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**▶ Guidebook for referral and support of forced labour
and human trafficking victims in Malaysia**

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

**Guidebook for referral and support of
forced labour and human trafficking
victims in Malaysia**

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1 Introduction

Malaysia is a signatory to various international human rights instruments, including the fundamental ILO Convention on Forced Labour (C29) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children of 2000 (Palermo Protocol).

The Forced Labour Protocol of 2014 (P29) that supplements ILO C29 tackles issues that are relevant to Malaysia and emphasizes prevention and suppression of forced labour and trafficking, protection of victims, and improving their access to legal remedies. Article 2 of P29 calls for effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.

Description of a referral mechanism

One important measure that Malaysia is undertaking is improving its referral mechanism for forced labour and trafficking. This guidebook defines “Referral Mechanism” as a cooperative framework through which state actors fulfil their obligations to protect and promote the human rights of victims of human forced labour and trafficking.¹ The human rights of the victims shall be at the centre of all efforts to protect, assist and provide redress to victims.²

The Referral Mechanism serves to:

- (a) provide a transparent and accountable system for identification of victims³,
- (b) act as a gateway for victim referral to appropriate holistic support and assistance;⁴
- (c) identify that an offence of trafficking in persons/forced labour has occurred so allowing for prompt referral to law enforcement agencies;⁵
- (d) provide a mechanism through which data about victims can be collected, allowing a clearer understanding of the scope and extent of trafficking in persons/forced labour in the relevant jurisdiction;⁶
- (e) provide an essential framework that promotes close, multi-layered strategic cooperation between all relevant stakeholders involved in providing assistance to victims and improves the quality of service to victims; and
- (f) help improve national policy and procedures on a broad range of victim-related issues, such as residence and repatriation regulations, victim compensation, and witness protection. It can also be used to establish national plans of action setting benchmarks to assess goal attainment.⁷

The absence of a Referral Mechanism limits cooperation between government agencies and other relevant stakeholders ultimately leading to further harm to victims. It also leads to lack of improvement /progress relating to policy initiatives and the practice of identification and protection of victims.⁸

¹ OSCE/ODIHR, 2004. National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons A Practical Handbook (“**OSCE National Referral Mechanisms**”).

² Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking (“**OHCHR Guidelines**”).

³ Liu, G. (2017) ‘National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development’, p.2.

⁴ Ibid.

⁵ Barnardo’s, ‘Benefits of the National Referral Mechanism’, 2017, p.2.

⁶ Ecpat UK, ‘National Referral Mechanism: What is the National Referral Mechanism?’, p.1.

⁷ OSCE National Referral Mechanisms.

⁸ Liu, G. (2017) ‘National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development’, p.2.

About this guidebook

This Referral Guidebook is designed for State and non-State front-line service providers including enforcement agencies, legal case workers and social workers, who might encounter potential victims of forced labour and trafficking for labour exploitation in the course of their duty. This is designed to answer the following questions of the frontline service providers:

- *What basic knowledge are expected of me to be effectively part of the referral system? How I am supposed to protect and support the needs of potential victims?*
 - The first three modules on legal framework, victim protection and victim identification will address these.
- *A potential forced labour and/or trafficking for labour exploitation case has been reported to me, what do I do as a first step? To whom do I refer the case next? What information will be expected from me by the agency I will refer the case to? What happens when a case is referred to this agency? What services are they expected to provide?*
 - The referral flowchart provides a graphical representation of the referral process, who is responsible for each step, and what tools should be used.
- How do I use the tools provided for the specific process I have to handle?
 - *The forms, checklists and questionnaires will be explained in greater details in this section.*

Whilst this Guidebook is **non-binding** on State actors who have their internal Standard Operating Procedures (SOPs) which are not shared to non-state actors, it is nevertheless a useful reference point for international standards and good practices on victim identification and referral. It will also greatly assist State actors in Malaysia to better understand the basis on which non-State actors make identifications and referrals.

This **Guidebook for Referral and Support of Victims of Forced Labour and Human Trafficking in Malaysia** is developed as part of the ILO's Bridge Project (From Protocol to Practice: A Bridge to Global Action on Forced Labour), in partnership with the Ministry of Human Resources (MOHR) and the Anti-Trafficking in Persons and Smuggling of Migrants Council (MAPO). It refers to both the international and national legal framework concerning the situation of forced labour, human trafficking and related labour rights in Malaysia.

2 International and national legal frameworks on forced labour and trafficking

To determine whether an individual is in fact a victim of human forced labour or trafficking, it is necessary to understand the legal definition of what constitutes trafficking in persons and forced labour. Identification of victims is usually based on the definitions of forced labour and trafficking as stated in national legislation, which varies from country to country. Service providers and law enforcement in a position to identify human forced labour or trafficking should take account the relevant provisions in national legislation and also the international legal framework on forced labour and trafficking, as national laws are progressively reviewed and aligned to international standards. This Guidebook acknowledges the complexity of the relationship between forced labour and trafficking for labour exploitation. In particular, despite the fact that these can be overlapping offences, forced labour can occur independently of trafficking. The guidance provided in this Guidebook honours the complexity and distinction between forced labour and trafficking for labour exploitation by demonstrating how exactly legal definitions and identification protocols can be used to identify both offences.

► 2.1. General provisions and mandates on forced labour and trafficking

Article 6 of the Federal Constitution states that “no person shall be held in slavery” and “all forms of forced labour are prohibited...” with the exception of compulsory national service and work or service carried out by persons as a consequence of a court conviction. The use of the term ‘no persons’ indicates inclusion of all persons, e.g. citizens and non-citizens including documented and undocumented migrant workers, refugees and asylum-seekers.⁹ This is supported by the case of *Ali Salih Khalaf V Taj Mahal Hotel*,¹⁰ where the Industrial Court held that Article 8 of the Federal Constitution uses the word ‘person’ and not ‘citizens’, and that the rights guaranteed by its equality is extended to documented and undocumented migrants.

Section 374 of the Penal Code (Act 574) also provides that “[w]hoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both”. Section 370 prohibits buying or disposing of any person as a slave and Section 371 similarly criminalises habitual dealing in slaves. All three sections refer to “any person” and not “citizen” which can include documented and undocumented migrants.¹¹

⁹ Ibid, p.11.

¹⁰ Industrial Court of Malaysia: Case No. 22-27/4-1580/12, Award No. 245 of 2014, unpublished (referred to in the ILO Gap Analysis at p.11)..

¹¹ ILO Gap Analysis, p.11.

This section is taken directly from the Forced Labour and Trafficking Training Manual for Law Enforcers in Malaysia, for the purpose of consistency with the referral guidebook:

Forced labour

There is no national definition of forced labour. However, the internationally recognised definition of forced labour is found in ILO Forced Labour Convention, 1930 (No. 29), which Malaysia ratified in 1957.¹² According to this Convention,

Forced labour is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself (or herself) voluntarily.

For a situation to be considered forced labour, it is important to note that:

- ✓ ***There should be work or service rendered:*** This includes all types of work, service and employment, regardless of the industry, sector or occupation within which it is found, and encompasses legal and formal employment as well as irregular and informal employment.
- ✓ ***The definition applies to ANY PERSON:*** This refers to adults as well as children, regardless of their nationality and legal status.
- ✓ ***There is a menace or threat of a penalty if the person leaves the employment:*** This threat or menace of penalty given by the perpetrator to the victim can be any form of coercion such as threats, violence, the retention of identity documents, confinement, or non-payment of wages. The penalty may also take the form of a loss of rights or privileges. **Module 3 discusses the indicators of Menace/Threat of Penalty.**
- ✓ ***There is the element of involuntariness:*** This means that the victim did not consent to enter into employment freely, or she/he has no freedom to leave the employment at any time, with reasonable notice in accordance with national law or collective agreements. **Module 3 discusses the indicators of Involuntariness.**

What is not forced labour?

Article 2(2) of the ILO Convention No. 29 (ILO C29) sets out certain exceptions pertaining to practices which would otherwise have fallen under the definition of forced labour:

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

All these situations only constitute exceptions under certain conditions, as defined by the ILO Committee of Experts.¹³

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

It should also be noted that in Article 1 of the ILO Forced Labour Protocol of 2014, the definition of forced or compulsory labour contained in ILO C29 is reaffirmed. Besides, the Protocol provides that measures

¹² Such ratification goes with the obligation to eliminate forced labour as a matter of urgency, criminalise forced labour, impose adequate penalties to reflect the seriousness of the offense and strictly enforce the penalties. It is also critical that the law enforcement response includes prosecution under criminal law.

¹³ https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174846/lang-en/index.htm

tackling forced labour should include specific action against trafficking in persons for the purposes of forced labour – making a clear link between forced labour and human trafficking.

Can forced labour also be Trafficking in Persons? Yes, if they meet the criteria for TIP.

Sub-standard working condition

Enforcement agencies, after careful assessment if indicators of forced labour are met, sometimes find either the involuntariness or menace of penalty is missing. Often, it could be a case of sub-standard working conditions, which are within the mandate of the Department of Labour.

Sub-standard working conditions are exploitative working conditions that do not meet the criteria for forced labour or TIP. For example, victims in receipt of low wages may not be working in a forced labour situation if they are not working under the threat of a penalty or are freely consenting on their employment.

Trafficking in persons (TIP)

Malaysia's definition for TIP come from the Anti-Trafficking in Persons and Anti-Smuggling of Migrant Act 2007 (Act 670) or otherwise called ATIPSOM. This Act states that

*“trafficking in persons” means all actions involved in acquiring
or maintaining the labour or services of a person through coercion, and includes the act of recruiting,
conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act.*

Proving the element of coercion is central to making a case of trafficking or forced labour. Under APTISOM movement is not necessary to establish a trafficking case.

Coercion is defined in ATIPSOM as:

- (a) Threat of serious harm to or physical restraint against any person;
- (b) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (c) The abuse or threatened abuse of the legal process.

Under the Act, Malaysian courts have jurisdiction to hear prosecutions of any person charged with an offense under the Act, whether or not the alleged offense occurred within or outside Malaysia and regardless of the nationality of the offender, if Malaysia is a receiving country, transit country, or if the trafficking starts in Malaysia. The Act also extends jurisdiction to extraterritorial offenses committed by Malaysian citizens or permanent residents.

Part III of the ATIPSOM Act sets out a number of offenses related to trafficking in persons, while Part IV relates to smuggling of migrants. The main offense of trafficking in persons for the purpose of exploitation may be punished with up to fifteen years in prison; where threats, use of force, abduction, etc. are involved, the punishment is from three to twenty years of imprisonment. Trafficking in children also attracts a maximum twenty-year term. Persons convicted of these offenses can also be fined. Other offenses include profiting from the exploitation of a trafficked person; making, obtaining, giving, selling, or possessing fraudulent travel or identity documents; recruiting others to participate in an act of trafficking in persons; providing facilities or services in support of trafficking in persons; and harbouring persons involved in trafficking in persons.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children of 2000 (Palermo Protocol) states that:

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

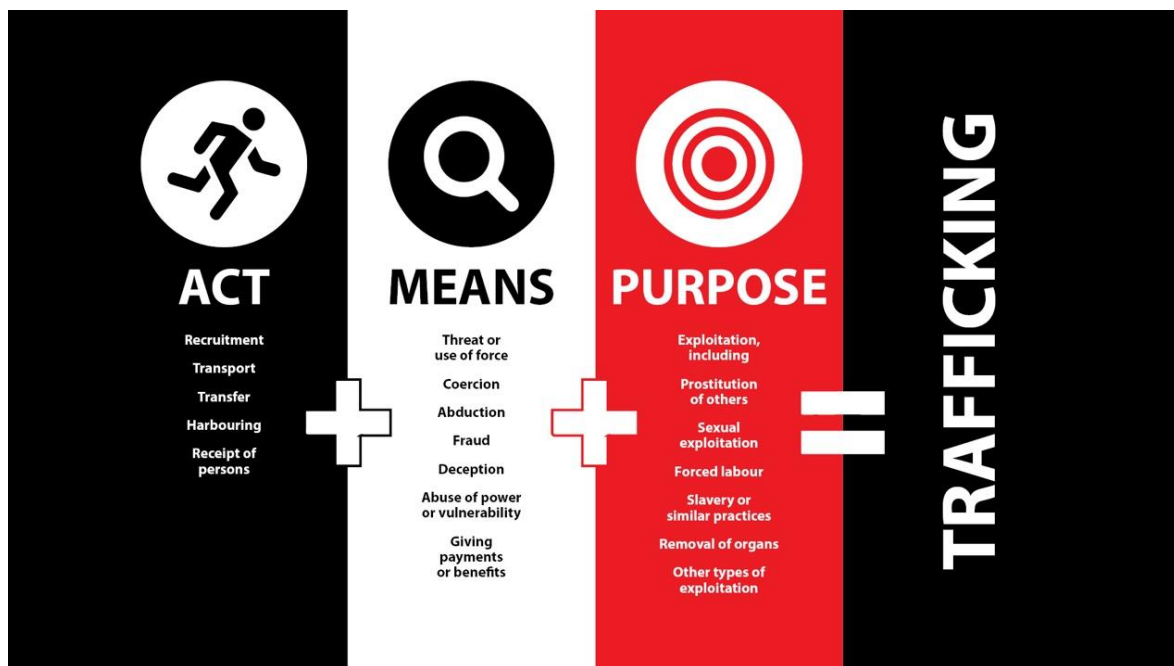
Exploitation shall include, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

3(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub-paragraph (a) of this Article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used

3(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in sub-paragraph (a) of this Article

3(d) "Child" means any person under the age of eighteen years of age

This definition is complex, but TIP can be broken down into three separate elements as shown in the following illustration:



- *If one condition from each element (Means, Act, and Purpose) is met, the result is trafficking.*
- *If any one of the three elements is missing, then it will not be trafficking. However, if the person is under the age of 18 years, it is only necessary to show that any one or more of the defined actions has been used to achieve any one or more of the defined exploitative purposes. The means by which this has been achieved are considered as irrelevant and can be ignored.*

Key points to note about the TIP definition in the Palermo Protocol

1. The Palermo Protocol is a treaty – this means that it is a legally binding instrument which creates obligations for all States that ratify and accede to it.
2. The definition recognises virtually all forms of trafficking that involve the exploitation of the body, labour or services of a person
3. The definition recognises that women, men, girls and boys are trafficked and is not confined only to women and girls.
4. Borders are not mentioned and the definition does not require that a victim crosses any internationally recognised border; this acknowledges the reality that victims are trafficked internally from one part of a country to another
5. The definition requires some form of distortion of the victim's free and informed consent, for example, through the threat or use of force, deception etc
6. In respect of persons under the age of eighteen years of age, there is no requirement for the distortion of the victim's free and informed consent – the use of the activity for the exploitative purpose of sufficient to breach the terms of the Article

Other relevant national legal provisions

The following laws do not specify forced labour as an offense but prohibit specific practices that could be considered indicators of forced labour:

- The Passport Act 1966 prohibits employers from withholding passports of their workers.¹⁹
- The Private Employment Agencies Act 1981 (as amended by the Private Employment Agencies (Amendment) Act 2017) regulates private recruitment agencies. The Act requires grant of a licence under the Act permitting an agency to carry out recruiting activity;¹⁴²⁰ a licence will only be granted to an employment agency who who satisfies certain good conduct provisions including that the director is a citizen of Malaysia, is not an undischarged bankrupt and has not been convicted of a trafficking in persons or forced labour offence.²¹ The licence may be granted subject to conditions.²² There is provision for suspension/revocation of the licence in certain circumstances including in cases of failure to comply with the Act (as amended) or any relevant regulations.²³
- The Employment Act 1955, The Sabah Labour Ordinance 1949 and the Sarawak Labour Ordinance of 1952 provide for basic labour rights of workers such as contract of service, wages, hours of work, protection for female employee, entitlement of leaves and with certain provision for domestic workers. As of April 2019, extensive amendments had been proposed to the Employment Act 1955 which were in the final stages of public engagement before the amendments are tabled before Parliament.¹⁵ At the time of writing the proposed changes have yet to come into force. The proposed amendments include a new definition of 'forced labour': ""forced labour" as the condition of any person who provides labour or services by the use of threat or deception, a reasonable person in the position of the victim would not consider himself to be free: (a) to cease providing the labour or services; or (b) to leave the place or area where the victim provides the labour or services".
- The Workers' Minimum Standards of Housing and Amenities Act 1990 as revised and amended and passed in Parliament in 2019 sets minimum standards of housing, living, medical and social

¹⁹ S.12(1)(f) Passport Act 1966.

²⁰ The Private Employment Agencies Act 1981 as amended, s.7(1).

²¹ Ibid, s.9(b)(i)-(iii).

²² Ibid, S.9(B).

²³ Ibid, a.11A(1)(a).

¹⁵Please refer to: https://www.mohr.gov.my/index.php/en/?option=com_content&view=article&id=885

amenities for workers to be provided by employers who choose to provide their workers with such benefits.

- The Occupational Safety and Health Act 1994 provides for securing the safety, health and welfare of persons at work, to protect workers from unsafe work practices. The Act applies to certain industry sectors set out in the First Schedule to the Act including manufacturing, construction, agriculture, forestry and fishing, mining and quarrying, utilities, hotels and restaurants. The Act imposes a duty on all employers to ensure, so far as practicable, the safety, health and welfare at work of all employees.³⁰

▶ 2.2. Legal provisions and mandates on victim protection

Part V of the Anti-Trafficking in Persons and Smuggling of Migrants (ATIPSOM) Act relates to the care and protection of trafficked persons and makes provision for the appointment of social welfare officers as Protection Officers. There are also provisions relating to protection orders, whereby a person is placed at a shelter home, and for the medical treatment and hospitalization of trafficked persons. A new provision, added by the 2015 amendment legislation, enables trafficked persons to be given permission by MAPO to move freely or to be employed outside of refuges.

A trafficked person is immune from prosecution in relation to irregularly entering the receiving or transit country, unlawful residence in a country, or his or her procurement or possession of any fraudulent travel or identity document.

Provisions in Part VI of the ATIPSOM Act prohibit media reporting and publication of certain matters and particulars of trafficked persons, and contain rules relating the admissibility in court of various documentary and testamentary evidence.

The 2015 amendment legislation added provisions to this Part that enable a court to order a person convicted of an offense under the Act to pay compensation to the trafficked person. Where there is no conviction, a person can still be ordered to pay any wages in arrears to the trafficked person. In relation to the order of the payment of compensation, subsections 426 (1A), (1B), (1C) and (1D) as well as section 432 of the Criminal Procedure Code shall apply. At the moment this is the judge's prerogative. The ideal situation should be that compensation should be guaranteed.

International standards on victim protection

A non-punishment clause was included in the ILO Forced Labour Protocol supplementing the ILO Convention No. 29:

“Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour”.

The language specifically addresses “unlawful activities” and not “criminal activities”, thus potentially include activities that not only violate criminal laws but also other laws such as administrative law or immigration law. This can include immigration-related, prostitution, drug offenses that are linked to victims' forced labour situations.

³⁰ The Occupational Safety and Health Act 1994, s.15(1).

It is common for officials to ignore complaints in relation to passport confiscation or withholding of wages in cases of domestic workers, thereby failing to recognise potential signs of forced labour and instead taking action against those who complained for immigration violations. Workers are most often penalised for being undocumented in the event their employer retains their passport and the employment arrangement ceases.

Given that the work permit renewal process is employer driven, there are also instances reported where employers fail to renew the permits and do not inform the workers about this, accordingly. In the latter case, workers caught are considered to be working “illegally” and criminalised by law enforcers despite the renewal failure being the employer’s fault. The ATIPSOM provides for the non-criminalisation of victims of trafficking in line with the requirements of the ILO Forced Labour Protocol. However, the same victim protection is not available for forced labour under the Criminal Code provision or those whose cases are heard under various different labour laws because they do not meet the ATIPSOM threshold.

International standards are clear on this point. The United Nations High Commissioner for Human Rights published the Principles and Guidelines on Human Rights and Human Trafficking in 2002. This document is acknowledged as setting the international standards as to how victims of trafficking should be treated.

The Principles and Guidelines state:

Trafficked persons shall not be:

- *Detained, charged or prosecuted for:*
- *Their illegal entry into countries of transit or destination*
- *Their illegal residence in countries of transit or destination*
- *Their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons*

As all victims of crime, forced labour and TIP victims have the right to seek legal redress for what they have suffered and to be supported and assisted while they navigate through the justice system. Law enforcement officials and all actors in the justice system must make every effort to respect the victim’s rights including:

- To the speedy investigation and prosecution of their case. All measures must be taken to avoid unnecessary delays in investigation and prosecution.
- To be treated with compassion and respect for their dignity
- Treat them as a witness and not a perpetrator.
- To be informed about their rights and what protections are available to them
- It is important not to lead witnesses or influence their testimony. It is however important that all victims should be informed in clear and understandable language of the following :
- Their role in legal proceedings
- The scope, timing and progress of such proceedings
- The disposition of their cases
- Their basic human rights in a language that the victim understands.
- Procedure to be followed in relation to the investigation and the trial.
- Regular feedback during the investigation process
- Date and the time of the trial of his or her case.
- A basic outline on what is going to happen during the legal proceedings. In most cases victims have never seen the inside of a court room and they do not understand the process.
- Postponement of any trial.
- Date on which the accused will be sentenced
- To express their views and concerns whenever their interests are at stake.
- To be properly assisted and supported through judicial proceedings.

- To have their privacy protected
- To physical safety. Measures must be taken to minimize inconveniences to victims, protect their privacy and ensure their safety/the safety of their families from intimidation and retaliation.
- To restitution and compensation for the damage/harm suffered.
- To material, medical, psychosocial and social assistance through government or NGOs. Victims should be informed on the availability of such services.
- To be received by personnel properly trained and sensitized to the needs of the victims.

In terms of the experiences of victims of trafficking for labour exploitation and forced labour, The ILO acknowledges that:






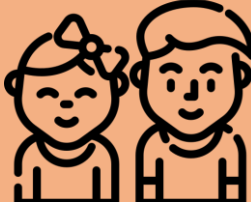
“ Within that part of the spectrum in which forced labour conditions may be found, the line dividing forced labour in the strict legal sense of the term from extremely poor working conditions can at times be very difficult to distinguish.”¹⁶

It is therefore paramount to take a comprehensive approach to labour exploitation by assessing individuals for trafficking for labour exploitation as well as for forced labour and other labour violations. The range of services required by these individuals and the stakeholders involved in providing these services is likely to be the overlapping but not always the same. For example, singular labour law violations would usually require services such as mediation, assistance to access wage arrears and a return to work whereas service provision required in the cases of forced labour or trafficking for labour exploitation will often include rescue, shelter and access to medical care that might be immediate requirements.

⁹ ILO, ‘A Global Alliance Against Forced Labour, Global Report under the Follow-up to the ILO Declaration of Fundamental Principles and rights at Work 2005’, 2005, p.8, para. 31.

3 Guidelines and recommendations in assisting victims of forced labour and trafficking

Service provision is a complex and multi-layered process involving several state and non-state actors. At the centre of this process is a vulnerable individual who requires assistance and support given the exploitation they have just endured. *Vulnerabilities do not cease to exist post-rescue and the principles stated below must be given due regard in order to ensure that victims are not re-traumatised through the identification and referral process and that a rights-based and victim-centric approach is observed.*

<p>Respect for and protection of human rights</p> 	<p>Unconditional support to victims of forced labour and trafficking</p> 	<p>Confidentiality and data protection</p> 
<p>Non-discrimination</p> 	<p>Informed consent</p> 	<p>Child protection</p> 

Respect for and protection of human rights³²

According to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, safeguarding the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.³³ As both forced labour and trafficking can lead to other rights violations, all assistance and protection efforts should seek to restore the victim's rights and prevent further violations without discrimination and re-victimisation.

Some victims may have been involved in criminal activities as a part of their exploitation and others might have entered a country illegally as part of their trafficking and/or exploitation process. It is important that these victims of forced labour or trafficking are perceived not as criminals but as victims of crimes and they should not be detained, charged or prosecuted for involvement in crimes arising as a direct consequence of their trafficking experiences. It should also be noted that non-criminalisation relies on a robust system of victim identification.

The concept of non-criminalisation is clearly set out at Principle 7 of the OHCHR Guidelines which provides that trafficked persons shall not be detained or criminalised for illegal entry or residence in countries of transit and destination or for their involvement in criminal activities occurring as a direct result of their trafficking situation. This is reinforced in Guideline 2(5) and in Guideline 4(5). The latter recommends that legislation should prevent trafficked persons from being criminalised for illegal entry or for activities

³³ Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking ("**OHCHR Guidelines**"), Principle 1.

resulting directly from their trafficking experience. Guideline 2(6) also makes clear that trafficked persons should not, in any circumstances be held in immigration detention or any other form of custody.

According to Section 25 of ATIPSOM, a trafficked person shall not be liable to criminal prosecution in respect of illegal entry and period of unlawful residence in the receiving country or transit country or the procurement or possession of any fraudulent travel or identity document which obtained for the purpose of entering the receiving country or transit country, where such acts are the direct consequence of an act of trafficking in persons.³⁵ The position under ATIPSOM is more limited than the extent of non-criminalisation as recognised in Principle 7 which extends to non-criminalisation for any activities directly resulting from the trafficking experience, not just those related to illegal entry and residence.

Unconditional support to victims of forced labour and trafficking

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

Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) provides that:

[9.] Taking into account their national circumstances, Members should take the most effective protective measures to meet the needs of all victims for both immediate assistance and long-term recovery and rehabilitation, such as:

(a) reasonable efforts to protect the safety of victims of forced or compulsory labour as well as of family members and witnesses, as appropriate, including protection from intimidation and retaliation for exercising their rights under relevant national laws or for cooperation with legal proceedings;

(b) adequate and appropriate accommodation;

(c) health care, including both medical and psychological assistance, as well as provision of special rehabilitative measures for victims of forced or compulsory labour, including those who have also been subjected to sexual violence;

(d) material assistance;

(e) protection of privacy and identity; and

(f) social and economic assistance, including access to educational and training opportunities and access to decent work.

10. Protective measures for children subjected to forced or compulsory labour should take into account the special needs and best interests of the child, and, in addition to the protections provided for in the Worst Forms of Child Labour Convention, 1999 (No. 182), should include:

(a) access to education for girls and boys;

(b) the appointment of a guardian or other representative, where appropriate;

(c) when the person's age is uncertain but there are reasons to believe him or her to be less than 18 years of age, a presumption of minor status, pending age verification; and

³⁵ OHCHR Guidelines, Principle 7; The Protocol to Convention 29 (the Forced Labour Convention 1930) Article 4(2).

(d) efforts to reunite children with their families, or, when it is in the best interests of the child, provide family-based care.

11. Taking into account their national circumstances, Members should take the most effective protective measures for migrants subjected to forced or compulsory labour, irrespective of their legal status in the national territory, including:

(a) provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings, during which the person shall be authorized to remain in the territory of the member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour;

(b) provision of temporary or permanent residence permits and access to the labour market; and.

(c) facilitation of safe and preferably voluntary repatriation.

Principle 8 of the OHCHR Recommended Guidelines sets out obligations of States to protect trafficked persons from further exploitation and to ensure that they have access to adequate physical and psychological care. It is explicitly stated that the principle of care and protection should not be conditional on cooperation by the trafficked person in legal proceedings.

Guideline 6 of the same document advises that States and, where applicable, both governmental and non-governmental organisations should consider:

- making safe and adequate shelter that meets the needs of trafficked persons available. Trafficked persons should not be accommodated in immigration detention centres other detention facilities or vagrant houses. It is also re-iterated that the provision of shelter should not be made conditional on the willingness of victims to give evidence in criminal proceedings (Guideline 6(1)); and
- giving trafficked persons non-obligatory access to primary health care and counselling. Trafficked persons should not be subject to mandatory testing for diseases including HIV/AIDS (Guideline 6(2)).

1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol states that all countries have an obligation under the principle of 'non-refoulement' to refrain from forcibly returning refugees to their country of origin if their lives or freedom would be threatened. Because of its wide acceptance, the said principle is considered to have become part of customary international law and would therefore apply even if a country has not ratified the above convention. Refoulement refers to the forcible return of refugees or asylum seekers to a country where they are liable to be subjected to persecution.¹⁷

Confidentiality and data protection

All support measures are implemented under strict confidentiality rules which define the ways of storing, transferring and using information related to cases of forced labour and trafficking. These practices must conform with the conditions provided for by the national legislation regarding the protection of personal data and shall be used exclusively for the purposes for which they were originally compiled.³⁶ The organisations providing support to trafficked persons and forced labour victims must inform the victims about the purposes of collecting their information and the ways in which this information will be stored

¹⁷ ILO, p.23. Access to work for Syrian refugees in Jordan https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_357950.pdf

³⁶ UNODC, Model Law Against Trafficking in Persons, Article 25.

and used, as well as their right to access and remove their personal information at any time. All information exchanged between a victim and a professional providing medical, psychological, legal or other assistance services is confidential and sharing of information should only be on a “need-to-know” basis, with the victim’s informed consent.³⁷ The information must not include data that can expose the victim to further danger or discrimination (e.g. information about sexually transmitted diseases and other conditions) or which do not concern the concrete work of the case.³⁸

Non-discrimination

Appropriate protection and support should be extended to all victims of forced labour and trafficking without discrimination.³⁹ Victims must be treated fairly regardless of their race or ethnicity, sex, sexual orientation, age, disability, religious beliefs and practices, political affiliations, social and cultural background, and without prejudice related to the fact that they were exploited or forced to engage in illegal activities.⁴⁰

Guideline 1(4) of the OHCHR Recommended Principles and Guidelines deals with gender discrimination. States are advised to take care to ensure that gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory way.

US examples of federal laws/guidance and civil society action relating to non-discrimination

Language Access: Title VI of the Civil Rights Act 1964 and Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency (LEP)”

These deal with language access to federal and federally assisted programmes. The latter puts an obligation on federal agencies to review their services and identify the extent of services necessary for people with LEP. Systems must be put in place to ensure that such people have access to the appropriate services. The Department of Justice leads an Interagency Working Group on LEP. Working Group members share promising practices, create and help to implement tools or other forms of technical assistance, identify common enforcement issues, and exchange ideas for ensuring high-quality and cost-effective language assistance services.¹⁸ An example of best practice includes the agreement reached in 2019 between the Department of Justice and the Louisiana Supreme Court to provide language assistance at no cost to LEP individuals in all State court proceedings and operations.¹⁹

Access for LGBTQ individuals: *There is federal guidance regarding non-discrimination on gender identity and sexual orientation. Some federal agencies apply policies across the board whereas others restrict the policy to specific issues such as housing or employment. An example is the Guidance produced by the Office of Personnel Management which highlights the Federal Government’s commitment to non-discrimination, and advises agencies to review policies to ensure that they provide a workplace that embraces diversity and inclusion.²⁰ An example of practical civil society advocacy for*

³⁷ Ibid; East Africa Guidelines.

³⁸ Bulgarian Guidelines.

³⁹ OHCHR Guidelines, Guideline 6.

⁴⁰ Bulgarian Guidelines; East Africa Guidelines.

¹⁸ Migrants in Countries in Crisis, Federal Interagency Working Group on Limited English Proficiency.

¹⁹ Department of Justice, Office of Public Affairs, News: Justice Department and Louisiana Supreme Court Reach Agreement to Provide Language Assistance for Individuals Not Proficient in English, 13 May 2019.

²⁰ OPM.GOV, Policy, Diversity & Inclusion, Reference Materials Guidance Regarding Non-Discriminatory Practices in Federal Employment.

non-discrimination is The Movement Advance Project²¹ which provides equality maps showing states where LGBT individuals receive unequal treatment. It also provides resources to help LGBT organisations frame and develop approaches in developing messages that will resonate with key audiences.

Informed consent

All measures in the Referral Mechanism, after consultation with victims, are implemented with their full and informed consent, after they have been advised about their rights, the possible courses of actions, and possible consequences for them and their family. The information must be provided in the victim's simple and accessible language.

In the UK, an adult cannot be referred to the UK National Referral Mechanism without consent.⁴¹ For an adult to provide informed consent, the first responder must explain: what the national referral mechanism is, what support is available through it, and what the possible outcomes are for the individual referred. The referral can only be completed where the adult concerned has understood the implications of referral and given consent.⁴²

If the potential victim is or could potentially be under 18, a referral needs to be made into the UK national referral mechanism. However, child victims do not have to consent to the referral. They must first be safeguarded and then referred into the referral mechanism process.⁴³ Whilst there is no need to obtain a child's consent for referral, in practice it is important to explain the process to the child in question. It is also advisable to make a referral as soon as possible in order to safeguard the child.⁴⁴

Child protection

For the purposes of child protection, four core principles apply. Each of the core principle not only grants a right in itself but should also be considered in the interpretation and implementation of other rights pursuant to the Convention on the Rights of the Child 1990 ("CRC"). A summary of the core principles is set out below. A more comprehensive explanation of each of the core principles can be found at Annex C.

The core principles are :

The 'Best Interests' principle: In the case of children, the best interests of the child are considered the primary consideration in all actions concerning the child irrespective of the nature of the body undertaking the relevant action(s) as set out in Article 3(1) of the CRC.

Non-discrimination: Children should never be subjected to discrimination as formulated in Article 2(1) of the CRC which provides that the rights in the CRC shall apply to all children without discrimination of any kind irrespective of the child's parents or legal guardian, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth or other status.

Respect for the views of the child: Article 12(1) of the CRC requires States to assure a child who is capable of forming his/her own views the right to express those views freely in respect of all matters affecting the child. Such views must be given due weight in accordance with the age and maturity of the child.

²¹ Movement Advance Project, Equality Maps, available at: <https://www.lgbtmap.org> .

⁴¹ GOV.UK, National Referral Mechanism Guidance: adult (England and Wales) (2020), section 2.2 (Adults and Consent).

⁴² Ibid.

⁴³ Ibid, section 2.1 (Child victims).

⁴⁴ ECPAT UK, The National Referral Mechanism, The NReferral Mechanism for children.

Right to survival and development: This is stated at Article 6 of the CRC which recognises the child's inherent right to life (Article 6(1)) and which requires States to ensure the survival and development of the child, to the maximum extent possible (Article 6(2)).

Other protections for child trafficking victims

Apart from the core protections discussed above, other protections for child victims have been identified. UNICEF identifies the following guiding principles which are specific to the rights of victims:⁶⁴

Right to express views – children should have the right to express views in matters affecting them but particularly relating to their involvement in the justice process as regards safety, the manner in which they wish to give testimony and their feelings about the conclusion of the process. Professionals involved with children need to explain why given requests by the child cannot be accommodated.⁶⁵

Right to information – implies an obligation to tell children about available services, the laws that apply to them, options in relation to prosecution, immigration, compensation and return. Information must be explained to children in an age-appropriate way and in a language they can understand.⁶⁶

Right to privacy and confidentiality – this is essential to protect child victims from stigmatisation (to which children are particularly vulnerable). Publicising a child's identity/experience can have a negative impact on his/her development and reintegration. Further, privacy and confidentiality are both vital for ensuring the safety of victims.⁶⁷

The Committee on Rights of the Child has stated that:

*"States parties must protect the confidentiality of information in relation to an unaccompanied or separated child...This obligation applies in all settings, including health and social welfare. Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another."*⁶⁸

Non-refoulement and internal displacement – states should not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.⁶⁹ In relation to internal displacement the Guiding Principles on Internal Displacement⁷⁰ make reference to providing assistance and protection to children (Principle 4(2)); family reunification and families wishing to stay together (Principle 17); education (Principle 23); and return/integration/resettlement (Principles 28-30).⁷¹

It should be noted that ILO C182, Worst Forms of Child Labour Convention, 1999 explicitly states that trafficking of children for commercial exploitation is considered to be one of the worst forms of child labour.²²

⁶⁴ UNICEF, 'Legislative Reform for the Protection of the Rights of Child Victims of Trafficking', V Sedletzki, Nov. 2008.

⁶⁵ Ibid, p.15, para.3.1.1.

⁶⁶ Ibid, pp.15/16, para.3.1.2.

⁶⁷ Ibid, pp.16/17, para.3.1.3.

⁶⁸ Committee on the Rights of the Child, General Comment No.6 (2005), CRC/GC/2005/6, p.11, para.29.

⁶⁹ Ibid, p.10, para.27.

⁷⁰ OHCHR, Special Representative of the Secretary General on Internally Displaced Persons, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2.as referred to at Footnote 12 of the UNICEF report on Legislative Reform for the Protection of the Rights of Child Victims of Trafficking. Note that the Guiding Principles are not child specific.

⁷¹ UNICEF, 'Legislative Reform for the Protection of the Rights of Child Victims of Trafficking', V Sedletzki, Nov. 2008, pp.17 to 19, para.3.1.4.

²² ILO, C182, Article 3.

4 The referral flowcharts

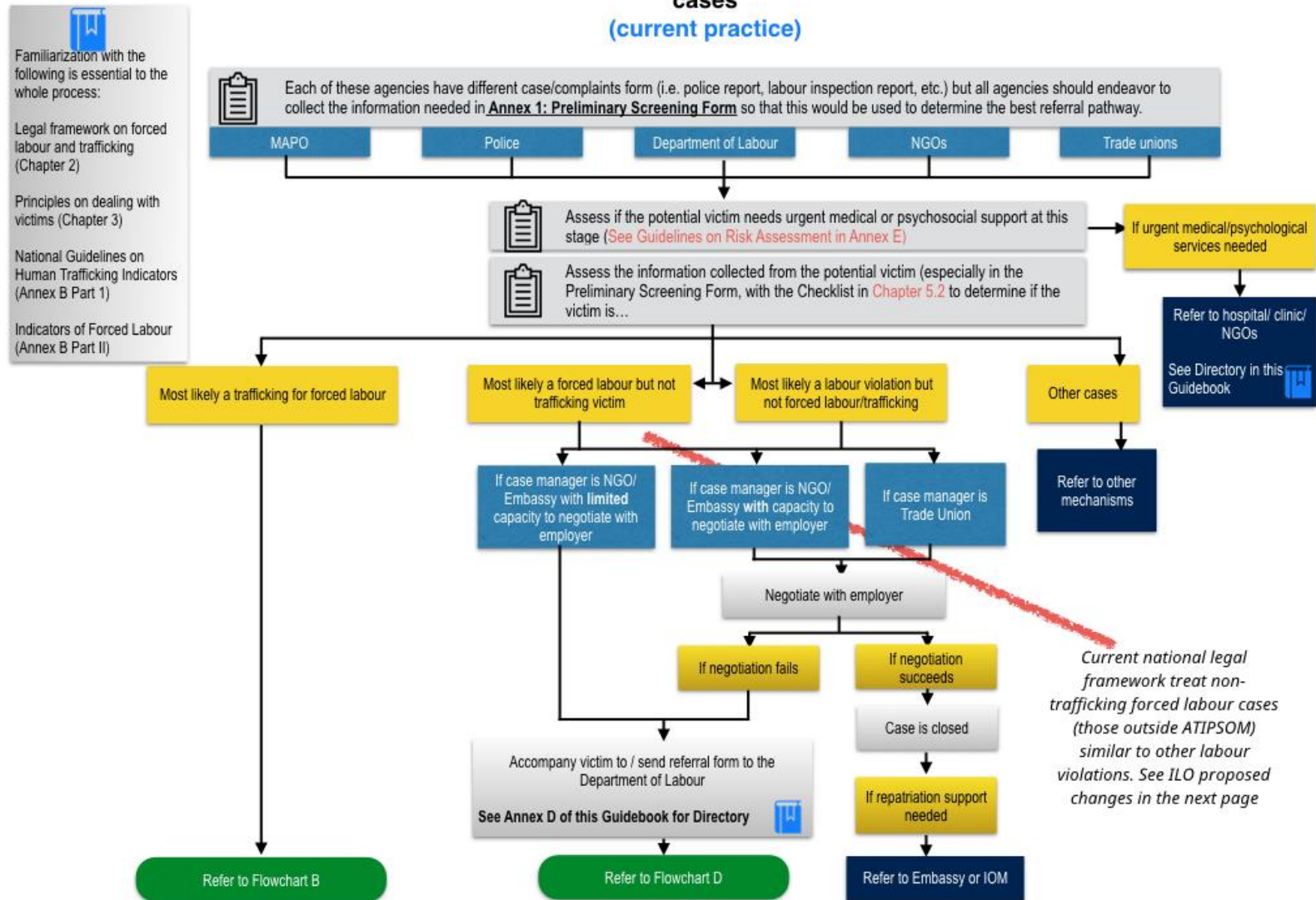
The following flowcharts are graphical illustrations of the existing referral system in general. The overall flowchart for the whole referral system is complex but here, for the sake of clarity it is broken down into sub-flowcharts, presented depending on steps that are undertaken, what tools and guidelines are to be used, referenced to the relevant sections in this guidebook.

When looking at the flowcharts note that knowledge of Chapters 1-3 are essential regardless of which sub-flowchart you are looking at. Icons referring to Chapters 4, 5 and Annexes are incorporated in the flowcharts so you are guided on which sections are most relevant to refer to at a particular step in the flowchart. It is important that this flowchart would be updated once SOPs or laws are amended.

In general, the referral process explained in the following flowcharts comprise the following steps, which are discussed in more details in the next Chapter:

1. Victim identification
 - 1.1. Potential victim's risk and needs assessment
 - 1.2. Screening for indicators of forced labour and trafficking
 - 1.3. Gathering additional corroborative materials
 - 1.4. Credibility assessment
 - 1.5. Final assessment on whether forced labour or trafficking victim
2. Protection and support services to victims – commences even after 1.1

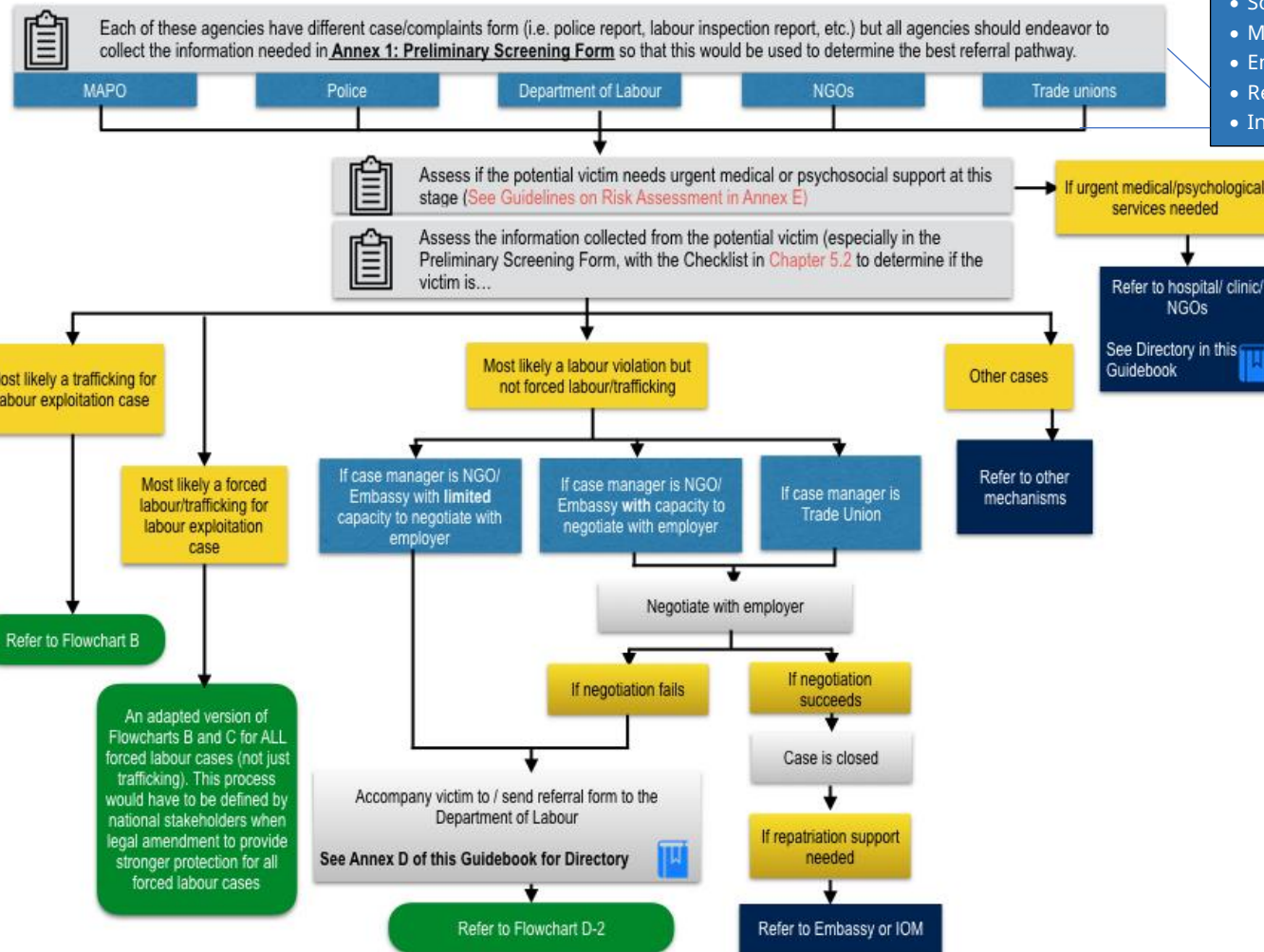
Flowchart A-1: Initial assessment and referral of potential forced labour and trafficking cases (current practice)



Flowchart A-2: Initial assessment and referral of potential forced labour and trafficking cases (proposed)

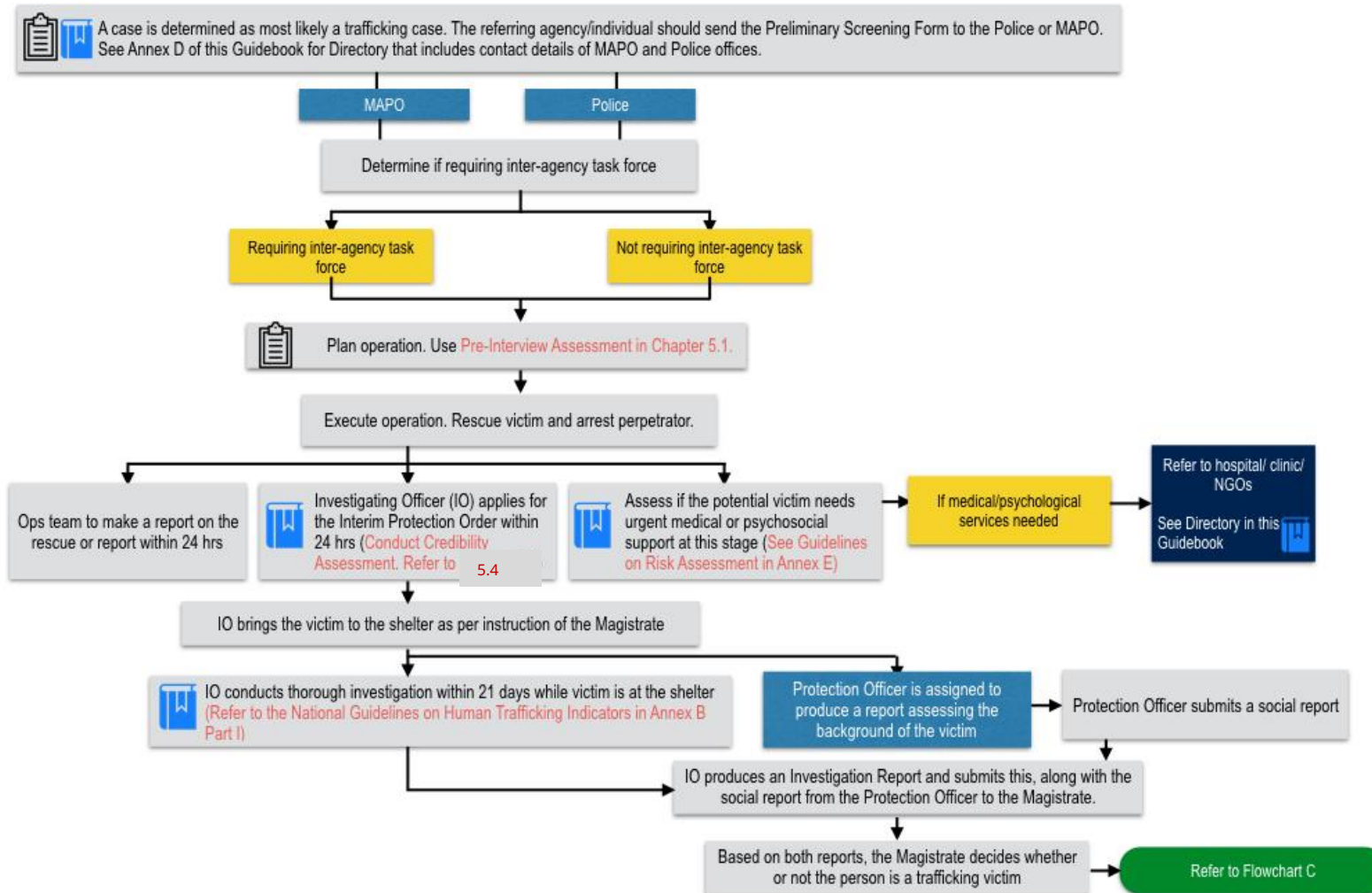
Familiarization with the following is essential to the whole process:

- Legal framework on forced labour and trafficking (Chapter 2)
- Principles on dealing with victims (Chapter 3)
- National Guidelines on Human Trafficking Indicators (Annex B Part 1)
- Indicators of Forced Labour (Annex B Part II)

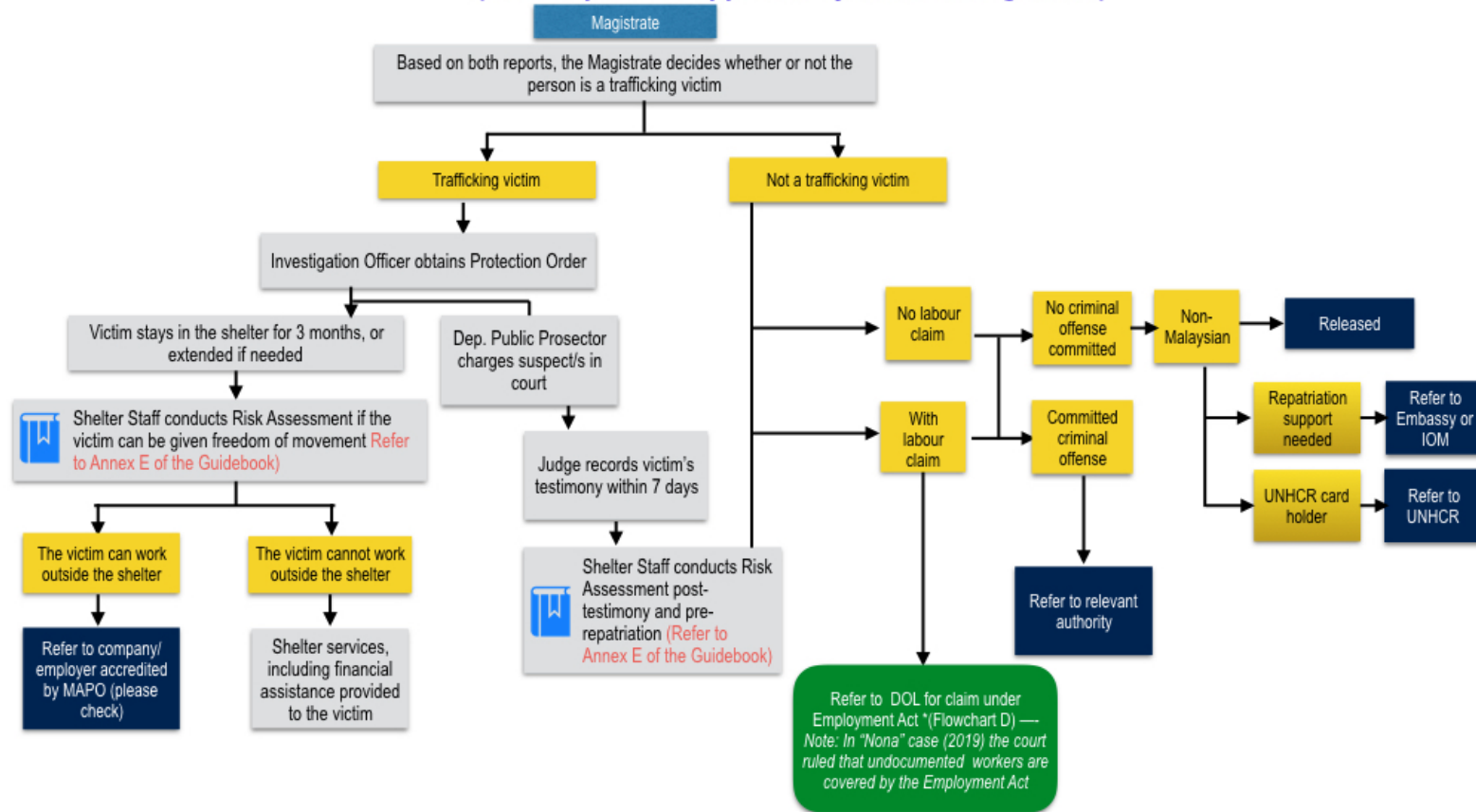


- To add:**
- Immigration officers
 - Child officers
 - Judicial officers
 - Social workers
 - Medical staff
 - Embassy officers
 - Religious leaders
 - International CSOs

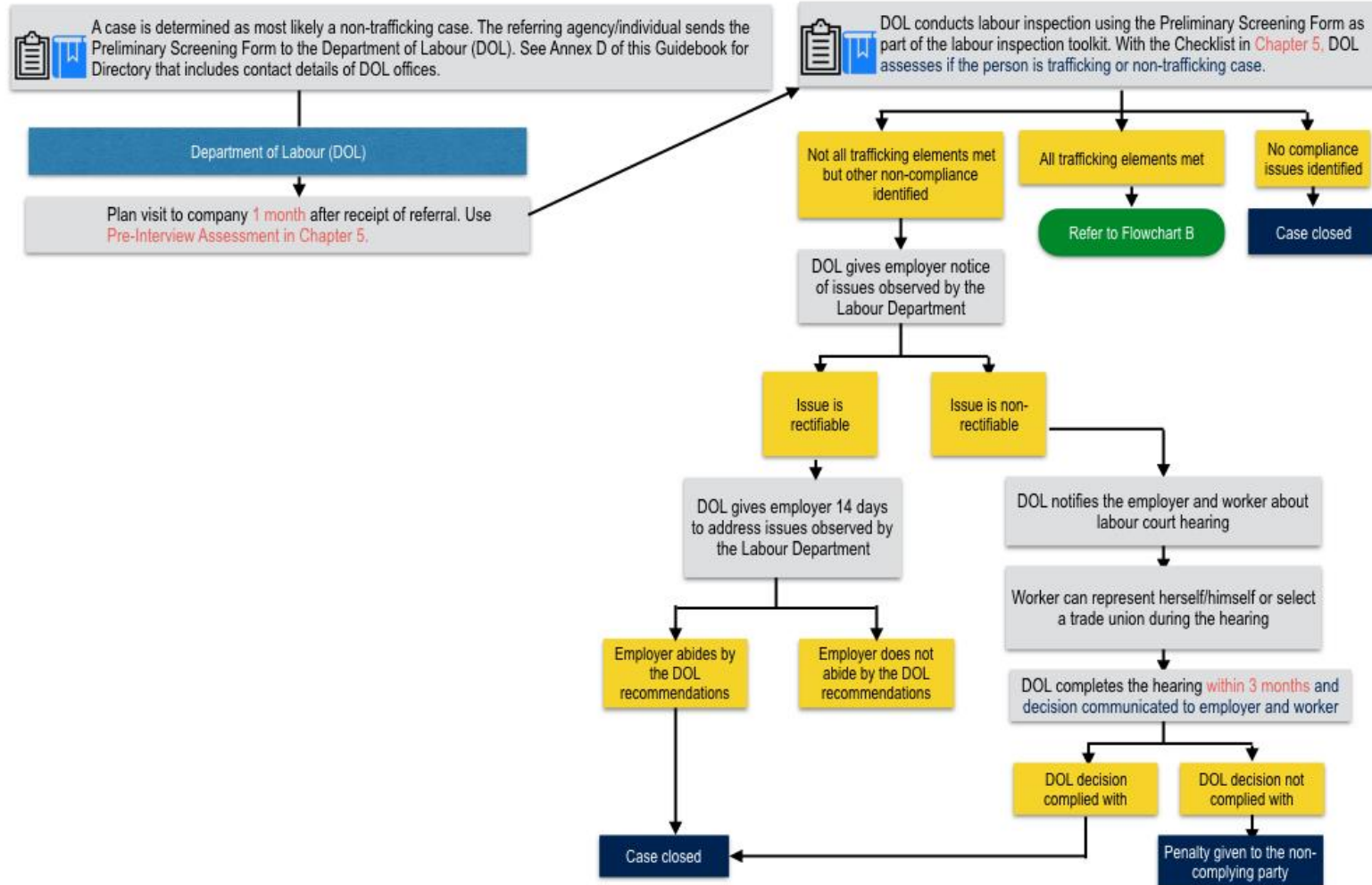
Flowchart B: Actions undertaken if most likely a trafficking for labour exploitation case (current practice)



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



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



5 Victim identification

► 5.1. Potential victims' risk and needs assessment



Responsible person: This step is currently carried out by either an officer MAPO, Police, Department of Labour, NGOs or trade unions who has the first contact with the victim. However, as indicated in Flowchart A-2, it is recommended to extend this role to other stakeholders. Because of their social position, the following stakeholders have more opportunities to identify victims of forced labour and trafficking: law enforcement agencies (police, prosecution, immigration, child officers), judicial officers, social workers, local administration/community leaders, labour inspectors/labour officers²³, workers' unions, medical staff, embassy and consulate workers, civil society organisations, church/religious leaders, international CSOs.⁷² Victims can be found in many different places such as private houses, restaurants, factories, or plantations. They may also be found in immigration detention centres as they are sometimes arrested for illegal entry or unlawful residence in Malaysia. When a potential victim is found in an exploitative situation, they should be removed from the situation and taken to a safe and secure environment.

Purpose: To enable the interviewer to assess both the factors surrounding the victim and the responses to the interview questions, to identify red flags that a person is potentially a victim of forced labour or trafficking, identify the risks that the potential victims is facing and their immediate needs, and to determine the best referral pathway.

Tools:

1. Please see Annex 1: Preliminary Screening Form. This could be adapted by the responsible agencies as in the illustration above, to incorporate to their own internal forms.
2. To determine medical or psychosocial needs of the victims, please see Annex E on Guidelines for Risk Assessment.

POTENTIAL CHALLENGES: Victim identification is a complex and multi-layered process with differing entitlements. It is time consuming because victims may need the time to overcome trauma and develop enough trust in the authorities to be able to speak out. In many cases of forced labour and trafficking, victims do not identify themselves as such due to a lack of understanding of their victimhood. Some may have strong relationship with the exploiter, leading to feelings of guilt, shame or fear of reprisal depending on the circumstances. Others may be convinced by their exploiters that they were involved in illegal activities and will be punished by law enforcement authorities. Fear of authorities is also a hindrance in victims' ability to reach out for assistance and support.

The positioning of forced labour and human trafficking as an immigration and security issue, rather than a human rights issue, can also hinder effective victim identification very often leading to victims of forced labour and trafficking being treated as criminals or illegal immigrants rather than presumed victims. In all these cases, a failure to identify a victim of forced labour or trafficking correctly is likely to result in a further denial of that person's rights and limit their access to justice and needed services.⁷³

²³ It must be noted that although Department of Labour inspectors are considered enforcement officers pursuant to Section 27 of ATIPSOM, in practice their involvement is limited to carrying out their statutory assigned task of labour inspections of work places. This effort is often reactive and complaints-based and therefore there are limitations to the ability of labour inspectors to pro-actively identify instances of forced labour and trafficking for labour exploitation. The ILO Bridge Project is currently working on a Training for Labour Inspectors on forced labour and human trafficking victim identification.

⁷² East Africa Guidelines.

⁷³ OHCHR Guidelines, Guideline 2.

Preliminary Screening form (could be done Pre-Interview with the Victim): the responsible officer should ask the following information. These indicators are by no means exhaustive and may apply to some but not others. Those working to identify victims of forced labour and trafficking should take into account local circumstances when adapting screening indicators. These indicators⁷⁴ are intended to assist in the overall assessment process and should be considered cumulatively. The guidance offered below on general screening indicators applies to both victims of forced labour and labour trafficking.

Age

The typical age of persons presumed to be victims of forced labour and trafficking depends on the nature of exploitation and the location of exploitation. With few exceptions, the older the person is, the less likely it is for him/her to be subject to labour exploitation, because older people are less productive in conditions of hard or forced labour. There are exceptions to this rule which are related to trafficking in older persons for the purpose of forced begging.⁷⁵ Children, especially unaccompanied and separated minors, are particularly vulnerable to forced labour and trafficking because it is easier to secure their compliance and they are more prone to intimidation. It is also worth noting that many children are made to undertake work meant for adults for example, domestic work, working in agriculture or in construction. To this end, their documents can be forged or simply unavailable (often in the case of unaccompanied minors) and this may lead to protracted issues around age assessment to determine the true age. There may also be cases where children undertaking work designed for adults are reluctant to come forward about their age due to fear of retribution against themselves or their families and may therefore appear to be uncollaborative to authorities.

Gender

Trafficking for the purpose of labour exploitation or forced labour is present across all genders and the percentage distribution by gender varies depending on the type of labour exploitation and the country of destination.⁷⁶ If the prevalent form of exploitation requires heavy labour e.g. fishing, agriculture, the emphasis is likely to be on males. If sexual exploitation, domestic work or garment production is more prevalent, the emphasis is likely to be on females.

Nationality

The country of origin as a general indicator increases the level of risk the person is subject to regarding certain types of forced labour and trafficking. For instance, the palm oil sector in Malaysia has drawn the majority of migrant workers from neighbouring countries such as Indonesia, Bangladesh, Nepal, Cambodia and India. Furthermore, favoured migration corridors and origin countries for sectors that are heavily reliant on migrant workers become a breeding ground for illicit activities of recruitment agencies, brokers and middle men who charge extortionate fees to enable migrant workers to find work abroad. The hefty recruitment fee and the debt it generates starts to enhance vulnerabilities to exploitation in the country of destination. It is also possible that low levels of protection for certain nationalities within the destination country and no pre-departure orientation make migrants more vulnerable to exploitation. For those migrating illegally through porous borders, the risk of being undocumented and extorted by unscrupulous employers in the destination country are high.

Documentation

Document (and other personal belongings) seizure is a common method of control employed by traffickers, recruitment agencies or employers. Remember that although the individual may be in possession of the documentation, it does not mean they have not been trafficked or subjected to forced labour.

Movement

Certain migration routes may be widely used by traffickers or smugglers. Traffickers or their facilitators often accompany their intended victims during the movement phase, thus individuals may be traveling in the company of other persons, other victims or possibly traffickers. The individuals may appear fearful or seem under the control of any person that he or she is with. The individual may act as if instructed by someone else or will not speak on his/her own. Alternatively, communication may seem scripted. Given that travel is often arranged by the

⁷⁴ Hong Kong Guidelines.

⁷⁵ Ibid.

⁷⁶ Ibid.

trafficker, the individual may appear unsure of his/her whereabouts. The element of movement is not relevant in the assessment of trafficking in Malaysia but it may nevertheless shed some important details that will assist in determining other elements of coercion, deception or control. For example, it is often the case in labour exploitation that victims are unable to seek out support or assistance from the authorities due to limits on their freedom of movement. This is an important red flag and an indicator of the control and coercion exerted by the exploiter. Where victims are cut-off from local communities due to remote location of work or deliberate isolation by the exploiter, modes of communication become a very relevant indicator of this restriction. For example, it is common to find grievances around exploitation aired on social media in Facebook posts or on social media groups created by migrant workers and/or their communities and NGOs who work with them. It is important to be understand different modes of communication and what information they can provide on the circumstances of the individual.

Location

The location of the interaction with the individual can be an indicator of where the exploitation is taking place. Examples of vulnerable locations include sweatshops, plantations, or at a particular border entry point that is regularly used by traffickers or smugglers.

Behaviour

There are indicators related to the behaviour of the individual. For example, the individual may appear frightened and afraid to speak, angry, aggressive, suspicious or depressed. The person may have noticeable variations in behaviours or display irregular behaviour. He or she may show signs of drug and alcohol abuse. It is important to note that there is no typical victim behaviour. Sex trafficking victims present very differently to labour exploitation victims and therefore during the assessment process it is important to keep perspective in relation to this difference. Victims of labour exploitation are often driven by the need to honour financial obligations towards their family, paying debts and the need to be employed. This impacts on their ability to come forward and share their experiences. Behaviour in labour cases may also be impacted by threats and intimidation from the employer and/or broker. These may take the form of financial penalties, withholding of wages, threats of deportation etc.

Signs of Abuse

Any signs of physical injury (including workplace/occupational related injury) to the victim may be indicative of forced labour and trafficking as victims are often subjected to violence and abuse by exploiters. It is important to note that the absence of signs of physical violence as an indicator **does not** exclude the possibility of forced labour and trafficking, as methods of intimidation e.g. psychological coercion are sometimes even more powerful than physical violence.

Assessment of Any Referring Agency

The assessment of the situation by another agency, such as a health clinic or a non-governmental organisation dealing with victims can be very helpful towards a formal identification. Very few victims provide complete information during one interview, therefore, there may be additional information that was disclosed during the assessment of a referring agency or information that was picked up by organisations with unique expertise, such as health professionals, to help with the assessment.

The pre-interview indicators should be assessed to give the interviewer an overall picture of the circumstances and the likelihood of whether or not the individual is a victim or potential victim of forced labour and trafficking. Each indicator can be interpreted in more than one way. **It is important to evaluate them cumulatively when making a determination.**

Practical pre-interview considerations that would assist with a smoother, more productive and victim-centered interview include²⁴:

Practical suggestions

- Review what you know about the person. Have they indicated what nationality they are? What language are they speaking? Where were they recovered: at premises of potential significance such as workplaces, brothels or transport facilities? How old are they saying they are? How old do they actually appear to be?

²⁴ https://www.unodc.org/documents/human-trafficking/TIP_module8_Ebook.pdf

- Try to find out at least something about the country the person comes from: for example, where it is, the culture and level of development. Time and other pressures may mean this is far from perfect but it is a start you can build on as the case develops.
- Keep victims separate from each other and from suspects. Allowing association with other victims may lead to allegations they have made the account up. At the early stages of an investigation you may not be able to clearly identify who is a victim and who is a suspect. Seeing suspects is very likely to lead to intimidation. However, the need to keep victims separate has to be balanced with their need for support.
- Challenging a person on issues such as age at the outset of an interview is likely to hinder any efforts to build rapport. Identify the issues you are not happy with and plan how you are going to investigate or corroborate them in future.
- If the person has been recovered with others, review who they are, where they come from, what languages they speak, and consider making checks on domestic and international databases to establish what, if anything, is known about them.
- Where recovered by law enforcement, first responders, NGO staff or other witnesses, investigators should speak to these individuals and find out exactly what circumstances the trafficked victims were found in. If they were found with others, was there any evidence that one or more people had dominance or control over the suspected victims or others in the group? Ask what the suspected victims have said so far to the individuals that recovered the victims.
- The information you get from these enquiries should help create a general profile of the case. In some circumstances it may suggest you need to ask direct questions very early; for example, if you think the victim, her family or others may be at risk. More commonly such direct questions will give you background that will allow you to probe during appropriate points in the interview.
- The review of what is known is likely to suggest other lines of enquiry that need to be pursued outside the interview. These can include specific checks on the identity of the victim and general background research that establishes what intelligence is known about trafficking in persons from the victim's suspected origin location.

You may need a psychological assessment of a suspected victim before you interview them (see below) but you may also need a more basic assessment of their physical health. Observations may show some obvious illness. Plan for an examination and ask them if they have any health problems.

- Give victims the choice of having alternative clothing. Clothing may be obtained by sponsorship from shops, local traders, victim service providers, including NGOs, or from police funds.
- Plan meals for the suspected victim. Avoid giving them detainee's/prisoner's meals. Meals should be appropriate to the person's culture and religion.
- Identify suitable accommodation. Such identifications should be risk assessed and appropriate to the particular case. You may be able to use accommodation provided by the State, local authorities or victim service providers, including NGOs. In some cases, accommodation may have to be provided out of law enforcement funds.
- Record details of everything you provide. Provisions should be adequate and decent but not extravagant.
- Start making enquiries as soon as you can to establish what rights of residency the suspected victim has. Make contact with immigration authorities where necessary. If it is possible to arrange a temporary residence permit in your jurisdiction, start the process straight away.

Deciding whether to interview the victim or not

There may be circumstances where an examiner concludes a person is either not fit to interview or the interview would cause significant further traumatization. Generally the advice in these circumstances is that the interests of the victim should come first. However, there may be circumstances where interviews should proceed despite this. Although it may be a very difficult decision to make, it may be that an individual victim has information that could lead to the recovery of others at risk of serious harm. The individual victim may be harmed by the interview but the result of the interview could save many others. In other circumstances, it may be that a victim could not provide information to an evidential standard but could provide valuable information/intelligence. Where a decision is taken to go ahead with an interview contrary to the recommendations of an assessment, interviews should only go as far as necessary to prevent serious wider harm. Extra support measures for victims may be required when this course of action is followed. In all cases the decision is a balance of the harm done to an individual versus the benefits to another individual or individuals.

Initial handling of potential victims of modern slavery in the UK²⁵

In the UK frontline staff are required to know what to do if they identify a potential victim of slavery. The initial steps are as follows:

- take the potential victim to a secure location away from potential traffickers or other victims;
- inform the potential victim of their right to emotional and practical help, protection and assistance so that their interests are represented and taken account of during criminal proceedings;
- if a potential victim requires urgent medical assistance, immediately arrange for them to be seen by an appropriate medical professional;
- refer the potential victim into the UK National Referral Mechanism (NRM). In the UK only specified first responders comprising various agencies (for example police, local authorities) and NGOs can make a referral into the NRM. In the interests of speed and efficiency referral is made using a digital referral form. Adults need to give informed consent to be referred into the NRM (so the first responder must explain the implications of consenting to referral);
- NRM referrals are made to the Single Competent Authority (SCA), a single, expert unit established in 2019 to make quick decisions about whether someone is a victim of modern slavery;
- first responders need to deal with children as a priority because of their vulnerability. They are instructed to deal with children with care in order to avoid causing alarm or concern to the child. In dealing with children they must also remember to take account of their added vulnerability, developmental age and possible grooming by the perpetrator. No child's case should be considered without contacting individuals from the local authority who specialise in children;
- children do not need to give consent to referral into the NRM but as local authorities are responsible for safeguarding and responding to the needs of child victims of trafficking, an immediate child protection referral should be made to the relevant local authority's children services; and
- the first responder should commission an age assessment where appropriate. In cases where there is a question as to the child's age the individual should be treated as a child until age is established. However, a determination as to whether the individual is a child or an adult needs to have been made before the SCA reaches its conclusive grounds decision.

Risk assessment

At the moment of identification of victims of forced labour or trafficking, a risk assessment is made with regard to the immediate dangers for the health and life of the victim e.g. emergency medical needs, danger of re-trafficking, and present and past experiences with violence.⁸⁵

The risk assessment during the identification includes (i) the victim's personal concerns and (ii) the objective assessment of the interviewer. Risk assessment is made during the initial interview with the potential victim, in a safe place when he/she is able and willing to speak.⁸⁶

Victim involvement is critical in the process of risk assessment. First, the victim must be willing to share their concerns and fears and take part in the development of his/her individual safety plan. The planned safety measures must be clear, understandable, and realistic for the victim.

The risk assessment and the safety plan must be regularly revisited and revised, if necessary, at every contact with the victim with institutions and organisations involved in identification and re-integration within the Referral Mechanism and after any developments in the case.

Risk assessment should not be considered confidential information. The referring organisation must provide complete information about the risks to the receiving organisation. In cases where the service is provided for a long period of time, it is necessary to revise the risk assessment and the safety plan regularly.

Risk assessment is particularly important when the victim is going to return to his/her country of origin. In this case, the referring organisation should contact organisations in the country of origin, which can better provide information about

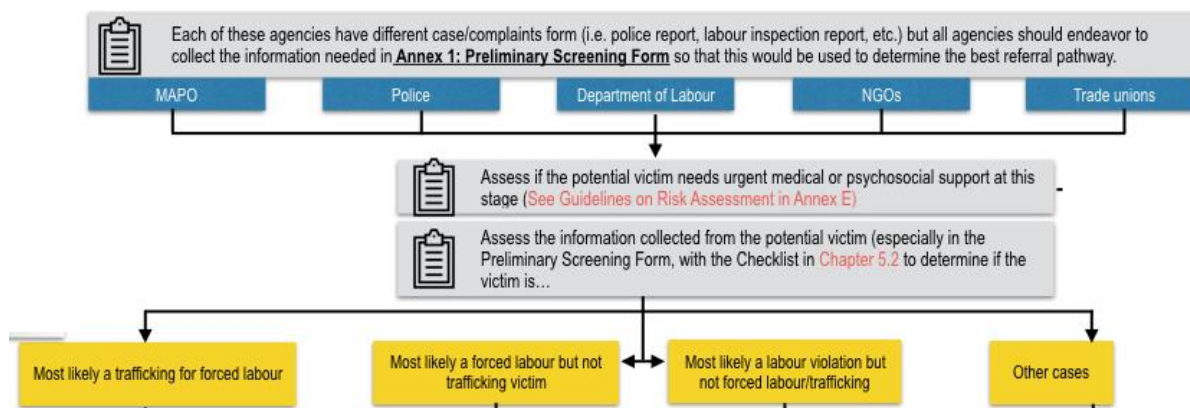
²⁵ Taken from: UK, Home Office: Victims of modern slavery – frontline staff guidance, version 3.0.

⁸⁵ Bulgaria Guidelines.

⁸⁶ Ibid.

the social, economic, and cultural factors that can pose any risk to the process of re-integration. Further information about risk assessments can be found at Annex E of this manual.

► 5.2. Interviewing the potential victim and screening for indicators of forced labour and trafficking



Responsible person: This step is currently carried out by either an officer from MAPO, Police, Department of Labour, NGOs or trade unions who has the first contact with the victim. However, as indicated in Flowchart A-2, it is recommended to extend this role to other stakeholders: law enforcement agencies (police, prosecution, immigration, child officers), judicial officers, social workers, local administration/community leaders, labour inspectors/labour officers²⁶, workers' unions, medical staff, embassy and consulate workers, civil society organisations, church/religious leaders, international CSOs.⁷²

Purpose: This step is to conduct a structured interview with the individual by asking questions based on the basis of the pre-interview assessment provided above. At this stage, the individual is usually out of the immediate situation of exploitation and potentially in a shelter (government run or NGO run) and has access to some support.

Tool:

1. For interview of potential victims, please see Annex 1: Preliminary Screening Form. This could be adapted by the responsible agencies as in the illustration above, to incorporate to their own internal forms.

Important note:

Irrespective of the findings as to whether the individual is a victim of forced labour or trafficking, the subsequent courses of action should not adversely affect the human rights and dignity of persons who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.⁷⁷ The purpose of the screening forms and guidance is to elicit the information necessary to map out the existence of forced labour or trafficking for labour exploitation. The more comprehensive the range of questions asked, the more likely the interviewer will be able to create a more composite and accurate picture that identifies whether the individual is a potential victim of forced labour or trafficking for labour exploitation.

Potential challenges

Some challenges to be aware of prior to starting the interview, are to remember the individual is likely to:

²⁶ It must be noted that although Department of Labour inspectors are considered enforcement officers pursuant to Section 27 of ATIPSOM, in practice their involvement is limited to carrying out their statutory assigned task of labour inspections of work places. This effort is often reactive and complaints-based and therefore there are limitations to the ability of labour inspectors to pro-actively identify instances of forced labour and trafficking for labour exploitation. The ILO Bridge Project is currently working on a Training for Labour Inspectors on forced labour and human trafficking victim identification.

⁷² East Africa Guidelines.

⁷⁷ OHCHR Guidelines, Guideline 1.

- Deny he/she is a victim.
- Blame themselves, shut down or suffer from Stockholm Syndrome
- Be traumatised as a result of physical, sexual or psychological abuse.
- Be fearful or confused by the situation and may not be able to understand the language, the questions or their purpose. In some cases it may be difficult because only a very small number of interpreters may be available at a particular location. Small communities increase the chance that interpreters may know victims or exploiters.
- Be fearful, suspicious or distrustful of you and what you will do to her/him.
- Be fearful of authority, reprisals (against self and family), shame and stigma
- Be fearful of the consequences of answering questions honestly as the exploiter may continue to have significant control or advantage over the victim, even where the victim is now in a place of safety. If they have an irregular migration status, they may fear prosecution and removal.
- Be distracted, angry, reluctant, or concerned about her/his own needs.
- Have fears around safety and privacy, particularly if the interview is in front of others.
- Be unaware of his/her legal rights and the local laws.
- Have unmet medical needs e.g. suffering from injuries, malnutrition or psychological abuse. Such needs will vary in degree depending on whether the interview takes place during the initial movement phase or after the exploitation has already begun.

Addressing the challenges

Managing some of these challenges can be down to intensive and strategic interview planning. Some useful pointers for effective and safe interviewing are set out below²⁷:

- Any approach to the victim should be a gradual and nonthreatening process.
- Be sure the victim has some control in the situation (breaks, water, seating placement).
- Avoid interrogation methods and refrain from physical contact with victims.
- The screening interview should take place in a comfortable environment and be conducted by someone who was not directly involved with the victim in the raids or arrest.
- Due to fear and possible trauma on the part of victims, it is best to use a conversational approach rather than a rapid series of questions in order to obtain preliminary information. Remember that open-ended questions may elicit more information from victims than yes or no questions.
- Do not expect victims to go into detail about their trafficking experiences during the first interview. In fact, it might take many interviews to get the victims comfortable enough to share details of their trafficking. It will take time and trust to develop the facts of a case.
- Victims need to feel safe at all times. Interviewers should introduce themselves and explain their role at the beginning of every interview.
- In the event that the victim is female, a female interviewer must be arranged. If a female interviewer is unavailable, the male interviewer must be accompanied by a female person.
- The interviewer must speak in the language of the victim and where this is not possible, a suitably screened, qualified and skilled interpreter must be made available to the victim for the purposes of the interview.

Using forced labour indicators

Recall in Chapter 1 that forced labour:

- ✓ Involves any type of work
- ✓ By any person, regardless of age, nationality and legal status
- ✓ **Done involuntarily**
- ✓ **Under the menace or threat of a penalty**

In terms of forced labour, it is important to check for presence of any indicator for both **involuntariness and menace/threat of penalty**, and in the end, these are how the information are used:

²⁷ <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/>

No <i>involuntariness</i> indicator, no <i>menace/threat of penalty</i> indicator	Not forced labour
With at least 1 <i>involuntariness</i> indicator, no <i>menace/threat of penalty</i> indicator	Not forced labour
No <i>involuntariness</i> indicator, with at least 1 <i>menace/threat of penalty</i> indicator	Not forced labour
At least 1 <i>involuntariness</i> indicator, at least 1 <i>menace/threat of penalty</i> indicator	FORCED LABOUR

Simply lacking alternative economic opportunities or not leaving because of poverty would not be considered symptomatic of forced labour unless the elements of coercion or lack of consent are present.

Key points on the indicators

- Indicators are **signs** that suggest a case may be one of forced labour or TIP.
- No single indicators on its own will answer the question of whether a person has been trafficked or exploited for labour purposes.
- Indicators are not proof of the crime; they are the starting point for investigation.

Indicators for involuntariness

(Any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.)

Involuntariness Indicators	Example of questions to ask	Example of evidence
<p>Deceived into entering that employment by false promises about work</p> <p><i>Deception involves deceit surrounding the nature of the work, working conditions, living conditions and/or wages.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> What was promised by the recruiter or employer in terms of type of work, identity of employer, working hours, pay, living arrangements, etc? Are any of these not fulfilled in the actual employment? 	<ul style="list-style-type: none"> <input type="checkbox"/> Contract / written communication about the job, including phone or social media messages <input type="checkbox"/> Embassy records about approved employment of the victim <input type="checkbox"/> Previous reports about recruiter or employer on deception/contract substitution <input type="checkbox"/> If child, communication between parent and the recruiter/employer about work and living arrangement for child <input type="checkbox"/> Copy of new contract / written agreement
<p>If child: False promises made to the child or their parents, concerning school attendance or the frequency of visits by or to their parents.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> What was promised by the recruiter or employer in terms of type of work , working hours, pay, living arrangements, support for education? Are any of these not fulfilled in the actual employment? 	
<p>Contract substitution</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Is there a contract in the workers' language signed before starting work? <input type="checkbox"/> What are the terms and conditions of employment? <input type="checkbox"/> Has these terms and conditions changed? 	
<p>Kidnapped / blackmailed to work for the employer</p>	<ul style="list-style-type: none"> <input type="checkbox"/> How did the victim find the employer? <input type="checkbox"/> Did someone use force/blackmail to get he victim to work for the employer? <input type="checkbox"/> Has the worker attempted to run away? <input type="checkbox"/> Are the living area and workplace heavily guarded? <input type="checkbox"/> Has the victim contacted family members or friends? 	<ul style="list-style-type: none"> <input type="checkbox"/> Police report filed by family members about missing person <input type="checkbox"/> Evidence about the blackmail
<p>Excessive volume of work or tasks beyond what can reasonably be expected within the framework of national labour law</p>	<ul style="list-style-type: none"> <input type="checkbox"/> How many hours of overtime per week did the victim incur? <input type="checkbox"/> Check if in compliance with the labour laws <input type="checkbox"/> How often is the victim asked to work overtime? 	<ul style="list-style-type: none"> <input type="checkbox"/> Time card <input type="checkbox"/> Payslip with salary deduction <input type="checkbox"/> Contract / written communication from employer <input type="checkbox"/> Company notice boards about overtime

<p>Degrading living conditions</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Pertaining to the dimension and provisions of the housing, does it comply with the Minimum Housing Standards and Amenities Act? <input type="checkbox"/> Are there separate rooms for male and female workers? <input type="checkbox"/> Are there available clean drinking water? <input type="checkbox"/> Is the accommodation, unhealthy and overcrowded? <input type="checkbox"/> Does the victim have privacy in the housing? 	<ul style="list-style-type: none"> <input type="checkbox"/> DOL report about the housing and accommodation
<p>Limitation on freedom of movement</p> <p><i>A common means by which labour is extracted by duress from workers is through their confinement. Workers are locked up, guarded to prevent them from escaping, have their movements controlled outside the workplace. Communication with family and friends are also restricted.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the victim have freedom of movement? <input type="checkbox"/> Is the worker locked up at the workplace? <input type="checkbox"/> Is the worker forced to sleep at the workplace? <input type="checkbox"/> Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints? <input type="checkbox"/> Is the worker constrained to leave the workplace? <input type="checkbox"/> Does the worker have days off? <input type="checkbox"/> Can the victim freely contact friends and family? 	<ul style="list-style-type: none"> <input type="checkbox"/> Photo of working, living and sleeping areas <input type="checkbox"/> Presence of armed guards or barbed wires <input type="checkbox"/> Worker has no mobile phone <input type="checkbox"/> If worker suddenly has mobile phone, check call logs <input type="checkbox"/> Logbooks for in/out of the workplace <input type="checkbox"/> Check with workers' closest friends in Malaysia how often they see the worker <input type="checkbox"/> Timesheets <input type="checkbox"/> Payslips (check no. of days used for computation – to see if there is no day off) <input type="checkbox"/> Check when the last time the victim contacted family members
<p>“Excessive dependency” on the employer</p> <p><i>The issue of dependency is difficult as some dependencies e.g. reliance on employer for food and lodging may be created by the law and could be systemic. For example, work permits tying workers down to one employer are also an example of dependency</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the victim hold her/his own money from wages? <input type="checkbox"/> Can the victim freely choose where to buy her/his basic necessities? <input type="checkbox"/> Does the victim have the option to choose her/his accommodation? <input type="checkbox"/> Can the victim withdraw her/his own money anytime from bank account without asking permission from the employer? 	<ul style="list-style-type: none"> <input type="checkbox"/> Payslip <input type="checkbox"/> Bank account <input type="checkbox"/> ATM with victim <input type="checkbox"/> Receipts of purchases from the employers' store <input type="checkbox"/> Receipts for house rents

<p><i>created by the legal framework.</i></p>		
<p>Working under degrading and hazardous conditions in severe breach of national laws</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Are there violations of occupational safety and health standards in the workplace? <input type="checkbox"/> Is the victim provided with PPEs and paid for by the employer (should be the case)? <input type="checkbox"/> Did the victim know about the hazardous nature of the job before accepting the job? 	<ul style="list-style-type: none"> <input type="checkbox"/> OSH report <input type="checkbox"/> Photo of work environment and PPEs provided <input type="checkbox"/> Payslip with PPE deduction <input type="checkbox"/> Contract/written communication mentioning about nature of the job
<p>Overtime more than allowed by national law under some form of threat for non-compliance of the worker</p>	<ul style="list-style-type: none"> <input type="checkbox"/> How many hours of overtime per week did the victim incur? <input type="checkbox"/> Check if in compliance with the labour laws <input type="checkbox"/> How often is the victim asked to work overtime? 	<ul style="list-style-type: none"> <input type="checkbox"/> Time card <input type="checkbox"/> Payslip with salary deduction <input type="checkbox"/> Contract / written communication from employer <input type="checkbox"/> Company notice boards about overtime
<p>Overtime in order to earn at least the minimum wage</p>	<ul style="list-style-type: none"> <input type="checkbox"/> How many hours of overtime per week did the victim incur? <input type="checkbox"/> How much is the hourly rate? <input type="checkbox"/> Compute if normal 8 hours work-day give at least minimum wage 	
<p>Wage retention</p> <p><i>This creates coercion that often acts to prevent a worker from exercising their right to leave an employer. Workers feel that they stand to lose already earned wages if they leave.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have a regular employment contract? If not, how are wages being paid? <input type="checkbox"/> Is there any illegal wage deduction? <input type="checkbox"/> Has the worker received any wage at all? <input type="checkbox"/> Does the victim receive little or no payment? <input type="checkbox"/> What is the amount of the wage in relation to national statutory requirements? <input type="checkbox"/> Do the workers have access to their earnings? <input type="checkbox"/> Have the workers been deceived about the amount of their wages? <input type="checkbox"/> Are wages paid on a regular basis? 	<ul style="list-style-type: none"> <input type="checkbox"/> Employment contract <input type="checkbox"/> Emails/ messages from employer or recruiter <input type="checkbox"/> Payslips <input type="checkbox"/> Contract on debts to pay <input type="checkbox"/> ATM card should be with the worker <input type="checkbox"/> Check bank statements on wages paid <input type="checkbox"/> Interview transcripts of workers <input type="checkbox"/> Payroll review – check for double sets of “books” to mislead auditors

	<input type="checkbox"/> Is the worker paid in-kind?	
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Indicators for menace/threat of penalty

Menace/threat of penalty Indicators	Example of questions to ask	Example of evidence
<p>Physical violence, including sexual violence</p> <p><i>Forced labour is frequently exacted from workers by the threat and application of physical or sexual violence. Some physical abuses by their employers can potentially amount to torture. Some sexual violence by their employers can potentially amount to rape</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have any sign of maltreatment, such as bruises? <input type="checkbox"/> Does the worker show signs of anxiety? <input type="checkbox"/> Is there any other sign of mental confusion or traces of violence? <input type="checkbox"/> Do supervisors/employers demonstrate violent behaviour? 	<ul style="list-style-type: none"> <input type="checkbox"/> Medical exam <input type="checkbox"/> Psychiatric test <input type="checkbox"/> Testimonies from neighbours or other co-workers <input type="checkbox"/> Interview family members/friends of the victims as to mental state of victim before and after abuse <input type="checkbox"/> Interview condo/subdivision guards and management <input type="checkbox"/> Interview previous employers of victim <input type="checkbox"/> Previous reports filed against the employer/supervisor <input type="checkbox"/> Photos of the workplace and living conditions
<p>Psychological coercion and isolation</p> <p><i>Verbal and emotional violence, constant insult, isolation, denial of a private life and individual autonomy, prohibition of communication with their family and various forms of daily harassment and reproaches undermine the victim's sense of self-efficacy and personal dignity and increase their sense of vulnerability. This is just as effective as physical violence but much more difficult to identify.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker show signs of anxiety? <input type="checkbox"/> Is there any other sign of mental confusion? 	
<p>Restriction on freedom of movement</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the victim have freedom of movement? <input type="checkbox"/> Is the worker locked up at the workplace? <input type="checkbox"/> Is the worker forced to sleep at the workplace? <input type="checkbox"/> Are there visible signs which indicate that the 	<ul style="list-style-type: none"> <input type="checkbox"/> Photo of working, living and sleeping areas <input type="checkbox"/> Presence of armed guards or barbed wires <input type="checkbox"/> Worker has no mobile phone

	<p>worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Is the worker constrained to leave the workplace? <input type="checkbox"/> Does the worker have days off? <input type="checkbox"/> Can the victim freely contact friends and family? 	<ul style="list-style-type: none"> <input type="checkbox"/> If worker suddenly has mobile phone, check call logs <input type="checkbox"/> Logbooks for in/out of the workplace <input type="checkbox"/> Check with workers' closest friends in Malaysia how often they see the worker <input type="checkbox"/> Timesheets <input type="checkbox"/> Payslips (check no. of days used for computation – to see if there is no day off) <input type="checkbox"/> Check when the last time the victim contacted family members
<p>Threats and intimidation</p> <p><i>Workers are threatened denunciation to the authorities, loss of wages or access to accommodation, further worsening of working conditions or withdrawal of "privileges" such as the right to leave the workplace.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker make statements which are incoherent or show indoctrination by the employer? <input type="checkbox"/> Do the workers report any threat against themselves, their co-workers or family members? <input type="checkbox"/> Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)? <input type="checkbox"/> Does the worker show anxious behaviour? <input type="checkbox"/> Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse? <input type="checkbox"/> Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities? 	<ul style="list-style-type: none"> <input type="checkbox"/> Psychological report <input type="checkbox"/> Interview to colleagues and family members about threats made to the worker or to them <input type="checkbox"/> Undocumented status of the worker <input type="checkbox"/> Investigation report on the recruiter <input type="checkbox"/> Previous reports about the recruiter or the employer <input type="checkbox"/> Company notice boards on overtime and penalty for not carrying it out
<p>Debt bondage and other forms of bonded labour</p> <p><i>Occurs when a person becomes a security against a debt or loan; or when debts are inflated to cause the person to continue working.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have to repay high/inflated recruitment or transportation fees? If so, are these deducted from the salary? <input type="checkbox"/> Is the worker forced to pay excessive fees for accommodation, food or working tools and safety 	<ul style="list-style-type: none"> <input type="checkbox"/> Receipts of recruitment fees and transport fees paid <input type="checkbox"/> Communication about how these fees are to be paid <input type="checkbox"/> Payslips with salary deductions <input type="checkbox"/> Loan receipts and terms and conditions <input type="checkbox"/> Complaints filed about the employer before

	<p>gear that are directly deducted from the salary?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Has any loan or advance been paid that make it impossible to leave the employer? (Exorbitant interests) <input type="checkbox"/> Are work permits bound to a specific employer? Has there been any complaint about the employer before? 	
<p>Withholding of wages or no payment of wages</p> <p>Systematic and deliberate withholding wages in order to oblige workers not to terminate their employment or not paying the right amounts</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the worker have a regular employment contract? If not, how are wages being paid? <input type="checkbox"/> Is there any illegal wage deduction? <input type="checkbox"/> Has the worker received any wage at all? <input type="checkbox"/> Does the victim receive little or no payment? <input type="checkbox"/> What is the amount of the wage in relation to national statutory requirements? <input type="checkbox"/> Do the workers have access to their earnings? <input type="checkbox"/> Have the workers been deceived about the amount of their wages? <input type="checkbox"/> Are wages paid on a regular basis? <input type="checkbox"/> Is the worker paid in-kind? 	<ul style="list-style-type: none"> <input type="checkbox"/> Employment contract <input type="checkbox"/> Emails/ messages from employer or recruiter <input type="checkbox"/> Payslips <input type="checkbox"/> Contract on debts to pay <input type="checkbox"/> ATM card should be with the worker <input type="checkbox"/> Check bank statements on wages paid
<p>Retention of identity documents</p> <p><i>Retention of identity or travel documents is a common form of coercion</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why? <input type="checkbox"/> Does the worker have access to the documents at all time? 	<ul style="list-style-type: none"> <input type="checkbox"/> Passport and other legal documents should be with the worker <input type="checkbox"/> If kept in the locker, worker should have the key to the locker <input type="checkbox"/> If kept by the employer or security guard, is the office accessible 24/7

Using human trafficking and forced labour indicators in one interview

At the onset it is important to remember that Malaysia has developed a National Guidelines on Human Trafficking Indicator (NGHTI) which will be used by enforcement agencies and frontline service providers in identifying trafficking in persons cases. Please see Annex B for the NGHTI.

Interviewing adults

The interview questions should be structured with elements of forced labour and trafficking in mind. When the case does not meet all the elements of Act-Means-Purpose for trafficking, but indicators of Involuntariness and Menace/Threat of Penalty are noted, it could still be forced labour, although non-

trafficking and would need to be referred appropriately as per Flowchart A-1 or A-2. But if the Act-Means-Purpose and Involuntariness-Menace/Threats are met there is a possibility that the case is a trafficking for forced labour.

The following section provides only an example as to how to look for both human trafficking and forced labour indicators in one interview. The questions are grouped into Act, Means and Purpose (Elements of Trafficking) and then labelled as whether indicators of Involuntariness and Menace/Threat of Penalty (elements of Forced Labour).

Act

In the following example, if the answer is YES to one or more of these actions, go on to Means. If the answer is NO, he/she is NOT a victim of trafficking. The more constituent parts of any of the elements that are satisfied, the stronger the case is likely to be. It is advisable to ask all questions to elicit as much information as possible. Please be mindful of the fact that not all questions can be answered by a simple YES or NO. Do use the question and follow up as appropriate to get information required. Although the questions set out above are designed to determine the “Act” element in trafficking cases, the information obtained may be very relevant to assessing a forced labour situation. For example, the questions marked with **I** are also relevant to demonstrate the Involuntariness element of the definition of forced labour whilst the questions marked with **M** can highlight elements of the Menace of Penalty element of the definition of forced labour.

- How was contact initiated?
- Who made the decision that you should work? **I**
- Why did you leave home or your last address?
- Have you been forced to leave your home or your last address?
- If so, who forced you and what force was used against you?
- Were you free to refuse to work for this employer? Yes/No. If no, what would you have risked in the case of refusal? **M**
 - Nothing, but work opportunities are scarce.
 - The employer would have tried to prevent other employers in the area from hiring me.
 - Other people from my family would lose their jobs.
 - My family would have lost access to land or other productive assets.
 - Threats of violence against myself or my family.
 - Other, specify...
- If you were not forced, who approached you about leaving home or your last address?
- If you were approached, did you respond to some form of advertisement?
- Did you sign any form of contract before leaving home or your last address?
- Did you understand the contract you signed? **I**
- How did you travel to this location?
- Who organised the travel arrangements?
- If you used travel tickets, who paid for them?
- Did you use your own identity documents?
- If not, who supplied the identity documents?
- If yes, did anybody assist you to obtain the documents or visa?
- Were you escorted or accompanied on the journey?
- Were you met on arrival at your destination?

Means

Assuming that the “Act” element has been met, you would then need to determine whether an individual was forced, threatened, coerced, subjected to fraud, deceived, and/or subjected to abuse of power or whether any menace of a penalty was involved.

If the answer is YES to one or more of these actions, go on to “Exploitation”. If the answer is NO and the victim is a child, also go on to “Exploitation”. If answer is NO and the victim is an adult, this is NOT a victim of trafficking. Please be mindful of the fact that not all questions can be answered by a simple YES or NO. Do use the question and follow up as appropriate to get information required. Although the questions set

out above are designed to determine the “Means” element in trafficking cases, the information obtained may be very relevant to assessing a forced labour situation. For example, the questions marked with **I** are also relevant to demonstrate the Involuntariness element of the definition of forced labour whilst the questions marked with **M** can highlight elements of the Menace of Penalty element of the definition of forced labour.

Questions that address the “Means” element include:

- What kind of promises were made to you about job or the nature of the job?
- What were the wages (and other benefits such as rest days, annual leave, statutory holidays) and conditions initially promised e.g. living and/or working conditions, legal status, nature of the job, location of the job, employer’s name/business, volume of work (per day/week/month/year), social security coverage? **I**
- Did you pay any money in advance and, if so, how much and for what purpose? **I**
- Did you always have control over your personal documents such as your passport or travel documents? If not, who held onto your documents? **P**
- Were you able to remain in contact with your family or friends? **I**
- Have you been told that you owe any debts to your employer/recruiters? **I**
- Could you come and go as you pleased? **I**
- Can you leave your employer? **I**
- Were you threatened when you tried to leave? **M**
- What do you risk if you were to leave? **M**
- Have any threats been made against any of your loved ones? **M**

Exploitation

Assuming the elements of “Act” and “Means” have been met, you must then determine whether an individual was exploited or whether there was an intent to exploit. Exploitation may include: prostitution, or other forms of sexual exploitation, or forced labour, or slavery. In the event that either the “Act” or “Means” or both elements are not made out, the following set of questions may nevertheless be helpful in eliciting information towards a forced labour assessment.

If the answer to one or more of the above mentioned exploitation types is YES, the person is a victim of forced labour or trafficking. If the answer is NO, the person is NOT a victim of forced labour or trafficking. Please be mindful of the fact that not all questions can be answered by a simple YES or NO. Do use the question and follow up as appropriate to get information required. Although the questions set out above are designed to determine the “Exploitation” element in trafficking cases, the information obtained may be very relevant to assessing a forced labour situation. For example, the questions marked with **I** are also relevant to demonstrate the Involuntariness element of the definition of forced labour whilst the questions marked with **M** can highlight elements of the Menace of Penalty element of the definition of forced labour.

Questions that address the Exploitation element include:

- How did the situation which you found once you started to work compare with the information that you received beforehand e.g. nature of the job, working conditions, living conditions, legal status, location of the job, employer’s name/business, volume of work (per day/week/month/year), social security coverage? **I**
- Were you physically, sexually, verbally or psychologically abused? **M**
- Was your freedom of movement and/or ability to communicate with friends/family restricted in any way? **I**
- Were you isolated from other people? **M**
- Did the employer intimidate or threaten you? **M**
- Were you paid for your work or service? **M**
- Is your salary equal to or higher than the statutory minimum wage (if this exists)? **I**
- Do you owe any money to your employer and/or agent? **I**
- Are unfair deductions made from your salary by the employer? **M**

- [For internal or cross-border migrants] Are you paid the same wages as (or more than) a local worker doing the same job? **I**
- Are you paid regularly on fixed dates? Yes / No. If no, why not? **M**
- Were you able to keep your earnings? **M**
- How many hours do you usually work (per day/week)? **I**
- Are your working hours continuous or do you receive rest breaks? **I**
- How many hours of overtime do you usually work (per day/week)? **I**
- How many days of leave can you take (per week/month/year)? **I**
- Were you forced to work on your day off or on statutory holidays? **I**
- In your job, are you entitled to any work benefits e.g. health insurance, paid sick leave, compensation for work-related accidents or illness?
- Were you deprived of food or medical attention? **M**
- Were you forced to work when you were feeling ill or were injured? **I and M**
- Were you forced to do dangerous work without necessary protections? **I and M**
- Were you ever forced to do work that you had not previously agreed to do or that was not in your contract? **I and M**
- Was anyone forcing you to do anything that you did not want to do? **I and M**
- What kind of force does the employer use against you? **M**
- Did your employer criticise the standard of your work or require you to regularly repeat work? **M**
- Did the employer keep you under constant surveillance? **M**

Interviewing children

Remember that when interviewing children you should, if at all possible, use a child-friendly interview venue. Before starting the interview establish whether any other person should be present for example, an interpreter or social worker. Due regard must also be had for anyone else whom the child asks to be present during this process and for the possibility that such person can be in attendance. At the outset try to engage the child in conversation on a topic that will put the child at ease. Explain to the child that if at any point he/she does not understand anything you say, he/she should stop you and tell you that they do not understand. Questions should be phrased as simply as possible and, in all cases, should be age-appropriate. Do not use complex or specialist terminology and avoid jargon. Try to avoid leading questions or putting words into the child's mouth. The child should be given regular opportunities to break during the interview in order to briefly rest, use the bathroom or drink something. When you have asked all the necessary questions, summarise what the child has told you and ask the child to tell you if you have made any mistakes or left out anything. Where appropriate, explain to the child what is likely to happen next. The interview questions should be structured with elements of forced labour and trafficking as follows:⁷⁹

Act

First, determine whether the individual was recruited, transported, transferred, harboured and/or received or whether there was any element of work being undertaken involuntarily during recruitment.

If the answer is YES to one or more of these actions, go on to Exploitation. If the answer is NO, the child is NOT a victim of forced labour or trafficking. Please be mindful of the fact that not all questions can be answered by a simple YES or NO. Do use the question and follow up as appropriate to get information required. Although the questions set out above are designed to determine the "Act" element in trafficking cases, the information obtained may be very relevant to assessing a forced labour situation. For example, the questions marked with **I** are also relevant to demonstrate the Involuntariness element of the definition of forced labour whilst the questions marked with **M** can highlight elements of the Menace of Penalty element of the definition of forced labour.

Questions that address the "Act" element include:

- What were the main reasons for taking your current job? **I and M**

⁷⁹ Hong Kong Guidelines.

- Need money for myself.
- Need money for my family.
- Nothing else to do.
- No interest in attending school.
- No school in local area.
- Employer provides me with food and accommodation in exchange for my work.
- My recruitment was part of an agreement made when my parents borrowed money from the employer.
- My recruitment was part of an agreement made when family members were recruited by the employer.
- My family has always worked for this employer (or his/her family), and we have no choice but to accept. Please note that if the parents are considered to be forced labourers then their child employed by the same employer will also be considered to be in forced labour.
- My parents received an advance on my salary.
- I had to replace a member of my family who was working for this employer but is now unable to work.
- Other, specify...
- Who decided that you should take your current job? **I** and **M**
 - I did on my own.
 - My parents/guardians, of their own accord.
 - My parents, forced by a third party.
 - My parents' employer/landowner.
 - The person from whom my parents borrowed money.
 - My previous employer, who sent me here without my consent.
 - My current employer.
 - Other, specify...
- What risk would you face if you refused to work for this employer? **M**
 - My family would lose some benefits (land, housing, etc.).
 - Other family members would lose their job.
 - The employer would tell other employers in the area not to hire me.
 - The employer would tell other employers in the area not to hire my relatives.
 - Physical violence against me or family members.
 - My parents would not receive any more loans from the employer/ landowner;
 - Not having any income.
 - Other, specify...
 - None.
- Did you have to travel outside the administrative district or boundary of your place of residence (home) to reach your place of work? Yes/No. If Yes, under what conditions? **M**
 - I/my parents organised the trip.
 - The recruiter/future employer organised the trip for me but I travelled on my own.
 - The recruiter/future employer sent someone to watch over me during the trip.

Exploitation

Assuming the "Act" element has been met, you must then determine whether an individual was exploited or whether there was an intent to exploit. In the event that the "Act" element is not made out, the following set of questions may nevertheless be helpful in eliciting information towards a forced labour assessment.

If YES is the answer to one or more of the above mentioned exploitation types, the child is a victim of forced labour or trafficking. If the answer is NO, the child is NOT a victim of forced labour or trafficking. Please be mindful of the fact that not all questions can be answered by a simple YES or NO. Do use the question and follow up as appropriate to get information required. Although the questions set out above are designed to determine the "Exploitation" element in trafficking cases, the information obtained may be very relevant to assessing a forced labour situation. For example, the questions marked with **I** are also

relevant to demonstrate the Involuntariness element of the definition of forced labour whilst the questions marked with **M** can highlight elements of the Menace of Penalty element of the definition of forced labour.

Questions that address the exploitation element include:

- How did the situation which you found once you started to work compare with the information that you received beforehand e.g. nature of the job, working conditions, living conditions, legal status, location of the job, employer's name/business, volume of work (per day/week/month/year), social security coverage? **I**
- Does your employer force you to do these things? **I** and **M**
 - Force you to go on working once the agreed working day is over.
 - Force you to work for him/herself or his/her family/relatives in their private house.
 - Force you to work when you are sick or injured.
 - Force you to perform dangerous tasks without protections.
 - Force you to work on days off.
 - Force you to perform tasks that are not part of the job you agreed to do.
 - Force you to take drugs, alcohol or other illegal substances.
 - Force you to engage in illicit activities such as selling drugs, arms etc.
 - Force you have sexual activity with him/herself, friends, relatives or others.
 - Force you to produce or earn a minimum amount every day.
 - Refuse to give you medical treatment when you are sick or injured.
- How does your employer force you to do these things? (multiple answers possible) **M**
 - By shouting or insulting me.
 - By kicking me or inflicting other forms of physical or sexual violence.
 - By depriving me of food.
 - By depriving me of sleep.
 - By depriving me of water.
 - By locking me in a room.
 - By deducting money from my wages.
 - By saying that I have to work harder to pay off the debt.
 - By threatening me with physical or sexual violence.
 - By threatening me with dismissal.
 - By threatening me with other forms of punishment.
 - By making threats against my family.
 - By other forms of punishment, specify...
- Have you witnessed other children refusing to obey the employer and being punished for it? Yes / No. If Yes, what happened? **M**
 - The employer shouted at the child in front of other children.
 - The child was beaten.
 - The child was otherwise physically or sexually assaulted.
 - The child was deprived of food.
 - The child was deprived of sleep.
 - The child was deprived of water.
 - The child was deprived of health care.
 - The child was locked in a room.
 - The child was dismissed from the job.
 - The child was threatened with physical violence/dismissal/other forms of punishment.
 - The child was fined or money was deducted from the child's wages.
 - The child received other punishment, specify.

During your working hours, are you free to do the following? **M**

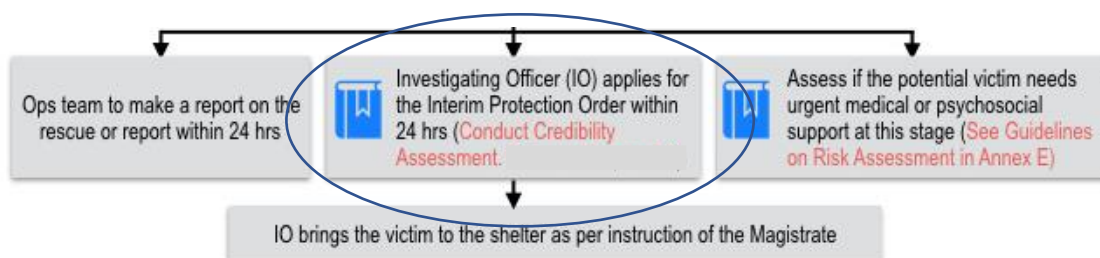
 - Talk to other children (Yes/No/Not applicable).
 - Go to the toilet when you need to (Yes/No).
 - Leave the workplace at lunchtime (Yes/No).

- If no to any of the above, how does your employer prevent you? **M**
 - By keeping me under constant surveillance.
 - By violence or threats of violence/punishment.
 - By threatening to deduct money from my wages.
 - By locking me in the workplace.
 - Other, specify...
- Outside your working hours, are you free to do the following? **M**
 - To talk to other children from the area (Yes/No).
 - To talk to adults from the area (Yes/No).
 - To leave your living quarters (Yes/No).
 - To contact your parents/relatives (Yes/No).
 - To travel alone or with other children to the nearest village/city (Yes/No/ Not applicable).
 - To practice your religion (Yes/No).
 - To attend school (Yes/No).
- If no to any of the above, how does your employer prevent you? **M**
 - By locking me in my living quarters.
 - By keeping me under constant surveillance.
 - By violence or threats of violence/punishment.
 - Because the workplace is totally isolated and there is no transport.
 - By confiscating my identity papers.
 - Other, specify....

► 5.3. Additional corroborative material

The third step is to see whether there is any additional information to help the screening process. It may be useful to cross-check any of the information disclosed during the interview with other sources of information and databases. Additional documentation that a victim may have in his/her possession can also be useful to confirm or contradict the account of events. This can include travel or identity documents, travel tickets, copies of advertisements for employment opportunities, immigration departure or landing cards, copies of contracts, any documents relating to medical treatment, any diaries or letters containing relevant entries, records of work, payment or details of assaults.⁸⁰ In addition, any materials that can be found at the work place are very relevant. For example, posts on notice boards, administrative records, payslips, any text messages, any communication around document retention or the need for it, among others.

► 5.4. Credibility assessments



⁸⁰ Hong Kong Guidelines.

When making a decision about whether an individual is a potential victim of forced labour and human trafficking, an assessment needs to be made by the relevant decision maker as to the credibility of the potential victim's account.

Responsible officer: In Malaysia this assessment would be made at the Interim Protection Order and Protection Order stages of the identification process by the Investigating Officer, Protection Officer and the subsequently the Magistrate who reviews the report put forward by the Protection Officer. In a forced labour matter, it is likely that the Investigating Officer and/or Labour Inspector makes such an assessment.

Example practices:

UK Guidance in relation to credibility assessments⁸¹ highlights the following:

- Where a potential victim meets the relevant definition of human trafficking and/or forced or compulsory labour and there is supporting evidence and the potential victim's account of events is credible, the relevant decision maker should recognise the person as being a victim. Where the potential victim is a child, the relevant decision maker must have regard to the child's: (i) added vulnerability; (ii) developmental stage; and (iii) possible grooming by the trafficker.
- In assessing credibility, the relevant decision maker should concentrate on material facts i.e. ones which are serious and significant in nature. The material facts should be assessed based on whether: (i) they are coherent and consistent with previous statements; (ii) there are contradictions or whether the evidence fits together; and (iii) there is corroborating evidence (either documentary or oral).
- Where there appears to be insufficient evidence to substantiate a claim, the relevant decision maker should consider if more information is required.
- Detail and consistency are important when assessing credibility. It is reasonable to assume that a victim will be: (i) expressive and will include sensory details such as what they saw, heard, felt or thought about an event; and (ii) able to recall central events and be consistent in their accounts of past or present events. Before the relevant decision maker makes a negative decision about a potential victim they should clarify inconsistencies with the first responder or other expert witness (if any). The relevant decision maker should also bear in mind that a potential victim's account may be inconsistent or lack detail due to trauma arising from their experiences.
- The relevant decision maker needs to take into account the individual position and circumstances of a potential victim and to consider gender and cultural issues when assessing credibility. For example, people of different sexes from the same country may have very different experiences due to their ethnicity, gender and cultural background/identity.
- An assessment may also include a consideration of the claimed nationality of the potential victim within the context of the case and their claims that they are a victim. However, no definitive finding should be made as to nationality as this is not determinative of whether the person is a victim or not.
- There are certain mitigating circumstances which can affect the consistency, coherence and speed with which a victim recounts the material facts. The mitigating factors include: trauma of any sort; an inability on the part of the potential victim to clearly express themselves; mistrust of authorities, feelings of shame and painful memories. Children may be unable to provide a coherent and consistent account of their experiences due to their developmental stage, fear of their trafficker/abuser and the on-going nature of abuse throughout childhood.
- Post-traumatic stress may mean that a potential victim cannot fully explain their experience until they have received appropriate psychological assistance. Accordingly, the relevant decision maker should not draw adverse conclusions from a delay in disclosing the material facts. Such disclosure could follow over time once a relationship of trust has developed between the potential victim and the person to whom they disclose the extent of their experiences.

⁸¹ Home Office, Victims of Modern Slavery – Competent Authority Guidance, Version 8.0, 2019, pp.69 to 72.

- Likewise, trauma may result in potential victims experiencing difficulties in recalling concrete facts such as specific times and dates. Relevant decision makers should be sensitive to this but should nevertheless assess information objectively when considering issues of credibility.
- Any decision as to the status of a potential victim should be made independently of both the existence of a criminal investigation and the potential victim's decision about whether or not to cooperate in criminal proceeding.

► 5.5. Final assessment on whether forced labour/trafficking victim

The final step is the decision-making process which can be a process undertaken by any stakeholder (state and non-state) for the purposes of determining whether an individual is a victim of trafficking or forced labour. Collectively evaluate all the information gathered from the previous four steps: pre-interview assessment indicators, interview, additional corroborative material and credibility assessment. If there are reasonable grounds to suspect that this is a case of forced labour or trafficking, the individual should be recognised as a victim of forced labour or trafficking.

In Malaysia, once an individual is suspected by an enforcement officer of being a potential trafficking victim, he or she is brought before a Magistrate who may make an interim protection order (“**IPO**”) for the individual to be placed in a place of refuge for 21 days.⁸² During the IPO, Protection Officers have responsibilities related to the care and protection of trafficked persons as well as a joint obligation with an enforcement officer to prepare a report for the consideration of the Magistrate’s Court. If the Magistrate finds the individual to be a victim of trafficking, a Protection Order will be made and Malaysian authorities can place trafficking victims in a place of refuge for appropriate support and assistance during the course of investigation for a period not exceeding three months from the date of the order⁸³ and can be extended until they are deported to their country of origin.⁸⁴

At this point, it is important to assess the victim’s physical, psychological and mental condition, and legal status/criminal proceedings. Once immediate health and legal concerns are addressed, the victim must be allowed a period of reflection which provides an opportunity for victims to stabilise from the traumatic experience of forced labour or trafficking, receive information on available options and make decisions without pressure.

Remember that even if an individual is not identified as a victim of forced labour or trafficking, they may still require support and assistance. Consider further referrals to other related organisations depending on their needs.

6 Protection and support services

Once an individual is identified as a victim of forced labour or trafficking, they should be immediately removed from the exploitative situation and moved to an appropriate, safe and secure environment. Referrals to the appropriate assistance and protection organisations are paramount to ensure successful assistance for the victims. Please refer to the Directory of Services set out at Annex C of this manual for a comprehensive list of organisations providing services to victims in Malaysia.

⁸² S.44 of ATIPSOM

⁸³ S.51(3) of ATIPSOM.

⁸⁴ Liberty Shared (2018) Legal Gap Analysis of Anti-Trafficking Legislation in Malaysia.

Shelter⁸⁷

Shelters vary greatly in terms of type, capacity and resources. The assistance offered to sheltered victims may include: accommodation, meals, water, basic medical assistance and toiletries. Some shelters provide a full range of services including psycho-social assistance, legal counselling, extensive medical care, and empowerment opportunities. Once a victim is settled into a secure place, health and medical assistance, counselling and psychological services, and legal assistance can be provided directly by the shelter or by other local service providers. Note also that a determination may need to be made as to whether a shelter comprises suitable accommodation for any given victim as some shelters may have mixed occupancy (males, females and children) or may not be specific to victims of trafficking. There is also a need to assess the shelters to ensure that they can cater to victims who may also have suffered sexual and gender-based violence.

Health conditions

It is important to immediately assess any victim's physical and psychological condition and provide appropriate help i.e. referring to specialists as required. Victims with diseases should be placed under compulsory isolation and hospital treatment.

Legal

It is important to address the legal status of the individual in particular around immigration status which is often tied to a specific employment relationship with a particular employer and to check if there are any ongoing criminal proceedings involving the victim. For refugees and asylum seekers, a verification of their status should be carried out and they should be referred to UNHCR. This should also include individuals who have yet to be registered but identify themselves as refugees or asylum seekers. There should be a referral pathway to ensure such individuals are channelled to UNHCR for determination of their status.

Other needs

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

Voluntary return

The return phase aims at ensuring the safe and secure voluntary return from the destination place to their country of origin. The return is organised only after all necessary measures have been undertaken to guarantee the victim's safety and the possibilities to continue the process of re-integration. Safe return means a guarantee that the trafficked person will not become involved again in a situation of forced labour or trafficking and that he/she will receive the necessary support to meet his/her medical, social, and psychological needs.⁸⁸ A necessary pre-condition of return and reintegration is an assessment of the home, family and community in order to ascertain if this option is appropriate.⁸⁹ To respect the rights of victims of forced labour or trafficking, the return must be voluntary and based on an informed decision, and when possible, a written consent.

Reintegration/local integration

The reintegration phase is long-term and involves various steps as well as various stakeholders e.g. social services, NGOs, the families of victims, local authorities, immigration, police and other law enforcement agencies and, in some cases, international organisations and UN agencies including UNHCR. The aim of the reintegration is to foster, nurture and strengthen the rehabilitation process of the victim into his/her community or host community to live a normal life and to reduce the vulnerability for re-trafficking and re-victimisation.

Examples of reintegration assistance include:⁹⁰

- Medical / health care services.

⁸⁷ Hong Kong Guidelines.

⁸⁸ Bulgaria Guidelines.

⁸⁹ Hong Kong Guidelines.

⁹⁰ Ibid.

- Counselling & long-term psychosocial support.
- Financial assistance.
- Legal assistance and access to remedies.
- Access to education.
- Vocational training.
- Micro-enterprise and income generating activities.
- Job placement, wage subsidies, apprenticeship programs.
- Housing and accommodation.

The family of the victim is often the primary support network for the victim hence reintegration efforts should also include the families of victims in the counselling and support services. It is often the case that these services impact the family adversely through stigmatisation and can present obstacles to the acceptance of the victim within his/her family and community. One must also be aware that in some cases of exploitation, family members are complicit and therefore any efforts aimed at reintegration would need to be mindful of the same.

In cases where returning to the country of origin is not the best option for the victim, organisations working on behalf of victims may consider advocating on behalf of a victim for a longer stay in the country of destination or for permission to move to a third country or possible local integration, depending on the wishes of the victim.⁹¹ Assistance providers should also keep in mind that return to the country of origin should not require that the victim return to the community of origin unless that is the victims' preference. If possible, services should be provided to assist the victim in relocating to a community of his or her choosing.

⁹¹ Ibid.

Annex A Preliminary Screening Form

GENERAL GUIDANCE FOR INTERVIEWER: Inform the interviewee that you will ask questions about his/her personal information, immigration status, how he/she was recruited and arrived, and how his/her experiences thus far in Malaysia. Explain that this is a voluntary interview and as such the interviewee is not obliged to answer any questions to which she/he does not know or is reluctant to respond. If a referral is needed, you must obtain his/her consent and give time to ask questions he/she may have. Please also explain the principle of confidentiality.

PRINCIPLE OF CONFIDENTIALITY: "The information collected in this form is strictly confidential and is held securely in line with and subject to the Personal Data Protection Act 2010 (Act 709). All information collected is used exclusively for _____(Organisation name). Under no circumstances will the information collected be distributed, reproduced or shared in any form with any third parties, nor be used for any research or advocacy without your written consent."

PLEASE FILL IN THE BLANK AND/OR TICK ALL APPROPRIATE ANSWERS DURING A SCREENING INTERVIEW.

INFORMATION ABOUT ORGANISATION CONDUCTING SCREENING

Name of Organisation:	Place of Interview:
Name of Interviewer:	Date of Interview:
Code Assigned to Individual (if any):	

A. PERSONAL DATA ABOUT THE INTERVIEWEE

A1. First Name:	A7. Interpretation required? YES/NO (please circle)
A2. Surname:	A8. Able to Read and Write? YES/NO (please circle)
A3. Sex: MALE / FEMALE / OTHER (please circle)	A9. Any Disabilities? YES/NO (please circle)
A4. Age:	A10. Phone Number and/or Email:
A5. Nationality:	A11. Languages
A6. Current Address (Malaysia):	A 12. Permanent Address (Home Country):

B. IMMIGRATION STATUS IN MALAYSIA:

Tourist Visa Visit Pass (Temporary Employment) Work permit UNHCR ID No Document

C. ARE YOU RECEIVING HELP FROM ANY OTHER ORGANISATIONS OR GROUPS AT THE MOMENT?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
If Yes, which organisations/ groups/churches/mosques are helping you at the moment? [Prompts for Interviewer: Include all the organisations, churches, government departments, or consulates currently helping the interviewee.]	

D. EXPERIENCES OF THE INTERVIEWEE (to identify the Act, Means, and Exploitation (Trafficking) AND Involuntariness and Menace/Threat of Penalty (Forced Labour)

D.1 How did you get to Malaysia? [Information for Interviewer: This question refers to any person/ company who may have assisted or been involved in the process of the interview coming to Malaysia. The person or group of persons could be a travel agent, broker, employment agency, employer, potential employer, family member, close family friend, partner or another party.]

<input type="checkbox"/> Recruited	Did anyone arrange or in any way recruit or control the recruitment of the individual to come to Malaysia (including but not necessarily for a job or a potential job)? Recruitment could include informal means of recruitment, a procedural recruitment according to the local government's law, and could also include online recruitment.
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<input type="checkbox"/> Transported	Did anyone provide transport for the individual or control any stage of the movement of the individual to Malaysia?
<input type="checkbox"/> Transferred	Did anyone transfer or control the transfer of the individual to another person into Malaysia or while she/he was in Malaysia?
<input type="checkbox"/> Harboured	Did anyone provide accommodation or control the accommodation of the individual at any stage during her/his journey to Malaysia or while she/he was in Malaysia?
<input type="checkbox"/> Received	Did anyone receive the individual when she/he arrived in Malaysia?
<input type="checkbox"/> Others:	Please provide details:

D2. Were you given accurate/correct information about what your conditions would be like once you arrived in Malaysia?

	YES	NO	Not Relevant		YES	NO	Not Relevant
1. Employment Contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7. Rest Days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Amount of Wages	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8. Legality of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Nature of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	9. Working Hours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Ability to Keep Personal Documents (Passport, ID Card, etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Ability to Leave the Working Place and/or Accommodation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Ability to Communicate and Possess a Communication Device	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Right to Terminate the Employment Contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Accommodation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12. Debt and Repayment Terms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				13. Others: _____			

D3. Is there anything or anyone/ people preventing you from leaving the place where you work or stay?

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Passport/ID Withheld | <input type="checkbox"/> Owe Money ²⁸ to Recruiters | <input type="checkbox"/> Owe Money to Employer | <input type="checkbox"/> Owe Money to Lending Company |
| <input type="checkbox"/> Wages Withheld ²⁹ | <input type="checkbox"/> Under Wage Deduction | <input type="checkbox"/> Locked In | <input type="checkbox"/> Always Supervised |
| <input type="checkbox"/> Threatened to be reported to the Local Authorities | <input type="checkbox"/> Violence/ Threats of Violence | <input type="checkbox"/> Family Threatened | <input type="checkbox"/> Threatened with More Debt |
| | | <input type="checkbox"/> Emotional /Verbal Abuse | <input type="checkbox"/> Threatened with being "blacklisted" |
| <input type="checkbox"/> Threatened with being sent home | <input type="checkbox"/> Threatened with being jailed | <input type="checkbox"/> Others: _____ | |

D4. What are your conditions like in Malaysia? [Prompts for Interviewer: What are your daily routine like? Are you working? Has someone threatened you or your family if you don't want to work? Has someone told you not to talk about your work or where you stay? How many hours a day do you work? How often do you get time off? What is it like where you stay?]

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> Excessive Working Hours | <input type="checkbox"/> On Call 24 Hours/Day | <input type="checkbox"/> Violence or Threats | <input type="checkbox"/> Degrading Living Conditions |
| <input type="checkbox"/> Illegal Work | <input type="checkbox"/> No Wages | <input type="checkbox"/> Underpayment of Wages | <input type="checkbox"/> Deducted Wages for Loan |
| <input type="checkbox"/> Dangerous Work | <input type="checkbox"/> Other Forms of | <input type="checkbox"/> Not Enough Food | <input type="checkbox"/> Excessive Recruitment/ Placement fee |
| <input type="checkbox"/> Deducted Wages for "Mistakes" at | | <input type="checkbox"/> Others: _____ | |

²⁸ All references to "Money" in this screening form also include non-monetary collateral such as jewellery, land and any other form of property.

²⁹ For the avoidance of doubt, "Wages Withheld" also includes deposits that only returnable on completion of a contractual term.

Annex B National Guidelines on Human Trafficking Indicators

The NGHTI will be used primarily by the five enforcement agencies, namely, the Royal Malaysian Police, the Immigration Department of Malaysia, the Royal Malaysian Customs, the Department of Labour and the Malaysian Maritime Enforcement Agency. The NGHTI will form part of the SOPs for the enforcement agencies which will use the guidelines in the course of their work on the ground when it comes to identifying potential victims of human trafficking.

COUNCIL FOR ANTI-TRAFFICKING IN PERSONS AND ANTI-SMUGGLING OF MIGRANTS (MAPO) National Guidelines on Human Trafficking Indicators (MEANS)		
No.	Types & Definition	Indicators
1	THREATS OR USE OF FORCE OR OTHER FORMS OF COERCION	
1.1	<p>Threats An expression or intention to inflict harm, injury, loss or damage to another person (including financial loss or damage).</p>	<p>1 The person (his/her family, friends or community) is threatened.</p> <p>2 The person (his/her family, friends or community) is threatened with force.</p> <p>3 The person is threatened to be imposed with even worse living or working conditions.</p> <p>4 The person is threatened with termination of employment.</p> <p>5 The person is threatened with being turned over to authorities.</p> <p>6 Threats to inform family/community/public.</p>
1.2	<p>Use of force When someone, a situation or an event, forces a person to do something against their will. Use of force usually means that threats have already been inflicted upon the person.</p>	<p>7 The person displays signs of physical harm.</p> <p>8 The person shows signs of mental and psychological harm.</p> <p>9 The person shows signs of sexual assault and/or rape.</p> <p>10 Be disciplined through punishment.</p>
1.3	<p>Other Forms of Coercion The action or practice of persuading someone to do something by using other forms of force or threats.</p>	<p>11 Debt bondage or unfair debt arrangements.</p> <p>12 Confiscation of documents (e.g. passport, identity documents), money or other possessions.</p> <p>13 Withholding of money and wages.</p> <p>14 Isolation, confinement or surveillance.</p> <p>15 The person's cultural or religious beliefs have been manipulated.</p> <p>16 Forced into illicit/criminal activities.</p>

2.1 **Abduction**

The action of taking away of a person by persuasion, fraud, or open force or violence.

17 Abduction - the person was brought to Malaysia against his/her will.

18 Forced marriage, forced adoption or selling of victim.

3.1 **Fraud or Deception**

(false, inaccurate, incomplete or misleading information)

19 Nature of the job/location/employer.

20 Terms and conditions of work (including type, pay, wages, income, earnings).

21 Family reunification (i.e. promise made that the person can be reunified with his/her family at country of destination).

22 Housing and living conditions (e.g. poor quality of lodgings which is unhealthy and unsanitary, overcrowded etc).

23 The legality of the person's documents, migration status, work or employment contract.

24 Travel and recruitment conditions.

25 Laws, attitude or conduct of authorities in relation to the person.

26 Promises of marriage/adoption.

27 Access to education opportunities.

4.1 Abuse of power by the exploiter who is in a position of power, or the abuse of a person's position of vulnerability by the exploiter.

"Abuse of a position of vulnerability occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim's situation. (UNODC 2012)"

28 Economic dependency on the exploiter.

29 Psychological or emotional dependency or relationship with the exploiter/employer/family member.

30 Migration documentation/status.

31 Unemployment or economic destitution.

32 Personal characteristics (age, sex, gender, sexual orientation, nationality, ethnic, social origin, mental or physical disability).

33 Cultural or religious beliefs, rituals or practices.

34 Lack of information, education (language) and/or illiteracy.

35 Drug or alcohol dependency or addiction.

36 Control or under strong influence by exploiters.

37 Denial of medical treatment and/or food/drink.

38 Isolation, unfamiliarity with new surrounding or difficulty to live in an unknown area.

5

GIVING OR RECEIVING OF PAYMENTS OR BENEFITS TO ACHIEVE THE CONSENT OF A PERSON HAVING CONTROL OVER ANOTHER

- 5.1 Giving/receiving payments or benefits to achieve the consent of a person having control over another person.
- 39 The person is placed in a situation through payment of fees, dowry, or giving or receiving of gifts to third persons.

1) SEXUAL EXPLOITATION

EXPLOITATION (shall include, at the MINIMUM, the exploitation of the following)

Sexual exploitation - "the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude or other kinds of sexual services, including pornographic acts or the production of pornographic materials". [1]

- 1 The person cannot refuse to service clients, to carry out specific sexual acts or to have unprotected sex.
- 2 The person does not receive money directly from clients or receives only a small portion of the fee paid.
- 3 The person is forced or coerced to use or not to use specific types of contraception.
- 4 The person is forced or coerced to receive medical/pregnancy testing/abortion.
- 5 The person is forced into a position of debt if he/she refuses to carry out the sex act.
- 6 The person was bought and sold for sexual exploitation.
- 7 Works as escort, exotic dancer, massage therapist/masseur, or other forms of work or area commonly associated with sex.
- 8 Works long hours, often leaves during unusual hours, and/or have few days off, if any.

Indicators for Maritime

9 The person on board the boat/ship has been kept isolated from the others.

Indicators for Maritime

10 The person has been on board the boat/ship for an extensive period of time without having access to land.

Additional indicators linked to sexual exploitation of children:

The Convention on the Rights of the Child identifies the following practices as "sexual exploitation of children":

- (a)** The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b)** The exploitative use of children in prostitution or other unlawful sexual practices;
- (c)** The exploitative use of children in pornographic performances and materials.

- 11 The person being sexually exploited is underage (below 18 years old).
- 12 Engaged in work that is not suitable for children.
- 13 The child does not behave in a way typical of children of the same age (e.g. is showing sexually explicit behaviour).
- 14 The child is pregnant.
- 15 The child appears to be forming unhealthy relationship with adults.
- 16 The child uses drugs/alcohol provided by the exploiter or person related to the exploiter.

17 The presence of toys, beds and children's clothing in inappropriate places such as brothels and places known for illicit activities.

18 Unaccompanied children carrying telephone numbers for calling taxis.

Indicators for Maritime

19 The child on board the boat/ship is accompanied by others who are not related to the child.

Indicators for Maritime

20 The child on board the boat/ship appears to be drugged.

2) FORCED LABOUR OR SERVICES (CONTINUED)

EXPLOITATION (shall include, at the MINIMUM, the exploitation of the following)

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. [2]

- 21 No employment contract, contract substitution or non-compliance of labour laws.
- 22 Works excessively long hours and/or no day off (not in accordance to relevant laws).
- 23 Does not receive salary or very limited one or have no access to earnings.
- 24 Bad living conditions (eg. unhealthy/unsanitary, overcrowded).
- 25 Very bad working conditions.

- 26 No social protection.
- 27 Hazardous work.
- 28 Wage manipulation.
- 29 Withholding of wages or refusal of payment.
- 30 Debt bondage/bonded labour - the person is expected to use his/her labour or services to repay a debt. The debt is often in excess of the costs involved and often unpayable.
- 31 Restriction of movement and/or confinement to the workplace or to a limited area.
- 32 Retention of passport and identity documents so that the worker cannot leave or prove his or her identity and status.
- 33 The person has to sign an agreement/contract/MOU to allow employer/third party to hold the person's passport and identity documents.
- 34 Threat of denunciation to the authorities (reporting to authorities that the person broke the law).
- 35 (Threat of) physical or sexual violence; this may also include emotional torture like blackmail, condemnation, use of abusive language and so on.

36 The person has been on board the ship for an extensive period of time without having access to land.

37 No access to education.

Additional indicators linked to labour exploitation of children:

38 Child is engaged in work that is not suitable for children (e.g. handling heavy machinery, poisonous chemicals etc).

3) SLAVERY OR PRACTICES SIMILAR TO SLAVERY

"Slavery" shall mean the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised; or "Slavery" shall mean the status or condition of a person over whom control is exercised to the extent that the person is treated like property. [1]

"Practices similar to slavery" shall include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. [1]

39 The person is being bought and sold, and has no freedom to leave.

40 Debt bondage/bonded labour (the person is expected to use his/her labour or services to repay a debt. The debt is often in excess of the costs involved and often unpayable. A new debt may be incurred when the person is sold.)

41 Forced or servile marriage (Includes marriage in consideration of a payment without the woman's consent, the transfer of a wife to another for value and the inheritance of a wife by another on the death of her husband).

4) SERVITUDE

Servitude "shall mean the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change" [1]

Remarks:- Servitude commonly involves the ill treatment of the person in question. Ill treatment refers to the act of treating someone cruelly or improperly.

42 Person lives with a family which is not hers/his.

43 Never or rarely leaves the house.

44 Never leaves the house without the employer (or someone assigned by the employer).

45 Has no private space, may sleep in a shared or inappropriate space.

46 Be given only leftovers to eat or insufficient/poor quality food.

47 Subjected to insults, abuse, threats or violence.

48 Has to take care of all domestic tasks in the house and/or look after the children/elderly on a daily basis, denied breaks and free time.

49 Person denied or given limited access to communication with family members or people outside of the house.

50 Be reported missing by their employer even though they are still living in their employer's house.

6) ILLEGAL ACTIVITIES

Exploitation of illegal activities - should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shoplifting, baby selling and other similar activities which are subject to penalties and imply financial gain. [4]

Forced begging, or the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. [2]

- 57 Person with vulnerabilities (children, elderly, disabled, women who are pregnant or with small children) begging on the street or in public transport.
- 58 Person/Child is punished if he/she does not collect or steal enough.
- 59 Moves everyday in groups of several people/ children, usually of same nationality or ethnicity, especially in popular or touristic places.
- 60 Person/Child working on the streets - selling items, cleaning windshields at traffic lights etc.
- 61 Person/Child forced to engage in illegal activities (snatch-theft, pick-pocketing, shoplifting, burglary, car theft, drug dealing).
- 62 Person/Child have physical impairments - disabled or mutilated.
- 63 Evidence that the person/child in the group has been involved in begging or committing criminal activities in other states or another country over a period of time.
- 64 There appears to be money transferred to third party/parties for the activity of baby selling.

Annex C Core child protection principles

The four core principles of child protection are as follows:

1. The “Best Interests” principle

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests** of the child shall be a **primary consideration**.”⁴⁵*

In May 2013, the Committee on the Rights of the Child (the “**CRC** Committee”) published a comment on the best interest article intended to clarify understanding of the principle.⁴⁶ In the Introduction to the comment the CRC Committee states:

“The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.”

The comment outlines seven elements to be considered when a decision about the child’s best interests is to be made:⁴⁷ (a) the child’s views; (b) the child’s identity; (c) preservation of the family environment and maintaining relations; (d) care, protection, and safety of the child; (e) situation of vulnerability; (f) the child’s right to health, and (g) the child’s right to education. Due to the fact that the best interests principle covers all areas of a child’s life, the comment also highlights that these seven elements are not:

“relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.”⁴⁸

Assessing the best interests of the child is a two-step process: (a) establish the relevant elements in the assessment based on the facts of the case in question, give the elements content and allocate the relevant elements a weight relative to each other; and (b) follow a procedure that ensures legal guarantees and a proper application of the right.⁴⁹

Principle 10 of the OHCHR Guidelines re-iterates the application of the best interests principle in the case of child victims and goes even further by providing that “their best interests shall be considered **paramount** at all times.”

Guideline 8 clarifies that the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. To that end States are advised to consider certain measures for the protection and support of child victims including (but not limited to): rapid identification of child victims, non-criminalisation, family reunification, protection of privacy and identity as well as the

⁴⁵ United Nation, Convention on the Rights of the Child (“**CRC**”), 1990, Article 3(1).

⁴⁶ United Nations Committee on Rights of the Child, General Comment No.14 (2013), CRC/C/GC/14 (“**General Comment 14**”).

⁴⁷ Ibid, Part V, Implementation: assessing and determining the child’s best interests.

⁴⁸ Ibid, p.17, para.80.

⁴⁹ Ibid, p.12, para.46.

protection of the interests of children at all stages of criminal proceedings against the alleged offender and during any claim for compensation.

The UN Model Law against Trafficking in Persons (the “**UN Model Law**”) suggests that jurisdictions should incorporate a statement of principle into relevant legislation that all actions taken in respect of child victims/witnesses shall be based on the principles set out in the CRC and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime in particular the best interests principle (which must be a primary consideration) and the principle that the child’s views must be taken into account in all matters affecting the child.⁵⁰

The UN Model Law also suggests a number of other provisions relating to child victims and witnesses including (amongst others): (i) pending verification of age, treatment of a victim/witness as a child if there are reasons to believe that is the case; (ii) assistance to be given by specially trained professionals in accordance with the needs of the child; (iii) where the child is unaccompanied, appointment of a “guardian” to represent the interests of the child and information to be given to the child via the guardian; (iv) family tracing where this is in the best interests of the child; (v) interviews of the child to be conducted by trained professionals in a child friendly environment, in a language the child understands and in the presence of parents or the guardian; and (iv) court proceedings involving a child victim/witness to be conducted away from the media/public and the child to testify ought of sight of the accused.⁵¹ There is also a suggested provision that where the victim is a child, he/she should be issued with a temporary or permanent residence permit (if this is in the child’s best interests).⁵² This provision does not appear to be limited by a requirement to cooperate with any investigation/prosecution.

Malaysia currently has no guidelines and guidance in relation to the application of the best interests principle. In light of the fact that this is a core principle of the CRC, policy and legislation needs to be implemented to ensure that decision making processes and outcomes relating to vulnerable children are informed by their best interests.

2. Non-discrimination

This principle is set out at:

(A) Article 2(1) of the CRC which provides:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

States are also obliged to take measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the opinions, beliefs or activities of family members.⁵³

In its general Comment No. 5, the CRC Committee noted the following in relation to Article 2:

⁵⁰ UNODC, Model Law against Trafficking in Persons (2009), p.59, Article 22.

⁵¹ Ibid, pp.60 to 62.

⁵² Ibid, p.76.

⁵³ CRC, Article 2(2).

*"This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights in particular the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment."*⁵⁴

As regards the interaction between the best interests principle and the right to non-discrimination, General Comment 14 notes that the right to non-discrimination is not a passive obligation satisfied simply by prohibiting all forms of discrimination. It requires appropriate proactive measures to ensure equal opportunities for all children to enjoy the rights under the CRC – where appropriate these may include measures to address real life inequality.⁵⁵

(B) Article 24(1) of the International Covenant on Civil and Political Rights which provides:

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

The Human Rights Committee noted that the non-discrimination clause in Article 24 refers "specifically to the measures of protection referred to in that provision."⁵⁶

In Malaysia, application of the principle of non-discrimination is problematic to trafficking victims who are not identified as such and may further be criminalised for breaches of immigration or other laws (even where such breaches occurred as a direct result of the trafficking situation). The Preamble to The Child Act 2001 explicitly recognises that "every child is entitled to protection and assistance in all circumstances, without regard to distinction of any kind...". It is important that ATIPSOM is amended to reflect this. S.17 of the Child Act (which defines 'children in need of care and protection') does not include trafficked children meaning that these children are subject to the Protection Order procedures under ATIPSOM, which are not as comprehensive as the protection provisions under the Child Act. The Protection Order provisions under ATIPSOM need to be aligned with the child protection provisions under the Child Act.

3. Respect for views of the child

Article 12(1) of the CRC requires States to assure a child who is capable of forming his/her own views the right to express those views freely in respect of all matters affecting the child. Such views must be given due weight in accordance with the age and maturity of the child.

Article 12(2) highlights that the opportunity for the child to express views is particularly relevant in judicial or administrative proceedings which affect the child.

The significance of Article 12 is that it not only requires that children be entitled to express their views but also that their views should be heard and given 'due weight'.⁵⁷

⁵⁴ General Comment No.5, 2003, CRC/GC/2003/5, para.12.

⁵⁵ General Comment 14, Section B, para.1.

⁵⁶ Human Rights Committee, General Comment No.17, 1989, HRI/GEN/1/Rev.9, p.2, para.5.

⁵⁷ UNICEF, 'Implementation handbook for the Convention on the Rights of the Child', Third Edition, 2007,(the "**UNICEF Implementation Handbook**"), p.150, para.4

The rights of the child set out in Article 12 do not provide a right to self-determination but do confer a right to be involved in decision making.⁵⁸

In 2009, the Committee on the Rights of the Child analysed the constituent elements of Article 12 (1) as follows:⁵⁹

- **“shall assure”**: Imposes a strict obligation on States to undertake appropriate measures to fully implement the right for all children.
- **“capable of forming his/her own views”**: Imposes an obligation on States to assess the capacity of the child to form an autonomous opinion. States cannot begin with an assumption that the child is incapable of expressing his/her own views.
- **“the right to express those views freely”**: The child can express views without pressure and can choose whether or not to exercise the right to be heard. The reference to ‘freely’ implies that the child must not be manipulated or subjected to undue influence or pressure.
- **“in all matters affecting the child”**: The child must be heard if the matter under discussion affects the child. In discussing this concept the Committee noted that it is: *“concerned that children are often denied the right to be heard even though it is obvious that the matter under consideration affects them and they are capable of expressing their own views with regard to the matter.”*⁶⁰
- **“being given due weight in accordance with the age and maturity of the child”**: This refers to the capacity of the child which needs to be assessed in order to give due weight to the views of the child. Age alone cannot determine the significance of the child’s views as levels of understanding are not uniformly linked to the child’s biological age. Other factors such as experience, environment, social and cultural expectations affect a child’s capacity to form a view. Therefore, the views of the child have to be assessed on a case-by-case basis.

4. Right to life, survival and development

This is dealt with in Article 6 of the CRC which provides:

“1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”

In its General Comment No.7 on: Implementing rights in early childhood, the Committee identifies the following issues:⁶¹

- States are encouraged to take all possible measures to;(i) improve perinatal care; (ii) reduce infant and child mortality; and (iii) create conditions promoting the well-being of young children.
- Article 6 encompasses all aspects of development. A young child’s health and psychosocial well-being are interdependent in many ways. They may be put at risk by poor living conditions, neglect, abusive treatment and restricted opportunities to develop potential.
- Young children growing up in difficult circumstances require close attention. The right to survival and development can only be implemented in a holistic manner through the enforcement of all other provisions of the CRC including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play, provision of assistance and quality services.

⁵⁸ Ibid, p.150, para.2.

⁵⁹ Committee on the Rights of the Child, General Comment No. 12 (2009), CRC/C/GC/12 (“**General Comment 12**”), pp.8 to 11.

⁶⁰ Ibid, p.10, para.27.

⁶¹ Committee on the Rights of the Child, General Comment No.7 (2005), CRC/C/GC/7/Rev.1, para.10.

Other factors which have been identified by the Committee as affecting the right to life survival and development include: HIV/AIDS; abortion and euthanasia; disabilities; infanticide; early marriage; the death penalty; armed conflict, other life-threatening violence to children e.g. use of rubber bullets; honour killings; other harmful traditional practices such as child sacrifice; increased rates of suicide and traffic accidents.⁶²

In Malaysia children who are not identified as victims of trafficking may be placed in immigration detention pending removal to their country of origin. This is contrary to the child's right to life, survival and development. It is also against the best interests principle. According to UNHCR, in the case of refugees and asylum seekers, they are often detained prior to verification by UNHCR and only then are released. As there is no clear guideline, screening or referral mechanism, this is done at the discretion of the immigration department. Thus, these children are exposed to risks of prolonged detention with adults in the detention centre.

The UN Model Law provides that victims of trafficking shall not be held in any detention facility as a result of their status as victims or their immigration status.⁶³ The commentary to this provision explains that holding trafficking victims in prisons or detention centres can by no means be considered appropriate housing. This would be doubly applicable in the case of child victims of trafficking.

⁶² UNICEF Implementation Handbook, pp.84-92.

⁶³ UN Model Law, p.58. para.4.

Annex D Directory of service providers

Shelter

Consulate General of the Republic of Indonesia (Johor) Address: No. 46, JI. Taat, Off Jalan Tun Abdul Razak, 80100, Johor Bahru, Johor	Tel: 07-2274188 Email: johorbahru.kjri@kemlu.go.id
Consulate General of the Republic of Indonesia (Kuching, Sarawak) Address: No. 21, Lot 16557, Block 11, Jalan Stutong, MTL D, 93350, Kuching, Sarawak	Tel: 082-460734 Email: Kuching.kjri@kemlu.go.id / kjrikuching@gmail.com
Consulate General of the Republic of Indonesia (Penang) Address: 467, Jalan Burma, Taman Selamat, 10350, George Town, Pulau Pinang	Tel: 04-2274686 Email: penang.kjri@kemlu.go.id
Embassy of the Republic of Indonesia Address: 233, Jalan Tun Razak, Imbi, 50400, Kuala Lumpur	Tel: 03-21164000 Email: kualalumpur.kbri@kemlu.go.id / info@kbrikualalumpur.org
Embassy of the Republic of the Philippines Address: 1, Jalan Changkat Kia Peng, 50450, Kuala Lumpur	Tel: 03-21484233 Email: owwamalaysia@yahoo.com.my
Global Shepherd Berhad Address: c/o Villamaria Good Shepherd, Lorong Setiabistari 2, Medan Damansara, 50490, Kuala Lumpur	Tel: 03-20117406 Email: info@globalshepherds.my
Human Trafficking Watch Services Address: Jalan PJS6/5D, Apartment Desa Mentari Blok 2/9/25, Petaling Jaya, Selangor	Tel: 03-78655491/ 013-6055999 Email: dewikholifah999@gmail.com
Malaysian Anti Trafficking Council Address: Kompleks D, Pusat Pentadbiran, Kerajaan Persekutuan, 62546, Putrajaya	Tel: 03 80008000 Email: pro@moga.gov.my
Migrant Care Address: 2A2 Vistana Residence, 32, Jalan Taiping, Off Jalan Pahang, 50400, Kuala Lumpur	Tel: 019-6001728/ 010-7632161 Email: alexmigrantcare@gmail.com
Perak Women for Women Society (PWW) Address: 52, Jalan Sultan Azlan Shah, 30250, Ipoh, Perak	Tel: 05-2469715 Email: perakwomenforwomen@gmail.com
Tenaganita (Headquarters) Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor, Malaysia	Tel: 03-77703691 Email: general@tenaganita.net

Tenaganita (Penang)
Address: 4k, Lorong Delima 20, Island Glades,
11700, Penang

Tel: 04-6681753
Email: tnitapenang@tenaganita.net

Women's Aid Organization (WAO)
Address: P.O. Box 493, Jalan Sultan, 46760,
Petaling Jaya, Selangor

Tel: 03-79575636/0636
Email: info@wao.org.my

Health and Medical Care Assistance

A Call to Serve (ACTS)/ Kumpulan ACTS
Address: Kumpulan A.C.T.S Berhad No. 16, Jalan
5/7, Petaling Jaya, Malaysia

Tel: 03-22722585

Catholic Diocesan Centre (Penang)
Address: 290, Jalan Macalister, Georgetown,
10450, Penang

Tel: 04-2292742/2292761
Email: admin@pgdiocese.org

**Consulate General of the Republic of Indonesia
(Johor)**
Address: No. 46, JI. Taat, Off Jalan Tun Abdul
Razak, 80100, Johor Bahru, Johor

Tel: 07-2274188
Email: johorbahru.kjri@kemlu.go.id

**Consulate General of the Republic of Indonesia
(Kuching, Sarawak)**
Address: No. 21, Lot 16557, Block 11, Jalan
Stutong, MTL D, 93350, Kuching, Sarawak

Tel: 082-460734
Email: Kuching.kjri@kemlu.go.id/
kjrikuching@gmail.com

**Consulate General of the Republic of Indonesia
(Penang)**
Address: 467, Jalan Burma, Taman Selamat,
10350, George Town, Pulau Pinang

Tel: 04-2274686
Email: penang.kjri@kemlu.go.id

Embassy of Cambodia
Address: 46, Jalan U Thant, Taman U Thant, 55000,
Kuala Lumpur

Tel: 03-42571150
Email: camemb.mys@mfa.gov.kh

**Embassy of the Republic of Indonesia (Kuala
Lumpur)**
Address: 233, Jalan Tun Razak, Imbi, 50400, Kuala
Lumpur

Tel: 03-21164000
Email: kualalumpur.kbri@kemlu.go.id/
info@kbrikualalumpur.org

Embassy of Nepal
Address: Wisma Paradise (Level 1, 3 and 9), No.
63, Jalan Ampang, 50450, Kuala Lumpur

Tel: 03-20201898/ 03-20201899
Email: eonkualalumpur@mofa.gov.np

Embassy of the Republic of the Philippines
Address: 1, Jalan Changkat Kia Peng, 50450, Kuala
Lumpur

Tel: 03-21484233
Email: owwamalaysia@yahoo.com.my

Global Shepherd Berhad
Address: c/o Villamaria Good Shepherd, Lorong
Setiabistari 2, Medan Damansara, 50490, Kuala
Lumpur

Tel: 03-20117406
Email: info@globalshepherds.my

Human Trafficking Watch Services
Address: Jalan PJS6/5D, Apartment Desa Mentari
Blok 2/9/25, Petaling Jaya, Selangor
Tel: 03-78655491/ 013-6055999
Email: dewikholifah999@gmail.com

Malaysian Anti Trafficking Council
Address: Kompleks D, Pusat Pentadbiran,
Kerajaan Persekutuan, 62546, Putrajaya
Tel: 03-80008000
Email: pro@moga.gov.my

Migrant Care
Address: 2A2 Vistana Residence, 32, Jalan Taiping,
Off Jalan Pahang, 50400, Kuala Lumpur
Tel: 019-6001728/ 010-7632161
Email: sekretariat@migrantcare.net

Seahut
Address: No. 17, Jalan AU2A/6, Taman Keramat,
54200, Kuala Lumpur
Tel: 012-3114644
Email: azizbeeeye@gmail.com

Tenaganita (Headquarters)
Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling
Jaya, Selangor, Malaysia
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Email: general@tenaganita.net

Tenaganita (Penang)
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11700, Penang
Tel: 04-6681753
Email: tnitapenang@tenaganita.net

Women's Aid Organization (WAO)
Address: P.O. Box 493, Jalan Sultan, 46760,
Petaling Jaya, Selangor
Tel: 03-79575636/0636
Email: info@wao.org.my

Case Management Services

Ampo-Sentro
Address: A-2-7, Pusat Perdagangann Seksyen 8,
Jalan Sungai Jernih 8/1, 46050, Petaling Jaya,
Selangor
Tel: 018-2580242
Email: ammpokl@gmail.com

**Archdiocesan Office for Human Development
(AOHD)**
Address: No. 5, Jalan Bukit Nanas, 50250, Kuala
Lumpur
Tel: 03-20780239

Catholic Diocesan Centre (Penang)
Address: 290, Jalan Macalister, Georgetown,
10450, Penang
Tel: 04-2292742/2292761
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Razak, 80100, Johor Bahru, Johor
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10350, George Town, Pulau Pinang
Tel: 04-2274686
Email: penang.kjri@kemlu.go.id

**Consulate General of the Republic of Indonesia
(Kuching, Sarawak)**

Address: No. 21, Lot 16557, Block 11, Jalan
Stutong, MTL D, 93350, Kuching, Sarawak

Tel: 082-460734

Email: [Kuching.kjri@kemlu.go.id/](mailto:Kuching.kjri@kemlu.go.id)
kjrikuching@gmail.com

***Department of Labour (Peninsular Malaysia)**

Address: Aras 5, Blok D3, Kompleks D, Pusat
Pentadbiran Kerajaan Persekutuan, 62530,
Putrajaya, Malaysia

Tel: 03-8000 8000

Email: jtksm@mohr.gov.my

***Department of Labour (Sabah)**

Address: Tingkat 1, Blok C & D, Bangunan KWSP,
Peti Surat 14557, Karamuning Complex, 88852
Kota Kinabalu, Sabah

Tel: 088-233820/ 233820

***Department of Labour (Sarawak)**

Address: Tingkat 13 Bangunan Sultan Iskandar,
Jalan Simpang Tiga, 93532, Kuching, Sarawak

Tel: 082-242261

Email: jtknsarawak@mohr.gov.my

Embassy of Cambodia

Address: 46, Jalan U Thant, Taman U Thant, 55000,
Kuala Lumpur

Tel: 03-42571150

Email: camemb.mys@mfa.gov.kh

Embassy of Nepal

Address: Wisma Paradise (Level 1, 3 and 9), No.
63, Jalan Ampang, 50450, Kuala Lumpur

Tel: 03-20201898/ 03-20201899

Email: eonkualalumpur@mofa.gov.np

**Embassy of the Republic of Indonesia (Kuala
Lumpur)**

Address: 233, Jalan Tun Razak, Imbi, 50400, Kuala
Lumpur

Tel: 03-21164000

Email: kualalumpur.kbri@kemlu.go.id/
info@kbrikualalumpur.org

Embassy of the Republic of the Philippines

Address: 1, Jalan Changkat Kia Peng, 50450, Kuala
Lumpur

Tel: 03-21484233

Email: owwamalaysia@yahoo.com.my

Global Shepherd Berhad

Address: c/o Villamaria Good Shepherd, Lorong
Setiabistari 2, Medan Damansara, 50490, Kuala
Lumpur

Tel: 03-20117406

Email: info@globalshepherds.my

Human Trafficking Watch Services

Address: Jalan PJS6/5D, Apartment Desa Mentari
Blok 2/9/25, Petaling Jaya, Selangor

Tel: 03-7865491/ 013-6055999

Email: dewikholifah999@gmail.com

**International Organization for Migration (IOM)
– Repatriation services**

Address: 570, Jalan Bukit Petaling, 50460, Kuala
Lumpur

Tel: 03-92355400

Email: IOMKualaLumpur@iom.int

Malacca-Johore Diocese Migrant Ministry

Address: Information to be provided

Tel: 016-6688933

Email: mjmigrantmajodi.org

Malaysian Trades Union Congress (MTUC HQ)

Address: 10-5, Jalan USJ 9/5t, Subang Business
Centre, 47620, Subang Jaya, Selangor

Tel: 03-80242953

Email: sgmtuc@gmail.com

Malaysian Trades Union Congress (MTUC Johor) Tel: 03-80242953/2955
Address: No. 12-A, Jalan Mata Kucing, Kampung Pasir, 81200, Johor Bahru, Johor
Email: malaysiantuc.mrc@gmail.com

Malaysian Trades Union Congress (MTUC Penang) Tel: 04-3900402
Address: No. 12, Second Floor, Tingkat Kikik 7, Taman Inderawasih, 13600, Seberang Perai, Penang
Email: malaysiantuc.mrc@gmail.com

Migrant Care Tel: 019-6001728/ 010-7632161
Address: 2A2 Vistana Residence, 32, Jalan Taiping, Off Jalan Pahang, 50400, Kuala Lumpur
Email: secretariat@migrantcare.net

North South Initiative (NSI) Tel: 03-79310741
Address: A-2-7, Pusat Perdagangan Seksyen 8, Jalan Sungai Jernih 8/1, 46050, Petaling Jaya, Selangor
Email: liberationx@gmail.com/
ns.initiative@gmail.com

Our Journey Tel: 019-5122852
Address: Unit 5.05, Level 5, No.63, Wisma Paradise, Jalan Ampang, 50450, Kuala Lumpur
Email: ssk010@gmail.com

Persatuan Sahabat Wanita Selangor (PWSW) Tel: 03-87378380
Address: 11a, 1, Jalan Restu, Taman Restu, 43000, Kajang, Selangor
Email: sahabatwanita@gmail.com

***Royal Malaysian Police (HQ)** Tel: 03-22662222
Address: Bukit Aman, 50560, Kuala Lumpur
Email: rmp@rmp.gov.my

Seahut Tel: 012-3114644
Address: No. 17, Jalan AU2A/6, Taman Keramat, 54200, Kuala Lumpur
Email: azizbeeeye@gmail.com

Serantau Tel: 016-2097904
Address: A-2-7, Pusat Perdagangan Seksyen 8, Jalan Sungai Jernih 8/1, 46050, Petaling Jaya, Selangor
Email: serantau@buruhmigran.or.id

Tenaganita
Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor, Malaysia
Tel: 03-77703691
Email: general@tenaganita.net

Tenaganita (Penang) Tel: 04-6681753
Address: 4k, Lorong Delima 20, Island Glades, 11700, Penang
Email: tnitapenang@tenaganita.net

Women's Aid Organization (WAO) Tel: 03-79575636/0636
Address: P.O. Box 493, Jalan Sultan, 46760, Petaling Jaya, Selangor
Email: info@wao.org.my

Counseling and Psychosocial Support

Global Shepherd Berhad Address: c/o Villamaria Good Shepherd, Lorong Setiabistari 2, Medan Damansara, 50490, Kuala Lumpur	Tel: 03-20117406 Email: info@globalshepherds.my
Health Equity Initiative (HEI) Address: 26-1A, Jalan Vivikenanda, Brickfields, 50470, Kuala Lumpur	Tel: 03-22724957 Email: admin@healthequityinitiatives.com
Suka Society (for children) Address: P.O.Box 013 Jalan Sultan, 46700, Petaling Jaya, Selangor	Tel: 03-78774227 Email: enquiry@sukasociety.org
Tenaganita Address: 12, Jalan 6/11, Seksyen 6, 46000, Petaling Jaya, Selangor, Malaysia	Tel: 03-77703691 Email: general@tenaganita.net
Tenaganita (Penang) Address: 4k, Lorong Delima 20, Island Glades, 11700, Penang	Tel: 04-6681753 Email: tnitapenang@tenaganita.net
Women's Aid Organization (WAO) Address: P.O. Box 493, Jalan Sultan, 46760, Petaling Jaya, Selangor	Tel: 03-79575636/0636 Email: info@wao.org.my

Legal Aid Centers

Johor Legal Aid Center Address: 5, Jalan Tun Abdul Razak Susur 1/1, Wadi Hana, 80000, Johor Bahru, Johor	Tel: 07-2763888
KL Legal Aid Center Address: No. 2, Leboh Pasar Besar, City Centre, 50050, Kuala Lumpur	Tel: 03-26911121 Email: legalaidkl@gmail.com / legalaid@kllac.com
Penang Legal Aid Center Address: No. 21 (Ground Floor) Green Hall, 10200, Penang	Tel: 04-2617451
Selangor Legal Aid Center Address: No. 41, Jalan Bola Jaring 13/15, Section 13, 40100, Shah Alam, Selangor	Tel: 03-55107007

*Enforcement Authorities

Annex E Risk assessment guiding questions

Some of the key questions to when assessing the level of risk that the victim is in include³⁰:

- "Is someone in immediate danger? Those in danger can include other victims or relatives and friends of the victim. Circumstances where a presumed victim has been seriously assaulted or raped and suggest both high levels of severity and likelihood of injury, psychological trauma etc. Similarly, presumed victims working in a dangerous industrial process would also indicate a high severity and likelihood of injury.
- Are there outstanding presumed victims? Outstanding victims could increase overall risk levels in a number of ways, primarily the risks to the presumed victims themselves. Exactly what the level of risk is will depend on the answers to other questions here. " Have traffickers previously threatened or used violence? Factors that would affect the risk rating include the nature of the violence (severity) and frequency (likelihood). If there is evidence of previous violence or threats the risk level is likely to be higher. "
- What knowledge do the traffickers have? Do the traffickers know the victim's home/work address or telephone number or details of those of his or her family? Knowing this type of information will raise the likelihood of risk.
- What support services, including physical protection, are available? Good support services such as health care, counselling and secure accommodation can reduce the likelihood of risks such as attacks on victim-witnesses, withdrawal of testimony, etc. Those support services also reduce the severity of risk, for example by improving the chance of recovery to health.
- What is the victims social network? Is he/she married? Does the victim have any children? A social network may help a victim recover (reducing the severity of risk) or provide an informal victim protection (reducing the likelihood of risk) and thus the overall risk rating. In other cases suspected traffickers may have the ability to intimidate the family or social network, increasing both the severity of risk (for example by persuading the victim-witness not to testify) and the likelihood of it occurring.
- Do the traffickers know (or claim to know) the locations of safe houses for victims of trafficking, home addresses of family etc? Actual knowledge will increase the likelihood of risk to victims. Claimed knowledge, even if not true, impacts on risk because it may be difficult to assess the likelihood of them knowing this information and the severity of risk increases because it may have the effect of intimidating the witness.
- Who do the traffickers have the ability to attack? Does it appear they have associates in place in locations that could enable them to attack the victim, his or her family or friends, thereby increasing the likelihood or a risk of injury to someone or preventing a witness from testifying.
- How "secure" is the investigation? Threats to the security and integrity of the investigation may come in a number of ways. Traffickers with a previous history of bribing public officials would increase the severity of risk of a total failure of the investigation; money in the hands of those same traffickers would increase the likelihood of bribery taking place. Other issues affecting security and integrity include (for example) weak exhibit management systems, wide access to intelligence/information resources, etc. Self-assessment What is "risk" in the context of trafficking in persons? Who is likely to be at risk in trafficking in persons?
- How are the severity of risk and likelihood of risk considered to determine the level of risk?
- What action should be taken? The tactical options available to the investigators when responding to a trafficking in person case have their own associated risks and challenges. For instance, reactive tactics may rescue one victim but expose others to danger. Proactive approaches can give powerful evidence but put officers in hazardous situations. Disruptive methods may make an environment hostile to the trafficker but make evidence gathering more difficult as offenders go

³⁰ https://www.unodc.org/documents/human-trafficking/TIP_module5_Ebook.pdf

further “underground”. The application of one of these approaches may not be sufficient in a given case. A tactic (or more properly a combination of range of tactics) that has been employed effectively is the combination of all these three approaches in an operation. Questions to help decide on action Some of the key questions when deciding on action to be taken include: " What law enforcement investigation activity is appropriate? What risks might that activity bring to victims etc. and to any NGO, other victim service provider or law enforcement staff involved? " Is the risk faced by current, outstanding or potential victims or family, etc. so high that immediate intervention is necessary? " If immediate action is required, what actions can be taken to prevent suspected traffickers from becoming aware that law enforcement agencies are aware of the traffickers’ activities? " If immediate action is not required, can the level of risk be safely managed while proactive investigation is initiated/conducted/continued? " If proactive investigation is not feasible, can the level of risk be safely managed to allow disruptive strategy to be initiated/conducted?

Risk on repatriation

- What social support services are available in the country of return to support the victims to recovery?
- What is the level of physical protection that could be provided to the victim against the traffickers and his associates by the government of the receiving country?
- Are there any social, cultural or religious factors that may make repatriation dangerous, i.e. is the victim being sent back to a family that sold him/her in the first place or does the nature of exploitation (i.e. sexual exploitation) put the victim at risk by reason of his/her religious inclination if he/she is repatriated as a trafficked victim?
- What NGO or other victim service providers exist in the country of destination and/or the country of origin that can either support the return of the victim or allow them to delay a return or not return at all?
- Is it safe to allow the victim to return home or are they at risk of being assaulted and/ or re-trafficked?
- If it is not safe, how can you reduce or eliminate the risk? If they are outside their country of origin can they be given temporary residency status? What support and assistance is available?