnote-75).

### **Risks and assumptions**

Some victims of forced labor may be working in isolated workplaces and have little or no access for communicating their situations to others. They are at risk of losing their jobs which is often the reason why they prefer to keep quiet. These victims do not trust the justice system to protect them. The authorities that run the justice system need to give them an assurance of their safety and protection and ensure that such protection is embodied in legislations. A safe and secure feedback mechanism and complaints system are needed that does not result in victims being disadvantaged.

From what was gathered during the consultations, there are multiple trainings provided to enforcement bodies and CSOs by different organizations. There is also the Migration Working Group, a coalition of NGOs working on migration issues that is being revived and could serve as the coordinating body for civil society organizations working on migration and forced labor issues.

Innovative ideas for reporting trafficking cases have recently been presented through a Hackathon event, implemented by Project Liber8. It gives any person with a mobile phone the ability to report forced labor cases to a centralized system that refers the cases to service providers. It is a service where anyone can ring a designated number, which will then respond with an SMS that provides the user with options, such as the option to report trafficking cases. This system is applicable to forced labor reporting. At this stage, it is not yet implemented since the developer and Project Liber8 is still searching for partners to move the project forward.

### **Roles and recommendations for the Bridge project**

The existing referral system on trafficking used in the operation under MAPO will be enhanced to ensure that all forms of forced labor are acted upon. The roles of different agencies will be clearly defined. Within an agreed period of time, cases referred through this enhanced referral system will be monitored and analyzed to determine its functionality and identify areas for further improvement.

Good examples of victim protection and access to legal remedies will be popularized to increase victims’ confidence in the justice system to report incidence of forced labor to authorities.

The project will also support the development of a system for reporting forced labor cases. Building on the efforts by NGOs on identifying trafficking victims, the project will strengthen the forced labor aspect of their current work.

The project will identify strategic partners to develop and institutionalize forced labor trainings to enforcement teams, MRCs and other CSOs. This may be done by reviewing and adapting existing training programs. The capacity building for labor inspectors will be aligned with the labor inspection strategy of the ILO.

## 

## **5.6 Challenges and measures to prevent forced labor**

There are measures in place to prevent forced labor, albeit with some gaps in their design or implementation:

**ATIPSOM and MAPO**: The ATIPSOM was amended in 2007 broadening the definition of trafficking to include all actions involved in acquiring or maintaining the labor or services of a person through coercion. The law is comprehensive in criminalizing all dimensions of trafficking and establishes stringent penalties of up to twenty years imprisonment and fines for those convicted. The supervisory and enforcement structure has been developed with MAPO being responsible for overseeing the implementation of the law and the National Plan of Action on Trafficking.

**Labor inspection**: Currently the Department of Labor has about 500 labor officers/inspectors. Out of the total number of officers 392 (up from 290 in 2007) labor officers perform multiple functions which includes labor investigation and inspection, mediation, employment promotion, labor court adjudication, consultation, assessment for workmen compensation. The remaining number of officers carry out management, supervisory and administrative functions. With the current number of labor officers, an enterprise will only be inspected every 7 to 8 years.

**G to G mechanism**: To prevent human trafficking and other forced labor practices, a Government to Government or G to G mechanism of recruitment of foreign workers that does not involve agents, third parties, middle men, private employment agencies or other recruitment agents of both countries was piloted with Bangladesh. A report by the United Nations Inter-Agency Project on Human Trafficking (UNIAP) in 2011 showed how the exorbitant recruitment fees is a reason why the domestic workers end up working without pay between 4.5 and 12 months, to repay their employers “the debt they are said to have incurred”.

**6P Program**: The 6P Program focused on registration, legalization, amnesty, supervision, enforcement and deportation of workers. The program supported data collection on employers and the workplace. According to the government, it created the platform for Malaysia (labor receiving country) to establish strategic collaboration with countries of origin such as Indonesia, Bangladesh, Vietnam, Myanmar, India, and Pakistan. The aim was to facilitate orderly entry of foreign workers into the country to ensure their protection from exploitation, particularly human trafficking. This program ended in 2014.

**Rehiring Program**: Introduced in February 2016, the purpose of the program was to legalize at least 2 million undocumented migrant workers. The agents were openly criticized for pocketing levies from the employers but failing to register the workers. A massive crackdown of undocumented migrants happened after the deadline of the rehiring or E-Kad program on June 30, 2017.

**CSO-assisted Programs**: According to the mapping study conducted by the ILO in 2017, the CSOs provide awareness raising activities include reaching out to migrant groups and conducting sessions on knowing your rights, personal safety and security, as well as understanding the Malaysian legal system. Capacity building efforts targeted at the migrant community include peer leaders training whereby migrant leaders are identified and trained to take on initial case management efforts. Other forms of capacity building activities include training of migrants on the use of phone applications to report a complaint, training on para-counselling, occupational safety and health training, training on video advocacy as well as training on collective bargaining. These capacity building needs are identified in consultation with the migrants themselves.

### **Findings**

**MAPO**

According to non-government respondents during consultations, MAPO has focused mainly on enforcement while the prevention activities are minimal. Even the role of MAPO in the reform process for legislations and policies for prevention of trafficking/forced labor is not clear as most changes emanate from individual agencies. MAPO as an inter-agency task force is a venue to build stronger coordination among the different agencies. However, this could be due to the lower level of authority and decision-making of regular members of MAPO, unlike the High-Level Committee comprised of Ministers.

**Labor inspections**

The Department of Labor conducted 41,452 workplace inspections in 2012 and 15,370 inspections in the first nine months of 2013, to check for forced or compulsory labor practices, and no forced or compulsory labor practices were recorded. This appears to be indicative of the quality of labor inspections including non-monitoring of smaller enterprises, where forced labor may be more prevalent.

**Government-to-Government mechanism for recruitment**

Overall, “the G-to-G mechanism is a good practice model that has led to dramatic reductions in the cost of migration, eliminated debt burdens, and demonstrated that a state-managed recruitment and placement option is a credible one. While there were operational problems in the pilot mechanism, no serious attempt has been made to evaluate its operation up to now, and address issues affecting its effective functioning”. This is according to ILO’s Review of the Government-to-Government Mechanism for the Employment of Bangladeshi Workers in the Malaysian Plantation Sector.

**Amnesty programs for undocumented workers**

The Rehiring Program did not meet its objective due to the low registration of undocumented migrant workers. One of the requirements under the registration is that the worker must have an employer that he has been working with. Employers, especially SMEs, were not willing to cover fees, ranging between RM 1,395 and RM 3,485 for each worker, to re-hire workers which in the opinion of MEF should have been reduced to encourage more registrations.

### **Risks and assumptions**

The countries of origin have a big role to play in preventing forced labor among migrant workers, even before they leave their country and while they are in the country. Some Embassies may not have the necessary resources to carry out awareness raising and other prevention activities but they can reach out to existing CSOs that support migrant groups from their specific countries. It is assumed that countries of origin and Malaysia will be open to working collaboratively on setting up prevention mechanism on forced labor.

Many migrants do not understand, speak, or write English and so there is a need to communicate to them in their own language. The language barrier is one issue cited for why some charges against employers are dropped. Based on the stakeholder consultations conducted by Bridge, the use of social media is an important means of communication among migrant workers. However, some migrant workers do not know how to use or do not have access to the most relevant forms of technology. There are migrant communities within certain areas of Malaysia that can serve as hubs for information sharing. Workers who are not given holidays or days off often miss the opportunity to socialize in these environments and miss out on receiving the information shared. In addition, while not applicable for all, mobile sim cards are among the first things migrant workers look for in the country. Telecom companies are willing to engage with projects such as Project Liber8 to implement programs against trafficking.

### **Roles and recommendations for the Bridge project**

Communication materials will be developed in different languages (of the migrant groups) and disseminated through migrant community hubs, MRCs, government media outlets, social media and SMS with a clear call to action, such as support to 50ForFreedom campaign and reporting of forced labor incidences through hotlines or SMS. Such materials will tackle common forced labor practices in the country, penalties and legal remedies. ITUC, in cooperation with MTUC, EIEU and EIWU will produce a video with workers’ stories and graphics for social media on violations of workers’ rights in global supply chains in Malaysia. The project will also partner with telecom companies for awareness raising campaigns.

Capacity building for MAPO, labor inspectors, other government officials, labor attaches and CSOs will include concrete recommendations on preventing forced labor including the required policy changes. These efforts are not duplicative of efforts carried out in the past, such as by IOM. Based on consultations, past trainings focused on trafficking in general and did not elaborate on forced labor issues and case studies. Bridge trainings will supplement them by offering forced labor-centric trainings.

World Day against Child Labor will be organized by the project and will serve as a venue to raise awareness about forced labor and for the government to share relevant country developments on forced labor and child labor, such as on the development and implementation of action plans, the hazardous list, the Roadmap towards the ratification of the Forced Labor Protocol, and the amendments of laws and policies.

Bridge will explore potential collaborations with the global ILO Fair Recruitment project, the ILO Malaysia’s MWEA and the TRIANGLE in ASEAN projects, as well as the ITUC and the Electronic Industry Citizenship Coalition in developing models for sustainable recruitment and utilizing recommendations from the findings on the Study of Migration Cost of Migrant Workers in Malaysia. The Bridge Project will advocate, through workshops and awareness raising materials, for such sustainable fair recruitment practices to reduce migration costs and thereby reduce vulnerability to debt bondage and other forms of forced labor.

The Bridge project will work with the government to incorporate prevention measures in the Action Plan on Forced Labor.

## **5.7 Challenges and measures to protect victims of forced labor**

Being a member of the trade union is, in principle, a strong protection mechanism against forced labor. The Trade Union Act 1959 states that a foreign worker can become a member of a trade union. The Employment Act 1955 states that a contract of employment shall not contain a clause prohibiting a worker from joining a union. The Industrial Relations Act 1967 also states that a worker cannot be dismissed for union activity.

MAPO is tasked to protect the victims of trafficking through the full implementation of ATIPSOM. Presently, the Criminal Investigation Department has been specifically tasked in tackling human trafficking activities, especially on the aspect of labor or sexual exploitation.

MAPO’s SET was established to enhance enforcement activities to combat trafficking practices. From 2012-15, SET conducted 57 investigations concerning 181 victims and in 6 cases, penalties ranging from 6000 to 120000 MYR were imposed to convicted persons. The Royal Malaysia Police, as the leading enforcement agency to combat the crime relies on provisions that were contained in the Penal Code, Child Act and the Immigration Act 1959 and 1963.

ATIPSOM was amended in 2014 to allow victims of labor trafficking to remain and work legally in Malaysia. However, aside from the victim’s consent or decision to stay and pursue legal remedies, diplomatic missions also have to approve of such actions. If the victims choose to leave Malaysia, they have to confirm that they understand that their safety is not guaranteed if they choose to return to their country of origin.

The Ministry of Women, Family, and Community Development maintained seven facilities to house trafficking victims—four for women, one for men, and two for child trafficking victims. The government provided basic services to those staying in its facilities, including food, medical care, social support and security. The victims are placed in the protection home or shelter, managed by NGOs, to facilitate the prosecution of the perpetrators and until the victims are ready to return home. Group and personal counselling and psychosocial support are provided by the Ministry to the victims. Depending on the complexity of each case, the victims can be placed in the protection shelter up to a period of 2 years. At any one time, the number of women in a protection shelter can rise up to over 300 victims and up to 30 – 40 children in the children’s protection shelter.

### **Findings**

**MAPO Special Enforcement Team**

The different enforcement bodies under SET, from the Police, RELA and labor inspectors, to maritime and customs, needs to improve its coordination toward greater efficiency and effectiveness. Currently, when cases are handled by the Police often they opt to file the cases only under ATIPSOM and the issues on wages and passport retention may be neglected by not referring the cases to the Labor Department. RELA would also need to refine its image as well, as they are perceived to be interested more on arrests/detention of undocumented migrants, and not on objectively finding out the causes behind the issues on a case-to-case basis.

**Migrant workers’ non-participation in legal proceedings**

The employment circumstances of migrant workers such as short-term contracts, fear of retaliation from employers, legal status in the country are the most common reasons why they opt not to participate in legal proceeding but endure the difficult situations they are in.

**Medical services for migrant workers**

Subsidies for migrant workers medical services were fully withdrawn by the Health Ministry in 2016. There is also the risk of arrest, detention and deportation of undocumented migrants who seek medical treatment at a government facility. Hospital staffs, including doctors are obligated to inform immigration officials if an undocumented migrant registers him/herself for treatment.

**Amnesty program for undocumented migrant workers**

Undocumented migrants who are caught are detained in special detention facilities that Amnesty International describe to be “extremely overcrowded. They fail in fundamental ways to meet basic international standards and generally accepted good practice in the treatment of detainees and the management of institutions. Detainees in immigration centers lack bedding, regular access to clean water, medication and sufficient food. They spend most of their time in their cells with no opportunities for exercise, organized worship or other activities. Diseases spread quickly, and fights are common. Detainees under age 18 are held together with adults, in violation of international law. Many foreigners remain in detention for extended periods of time because they cannot meet the costs of a flight back home: deportation in Malaysia is “generally at the detainee’s expense”.”

### **Risks and assumptions**

Undocumented migrants fear accessing medical treatment even if it is sometimes vital for their survival. Migrants who decide to seek medical treatment in government facilities but are found to have contracted communicable diseases such as tuberculosis, HIV/ AIDS, or are pregnant are deported. [[76]](#footnote-76)

Based on the consultations conducted for this assessment, the MAPO is interested to learn about other countries’ good practices in handling forced labor cases and how security and labor issues are dealt with appropriately. As part of this, it is assumed that the members of the SET and the Labor Department will be willing to cooperate as recipients of training support from the project and that such training could be delivered at the State- and local level.

### **Roles and recommendations for the Bridge project**

The project will incorporate issues on protection of victims in the gap analysis that will be discussed with key stakeholders to inform the development of the Roadmap toward the Ratification of Forced Labor Protocol and the National Action Plan on Forced Labor.

The project will review and adapt existing training package for the enforcement agencies under SET in coordination with UNODC that is also providing them with technical assistance, and identify how such training could be institutionalized*.*

The project will engage with MOHA through MAPO, which is tasked to implement the ATIPSOM. Knowledge sharing of other country experiences on adequately addressing forced labor within the ambit of trafficking will be organized. Participation in regional/global events of key members of MAPO will also be supported.

The project will build the capacity of employers and palm oil industry certification bodies to protect workers' rights. MEF has agreed to jointly organize with Bridge awareness raising and capacity building activities for its members. The project will conduct two national workshops and four follow-up regional events for employers on combatting forced labor in the workplace. The project will enhance the capacity of the existing palm oil industry certification and regulatory bodies such as the Malaysian Palm Oil Board and the Malaysian Sustainable Palm Oil Certification Council, through roundtable discussions on International Standards and emerging good practices in the sector.

Bridge will also conduct a workshop for labor attachés on their roles in addressing forced labor, such as vetting potential employers and contracts, responding to and resolving grievances, assisting migrant workers who may be victims of forced labor and other crimes, and facilitating the repatriation of their citizens.

Forced labor and child labor are closely linked in Malaysia. In preparation for the Malaysian palm oil plantations survey, NGOs suggested that undocumented children may be more susceptible to forced labor because they do not have access to the public education system, are treated as “illegals” and kept hidden from authorities due to lack of documentation. In some cases, these children could be working with their parents who may be victims of forced labor. There are also elements on the presence of debt bondage. There are anecdotal reports that work undertaken by these children, such as in plantations or in the streets, are hazardous (i.e. fruit picking in extreme weather conditions, as vendors in dangerous locations, carrying heavy loads). The project will collaborate with the ILO Labor Law and Industrial Relations Reform Project to develop/adapt guidelines for conducting labor inspections that ensure forced labor indicators are captured, as well as assessments on hazardous work especially for children. The projects will also review OSH inspection guidelines with a focus on risk assessments on hazardous work for children, and conduct a Training of Trainers for labor and OSH inspectors in collaboration with relevant training departments. The project will implement multiplier trainings for labor inspectors in Peninsular Malaysia, Sabah and Sarawak.

## **5.8 Challenges and measures to provide victims with access to remedies and justice**

**Government complaints mechanism**: In the event of a breach of their labor rights, workers can lodge a complaint with the Labor Department and with the Industrial Relations Department. The Labor Department is mandated to accept complaints relating to violations of the Employment Act, the Minimum Wage Order, the Workers’ Minimum Standard of Housing and Amenities Act, the Workmen’s Compensation Act, and the Anti-Trafficking of Persons and Smuggling of Migrants Act. The Industrial Relations Department is responsible for resolving cases of unfair dismissal, filed under Section 20 of the Industrial Relations Act.[[77]](#footnote-77)

**Migrant Worker Resource Centers (MRCs):** Since 2011, the International Labor Organization’s (ILO) TRIANGLE in ASEAN program has supported the operation of Migrant Worker Resource Centers (MRCs) in ASEAN countries including Malaysia. As part of the MRC service model, legal assistance is provided to migrant workers and members of their families to allow them to seek redress for abuses during recruitment and employment and utilize the social protection benefits to which they are entitled. [[78]](#footnote-78) The MRCs in Malaysia are managed by Tenaganita and MTUC. Lawyer interns in these organizations provide support in pursuing the cases. Over a four-year period from May 2011 to May 2015, 263 complaint cases have been resolved, largely through Tenaganita (95%).

**Other Migrant NGOs:** Other Migrant NGOs also offer services from receiving a complaint, conducting investigations, connecting the migrant to the respective embassy and attempting to access some form of justice for the migrant by way of contacting the perpetrator for negotiation among others as part of case management efforts. Legal support is provided to migrants in the form of assistance with filing police reports, as well as assistance with court related matters and in providing migrants with legal representation.

**MEF**: The MEF has provided migrant workers with information on accessing complaint mechanisms and has advocated for complaint procedures to be established at the workplace level. A survey conducted among the Federation’s membership found that 84% of the respondent companies have a grievance mechanism for employees claiming unfair treatment, and 75% have systems in place to handle complaints of sexual harassment (MEF, 2014).

**Prosecutors**: Under the supervision of the Director of Public Prosecutions of the Attorney-General’s Office of Malaysia, there are two prosecution officers in every state serving as the specialist prosecutors for trafficking in persons. A special court in Kuala Lumpur was established to supposedly expedite trial for trafficking cases. The Malaysian Bar Council also provide pro-bono services through their Legal Aid Centers (LAC), which differs in purpose to the Government Legal Aid Bureaux (LAB). The LACs are funded by lawyers through the Council fund, while the LABs are government funded. LACs assist both documented and undocumented workers including migrants, while LABs do not assist undocumented workers. Only LACs represent those charged with criminal offenses who intend to claim trial.

### **Findings**

According to the ILO study on Access to Justice of Migrant Workers (2017), the mechanisms for assistance with dispute resolution, administrative complaint mechanisms, and criminal and court hearing proceedings are established in legislations but not always accessible in practice.

**Coverage of laws to vulnerable groups**

The limited coverage of several laws for domestic workers and undocumented migrants impede their ability to access justice. For instance, undocumented migrants are subject to immediate arrest and detention if caught by authorities and face strict sanctions for violating the Immigration Act. Also, since permission to stay and work in Malaysia is strictly tied to an employer, threat of retaliatory dismissal is sometimes used to coerce migrant workers (Verité, 2014).

**Investigations**

The effective and swift investigation of offences under the ATIPSOM is hampered by a number of factors such as limited coordination among enforcement agencies and the lack of skills to handle cases of trafficking as well as corruption of law enforcement officers.

**Prosecutions**

Despite assigned prosecutors in every state, the time taken to process cases is very long, with the majority of cases taking four months or longer to resolve (63%). The severity of the abuses handled in Malaysia can in part explain the extended time period to reach closure but the complaints process can be long and complicated for migrant workers regardless. The process of gathering evidence, investigations and prosecutions have many loopholes due to limited capacity of enforcement officers and prosecutors especially in scrutinizing and preparing for forced labor complaints.

**Documentation, language and accessibility to victims**

Identifying perpetrators is a daunting task due to the practice of outsourcing and sub-contracting. Documentary proof is also difficult to secure because of the lack of written contracts. Language is also a barriers since some workers don’t speak English or Bahasa Malaysia. Forced labor victims are often isolated, work long hours and in difficult situations, and have no access to communication tools. These make it difficult for victims to leave the employment premises to file complaints or pursue cases.

**NGO presence**

Since migrant workers cannot afford private legal assistance, they rely mainly on NGOs for paralegal support. However, the presence of NGOs that provide these services are limited. Despite a high concentration of migrant workers in Negeri Sembilan and Johor, services are not available in these areas. The lack of service providers for migrant workers in Peninsular Malaysia is also evident with only seven out of the 12 states in Peninsular Malaysia having some form of CSO presence.

In 63% of cases resolved with assistance from the MRCs, the most common remedy provided to migrants in Malaysia was to return them to their country of origin. Some of these cases involved migrant workers who were provided with shelter services after enduring forced labor – and returning home was a high priority. However, considering repatriation to be a “remedy” may be a mischaracterization due to the loss of income and investment in migration costs (ILO, 2017). CSOs cite the lack of support from embassies as a major roadblock in pursuing cases. Some Embassies advise the workers to leave the country instead of pursuing a claim against the employer. Service providers relied on informal mediation to resolve cases in Malaysia (53%), which is reportedly due to slow and ineffective administrative mechanisms (Harkins, 2016).

### **Risks and assumptions**

CSO service providers do not feel completely free and safe to operate in the current political environment. They have encountered harsh treatment from employers and even authorities. A lot of capacity building support is being provided to CSOs on trafficking and migrants rights but according to the mapping study conducted by ILO there is a lack of follow-up efforts such as coaching, mentoring, and exchange platforms to allow integration for the learning acquired.

Victim harassment not only comes from the perpetrators but also from enforcers. According to the Asian Migrant Centre profile for Malaysia, RELA agents have the authority to enter people’s homes at will, despite their often poor training, and are known to create an extremely hostile environment for foreign workers in Malaysia, and have been accused of “violence, extortion, theft, and illegal detention.” These volunteers act under the auspices of the Ministry of Home Affairs, and as such, enjoy legal immunity.

Female migrant workers are often employed as domestic workers in Malaysia and face physical isolation, restricted movement and lack of coverage by the law which causes them to have poor access to justice. The negative attitude of some locals to migrant workers has an impact on the kind of treatment these workers receive.

### **Roles and recommendations for the Bridge project**

To improve forced labor victims access to justice and legal remedies, the project will:

* Advocate and provide technical support in the legal reform process to ensure that victims’ access to justice and to legal remedies are enhanced, including addressing the issues of outsourcing and sub-contracting by examining these in the Gap analysis on existing mechanisms on prevention of forced labor, protection and access to legal remedies and other services for the victims of forced labor.
* Build the capacity of key actors who provide access to justice and legal remedies: Police, RELA, labor inspectors, prosecutors, the Attorney General’s Office, CSO service providers, the Labor Department and the Industrial Relations Department. Incorporate the capacity building recommendations from the TRIANGLE study that examines how the investigation of forced labor and trafficking cases actually work in practice, and aim to enhance understanding on the indicators of forced labor and trafficking as a means to assist labor officers, enforcement officials and other relevant personnel in identifying situations of forced labor among migrant workers and securing the prosecution of offenders.
* The project will provide assistance to the Special Committee on Labor Exploitation in the development of a safe and secure feedback mechanism and complaints system that does not result in victims being disadvantaged. It will also conduct an assessment of the complaints-prosecution-conviction processes to identify causes for delays and other issues with a view of addressing these challenges through improved policies and systems.

# **Annexes**

## **Annex 1: Methodology**

Scope:

The goal of the pre-situational analysis is to document the current status of country level and global level efforts to combat forced labor. They will be completed prior to the start of substantive project activities and will focus on the Bridge project’s main objectives[[79]](#footnote-79):

1. Increased knowledge, awareness, and ratification of the ILO Protocol and Recommendation;
2. Improved and responsive national policies and/or action plans and/or legislation on forced labor with strong implementation, monitoring, and enforcement mechanisms;
3. Increased efforts to collect reliable data in order to carry out research and share knowledge across institutions at national, regional, and global levels;
4. Workers’ and employers’ organizations actively support the fight against forced labor; and
5. Increased awareness and access to livelihood programs for victims of forced labor.

Methodology:

The process for undertaking the pre-situational analysis will consist of undertaking a desk review. The post-situational analysis will expand upon this method to incorporate data from various additional sources, using additional methods of data collection to help inform the final evaluation.

The desk review will entail the collection and synthesis of relevant information from existing literature and data on the forced labor situation in each priority country under the Bridge project. Each desk review will culminate in the development and submission of country-level chapters that feed into one Bridge Project Pre-Situational Analysis Report.

**Desk review**

The desk review will be undertaken by the National Project Coordinators (NPCs) for each priority country and by the Project Director and M&D officer for the global level. The aim of the desk review will be to determine the status of the following forced labor related issues (where applicable and where information is available):

|  |  |
| --- | --- |
| **Issue:** | **Information on:** |
| Status of legal frameworks | * Ratifications of International Standards * National laws * Comments from the ILO committee of experts * Victims’ access to justice * Jurisprudence (summary of court cases) |
| Status of institutional frameworks | * National plan of action * National policy * National coordination and enforcement mechanisms Victim Identification * National referral mechanisms |
| Evidence of forced labor | * Research/studies/surveys on forced labor * Types of forced labor * Sectors and geographical areas concerned |
| Evidence of Tripartite Constituents’ involvement | * Involvement of Employers Organizations * Involvement of Trade Unions * Involvement of Labor Inspectors * Involvement of other key stakeholders |
| Prevention and protection | * Awareness raising campaigns * Capacity building/Trainings * Socio-economic initiatives |

Sources of information for the desk reviews will include:

* Websites (e.g. National Action Plans, laws, published reports, research)
* ILO sources (e.g. NORMLEX, Committee of experts’ comments, General surveys, Decent Work country profiles)
* Sources from other International Organizations (e.g. UN Special rapporteurs, relevant UN databases)
* Sources from other International Organizations (e.g. UN Special rapporteurs, relevant UN databases)
* Sources from ILO Constituents
* Other sources (e.g. USDOL List of Goods Produced by Child Labor or Forced Labor, US State Department TIP report)

**Pre-situational analysis reports**

Information from the desk reviews will be analyzed and synthesized in a final Bridge Pre-Situational Analysis report, with specific chapters for each country report. The final report will be prepared by a consultant, and will provide an overview of findings, including gaps and possible opportunities. Findings from the report will help inform the interventions to be carried out under the Bridge project components, and provide a high-level overview to feed into the monitoring and evaluation process.

**Reporting Structure and Timeline:**

The pre-situational analysis report will contain separate chapters covering the forced labor situation at the global level, in addition to each of the project’s pilot countries. The content of the chapters will include (depending on the available information):

Global chapter:

* The ratification of International Standards on forced labor
* Global tools available for addressing forced labor
* Global networks and partnerships on forced labor
* Global research on forced labor
* Global awareness campaigns on forced labor

Country chapters:

* National laws addressing forced labor
* National policies and action plans aimed at suppressing all forms of forced labor
* Statistical data on forced labor
* Measures to identify victims of forced labor
* Measures to prevent forced labor
* Measures to protect victims of forced labor
* Measures to provide victims of forced with access to remedies

Each section should include (if available), the population groups that benefit from the measures, the key stakeholders involved including the employers’ and workers’ organizations, monitoring mechanisms, as well as the main challenges and gaps.

## **Annex 2: Nepal – List of stakeholders interviewed**

## **Annex 3: Malaysia – List of stakeholders interviewed**

1. Ministry of Human Resources
2. Advisor to the Ministry of Home Affairs, MAPO and the Deputy Prime Minister
3. Ministry of Plantation Industries and Commodities
4. Malaysian Employers Federation
5. Malaysian Trade Union Congress
6. Judicial and Legal Training Institute
7. ILO Migration Consultants
8. ILO ROAP Labor Inspection Specialist
9. ILO Workers’ Specialist
10. ILO Technical Officer for Migrant Workers’ Empowerment and Advocacy Project
11. ILO National Coordinators in Malaysia
12. Malaysian Bar Council
13. Tenaganita – NGO
14. Project Liber8-NGO
15. Members of the Migration Working Group – NGOs
16. Migrant Workers Right to Redress Coalition
17. The Forest Trust
18. Palm oil plantation managers and supervisors
19. United Nations Resident Coordinator’s Office
20. UNICEF
21. UNHCR
22. UNODC

1. See annex 2 and 3 for the list of stakeholders interviewed in Nepal and Malaysia respectively. [↑](#footnote-ref-1)
2. Malaysia denounced C105 in 1990 [↑](#footnote-ref-2)
3. Forced Labour Convention, 1930 (No. 29): [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\_INSTRUMENT\_ID:312174:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174:NO) [↑](#footnote-ref-3)
4. Five exceptions include: work imposed under compulsory military service, normal civic obligations, prison labour (if conviction is by a court and with public authority supervision), work in emergency situations (war, calamity...), and minor communal services. [↑](#footnote-ref-4)
5. Abolition of Forced Labour Convention, 1957 (No. 105):

   [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105) [↑](#footnote-ref-5)
6. Protocol of 2014 to the Forced Labour Convention, 1930:

   [www.ilo.ch/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:P029](http://www.ilo.ch/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029) [↑](#footnote-ref-6)
7. Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203):

   [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_INSTRUMENT\_ID:3174688](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174688) [↑](#footnote-ref-7)
8. Argentina, Cyprus, Czech Republic, Estonia, Finland, France, Mali, Mauritania, Niger, Norway, Panama, Poland and the United Kingdom (as of March 2017) [↑](#footnote-ref-8)
9. <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> [↑](#footnote-ref-9)
10. [www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx) [↑](#footnote-ref-10)
11. [www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx) [↑](#footnote-ref-11)
12. [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf) [↑](#footnote-ref-12)
13. [www.ilo.ch/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_101171.pdf](http://www.ilo.ch/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf) [↑](#footnote-ref-13)
14. [www.dol.gov/ilab/child-forced-labor/](http://www.dol.gov/ilab/child-forced-labor/) [↑](#footnote-ref-14)
15. [www.unodc.org/documents/human-trafficking/HT\_Toolkit08\_English.pdf](http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf) [↑](#footnote-ref-15)
16. [www.ituc-csi.org/IMG/pdf/TU\_Guide\_Forced\_labour\_EN.pdf](http://www.ituc-csi.org/IMG/pdf/TU_Guide_Forced_labour_EN.pdf) [↑](#footnote-ref-16)
17. [www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_182096.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182096.pdf) [↑](#footnote-ref-17)
18. [www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_081999.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf) [↑](#footnote-ref-18)
19. [www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_097835.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf) [↑](#footnote-ref-19)
20. [www.ilo.org/wcmsp5/groups/public/---ed\_norm/---declaration/documents/publication/wcms\_203832.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf) [↑](#footnote-ref-20)
21. <http://www.ilo.org/dyn/natlex/natlex4.home?p_lang=en> [↑](#footnote-ref-21)
22. [www.unodc.org/cld/en/v3/htms/index.html](http://www.unodc.org/cld/en/v3/htms/index.html) [↑](#footnote-ref-22)
23. [www.globalmodernslavery.org](http://www.globalmodernslavery.org) [↑](#footnote-ref-23)
24. <https://sustainabledevelopment.un.org/sdg8> [↑](#footnote-ref-24)
25. Operational indicators of trafficking in human beings , Results from a Delphi survey implemented by the ILO

    and the European Commission, ILO, Geneva, September 2009 [www.ilo.org/wcmsp5/groups/public/@ed\_norm/@declaration/documents/publication/wcms\_105023.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf) [↑](#footnote-ref-25)
26. ILO has implemented surveys in 14 countries: Armenia, Bangladesh, Bolivia, China, Ethiopia, Georgia, Ivory Coast, Moldova, Myanmar, Nepal, Niger, Sri Lanka, Thailand, and Zambia [↑](#footnote-ref-26)
27. [www.ilo.ch/global/topics/forced-labour/news/WCMS\_389995/lang--en/index.htm](http://www.ilo.ch/global/topics/forced-labour/news/WCMS_389995/lang--en/index.htm) [↑](#footnote-ref-27)
28. <http://50forfreedom.org/> [↑](#footnote-ref-28)
29. Strengthening action to end forced labour, ILC, ILO, 2014

    [www.ilo.ch/wcmsp5/groups/public/---ed\_norm/---relconf/documents/meetingdocument/wcms\_217752.pdf](http://www.ilo.ch/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_217752.pdf) [↑](#footnote-ref-29)
30. 2016 TIP report - www.state.gov/documents/organization/258876.pd [↑](#footnote-ref-30)
31. Esclavage en Mauritanie: l’Echec de l‘application de la feuille de route pour la lutte contre les séquelles de l’esclavage, Anti-Slavery International, Association pour les Peuples Menacés, Initiative pour la Résurgence du mouvement Abolitionniste – Mauritanie, Kawtal, SOS Esclaves, Unrepresented Nations and Peoples Organization, February 2016 [↑](#footnote-ref-31)
32. http://www.cdhah.gov.mr/index.php/10-strategies/14-plan-d-action-triennal [↑](#footnote-ref-32)
33. See here www.cdhah.gov.mr/ [↑](#footnote-ref-33)
34. Fatwa in the [Islamic](https://en.wikipedia.org/wiki/Islamic) faith is the term for the legal opinion or learned interpretation that qualified jurist or ulemas can give on issues pertaining to the [Islamic law](https://en.wikipedia.org/wiki/Islamic_law). The legal system of Mauritania is a mix of the colonially inherited French Civil Law legal system and of Sharia Law. The theoretical predominance of Sharia in recent Constitutions does not fundamentally alter the Civil Law foundation upon which the legal system was set up after independence. [↑](#footnote-ref-34)
35. See at <http://www.tadamoun.mr/>: Created by Decree No. 048-2013 dated 28 March 2013, mainly to fight against the Sequels of the Slavery, integration of the Mauritanian returnees of Senegal and Fight against poverty. [↑](#footnote-ref-35)
36. See the ILO CEACR Observation of 2016 on PANETE: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\_COMMENT\_ID:3248990 [↑](#footnote-ref-36)
37. Association des Femmes chef de Famille AFCF: http://afcf-rim.org/ [↑](#footnote-ref-37)
38. ACORD http://www.acordinternational.org/acord/fr/acord/fr/nos-actions/a/zones/mauritanie/ [↑](#footnote-ref-38)
39. ADIG http://www.ongadig.org/ [↑](#footnote-ref-39)
40. TdH Mauritanie https://www.tdh.ch/fr/recherche/page\_pays/Mauritanie [↑](#footnote-ref-40)
41. Centre de Formation et de Perfectionnement Professionnels (CFPP) de Nouakchott, Centre de Formation et d’Insertion Professionnels de Caritas (CFIP) à Nouakchott, Centre de Formation Professionnelle Régional (CFPP) de Kaédi, Centre de Formation Professionnelle Régional (CFPP) d’Aleg, Lycée de Formation Technique et Professionnelle (LFTP) de Boghé, See more details here: http://www.emploi.gov.mr/formation-professionnelle. [↑](#footnote-ref-41)
42. Enforcing Mauritania’s Anti-Slavery Legislation: The Continued Failure of the Justice System to Prevent, Protect and Punish is published by ASI, IRA, MRG, SOS-Esclaves, STP and UNPO, October 2015, page 10 [↑](#footnote-ref-42)
43. Commission Nationale de Droitsde l’Homme, CNDH : <http://www.cndh.mr/> [↑](#footnote-ref-43)
44. Ministère de la Justice, 2016 <http://www.justice.gov.mr/spip.php?article121> [↑](#footnote-ref-44)
45. Statut des Para juristes délivrant des services d’accompagnement juridique en Mauritanie, June 2016 [↑](#footnote-ref-45)
46. Ibid., page 13 [↑](#footnote-ref-46)
47. Many Nepalese workers migrate to foreign countries for work particularly in India and Gulf Cooperation Countries and Malaysia. The work by these migrant workers is termed as foreign employment as a general term in Nepal. [↑](#footnote-ref-47)
48. <http://www.npc.gov.np/images/download/14_plan_approach_paper2.pdf> [↑](#footnote-ref-48)
49. As per the interview with the undersecretary of MoLRM, the ministry is in the process of declaring Haruwa-Charuwa free from their debt through a cabinet order (the same process followed while declaring the Kamaiya and Haliya free from their debt) [↑](#footnote-ref-49)
50. ‘Undocumented’ refers to the Nepali migrant labourers working in India and who travelled abroad via India. As Nepalese workers do not require passports or visas to travel and work in India, many recruitment agencies or traffickers use India as a fist transit point to other counties. As these migrant workers are not registered with the government of Nepal, they are not included in the data collected through government sources. [↑](#footnote-ref-50)
51. <http://www.americanbar.org/content/dam/aba/directories/roli/nepal/nepal_human_trafficking_assessment_report_2011.authcheckdam.pdf> [↑](#footnote-ref-51)
52. As modified by Law No. 30251 (October, 2014) http://www.leyes.congreso.gob.pe/Documentos/Leyes/30251.pdf [↑](#footnote-ref-52)
53. Legislative Decree No. 1323 (January, 2017): http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-fortalece-la-lucha-contra-el-feminic-decreto-legislativo-n-1323-1471010-2/ [↑](#footnote-ref-53)
54. The crimes of ‘slavery and other forms of exploitation’ (article 153-C) and ‘sexual exploitation’ (article 153-B) were also regulated by Legislative Decree No. 1323. [↑](#footnote-ref-54)
55. See: http://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-lima/documents/genericdocument/wcms\_240910.pdf [↑](#footnote-ref-55)
56. <http://www.trabajo.gob.pe/archivos/file/SNIL/normas/2014-10-03_011-2014-TR_3715.pdf> [↑](#footnote-ref-56)
57. https://www.mininter.gob.pe/userfiles/DS-MIN-004-2011.pdf [↑](#footnote-ref-57)
58. http://www.minjus.gob.pe/pnddhh/ [↑](#footnote-ref-58)
59. http://www.minjus.gob.pe/wp-content/uploads/2015/01/POL%C3%8DTICA-NACIONAL-CONTRA-LA-TRATA-DE-PERSONAS-Y-SUS-FORMAS-DE-EXPLOTACI%C3%93N-02.pdf [↑](#footnote-ref-59)
60. Garland, Eduardo Bedoya and Álvaro Bedoya Silva-Santisteban. "El Trabajo Forzoso en la Extracción de la Madera en la Amazonia Peruana." ILO: Geneva 2005. [↑](#footnote-ref-60)
61. <http://www.verite.org/sites/default/files/images/Indicators%20of%20Forced%20Labor%20in%20Gold%20Mining%20in%20Peru_0.pdf> [↑](#footnote-ref-61)
62. <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_143197.pdf> [↑](#footnote-ref-62)
63. National Policy on Human Trafficking and its forms of exploitation (DS. 001-2015-MINJUS) Presentation. [↑](#footnote-ref-63)
64. According to [the Malaysia Country baselines under the ILO Declaration Annual Review (2000-2008): Elimination of all forms of forced or compulsory labour (FL)](http://www.ilo.org/declaration/follow-up/annualreview/archiveofbaselinesbycountry/WCMS_DECL_FL_MYS/lang--en/index.htm), the denouncement is “due to divergences with the ILO in the interpretation of national legislation with regard to this Convention” [↑](#footnote-ref-64)
65. The recommendations related to legal reform and enforcement are included in subsequent sections. [↑](#footnote-ref-65)
66. The DWCP Outcome 1.1: Increased compliance with international labour standards through

    strengthened legislative and regulatory framework incorporates Bridge’s supporting objective 2.2 while the scope of DWCP Outcome 1.2: Strengthened quality, implementation and enforcement of national policies, action plans and/or legislation on forced and child labour cover’s the rest of the project’s supporting objectives. [↑](#footnote-ref-66)
67. The EA only applies to Peninsular Malaysia or West Malaysia.3Sabah and Sarawak, collectively called East Malaysia, have maintained separate labor enactments. [↑](#footnote-ref-67)
68. The outsourcing companies’ responsibilities include negotiating contracts, arranging workers’ visas, paying workers and providing accommodation, food and insurance, says the Malaysian Employers Federation. [↑](#footnote-ref-68)
69. This is reportedly done by employers as a means of keeping employers from changing jobs, as a penalty for making a mistake, complaining, or failing to achieve a quota [↑](#footnote-ref-69)
70. Many workers reported that their Malaysian agents and employers immediately began to deduct the cost of their work permits from their salaries, usually in monthly instalments known as levies. Nearly all of these workers had already paid for their work permits in their home countries, meaning that they were paying twice for the same permits. [↑](#footnote-ref-70)
71. According to Wikipedia, Industry 4.0 is the name for the current trend of automation and data exchange in manufacturing technologies. It includes cyber-physical systems, the Internet of things, cloud computing and cognitive computing. [↑](#footnote-ref-71)
72. TRIANGLE in ASEAN project, Migrant Workers Empowerment and Advocacy Project and Labor Law Reform and Industrial Relations Project. [↑](#footnote-ref-72)
73. Draft Terms of Reference of Study of Migration Costs for Migrant Workers in Malaysia [↑](#footnote-ref-73)
74. The study is latter referred to as Forced Labor/Child Labor Surveys in Palm Oil Plantations [↑](#footnote-ref-74)
75. These findings are based on the assessment conducted by ILO-ROAP Labor Inspection Specialist Rene Robert in 2017. [↑](#footnote-ref-75)
76. Mapping of Migrant Rights Civil Society Organizations in Peninsular Malaysia, 2017 [↑](#footnote-ref-76)
77. A government funded Legal Aid Bureau in Malaysia is in operation but assistance through this bureau is not rendered to migrant workers. [↑](#footnote-ref-77)
78. Access to Justice of Migrant Workers, ILO, 2017 [↑](#footnote-ref-78)
79. Objective areas covered will vary based on project activities relevant to the country [↑](#footnote-ref-79)