



THE
REMEDY
PROJECT

Response to Consultation First Malaysia National Action Plan on Forced Labour (2021-2025)

5 August 2021

LIST OF ABBREVIATIONS

ASEAN	Association of South East Asian Nations
ATIPSON	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
CEACR	Committee on Experts on the Application of Conventions and Recommendations
CSO	Civil Society Organisation
ILO	International Labour Organization
MEF	Malaysian Employers' Federation
MOHA	Ministry of Home Affairs
MOHR	Ministry of Human Resources
MOL	Ministry of Law
MTUC	Malaysian Trades Union Congress
NAPBHR	National Action Plan on Business and Human Rights
NAPCL	National Action Plan on Child Labour
NAPFL	National Action Plan on Forced Labour
NAPTIP	National Action Plan on Anti-Trafficking in Persons
NGO	Non-Governmental Organisation
RSPO	Roundtable on Sustainable Palm Oil
SG	Strategic Goal
SOPs	Standard Operating Procedures
UNGP	United Nations Guiding Principles on Business and Human Rights

I. INTRODUCTION

1. The First Draft National Action Plan on Forced Labour 2021-2025 (“**NAPFL**”) sets out the commitments of the Government Malaysia to combat forced labour. The NAPFL is the product of a multi-year development process that commenced in 2018.¹ In July 2021, MOHR invited consultation on the NAPFL. This Submission sets out The Remedy Project’s response to that consultation.
2. The Remedy Project welcomes the Government of Malaysia’s declaration of its commitment to eliminating forced labour in Malaysia. The development of a NAPFL is a commendable step in setting out clear commitments, objectives, and concrete actions to be taken by the Government of Malaysia towards that goal. The Remedy Project further welcomes the Government of Malaysia’s multi-stakeholder approach to the development and implementation of the NAPFL, and willingness to engage with stakeholders by inviting consultations on the NAPFL.
3. Our key recommendations and specific comments on the proposed activities under the NAPFL are summarised in section III below. These are explained in more detail in sections IV to XI. Section VI sets out our comments on the situational analysis that forms the basis of the NAPFL. Section V sets out our comments and recommendations on the NAPFL’s guiding principles and pillars. Sections VI to IX set out our comments and recommendations in respect of the activities proposed under each of the four Strategic Goals of the NAPFL. Section X sets out our comments and recommendations regarding resource allocations. Section XI sets out our comments with respect to the monitoring and evaluation framework.
4. In this submission, unless otherwise defined, references to sections and page numbers are references to the relevant parts of the NAPFL. Unless otherwise defined, terms used in this submission (including child labour, forced labour, human trafficking, and child labour) have the meaning given to them in the NAPFL.

II. ABOUT THE REMEDY PROJECT

5. The Remedy Project is a social enterprise that works with companies and workers to develop and improve remediation mechanisms to redress labour grievances for fair, effective and enduring positive outcomes. We also work with government bodies, law enforcement agencies, international organisations, and civil society across Asia and beyond to provide policy advice, conduct research, and build capacity to combat forced labour, human trafficking, and other forms of exploitation. Our founder, Archana Kotecha, is a recognised expert in the areas of forced labour and labour exploitation, human trafficking and modern slavery in South-East Asia – with particular expertise in Malaysia. Among other things, Archana served as the lead consultant engaged to produce the ILO 2018 Situation and Gap Analysis on Malaysian Legislation, Policies, and Programmes and the ILO Forced Labour Convention and Protocol, which informed the development of the NAPFL.

For more information, please contact us at contact@remedyproject.co or visit our website at www.remedyproject.co.

¹ See section 4, NAPFL

III. SUMMARY OF KEY RECOMMENDATIONS

Section	Recommendation
Situational Analysis	<p>Consider how the specific risks and needs of different vulnerable groups – including undocumented workers, asylum seekers and refugees, and stateless persons – will be identified and addressed in planned activities under the NAPFL.</p> <p>Consider whether, and if so how, an industry or sectoral-based approach should be adopted under the NAPFL to target previously identified high-risk industries (e.g., rubber, construction, furniture, restaurants and cleaning, plantations, domestic work, and electrics/electronics).</p> <p>Consider whether, and if so how, to integrate the previously-established MOHR/JTK task force committees on forced labour into the institutional framework of the NAPFL.</p>
Guiding Principles	<p>Ensure that the NAPFL’s guiding principles including non-discrimination, and gender and age-sensitive approaches are fully reflected in the design and implementation of the NAPFL – including in its strategic goals, outputs, and activities.</p>
Monitoring and Evaluation	<p>Indicators for activities under the NAPFL should be designed to measure the impact of proposed activities.</p> <p>Consideration should be given to mandating an independent external body or group of experts (other than the National Forced Labour Task Force) to periodically evaluate the NAPFL. Such a body could, for example, be modelled on the council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA).</p>
Resource Allocation	<p>A general analysis of the resources currently available and the resources that are likely to be required to implement the NAPFL activities should be undertaken. Where resourcing considerations are not considered and any gaps identified at the outset, this increases the risk of poor implementation. This resource and budget analysis should consider the financial, human, and logistical resources that are likely to be required to implement the proposed activities. Gaps between the level of existing resources available and the expected resources required should also be identified.</p>

Specific Comments on Matrix		
Output	Activity	Comment
Strategic Goal One: By 2025 there will be an improved knowledge base and awareness and understanding of forced labour among workers and employers, young people, government staff, and the general public		
1&2		<p>Awareness raising campaigns should be targeted at specific groups and have a clear theory of intended behavioural change that the campaign hopes to elicit from each targeted group.</p> <p>Consideration should also be given to clearly linking awareness raising activities to other activities under the NAPFL. For example, awareness raising activities could be carried out to promote higher levels of unionisation among workers or increased awareness of workers' rights to freedom of association (consistent with Strategic Goal 2, Output 6)</p>
2	3	Town hall style meetings and other community events should be worker led and driven. They should be inclusive of diverse groups of workers – including migrant workers of different nationalities, as well as documented and undocumented migrant workers.
4	1	<p>The development of the national database on forced labour should include a baseline mapping exercise to identify what sources of data on forced labour are available from different stakeholders, and what gaps exist in existing data sources. Where key gaps are identified, consideration should be given to establishing new data collection and monitoring mechanisms to fill any identified gaps.</p> <p>The national database on forced labour should encompass data sources relating to trafficking in persons and child labour to support the objectives of the NAPTIP and NAPCL.</p>
4	2	<p>The national database on forced labour should provide data to support Malaysia's various monitoring and reporting commitments under national, international, and regional (e.g., ASEAN-level) reporting mechanisms.</p> <p>Consideration should be given as to how the national forced labour database can support the monitoring and evaluation of the NAPFL.</p>
Strategic Goal Two: By 2025 there will be improved legal compliance and enforcement related to forced labour		
1	1	Ensure that recommendations for legislative reform advanced under the 2018 Situation and Gap Analysis on Malaysian Legislation, Policies, and Programmes and the ILO Forced Labour Convention and Protocol are reflected in proposed legislative amendments.

Specific Comments on Matrix		
Output	Activity	Comment
		<p>Consistent with those recommendations, legislative amendments to, or regulations issued under, the Workers' Minimum Standards of Housing and Amenities Act, and Passport Act should also be considered – in addition to the Employment Act and ATIPSOM.</p> <p>Where laws and policies are amended, it is important that these amendments are followed by training and capacity building for law enforcement agencies, labour inspectors, prosecutors, the judiciary, and other key stakeholders to ensure they understand and can effectively implement the amended legislation. Such training should be included within the proposed activities under the NAPFL. The development of key performance indicators for implementing agencies would also be helpful to incentivise correct and thorough implementation of new legislative provisions and/or policies.</p>
3		One proposed activity under Output 3 is to hold a conference between law enforcement agencies and prosecutors. Building on the success of previous training for judges and prosecutors for forced labour, ² it is suggested that a conference between judges and prosecutors may also be valuable.
3		Consider including an additional activity to conduct a review of existing trafficking victim identification and screening procedures. This review should examine, among other things, means through which the system of victim identification and screening could be made more victim-centred and be made less directly connected to the criminal justice process, for example, where the chances of a successful prosecution affect the decision relating to identification.
4	-	Improving compliance with labour laws and enhancing the effectiveness of labour inspection requires the deployment of a sufficient number of trained labour inspectors. Without sufficient inspectors, inspection, compliance, and enforcement efforts will be hampered. Therefore, consideration should be given to including an additional activity under Output 4 to train and deploy additional labour inspectors.
4	1	The development of joint inspection teams should be accompanied by amendments to relevant procedures and policies to ensure that joint inspection teams have the capacity to mandate employers found to be in violation of relevant laws to undertake corrective action plans, and to monitor compliance with those corrective action plans.
4	2	The development of training on forced labour for labour officers should be preceded by a needs assessment. The training itself should include training in relation to the legal definitions of forced labour and related offences, the use of

² 2019 ILKAP-ILO Training on Forced Labour for Judges, Prosecutors, and Legal Aid Practitioners

Specific Comments on Matrix		
Output	Activity	Comment
		<p>indicators and how to identify and distinguish forced labour from other offences or singular labour law violations, and appropriate responses where indicators of forced labour are present or actual or suspected cases of forced labour are identified. This training on forced labour should be integrated with training for labour inspectors on trafficking in persons that is already contemplated under NAPTIP.</p>
4	3	<p>The proposed activity to implement grievance mechanisms at businesses is welcomed. Many jurisdictions globally have now introduced mandatory human rights due diligence or anti-modern slavery disclosure laws. Several other jurisdictions have plans to introduce similar legislation. Prompted by these laws and the broader global business and human rights movement, many businesses in Malaysia have introduced grievance mechanisms. This is particularly the case among international businesses with a presence in Malaysia, or large-scale Malaysian businesses that are suppliers to international brands.</p> <p>That said, further work needs to be done to encourage smaller to medium-size enterprises to adopt grievance mechanisms. The development of grievance mechanisms requires an investment of resources and technical capacity that small and medium-size businesses may be unable to commit to without support.</p> <p>Further, grievance mechanisms created by businesses (both existing and new) must be genuinely trusted, accessible, effective, offer meaningful remedies, and align with international good practices on business and human rights.</p> <p>The NAPFL must therefore consider what means will be used, and what resources will be required, to incentivise businesses to implement grievance mechanisms given that many have yet to do so voluntarily. Consideration must also be given as to how to support businesses to develop genuine and effective grievance mechanisms that comply with international good practices and human rights standards. For example, businesses of a certain size could be required to demonstrate that they have a grievance mechanism that meets certain minimum requirements before they can obtain permission to apply for work permits for migrant workers.</p> <p>Consideration should also be given as to what, if any, legal and policy reforms should be implemented to build worker trust in company grievance mechanisms, and encourage workers to make use of them. These might include, for example, whistleblower protection laws or other mechanisms to protect workers against retaliatory dismissals or other reprisals by employers with clearly defined consequences for breaching these protections.</p>

Specific Comments on Matrix		
Output	Activity	Comment
6	1	Consider how to overcome barriers to trade union penetration among at risk worker populations – particularly among migrant workers. Trust building is especially key given that migrant workers cannot hold key positions within trade unions.
Strategic Goal Three: By 2025 migration management, including recruitment practices, will be strengthened		
1	6	<p>The MOU review and negotiation progress should seek to include, where possible, a legal mechanism within these bilateral agreements/MOUs to enable migrant workers to seek redress for rights violations that occur in Malaysia (e.g., to facilitate cross-border claims for the recovery of illegally charged recruitment fees, unpaid wages, and damages). Consideration should also be given to including express provisions to regulate the charging of recruitment fees in countries of origin.</p> <p>The review and renegotiation of MOUs should be undertaken in an open and transparent manner. This should include consultations with all relevant stakeholders, including trade unions, civil society organisations, and worker and migrant worker representatives. The texts of MOUs and bilateral agreements should also be made publicly available and widely disseminated among relevant stakeholders that are affected by the provisions of any MOUs and bilateral agreements.</p>
Strategic Goal Four: By 2025, victims of forced labour will have improved access to support and protection services, and systems to prevent forced labour will be improved		
1	1	This activity should be preceded by a needs assessment that ensures that the views of victims have been taken into consideration and that support services made available are relevant to their needs.
1	3	The same comments made in relation to the introduction of business grievance mechanisms apply equally to this activity. Consideration should be given as to the specific measures that will be adopted to incentivise businesses to implement forced labour prevention and remediation measures. This should include policy and regulatory measures both to incentivise businesses that voluntarily participate in proposed activities, but also to require businesses to implement certain prevention and remediation measures (for example, as a precondition to businesses being eligible to apply to sponsor migrant worker work permits). Labour inspectors could also be empowered to issue directions to businesses to require them to introduce certain forced labour prevention and remediation measures as part of correction action plans where labour law violations are identified.

IV. SITUATIONAL ANALYSIS

6. In this section, we provide our comments on the background and situational analysis set out in section 1 of the NAPFL.
7. The NAPFL states that forced labour is a “beneath the radar” activity that is often associated with the informal economy. The NAPFL further states that forced labour is often associated with vulnerable groups whose rights are not protected by existing legal frameworks, including undocumented migrant workers, refugees, stateless persons, asylum seekers, and minorities.³ However, the NAPFL does not expressly state how the needs of these identified high-risk groups will be specifically addressed under the NAPFL. The NAPTIP, for example, directs specific activities towards targeted vulnerable groups.⁴
8. Further, while workers in the informal economy and among vulnerable groups are often at greater risk of forced labour, the NAPFL should not overlook forced labour in the formal economy and among documented workers. As noted in the NAPFL, a 2018 Government survey estimated that 0.8% of workers in the palm oil sector (and 1.3% of palm oil workers in Sarawak) were in situations of forced labour.⁵ The survey did not measure the portion of regular to irregular/undocumented workers among the survey participants. However, of the workers in situations of forced labour, 51% indicated that the need to obtain work permit renewals from their employer was a form of menace keeping them in situations of forced labour.⁶ This indicates that the majority of workers identified in the 2018 survey as being in situations of forced labour had work permits. I.e., they were regular/documented workers. There have similarly been independent reports of forced labour within other formalised sectors of the economy including in the electronics, latex, and tyre manufacturing industries. While it is therefore important that the NAPFL should target interventions at identified high-risk groups (e.g., undocumented workers), the NAPFL should not focus solely on undocumented workers in the informal economy at the expense of combatting forced labour among documented workers or workers in formal sectors of the economy.
9. Similarly, certain high-risk industries have been identified in the NAPFL (palm oil, electronics, and rubber). However, the NAPFL does not detail how or whether these industries will be prioritised for interventions under the NAPFL. For example, NAPFL states that the Strategic Goal Two programme area will “target forced labour prone sectors”⁷, but does not identify what those sectors are, how those sectors will be identified, and how activities will be designed to target the identified forced labour prone sectors.⁸ As an example, the NAPTIP identifies specific target sectors for interventions including plantations, construction, fishing, manufacturing, and

³ NAPFL, page 8

⁴ See, e.g., NAPTIP S9, Output 4, S10, Output 1.

⁵ Ministry of Plantation Industries and Commodities (2018) *Employment Survey in Palm Oil Plantations, Malaysia 2018*. Available at: https://www.mpic.gov.my/mpi/images/01-Bahagian/PSA/MPIC_EmploymentSurvey2018_FINAL.pdf

⁶ Ministry of Plantation Industries and Commodities (2018) *Employment Survey in Palm Oil Plantations, Malaysia 2018*. Available at: https://www.mpic.gov.my/mpi/images/01-Bahagian/PSA/MPIC_EmploymentSurvey2018_FINAL.pdf

⁷ NAPFL, page 19

⁸ Other than in relation to one activity which is taken from the NAPTIP. See NAPFL Matrix, page 25

domestic work.⁹ The NAPTIP could therefore provide guidance as to which industries may be targeted for interventions under the NAPFL. Aligning the sectors of focus under the NAPTIP and NAPFL may also help promote the harmonisation of activities under the NAPTIP and NAPFL.

10. Guidance could also be drawn from previous MOHR initiatives, such as the MOHR and JTHK task force committees established in 2019 to target forced labour in the rubber, construction, furniture, restaurants and cleaning, plantations, and electrics/electronics industries.¹⁰ Consideration should be given as to whether the NAPFL should specifically target these same industries, and whether any existing initiatives under the MOHR/JTK task force committees should be integrated into the NAPFL.
11. One key sector that is also not clearly addressed in the NAPFL is domestic work – which is a specific sector of focus under the NAPTIP.¹¹ The strategic goals, outputs, and activities under the NAPFL do not indicate any specific interventions targeted at domestic workers or their employers.¹²
12. **Recommendations:**
 - (a) Consider how the specific risks and needs of different vulnerable groups – including undocumented workers, asylum seekers and refugees, and stateless persons – will be identified and addressed in planned activities under the NAPFL.
 - (b) Consider whether, and if so how, an industry or sectoral-based approach should be adopted under the NAPFL to target interventions towards previously identified high-risk industries (e.g., rubber, construction, furniture, restaurants and cleaning, plantations, domestic work, and electrics/electronics).
 - (c) Consider whether, and if so how, to integrate the MOHR/JTK task force committees on forced labour into the institutional framework of the NAPFL.
 - (d) Consider whether, and if so how, activities specifically targeted at addressing forced labour in the domestic work sector should be incorporated into the NAPFL.

V. GUIDING PRINCIPLES, PILLARS, AND STRATEGIC GOALS

13. In this section, we provide our comments on the guiding principles, pillars, and strategic goals of the NAPFL.
14. The NAPFL states that it is guided by certain fundamental principles, including non-discrimination, gender and age sensitivity, and the inclusion of the voice and needs of beneficiaries.¹³ This up-front statement of guiding principles, founded in international human rights and labour law standards, is highly welcomed.

⁹ See, e.g., NAPTIP, S21, output 1

¹⁰ See NAPTIP, section 1.3.2

¹¹ See, e.g., NAPTIP, S20, output 1

¹² Other than in relation to one activity, which is taken from the NAPTIP. See NAPFL Matrix, page 25

¹³ NAPFL, page 17

15. Having set out these guiding principles, it is important that they are clearly integrated throughout the NAPFL.¹⁴ The NAPFL reflects a gender-sensitive approach in parts. For example, the NAPFL includes gender-disaggregated indicators and frames outputs and activities in terms of achieving outcomes for men and women migrant workers, and not just ‘migrant workers.’ However, gender and age-responsive approaches could be more expressly incorporated into proposed strategic goals, outputs, and activities under the NAPFL. In particular, further detail could be provided as to how the NAPFL will identify and address the different needs of men and women in its activities, and ensure that activities are designed and implemented in a gender-inclusive manner. As an example, gender and age-responsive approaches are expressly considered in the NAPTIP, and the NAPFL may benefit from adopting a similar approach.¹⁵ The specific needs of children will most likely be the focus of the NAPCL, currently under development, but should not be ignored in the NAPFL.
16. The NAPFL follows a similar strategic goal – output – activity structure to the NAPFL. Adopting a similar structure to other NAPs is sensible given the complementary and interrelated nature of the NAPFL and NAPTIP. For ease of reference, consideration could be given to assigning a unique alphanumeric number to each strategic goal, output, and activity – as is the case in the NAPTIP.
17. **Recommendations:**
- (a) Ensure that the NAPFL’s guiding principles including non-discrimination, and gender and age-sensitive approaches are fully reflected in the design and implementation of the NAPFL – including in its strategic goals, outputs, and activities.
 - (b) Consider adopting a clear numbering scheme for ease of identification of strategic goals, outputs, and activities.

VI. STRATEGIC GOAL ONE (SG1)

18. The SG1 programme area will focus on increasing awareness and understanding of forced labour among individuals who are at increased risk, duty bearers, and in the general public.
- Output 1: Workers and employers have increased knowledge on forced labour and are better able to combat forced labour, including in supply chains
- Output 2: The general public (community key stakeholders) have increased knowledge on forced labour and are better able to take action against it
19. Improving the understanding of forced labour among key groups is an important means of preventing and mitigating forced labour. That said, education and awareness campaigns should prioritise targeting key rights holders (workers and migrant workers) and duty bearers (employers, including individual employers of domestic workers) rather than the public in general. Forced labour is first and foremost a product of rights violations by duty bearers (employers, recruitment agencies, etc.), not a question of public attitude.

¹⁴ ILO *Developing National Action Plans on Forced Labour*, pages 22-23. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_762164.pdf

¹⁵ See Section 4.2.3 of the NAPTIP, and the inclusion of clear gender and age-responsive approaches in the design of objectives (e.g., G4 Specific Objective 15)

20. It is therefore important that any awareness raising campaigns are targeted towards specific groups and have a clear theory of intended behavioural change that the campaign hopes to elicit.¹⁶ These intended behavioural changes should be aligned with the other objectives of the NAPFL. For example, awareness raising and education campaigns targeting employers and workers will likely have different intended outcomes. For employers, the objective may be to ensure that employers understand and comply with their obligations toward workers (e.g., to not retain passports and other documents, provide workers with written employment contracts, pay wages on time, etc.). For workers, the objective may be to ensure that workers are aware of their rights and employers' obligations towards them, and the channels through which they may seek assistance or report rights violations.
21. Similarly, an awareness raising campaign targeting the public needs to identify what sections of the public the campaign is intended to target, and what behavioural change among that target group the campaign is intended to elicit (e.g., members of the target group are better able to identify signs of forced labour among members of their community and report these to the relevant authorities).
22. Finally, the proposed activity to hold town-hall style meetings and community events should also be targeted at specific groups. Such events should be worker led and driven so far as possible, and should be inclusive and participatory. Consideration should be given as to how such events can include migrant workers of different nationalities, as well as both regular and irregular/undocumented migrant workers. Town hall style activities should likewise have clear objectives and intended outcomes. These could include, for example, increasing awareness of migrant workers' rights to freedom of association and labour union participation – as discussed below.
23. Indicators for proposed awareness raising activities should seek to capture and measure the impact of awareness raising activities, for example, by measuring increases in reports of forced labour raised by target groups, increases in number of complaints or grievances raised by workers, or reductions in incidents of labour rights violations found among employers.

Output 4: Robust forced labour data collection, analysis, dissemination systems are operational

24. We welcome the open and data driven approach to combatting forced labour under SG1. In particular, we welcome the proposal to establish a national forced labour database that will be accessible to external stakeholders. To ensure that such a database is as comprehensive as possible, a preliminary mapping exercise could be undertaken to identify what sources of data on forced labour are available from different stakeholders, and what gaps exist in existing data sources. Where key gaps are identified, consideration should be given to establishing new data collection and monitoring mechanisms to fill any identified gaps. Given the interconnected nature of the NAPFL the NAPTIP and NAPCL, consideration should also be given to expanding the forced labour database to include data and data sources on human trafficking and child labour.

¹⁶ For a useful overview of evaluation findings from various global modern slavery-related awareness raising programs, please see K4D (December 2017) *Interventions to combat modern slavery*. Available at: <https://assets.publishing.service.gov.uk/media/5a5f23f240f0b652634c6f4d/Interventions-to-combat-modern-slavery.pdf>

25. A national forced labour database has the potential to greatly enhance Malaysia’s ability to provide accurate and uniform reporting to various national, regional, and international monitoring mechanisms on trafficking in persons and forced labour (for example, reporting at the ASEAN level). The design of the database should therefore take into account the differing sources of data required for the purposes of these reporting mechanisms. The database may also be a key resource to support the monitoring and evaluation of the NAPFL itself. The database should therefore capture information that will be relevant to the monitoring and evaluation framework adopted for the NAPFL.

VII. STRATEGIC GOAL TWO (SG2)

26. The SG2 programme area will focus on building capacity for law enforcement among relevant government authorities, such as the Labour Inspectorate, and include activities to support legal compliance by employers and workers.

Output 1: Relevant laws revised to address forced labour and strengthen protection support for all victims of forced labour

27. The sole activity under this output is to amend the Anti-Trafficking in Persons and Smuggling of Migrants Act and the Employment Act to address forced labour and strengthen protection and support for victims of forced labour.
28. The specific amendments that are contemplated are not identified. However, it is important that key findings and recommendations of previous gaps analyses¹⁷ – e.g., the need for a clearer criminal law definition of forced labour with penalties commensurate with Malaysia’s obligations under ILO Convention No.29, the non-criminalisation of victims of forced labour, and the equal treatment of domestic workers with other workers under the Employment Act – should be taken into consideration when proposing legislative amendments pursuant to the NAPFL.
29. Where laws and policies are amended, it is also important that these amendments are followed by training and capacity building for law enforcement agencies, labour inspectors, prosecutors, the judiciary, and other key stakeholders to ensure they understand and can effectively implement the amended legislation. Such training should be included within the proposed activities under the NAPFL.

Output 3: Specialised ATIP unit empowered at the federal level and state level in all enforcement agencies

30. One proposed activity under this output is to hold a conference between law enforcement agencies and prosecutors. Building on the success of previous training for judges and prosecutors for forced labour,¹⁸ it is suggested that a conference between judges and prosecutors may also be valuable.
31. An additional activity that could be included under this output would be to conduct a review of existing trafficking victim identification and screening procedures. Among other things, this review should consider means through which the system of victim identification and screening

¹⁷ E.g., the ILO 2018 Situation and Gap Analysis on Malaysian Legislation, Policies, and Programmes and the ILO Forced Labour Convention and Protocol. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_650658.pdf

¹⁸ 2019 ILKAP-ILO Training on Forced Labour for Judges, Prosecutors, and Legal Aid Practitioners

could be made more victim-centred and be made less directly connected to the criminal justice process.

Output 4: The Labour Inspectorate and other relevant authorities have increased capacity to enforce legislation and advice on forced labour

32. Three activities are proposed under this output, the development of joint inspection procedures, tailored training on forced labour for labour officers, and tailored training on forced labour for police officers and the judiciary.
33. Joint inspection systems involving different agencies have proven to be a successful model in other jurisdictions (e.g., Brazil). To enhance the effectiveness of these joint inspection teams, relevant procedures and policies should be amended to ensure that joint inspection teams have the capacity to mandate employers found to be in violation of relevant laws to undertake corrective action plans, and to monitor compliance with those corrective action plans.
34. The development of training on forced labour for labour officers should be preceded by a needs assessment. The training itself should include training in relation to the legal definitions of forced labour and related offences, the use of indicators and how to identify and distinguish forced labour from other offences or singular labour law violations, and appropriate responses where indicators of forced labour are present or actual or suspected cases of forced labour are identified. This training on forced labour should be integrated with training for labour inspectors on trafficking in persons that is already contemplated under NAPTIP.
35. Improving compliance with labour laws and enhancing the effectiveness of labour inspection requires the deployment of a sufficient number of labour inspectors. Without sufficient inspectors, inspection, compliance, and enforcement efforts will be hampered. As such, one activity that should be added to Output 4 is to support the recruitment and training of additional Labour Inspectors. An increase in the number of labour inspectors is likely to have an immediate and direct impact on the capacity of the Labour Inspectorate and levels of compliance by employers.

Output 5: Employers and workers have increased capacity for compliance with forced labour legislation

36. The third proposed activity under this output is to develop internal complaints mechanisms in companies that protect workers who file complaints.
37. This proposal is welcomed. The use of company grievance mechanisms can be an effective means of identifying and remedying human rights violations, and are an important component of businesses' responsibility to respect human rights. Many jurisdictions globally have now introduced mandatory human rights due diligence or anti-modern slavery disclosure laws.¹⁹ Several other jurisdictions have plans to introduce similar legislation.²⁰ Prompted by these laws and the broader global business and human rights movement, many businesses in Malaysia have introduced grievance mechanisms. This is particularly the case among international businesses

¹⁹ E.g., UK Modern Slavery Act 2015, the Australian Modern Slavery Act 2018, the California Transparency in Supply Chains Act, the German *Sorgfaltspflichtengesetz*, the French *Devoir de Vigilance* law, and the Dutch Child Labour Due Diligence Law – which will come into force in 2022.

²⁰ These include Canada and the European Union.

with a presence in Malaysia, or large-scale Malaysian businesses that are suppliers to international brands.

38. That said, greater specificity is needed in relation to how such grievance mechanisms will be developed and implemented under the NAPFL. For example, the NAPFL could indicate what types of businesses (e.g., small to medium sized businesses, etc.) and in what sectors will be the focus of this activity. In particular, further work needs to be done to encourage smaller to medium-size enterprises in Malaysia to adopt grievance mechanisms. The development of grievance mechanisms requires an investment of resources and technical capacity that small and medium-size businesses may be unable to commit to without support.
39. Further, it is important that grievance mechanisms do not only exist on paper. Grievance mechanisms created by businesses (both existing and new) must be genuinely trusted, accessible, effective, offer meaningful remedies, and align with international good practices on business and human rights.²¹
40. The NAPFL must therefore consider what means will be used, and what resources will be required, to incentivise businesses to implement grievance mechanisms given that many have yet to do so voluntarily. Consideration must also be given as to how to support businesses to develop genuine and effective grievance mechanisms that comply with international good practices and human rights standards. For example, businesses of a certain size could be required to demonstrate they have a grievance mechanism that meets certain minimum requirements before they can obtain permission to apply for work permits for migrant workers.
41. Consideration should also be given as to what, if any, legal and policy reforms should be implemented to build worker trust in company grievance mechanisms, and encourage workers to make use of them. These might include, for example, whistleblower protection laws or other mechanisms to protect workers against retaliatory dismissals or other reprisals by employers with clearly defined consequences for breaching these protections.

Output 6: Trade unions provide assistance to potential victims of forced labour in submitting their complaints, and also in tripartite dialogues with workers and government

42. The proposed activity under this output is to organise workers into trade unions, particularly in high-risk sectors.
43. A critical factor in the success of this activity will be the ability of trade unions to engage with migrant workers. A 2019 study found that 60% of migrant workers in Malaysia did not know whether they could join or form a union, and a further 10% believed that they could not form or join a union.²²

²¹ E.g., the IOM Operational Guidelines for Businesses on the Remediation of Migrant-Worker Grievances. Available at: <https://publications.iom.int/books/operational-guidelines-businesses-remediation-migrant-worker-grievances>

²² Civicus and Solidarity Center (October 2019) *Freedoms on the Move: The Civic Space of Migrant Workers and Refugees*. Available at: https://www.civicus.org/documents/reports-and-publications/freedoms-on-the-move/freedoms-on-the-move-report_oct2019.pdf

44. One issue potentially limiting migrant workers' accessibility to trade unions is the prohibition on non-Malaysian citizens holding office in, or being employed by, trade unions.²³ This potentially inhibits the level of visibility of migrant worker-specific issues within trade unions, and may undermine migrant workers' perceptions of how representative trade unions are of their interests. Consideration should also be given as to other ways to increase levels of trust in trade unions and levels of awareness of rights to freedom of association among migrant workers, including through outreach and training activities. These activities could potentially be included as part of the awareness raising and education activities planned under SG1.

VIII. STRATEGIC GOAL THREE (SG3)

Output 1: Recruitment systems and practices for non-Malaysian migrant workers are improved

45. One activity proposed under this output is to negotiate or review existing bilateral agreements/MOUs with all source countries to prevent trafficking and exploitation of migrant workers.
46. As part of the MOU review and negotiation progress, the Government of Malaysia should seek to include, where possible, a legal mechanism within bilateral agreements/MOUs with source countries to enable migrant workers to seek redress for rights violations in Malaysia (e.g., to facilitate cross-border claims for the recovery of illegally charged recruitment fees, unpaid wages, and damages). Consideration should also be given to including express provisions in such agreements to regulate the charging of recruitment fees in countries of origin.
47. The review and renegotiation of MOUs should be undertaken in an open and transparent manner. This should include consultations with all relevant stakeholders, including trade unions, civil society organisations, and worker and migrant worker representatives. The texts of MOUs and bilateral agreements should also be made publicly available and widely disseminated among relevant stakeholders that are affected by the provisions of any MOUs and bilateral agreements.²⁴

IX. STRATEGIC GOAL FOUR (SG4)

Output 1: Improved national capacity to protect and support victims of forced labour and prevent vulnerable workers becoming victims through establishing better systems and procedures and training relevant stakeholders

48. The first activity proposed under this output is to increase the number of support services for victims of forced labour, starting with establishing a new shelter in Sarawak. This activity should be preceded by a needs assessment that ensures that the views of victims have been taken into consideration and that new support services are relevant to their needs.
49. The third activity proposed under this output is to support businesses to establish a human rights department and implement prevention and remediation measures. This activity will require the engagement and participation of businesses. The same comments made in relation to the development of grievance mechanisms as part of SG2 Output 4 apply equally here. Consideration

²³ s.28(1)(a), 29(2)(a), Trade Union Act 1959

²⁴ For further good practices and recommendations with regard to MOUs and bilateral agreements, see ILO (2015) *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf

should therefore be given as to how businesses will be encouraged or incentivised to implement forced labour prevention and remediation measures – particularly small and medium-sized enterprises. This should include both policy and regulatory measures to incentivise businesses that voluntarily participate in proposed activities, but also to require businesses to implement certain prevention and remediation measures (for example, as a precondition to businesses being eligible to apply to sponsor migrant worker work permits). Labour Inspectors could also be empowered to issue directions to businesses to require them to introduce certain forced labour prevention and remediation measures as part of correction action plans where labour law violations are identified by inspectors.

50. The fourth activity proposed under this output is to develop a remediation plan and establish a national referral mechanism for remediation and support services. In developing and implementing this plan it is important that the concepts of support and remediation are clearly distinguished.

X. RESOURCE ALLOCATON

51. The NAPFL does not specify budgets or resource commitments needed to implement proposed activities. This is understandable. The NAPFL is not intended to be a detailed plan for implementation. The activities contemplated under the NAPFL are framed in broad general terms, and the responsible implementing agencies for these activities and timelines have not yet been determined. These factors make it challenging to set out detailed budget allocations within the NAPFL itself.
52. However, a general analysis of the resources currently available and the resources that are likely to be required to implement the NAPFL activities can and should still be undertaken.²⁵ Where resourcing considerations are not considered and any gaps identified at the outset, this increases the risk of poor implementation.
53. A resource and budget analysis should consider the financial, human, and logistical resources that are likely to be required to implement the proposed activities. Gaps between the level of existing resources available and the expected resources required should also be identified.²⁶ For example, a proposed activity under SG4 is to “recruit, train, and deploy additional law enforcement officials at the border”. This activity is highly likely to require additional resource commitments by all relevant agencies involved in the recruitment, training, and deployment of such officials. The NAPFL should therefore consider what existing resources the relevant agencies have available to support the deployment of additional officers, and identify any resource gaps. The proposed development of a national forced labour database is equally highly likely to require a substantial resource commitment that should be considered at the outset.
54. The budget and resource analysis for the NAPFL should indicate where it is anticipated that external parties will be required to commit resources. For example, several activities contemplate the involvement of businesses. For example, one activity under SG2 is to “develop internal complaints mechanisms in companies that protect the workers who file complaints using this

²⁵ ILO *Developing National Action Plans on Forced Labour*, page 30. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_762164.pdf

²⁶ ILO *Developing National Action Plans on Forced Labour*, page 30. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_762164.pdf

mechanism”. It is likely that businesses will need to provide the resources to develop and implement such mechanisms themselves. If so, this should be made clear so that expectations are communicated at the outset.

55. Similarly, where partnerships with civil society actors, such as trade unions, NGOs, or other organisations are expected as part of the activities under the NAPFL, consideration should be given as to whether these organisations have the existing resources and capacity to participate in planned activities. If not, then consideration should be given as to how these organisations will be supported with additional capacity and resources to take part in activities under the NAPFL. Without this analysis, there is a risk that necessary resources will not be available – leading to low or poor implementation of proposed activities.

XI. MONITORING AND EVALUATION

56. The present draft NAPFL does not yet set out a monitoring and evaluation framework. Though it is contemplated that a monitoring and evaluation framework will be developed once the activities under the NAPFL are finalised.
57. In developing a monitoring and evaluation framework for the NAPFL, consideration should be given to mandating an independent external body or group of experts (other than the National Forced Labour Task Force) to periodically evaluate the NAPFL. Such a body could, for example, be modelled on the council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA). To promote a consistency of approach among the different NAPs, this independent evaluation body could potentially be tasked with producing periodic evaluation reports on all of the various NAPs (NAPTIP, NAPFL, NAPCL, NAPBHR).
58. The list of proposed indicators set out in the Matrix are understood to be preliminary indicators for discussion. However, as a general comment, many of the proposed indicators are purely qualitative (e.g., number of trainings held, number of people trained, etc.) and do not capture the impact of proposed activities. Other indicators should include, among other things, rates of prosecution and convictions of offenders, numbers of victims of forced labour identified, number of companies prosecuted and convicted for violations of labour laws and other offences relating to forced labour etc. Where existing baseline data is not available to measure the progress of indicators, it is important that such data is collected at the outset of the NAPFL so that performance can be measured and benchmarked.