



# Mapping Study on Seasonal Agriculture Workers and Worker Feedback and Grievance Mechanisms in the Agricultural Sector

**Business and Human Rights I 15 June 2018**

**Reviewed by the Fair Labor Association**

BUSINESS AND HUMAN RIGHTS S.L  
15 June 2018

The author gratefully acknowledges the support, involvement and contributions of the Project Partners, composed by the Fair Labor Association (FLA) and Nestlé; as well as the participation of the organizations part of the case studies carried out in the framework of this project.

This project has been funded by the United States Department of Labor under cooperative agreement number IL-28101-15-75-K-11. Ninety-seven (97) percent of the total costs of the project is financed with Federal funds, for a total of \$4,996,000 dollars.

This material does not necessarily reflect the views or policies of the United States Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the United States Government.

**Business and Human Rights S.L** ([www.bandhr.com](http://www.bandhr.com)) is a consultancy firm based in Barcelona (Spain), and with presence in Madrid (Spain), Bogotá D.C. (Colombia), Washington D.C. (United States) and Paris (France). BHR has more than 18 years of expertise working with companies, governments, multilateral entities, civil society organizations and communities to put into practice the United Nations Guiding Principles on Business and Human Rights (UNGPs), as well as other strategic business and human rights frameworks and tools.



# TABLE OF CONTENTS

## List of abbreviations

<b>EXECUTIVE SUMMARY</b>	<b>1</b>
<b>PART I: INTRODUCTION AND METHODOLOGY</b>	<b>2</b>
1. Introduction	2
2. Methodology and data collection	3
<b>PART II. SEASONAL AGRICULTURAL MIGRANT WORKERS: TRENDS AND PROFILES</b>	<b>5</b>
3. Migrant Work Force: A Global Phenomenon	5
3.1. Seasonal and Migrant Workers: A General Overview	5
3.2. International Regulatory Frameworks and Instruments Applicable for Migrant Workers	6
4. Global Agricultural Seasonal and Migrant Labor	7
4.1. Seasonal Migratory Workers in Spain	7
4.2. Seasonal Workers in the Cotton Industry in Uzbekistan	12
4.3. Migrant Workers in the Palm Oil Sector in Malaysia	16
4.4. Migrant Workers in the Sugarcane Sector in Brazil	21
5. Analysis of Seasonal Agriculture Workers	24
<b>PART III. WORKER FEEDBACK AND GRIEVANCE MECHANISMS CASE STUDIES</b>	<b>28</b>
6. WFGM Mechanisms analyzed	28
7. WFGM case studies	31
8. Results of the analysis: best practices	35
<b>PART IV. CONCLUSIONS AND RECOMMENDATIONS</b>	<b>39</b>
9. Initial observations regarding the design of a WFGM	39
10. Key considerations from the workers point of view	40
11. Final conclusions and recommendations	41
<b>PART V. ANNEXES</b>	<b>44</b>



## LIST OF ABBREVIATIONS

<b>CBA</b>	Collective Bargaining Agreements
<b>CFS-RAI</b>	Committee on World Food Security Principles for Responsible Investment in Agriculture and Food Systems
<b>CONATRAE</b>	National Committee for Eradicating Forced Labor
<b>DWCP</b>	Decent Work Country Programme
<b>EC</b>	European Commission
<b>ETT</b>	Temporary Employment Agency (Spanish)
<b>EU</b>	European Union
<b>FLA</b>	Fair Labor Association
<b>FTUU</b>	Federation of Trade Unions of Uzbekistan
<b>HRW</b>	Human Rights Watch
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>ISCC</b>	International Sustainability and Carbon Certification
<b>MOL</b>	Ministry of Labour and Social Protection (Uzbekistan)
<b>MSI</b>	Multi-stakeholder Initiatives
<b>NUPW</b>	National Union of Plantation Workers
<b>PER</b>	Programa Rural de Empleo (Spanish)
<b>PPE</b>	Personal Protective Equipment
<b>RMO</b>	Recruitment of Migrants in Origin
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>SMI</b>	Salario Mínimo Interprofesional (Spanish)
<b>UNDP</b>	United Nations Development Programme
<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights
<b>USDOL-ILAB</b>	U.S. Department of Labor, Bureau of International Labor Affairs
<b>WB</b>	World Bank
<b>WFGM</b>	Workers' Feedback and Grievance Mechanism

## EXECUTIVE SUMMARY

An increasing number of international frameworks such as the USDA Guidelines on Child Labor and Forced Labor, OECD Guidelines for Multinational with Agricultural Supply Chains and the United Nations Guiding Principles on Business and Human Rights (UNGPs) have established the need of Worker Feedback and Grievance Mechanisms (WFGM). Worker feedback and grievance mechanisms are an essential part of any human rights due diligence program and an important component of stakeholder engagement. The UNGP's identify eight (8) effectiveness criteria of non-judicial grievance mechanisms, against which the design and process of a grievance mechanism can be assessed. Accordingly, grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and – for operational-level mechanisms – based on engagement and dialogue.

Within this context, in March 2018, the Fair Labor Association (FLA) commissioned to and partnered with the Business and Human Rights (BHR) to undertake a Mapping Study on Worker Feedback and Grievance Mechanisms in the agricultural sector. This work is funded by the U.S. Department of Labor, Bureau of International Labor Affairs (USDOL-ILAB), as part of the project titled “Partnership to Prevent Child and Forced Labor in Imported Agricultural Products: Piloting the USDA Guidelines in Turkey's Hazelnut Supply Chain”. The study has two main objectives: 1) profile global agricultural workers to draw conclusions about the commonalities amongst the agricultural workers and a basic comparative analysis of the most prevalent human rights in different countries; and 2) conduct an in-depth analysis of four existing WFGMs operated by the private sector multi-stakeholder initiatives in four commodities namely tea, sugarcane, palm oil and sea food sectors.

Working and living conditions that prevail within the migrant seasonal workers in the four studied commodities and countries (seasonal workers in Spain, cotton in Uzbekistan, palm oil in Malaysia and sugarcane in Brazil) are similar to those for the seasonal migratory labor working in the hazelnuts sector in Turkey, with minor differences. In all studied commodities, the working conditions are precarious. Issues around lack of contracts, excessive hours of work, poor transportation and accommodation conditions, deception by labor contractors, and exploitation of vulnerability are rampant. When it comes to the presence of or lack of use of grievance mechanisms by seasonal agricultural workers, these similarities are even greater.

Worker feedback and grievance mechanisms should be a channel through which workers and other potentially affected stakeholders who feel they have been adversely affected by business activities can provide feedback or/and raise concerns to a company and have those concerns addressed in a prompt and professional manner. However, the workers and stakeholders - particularly who are seasonal and / or migrant - may face several challenges regarding WFGM's functioning and effectiveness; cultural barriers, insufficient accessibility; lack of predictability, transparency and engagement; excessive consumption of time and resources; confidentiality issues; lack of protection against retaliation or fear of reprisals; lack of awareness about existing mechanisms; gender issues; or limitations to issue binding recommendations and to enforce outcomes, among other issues. This may mean that, even after the process concludes, there is no guarantee the company will actually change its behavior, or it has brought any value to the workers or stakeholders.

Factors that render migrant seasonal workers including the Turkish hazelnuts workers more vulnerable to exploitation, require solutions that can reach workers, empower them and build trust. For the design of the WFGM for the Turkish seasonal hazelnut workers, the project partners including FLA, Nestlé, Olam and Balsu, should consider deploying multiple methods, channels and grievance mechanism options simultaneously to enhance the accessibility of all potentially affected stakeholders, despite their gender, age, ethnic group, marital status, traditions, etc. to cover workers with varying characteristics, resources, and capabilities. Furthermore, project partners should apply if possible their leverage to effect change in practices that are currently causing or contributing to negative impacts through external mechanisms mentioned in this report.

Relevant stakeholders and especially workers should be involved in the design and review of the WFGM. This mechanism should be predictable, simple and flexible, and ensure minimum guarantees to enable a fair, informed and respectful grievance processes. The WFGM should be widely known to the workers and other stakeholders and awareness activities need to be undertaken. No doubt, these elements will contribute to enhance the accessibility of the mechanism and will build trust. However, there are other aspects of the mechanism that are relevant to ensure as well, such as the independence and expertise of the investigation team, the involvement of several units or departments in the company (when required), access to information and complaint records, appeals provision, proofs of the repair, follow-up and proper close out of the case, as well as a continuous monitoring and assessment of the WFGM. Lessons learnt by the project partners from this exercise could be applied in the design or review of any other grievance mechanism in other contexts.



# PART I: INTRODUCTION AND METHODOLOGY

## 1. Introduction

The United States Department of Labor-Bureau of International Labor Affairs (USDOL-ILAB) funded the Fair Labor Association (FLA) to implement a comprehensive project to pilot the *U.S. Department of Agriculture's Guidelines for Eliminating Child Labor and Forced Labor in Agricultural Supply Chains* (hereinafter, the [USDA Guidelines](#)). The main objective of the project titled "[Partnership to Prevent Child and Forced Labor in Imported Agricultural Products: Piloting the USDA Guidelines in Turkey's Hazelnut Supply Chain](#)" is to design and pilot a comprehensive and sustainable program with Nestlé, and its two main hazelnuts supplying companies, Olam and Balsu that implements all elements of the USDA Guidelines.

One of the key features of the USDA Guidelines is for companies to establish a functioning Worker Feedback and Grievance Mechanism (WFGM) through which they can continuously monitor for working conditions in their supply chains. As highlighted by the FLA, companies participating in this project have established international and national hotline numbers for the workers through which workers can contact them. However, it only serves as a one-way communication channel and has been used rarely by the workers. Hence, as a part of the project, the partners sought to **identify best practices and case studies that exist globally for WFGMs** in view to inform the development of a WFGM for the Turkish seasonal migratory labor working in the hazelnuts sector.

### Assignment

Following an open call for tenders, Business and Human Rights (BHR) was commissioned by FLA in March 2018, to undertake a Mapping Study on Seasonal Workers and Workers Feedback and Grievance Mechanisms in the Agricultural Sector.

The study was undertaken with two main objectives. First, is to profile global agricultural workers by presenting four case studies namely, 1) seasonal labor in Spain, 2) seasonal cotton harvesters in Uzbekistan, 3) foreign migrant workers in the palm oil sector in Malaysia, and 4) seasonal sugarcane workers in Brazil, and review the locally available WFGMs. Based on this literature review, conclusions are drawn about the commonalities amongst the agricultural workers and a basic comparative analysis of the most prevalent human rights in different countries is presented. Additionally, the context of seasonal migratory labor in Turkey was understood from the FLA staff in Turkey through strategic interviews. Excerpt from their internal report<sup>1</sup> are used to complement information in this report.

The second objective of this study is to conduct an in-depth analysis of four existing WFGMs operated by the private sector in four commodities namely tea, sugarcane, palm oil and sea food. This is done by assessing the WFGMs with the *BHR Grievance Assessment Tool (BHR Tool)* for each of the analyzed mechanisms. The BHR Tool is based on the UNGPs' eight effectiveness criteria for the grievance mechanisms. The names of the four analyzed WFGM are not included in this report due to confidentiality agreements.

From both the analysis, best practices and learnings were drawn that inform the development of a WFGM for the Turkish seasonal migratory labor working in the hazelnuts sector. Recommendations for that are presented in the final section of the report.

### Structure of the report

Following this INTRODUCTION, Section 2 summarizes the METHODOLOGY used by the FLA and BHR to conduct the assignment, the steps followed and the indicators used to assess the WFGMs.

PART II provides an overview of the profile and trends of the seasonal agriculture migrant workers globally (Section 3). Please read the companion piece - FLA's report on grievance mechanism<sup>1</sup> with this section. This is followed by a basic comparative analysis of the most prevalent human rights impacts per commodity (Section 4) analyzed (cotton, palm-oil and sugarcane) in different countries (Spain, Uzbekistan, Malaysia and Brazil).

In addition, as the working conditions of seasonal workers are often a result of the formal and informal relationships that take place with the various supply chain stakeholders, the analysis is complemented with a brief

<sup>1</sup> Fair Labor Association unpublished report: Grievance Mechanisms among Seasonal Migrant Hazelnut workers from Şanlıurfa and Mardin: Current Situation and Recommendations (June 2018).



introduction to the roles that the most important stakeholders have in determining the living and working conditions of workers.

PART III (Sections 6 to 8) focuses on providing a summary of the main findings regarding the analysis of four WFGMs selected and best practices identified.

The CONCLUSIONS AND RECOMMENDATIONS (PART IV) chapter (Sections 9 to 11) provides recommendations for the Turkish case, considering best practices and lessons learned from other mechanisms, and some ways to integrate other value chain actors in the system.

Finally, PART V of the document provides the ANNEXES which include literature and other references, as well as a list of figures provided in the document and more detailed description on the indicators utilized for the analysis of the WFGMs.

## 2. Methodology and data collection

The USDA Guidelines establishes the needs of a functioning grievance mechanism. To determine what good looks like, this work is grounded in the UNGPs standard which seek to provide an authoritative global framework for preventing and addressing the risk of adverse human rights impacts linked to business activity. According to the UNGPs, business enterprises should ensure the access to an appropriate and effective remedy against human rights abuses. In order to ensure the effectiveness of the grievance mechanisms, these should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and be based on engagement and dialogue. These are the effectiveness criteria that have been established as a benchmark within this project.

After a kick-off meeting of the project, held at the end of March 2018 together with FLA and Nestlé, the BHR team undertook the task assigned following a methodology that consisted of these components.

**a. Desk review and report:** By using desk research techniques, BHR conducted in April a thorough documentation review of literature, reports, databases and websites (see Annex 1) related to some existing workers voice channels and grievance resolution mechanisms, and the profile and trends of the seasonal and migrant workers in certain commodities globally to compare with the in-country seasonal migratory labor in Turkey. BHR also analyzed the information provided by the FLA regarding the hazelnut sector in Turkey. In particular, the commodities and contexts analyzed were: various commodities in Spain, cotton in Uzbekistan; palm-oil in Malaysia; and, sugarcane in Brazil. Although relevant for the quality of the assessment, there was no access to primary sources such as interviews with workers and their families, given the short time period and limited scope of the study. BHR's and FLA's past experiences working with the agricultural workers in different countries was leveraged to develop this analysis. Taking into account the study's purpose and scope, several cases were selected according to the following criteria:

- Cases that present an overview of both in-country seasonal workers and transnational workers moving across borders;
- Cases highlighting commonalities and differences between gender profiles; employment in multiple or single commodity; existence of relevant governmental role and seasonal migration scheme; or the economic importance of the commodity to the country.
- Cases that present different roles and leverage that the various stakeholders have regarding workers' living and working conditions.

**b. WFGMs Review:** BHR and FLA reviewed WFGMs developed by four private sector organizations<sup>2</sup>. BHR started with a desk-based analysis of publicly available information. Thorough documentation review of the literature, reports and websites related to the four WFGMs was undertaken.

**c. Dialogues with representatives from the organizations selected:** Online interviews were held with appropriate representatives from three studied organizations in May in view to complement the analysis of the WFGMs. No response for an interview was received from the fourth organization RSPO. For preparation of the interviews, the BHR team developed a semi-structured questionnaire. BHR and FLA jointly conducted the interviews.

**d. Comparative analysis:** Each organization was requested to respond to the online BHR Grievance Assessment Tool in May. The tool, which comprises of 82 indicators against the 8 effectiveness criteria contained in the UNGPs, was adapted to better reflect the features of the selected channels. Confidential individual reports on the results of the assessment were developed and shared with each organization. These reports highlighted the strengths and weaknesses of each mechanism. Given the confidentiality agreement with each organization,

<sup>2</sup> The names of the organizations are kept confidential and the learnings are presented at an aggregate level in this report.



the individual reports were not included in this report, but the results were taken into consideration and best practices extracted.

**e. Reporting and discussion about the findings with FLA and Nestlé teams:** BHR maintained biweekly follow-up meetings with the project team formed by FLA and Nestlé representatives in view to assess the progress made within the project and discuss the findings.

**f. Final analysis and report:** BHR and FLA undertook the analysis of the information based on the two information sources, review of gaps and developed recommendations. Five reports were developed as part of this study. This final report was developed in June. This consolidates the content and feedback from the project partners on the findings of the review and analysis of the case studies. The report sets out the research findings and final recommendations for the development of a WFGM in the hazelnuts sector in Turkey.

In particular, the analysis undertaken by BHR regarding the WFGMs, considered the following two standards (box 1 and box 2).

#### Box 1: The UNGPs effectiveness criteria

**Legitimate:** enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.

**Accessible:** being known to all stakeholder groups for whose use they are intended and providing adequate assistance for those who may face particular barriers to access.

**Predictable:** providing a clear and a known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.

**Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.

**Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the performance of the mechanism to build confidence in its effectiveness and meet any public interest at stake.

**Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights.

**A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

**Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended for their design and performance, and focusing on dialogue as the means to address and resolve grievances.

#### Box 2: The process requirements of the mechanisms

**Design:** considers issues that relate to the involvement of the stakeholders in the process of design and improvement, and whether this states clearly its purpose, cost, anonymity, flexibility and takes into account cultural aspects of the end users, among other issues.

**Publication:** takes into account how the company or the organization makes it known and the information provided.

**Reception and registration:** this process integrates issues regarding the submission of the claim and confirmation of receipt, confidentiality, data security, and record keeping.

**Review and investigation:** the focus is put on the investigation plan and team, access to information, privacy and personal security, assistance provided, reprisals, approaches to analyze the claim, involvement of third parties, and the investigation report.

**Development of a resolution, responses and reparation:** considers issues like the approaches to resolve the claim, information shared with the parties involved, final agreements and confirmation of the resolution, and satisfaction of right-holders.

**Monitoring, reporting, evaluation and closure of the claim:** this process integrates issues that relate to the collection of proofs or evidence regarding the implementation of the resolution agreed, involvement of third parties, accountability and knowledge building.

**Monitoring, reporting and evaluation of mechanism:** takes into account how the company or the organization monitors and evaluates the mechanism, integrates lessons learnt and involves stakeholders in the process.





## PART II: SEASONAL AGRICULTURAL MIGRANT WORKERS: TRENDS AND PROFILES

### 3. Migrant Worker Force: A Global Phenomenon

#### 3.1. Migrant workers: a general overview

In 2013, the ILO estimated that migrant workers accounted for 150.3 million of the world's approximately 232 million international migrants and of which 11.5 are domestic migrant workers<sup>3</sup>. Poverty and unemployment, aspirations for upward mobility, political conflicts and the impact of climate change have prompted many workers in developing countries to leave their home nations and seek work elsewhere, while developed countries have increased their demand for labor in some sectors such as agriculture<sup>4</sup>.

Even though international labor migration is a global phenomenon, there is paucity of accurate data on its scale, migratory patterns and prevalence<sup>5</sup>. In many countries, incomplete or non-existent data impedes sketching of an accurate picture of migratory structures and migration corridors. Even where such data exist, the definitions of "economic migrant", "permanent migrant", and "irregular migrant"<sup>6</sup> are not universally accepted, and the instruments used<sup>7</sup>

for data collection often differ from one country to another. Finally, data on irregular migration and illegal employment is sparse in majority of the countries.

Presently, women workers are migrating at almost the same scale as men. Amongst the migrant workers, 83.7 million are men and 66.6 million are women, corresponding to 55.7 percent and 44.3 percent of the total, respectively. Often depending on the nature of work which they undertake, women can be particularly vulnerable and discriminated when employed for work outside their own countries. However, migration can also be an empowering experience for many women when it is established under fair conditions. Over the past years a substantial increase is noticed in young, unmarried women migrating on their own to find employment abroad.

**Table 1. A Global Snapshot of Human Mobility<sup>8</sup>**

Approximately 50 percent of the 232 million international migrants globally are economically active.
72.7 percent of all migrants are of working age (15 years or older).
Migrants sent \$US 601 billion in remittances in 2015 to their home countries.
Migrants in Europe are paid 17.5 percent less than nationals for the same job.

Table 1. Adapted from the ILO Global estimates on migrant workers, Results and methodology, 2015 and ILO Global Wage Report 2014/2015.

Migrants are concentrated in certain economic sectors, such as services, domestic work, manufacturing, construction and agriculture (figure 1). In all sectors that have high participation of migrant workers, there is the need for fair and rights-based seasonal migration arrangements that benefit workers and their families<sup>9</sup>.

Concerning global distribution, a vast majority of migrant workers work in high-income countries. Almost half (48.5 percent) of migrant workers are concentrated in two broad sub-regions, North America and Northern, Southern and Western Europe. These two broad sub-regions host relatively larger proportions of female workers compared to male migrant workers. These regions together account for 45.1 percent of all male migrant workers, but a higher proportion (52.9 percent) of female migrant workers<sup>10</sup>.

<sup>3</sup> ILO Global estimates on migrant workers, Results and Methodology, 2015.

<sup>4</sup> <http://ojs.utlib.ee/index.php/TPEP/article/download/420/413/>

<sup>5</sup> <http://www.knomad.org/publication/handbook-improving-production-and-use-migration-data-development-0>

<sup>6</sup> **Economic migrants** are people who normally leave their homes and countries voluntarily to seek a better life elsewhere.

**Permanent migrants** are foreigners with, usually, regulated movements. According to IOM, there is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations.

<sup>7</sup> For e.g. population and housing censuses, household surveys, administrative records, Big Data, IOM's Displacement Matrix, etc.

<sup>8</sup> ILO, Decent Work for Migrants and Refugees, 2018. [http://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_524995/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_524995/lang--en/index.htm) (accessed 12 May 2018).

<sup>9</sup> ILO, International Labour Migration – A Rights-based Approach; 2010.

<sup>10</sup> ILO, ILO Global estimates on migrant workers, Results and methodology.



While migration is undertaken voluntarily by most migrant workers, a significant number face serious violations of their human rights, which can occur at each stage of their journey, from transportation to a different location, to working conditions at the farms and plantations and at the time of repatriation.

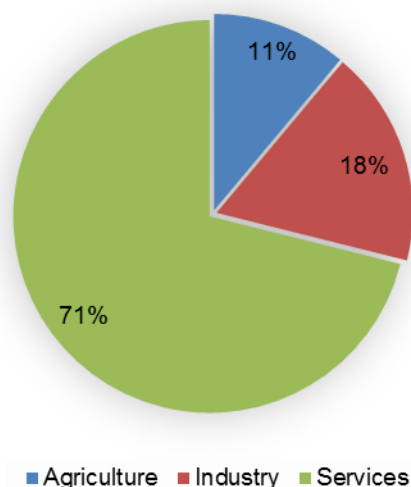
The violations may include infringement of fundamental rights at work and other labor rights violations that increase the social and financial costs of labor migration incurred by migrants<sup>11</sup>. These range from wage discrimination, gaps between wages promised and wages actually received, poor working conditions, lack of access to social protection and fair living conditions and abusive recruitment practices to – in extreme cases – bonded or forced labor and trafficking.

### 3.2. International Regulatory Frameworks and Instruments Applicable for Migrant Workers

Promotion and protection of the rights of migrant workers and their families in all parts of the world is an on-going effort at international, regional and national levels. Lack of labor protection for migrant workers undermines protection for all workers. Protections that apply to migrants are set out in core international human rights treaties and under customary international law. Additionally, ILO Conventions provide basic protections for treatment and conditions at work. These apply to all workers regardless of their migratory status.

In general, National Governments are obliged to ensure that migrants receive comparable treatment and protection as nationals of the State, but this is not always the rule and discrimination by law might be present in some countries<sup>12</sup>.

**Graph 1. Percentage of migrant workers by economic activity (2013)**



Source: ILO, *Decent Work for Migrants and Refugees*.

- **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)** is the most comprehensive international treaty on migrant workers adopted by the United Nations General Assembly (Resolution 2016) on 18 December 1990 and was enforced in July 2003. It is aimed at international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms which could be applied universally. These rights apply to both documented and non-documented migrant workers and members of their families. According to the ILO, ICMW does not create new rights but rather restates many of the rights found in the other human rights treaties and labor conventions. Furthermore, the mandate of the Special Rapporteur on the Human Rights of Migrants was created in 1999 by the Commission on Human Rights, pursuant to resolution **1999/44**. The Special Rapporteur's mandate extends to all countries, irrespective of whether a State has ratified the Convention on Migrant Workers or not.
- Complementary to the ICMW, the **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children**, which supplements the **United Nations Convention against Transnational Organized Crime** is another relevant instrument that protects migrant workers from human trafficking, including children.
- In addition to these international human rights treaties, the ILO has adopted a number of conventions that outline and protect the labor rights of migrant workers. In particular, the ILO has two major conventions specifically on the rights of migrant workers:
  - **Migration for Employment Convention, 1949 (C-97)**
  - **Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143)**
- These conventions are supplemented by two (non-binding) ILO recommendations that provide further guidance on how the rights of migrant workers can be protected in practice:

<sup>11</sup> While migrants contribute to some extent to economic development of their home countries through remittances flows back to their country of origin, they often incur extra economic costs due to their situation of vulnerability. This is mostly linked to abusive practices in the recruitment channels and living conditions facilities.

<sup>12</sup> For e.g. See <https://www.reuters.com/article/us-workers-women-health/pregnant-migrant-workers-in-asia-face-discrimination-deportation-report-idUSKBN1H211Q> and <https://www.hrw.org/news/1998/03/29/un-investigate-discrimination-against-migrant-workers-saudi-arabia>



- **Migration for Employment Recommendation (Revised), 1949 (R-86)**
- **Migrant Workers Recommendation, 1975 (R-151)**

There are a range of other instruments – including declarations, principles and guidelines – that are relevant to migrant workers and can be used to promote and protect their rights<sup>13</sup>.

<b>Table 2. Other Instruments to Protect Migrant Workers' Rights</b>
United Nations Convention against Transnational Organized Crime and its Protocols: <ul style="list-style-type: none"> <li>• Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime</li> <li>• Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime</li> </ul>
Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, Institutions and Practices Similar to Slavery
Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live <sup>14</sup>
Durban Declaration and Programme of Action <sup>15</sup>
Recommended Principles and Guidelines on Human Rights and Human Trafficking – Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council <sup>16</sup>
Resolution of the UN Commission on Human Rights on the Human Rights of Migrants (2005) <sup>17</sup>
Resolution of the UN General Assembly on Protection of Migrants (2004) <sup>18</sup>

Table 2. Other Instruments to Protect Migrant Workers' Rights.

## 4. Global Agricultural Seasonal and Migrant Labor

In this section we explore the pattern of seasonal and migrant labor in the agriculture sector. The four case studies presented here will help draw out the commonalities and context-specific differences and the involved stakeholders. Each case presents an overview of the agricultural commodity/ies and presents information on the labor recruitment process. The cases then delve into the most prominent labor and human rights violations and finally presents some country level programming that is trying to address those issues.

### 4.1. Seasonal Migratory Workers in Spain

#### 4.1.1. Country context

Spain has a long and strong agricultural tradition. The agriculture has experienced significant social, cultural and economic transformation over the past two decades, resulting largely from mechanization and innovation. In 2015, around 900.000 people (4.3 percent of the population) were employed in agriculture, contributing 2.5 percent to the GDP<sup>19</sup>. In particular, southern Spain has a great variety of agricultural areas, and human resources. Diverse patterns and labor realities exist even between bordering regions growing similar products. For example, Huelva and Almería (located in Andalusia) and Murcia, even though closely located differ with respect to crops, supplier type, recruitment and social practices.

Spain has ratified all eight core ILO Conventions; however, it has not ratified the ICMW. Spanish labor legislation allows for a certain level of precariousness in agriculture, with workers earning low wages and having a lower level of legal social protection as compared to workers in other sectors. Recent national labor law reforms (2012)<sup>20</sup> rendered workers and seasonal workers even more vulnerable and undermined their abilities to engage in social dialogue.

The main public authority dealing with social dialogue and working conditions is the Ministry of Employment and Social Security (Ministerio de Empleo y Seguridad Social) and the related Employment Sections of the

<sup>13</sup> "Migration and Human Rights – Other International Standards"; OHCHR; [www2.ohchr.org/english/issues/migration/taskforce/standards.htm](http://www2.ohchr.org/english/issues/migration/taskforce/standards.htm)

<sup>14</sup> A/RES/40/144.

<sup>15</sup> Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Durban, South Africa; 2001.

<sup>16</sup> E/2002/68/Add.1.

<sup>17</sup> E/CN.4/RES/2005/47.

<sup>18</sup> A/RES/59/194.

<sup>19</sup> Economy Weblog, "Estructura De La Economía Española Por Sectores Económicos Y Empleo (2015)", <http://economy.blogs.ie.edu/archives/2016/02/estructura-de-la-economia-espanola-por-sectores-economicosyempleo.php> (accessed 14 May 2018) and Eurostat (accessed 15 May 2018).

<sup>20</sup> Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral.



Autonomous Communities and regions. The main, national-level, labor code is the Statute of Workers' Rights that contains the rights and obligations arising from labor relationships<sup>21</sup>.

Labor relations are governed by Collective Bargaining Agreement (CBA), and negotiated between workers' and employers' representatives at regional level<sup>22</sup>. In Almería, for example, two CBAs cover farms and packinghouses; in Huelva, one CBA covers all activities; whereas in Murcia, six CBAs cover horticultural farms and packinghouses, stone fruit (fruta de Piedra), citrus and grape farms, plus a general agriculture CBA. Following the 2012 Labor Reforms, company-specific CBAs may modify – and may even lower – certain labor standards recognized in higher-level CBAs, including wages. This reform has been controversial and has given rise to strong criticism from trade unions<sup>23</sup>.

Whilst wages are set out in individual CBAs, the national Government also sets an annual SMI (Salario Mínimo Interprofesional), which is the minimum salary earned by workers for a legal number of working hours in any agricultural (or industrial or services) activity. It is illegal to hire a worker for a lower salary. In 2017, the Ministry of Employment and Social Security set the minimum wage at the following levels: i) daily minimum wage: € 23.59; ii) monthly minimum wage: € 707.60; and (c) minimum annual salary: € 9,906.40. The Council of Europe indicated in 2015 that the minimum wage for workers in the private sector, as set by the SMI mechanism, was not sufficient to secure workers a decent standard of living<sup>24</sup>.

#### 4.1.2. Labor Recruitment Process

Southern Spain is a destination and transit country for migrant workers. Andalusia employs the most number of migrant workers in the agriculture sector (90,329 in 2016)<sup>25</sup>. In Huelva, migrants represented 55.90 percent of the total agriculture workforce in 2014<sup>26</sup>. According to the State Employment Service data and for the same period, 26,851 contracts involved Spanish workers while 28,376 involved migrant workers, representing 51.38 percent of the total number of contracted workers for the period<sup>27</sup>. Migrant workers in Spain move from working on one commodity to another following production and harvesting peaks.

Temporary and seasonal work is the norm in the Spanish agricultural sector. Challenges in the implementation of labor standards for agricultural workers have contributed to this casualization and externalization of the recruitment of temporary workers through channels that vary across regions and commodities. Formal and informal intermediaries have proliferated in various regions to cope with the need to recruit temporary workers, leading to a certain degree of arbitrariness and a grey area that raises risks for the workers. Three main processes, which may have different impacts on workers' rights, are in practice to recruit temporary seasonal workers:

- Temporary employment agencies (ETTs)
- Recruitment through formal and informal labor providers
- Recruitment of migrants at the place of origin (RMO)

**Temporary Employment Agencies (ETTs):** ETTs are privately-run enterprises that employ and supply labor force to an employer (i.e., suppliers, growers) on demand. For workers, ETTs facilitate finding employment, handle all paperwork and for growers, they help fulfilling temporary peak needs in a flexible way and provide trained and reliable workers. ETTs are reported to be increasingly providing trainings for various tasks and products and are legally required to train workers in health and safety. Nevertheless, there are some inherent risks for workers recruited through ETTs:

- Lack of transparency of the recruitment process and working conditions.
- Sub-optimal transportation conditions for workers to the work sites (lack of clarity on deductions for transportation, unsafe or use of unlicensed vehicles, etc.),
- Contract informality, including deductions, verbal contracts, etc.,
- Control over compulsory breaks (or lack of breaks) between assignments,

<sup>21</sup> Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430> (accessed 24 May 2018).

<sup>22</sup> CBAs are negotiated normally every 2-3 years. Salaries and working conditions that are set out in CBAs are agreed at the relevant sector and regional level. CBAs are legally binding on all employees within the scope they cover (region, industry, or company). Further, CBAs established in different regions set wages that may vary across skilled/unskilled workers, tasks, products or the temporary/permanent condition of workers. Company-specific CBAs may also exist.

<sup>23</sup> UGT "Guía sindical para la reforma laboral", 2012.

<sup>24</sup> European Social Charter. European Committee of Social Rights. Conclusions XX-3 (2014). Spain. January 2015

<sup>25</sup> Ibid.

<sup>26</sup> Latest official data published by the SEPE- Servicio Público de Empleo Estatal. Observatorio de las Ocupaciones: "Informe del Mercado de Trabajo de los extranjeros, Huelva, Datos 2014". Available at [http://www.sepe.es/contenidos/observatorio/mercado\\_trabajo/2568-1.pdf](http://www.sepe.es/contenidos/observatorio/mercado_trabajo/2568-1.pdf). (accessed 25 April 2018).

<sup>27</sup> <http://www.juntadeandalucia.es/servicioandaluzdeempleo/web/argos/descargaInforme.do?action=downloadInforme&idInforme=434176>; Accessed 15 April 2018.



- Trade unions agree that, in the absence of a labor link with the grower, ETT systems create job insecurity and hinder worker's chances to be converted into permanent workers,
- ETT workers do not enjoy the same rights as company-employed workers (e.g., regarding union representation<sup>28</sup> or access to a permanent status) and are not part of the company, making their integration and working conditions more difficult.

**Recruitment through formal and informal labor providers:** Most temporary workers are recruited informally and paid in cash, for one or a few days, sometimes for a particular task, and picked up from settlements or gathering places. This is a cheap and flexible way to collect daily workers and, in some cases the only opportunity for irregular migrants to find a job. This practice is still in use, although it has decreased significantly over the past few years, due to robust legislation, permanently settled migrant workers, and the return of Spanish workers to agriculture, after the economic crisis.

The labor recruiters or intermediaries are informal agents, foremen and networks (*manijeros*, *enganchadores*, *capataces*, *furgoneteros*), often not registered with the government, providing temporary workers operating in several regions in Spain. These agents recruit groups of workers and sometimes also transport them to the work place. Recruitment through the informal entail a series of risks besides their "informal" status:

- Recruitment fee and transportation costs levied on the workers,
- Significant control and power over the workers given that the relationship is typically authoritarian. According to interviews with workers, trade unions and civil society, this position of power the labor intermediary holds over the workers often translates into abuse, including excessive hours of work, lack of enough rest periods and restricted access to facilities (drinking water and toilets). *Manijeros* can also be employed by growers, assuming responsibilities of worker management and productivity,
- Interviewed workers pointed that these labor intermediaries often put enormous pressure (even physical and verbal abuse) on workers to meet production and harvesting quotas, collect the harvest and load the minimum number of lorries agreed for each day.

In Huelva, the *manijero*<sup>29</sup> is a common figure, mostly in the citrus sector<sup>30</sup>. They usually have a personal link with the workers (generally of the same nationality, often being Moroccan or Eastern European). They organize worker groups provided to growers or other intermediaries. The heads of workers' groups (*cuadrillas*) in Huelva perform, for example, similar gathering and organization tasks in Murcia. Probably the highest risk situation would be that of Eastern Europe intermediaries that recruit workers in their countries of origin through gangs, and apply their countries of origin labor practices, with implies substandard practices compared to the Spanish labor law protections and exploitation. This is a rare but an existing risk in Spain.

**Recruitment of Migrants at Origin (RMO):** During the last decade, Spanish immigration policies responded to growers' demands for more workers, creating programs to recruit seasonal foreign workers through RMO. Through these programs, foreign workers are employed in a certain geographic area and sector in Spain and are required to return to their country at the end of the agreed period. Growers are guaranteed the number of workers that they need, at the right time, and that they could recruit the same workers year after year (*repetidores*), ensuring predictability and experience. A number of institutions are involved in the process: employers' associations, trade unions, NGOs and different levels of administration.

These programs are regional and tied to the local market needs (although the Central Administration approves the final numbers). Since Bulgaria, Poland and Romania joined the EU in 2014, many workers from these countries returned to their countries, leaving RMO almost exclusively to Moroccan women workers and a limited number of Latin Americans. After the Spanish economic crisis, RMO is disappearing (with some exception in Huelva) to reduce unemployment of local workers. RMO workers, although guaranteed the same labor and social rights as domestic workers, still face limitations with respect to other rights, such as the possibilities of settling permanently, obtaining a work permit in another sector, bringing their families with them, and taking advantage of family reunification. Although on decline, the RMO system guarantees an ever-available workforce in peak times when there is shortage of local workers.

Despite their higher costs (e.g., to cover travel, housing, selection process), growers often demand and prefer RMO workers for several reasons:

- Workers are officially assigned to the company that has made the employment offer (unlike local or legal migrants who can easily leave, join another employer harvesting a different product, or simply stop

<sup>28</sup> Although legally the workers committee should "look after" their interests, ETT workers are not entitled to be elected representatives, as they do not meet seniority conditions or voting rights in elections.

<sup>29</sup> The person that "manages".

<sup>30</sup> Berry picking requires skilled and preferably repetitive (called *repetidores*) or reliable workers, to avoid damaging a fragile product, and certainty, as once it is mature it is highly perishable and cannot wait to be collected. This reduces the use of more uncertain ways of recruitment, while citrus (less perishable, resistant during more time in the tree) would better allow for the use of intermediaries.





working because they have accumulated enough worked days to receive the *Plan de Empleo Rural* (PER) benefits<sup>31</sup>.

- Lodged by the employer, they provide a guarantee of 'just in time' labor,
- They are likely to be more disciplined and less challenging regarding poor labor conditions, as their status is fragile, and their rights are linked to their seasonal work, and
- As they will be in Spain for a short time, they may be willing to work the maximum number of hours and days without taking time off.

RMO systems require adherence to minimum standards and social conditions, as the accommodation, selection process and other conditions are monitored by a range of government authorities and trade unions. Still, abuses have been reported<sup>32</sup>. RMO workers are in general strongly dependent on their employer<sup>33</sup>.

#### 4.1.3. Working Conditions

The desk-based research indicates that migrant workers in Spain are most vulnerable and experience the worst poverty conditions, including the following:

**Recruitment Fee, Lack of Contracts and Informality:** Spanish law requires migrants wishing to regularize their status to be in possession of a 1-year contract. In practice, this is difficult to obtain as growers do not need workers for such a long period<sup>34</sup>. Additionally, many growers are reluctant to start the regularization process for the migrant workers, alleging that once regularized, they would leave for more pay or to other regions. According to sources consulted in Almeria, migrants are sometimes obliged to pay money to their prospective employer, allegedly to cover administrative regularization costs. Finally, the regularization processes are long. All these factors push irregular migrants towards undertaking work informally. Although short term employment affects all agriculture workers, its impact is higher for migrants<sup>35</sup>.

**Wage Discrimination and Low Wages:** In some regions, wages paid to migrants -- even when legally employed -- are often lower than for Spanish nationals engaged in equivalent work. In practice, migrant workers normally are assigned the lowest paid tasks (picking, collecting), while Spanish workers are assigned the better paid ones (application of plant health products, tractor driving or irrigating), presumably because these require special permits that in principle would be easier to obtain for a Spanish national. Although the minimum wage for farm work is € 46.72 per day, migrant workers may be regularly paid € 30-35 per day and informal ones even € 20 per day, far below the legal minimum wage. Interviewed migrants in settlements reported that they work to be able to report working days to the Spanish migration authorities, as incomes are paltry and far from a living wage. In Murcia, NGOs and trade unions report wages of € 30 per day, far below the CBA wages, while employer associations and suppliers deny that this situation is occurring.

**Excessive Working hours:** Longer working days are common amongst migrant workers, notably in Almeria, due to their uncertain labor situation and their desire to earn as much as possible in the shortest possible time. It is not uncommon for migrants to perform extra duties such as cleaning, taking care of the farm animals, once the farm work is over, especially when they are provided housing by the employers.

**Sub-standard Housing:** While housing availability and quality could also affect local Spanish seasonal workers, especially when they move across regions and commodities, lack of adequate housing is more of an issue for migrants. Reduced seasonality in Murcia and Almeria encouraged the settling of migrants, while in Huelva, a large number of workers move to agricultural areas joining the seasonal supply<sup>36</sup>. Migrant workers generally find housing near the agriculture sites. However, there are notable differences with respect to adequate housing

<sup>31</sup> The high use of temporary workers in seasonal agriculture led to the creation of a specific subsidy in Andalusia (*Subsidio Agrario y Renta Agraria*). The subsidy, commonly known as the PER, forms part of a rural development program called the *Plan de Empleo Rural*. Workers are eligible for PER, up on meeting the requirement of a number of worked days (declared to the Social Security system) and other conditions (e.g., inscription in a census, payment of monthly contributions). Paradoxically, it is easier for temporary workers to obtain the subsidy than for permanent-discontinuous (*fijo-discontinuo*; FD) workers who have fixed contract for the season, temporal or cyclic activities (and who are entitled to other social aids). Therefore, often workers in Huelva and Almeria would choose temporary contracts. Various actors agree that the subsidy scheme incentivizes temporary work and fraud. This could also explain why Spanish workers are employed in farms in Andalusia (although in low numbers) while in Murcia they are practically non-existent (as there is no subsidy).

<sup>32</sup> FIDH, "Importing workers, exporting strawberries", January 2012. <https://www.fidh.org/en/region/europe-central-asia/spain/importing-workers-exporting>. (accessed 25 April 2018).

<sup>33</sup> For 2017, growers in Huelva are demanding an increase of RMO workers, alleging that those hired in 2015-16 (2,092 Morocco women) were insufficient, leaving part of the harvest uncollected, which raises general criticism due to the high levels of unemployment in Spain.

<sup>34</sup> The *Arraigo laboral* process requires migrants also to demonstrate 3 years of residence in Spain plus 1-year contract.

<sup>35</sup> Official data from *Encuesta de Población Activa y Economía Regional de España*. Instituto Nacional de Estadística. Data from 4Q 2013.

<sup>36</sup> According to NGOs like *Almería Acoge* or *Doctors of the World*, there were approximately 100 settlements in Almeria (in 2016), where near 4,000 migrants lived, mostly, sub-Saharan Africans and Moroccan. The NGO Caritas reports that approximately 2,500 people lived in settlements in Huelva during the strawberry campaign, of which an important percentage remains the rest of the year.



between stable workers, who work in one or several combined campaigns but settle in an area with a regular employment situation, and those moving between campaigns (*temporeros*) and newcomers, with less stable legal status and/or employment.

The former, often with regular legal employment status, are commonly integrated in compatriot networks, and experience labor and housing conditions that could be considered equal to those of Spanish workers. Regarding the latter, their housing and labor conditions during the campaign is highly dependent on the growers employing them and their legal status. The situations vary across contexts, recruitment schemes and regions. Certain regions offer accommodations that are affordable and available after the construction boom and the economic crisis (for example in some villages in Almeria). In other regions, migrant networks facilitate lodging sharing. But in most cases, farms are typically located in villages where the lodging infrastructure for seasonal workers is non-existent or insufficient (due to the large number of workers that join the campaigns), renting may be prohibitively expensive, or face situations where owners refuse to rent to migrants. Hence, migrant workers are forced to find the following forms of housing:

- Facilities provided by the farmers- In these cases, workers might be subject to wage deductions, extra days of work, or the provision of accommodation may be used when bargaining for wages. The provision of accommodation often results in increased subordination or control of farmers over the workers, along with their vulnerability to various forms of abuse (e.g., sexual abuse, forced labor, monetary deductions, additional work, etc.). Further, living at farms implies physical and social isolation, limiting migrants' integration and fueling marginalization and racism<sup>37</sup>.
- Substandard, often abandoned structures close to the farms, often in ill repair and lacking basic services, for example without electricity, running water, full of debris, etc.; or
- Settlements, with the poorest living arrangements. Irregular migrant, lacking legal residence and work permit, are forced to improvise housing in these shantytowns<sup>38</sup>, often living in structures made of old boxes and plastic sheeting, that do not meet health, sanitation or safety minimums, water, electricity or appropriate access ways for vehicles, generating greater safety and security risks. Such settlements grew after the financial crisis, due to the excess of available workers<sup>39</sup>. Some administrations follow a policy to eliminate them, however without building alternative infrastructure, this results in overcrowded settlements with severe health and hygiene concerns<sup>40</sup>.

Migrants with legal status also live in them<sup>41</sup>. This is due to the irregularity of work, low wages per (intermittent) day of work, or the fact that they form a floating population that moves from one campaign to another and cannot afford better alternatives. Living in settlements is the only available option and a way to save money. Further, it improves job opportunities, as growers sometimes go to settlements to pick casual workers for one or few days during the peak season, improving chances to obtain occasional income.

**Discrimination:** Migrant workers are susceptible to discrimination at all stages of the employment relations cycle: access to employment, task distribution, type of contract, remuneration, etc. In the case of Almeria, the Labor Inspection Department reported receiving claims of racist attitudes towards migrant workers. Some employers state that they are giving migrant some form of employment and feel justified in using contemptuous language with them.

**Lack of Freedom of Association and Collective Bargaining:** Migrants face particular obstacles to exercise these fundamental rights. They face language barriers, are poorly informed of their rights, are isolated, and consider their stay in Spain provisional. Even though Spanish trade unions have special services for migrants, to some extent, migrants (especially Africans) perceive trade unions as semi-institutional entities. This gives rise to skepticism towards them, such as lack of trust or a perception that TUs are services providers or only useful to give support on administrative issues. Another key obstacle to organize migrants is the conditional link between the holding of a work contract and the migrants' legal status<sup>42</sup>.

<sup>37</sup> Important xenophobic episodes and social tension have taken place (e.g., El Ejido in 2000, Lorca, 2001).

<sup>38</sup> Although legal procedures to organize migration flows like contingents and RMO reduced the chances for irregular migrants to find employment in agriculture, settlements did not disappear, housing both migrants with no or precarious employment.

<sup>39</sup> "Huelva Agraria, los frutos rojos y los cítricos".

<sup>40</sup> The neighboring region of Jaen (known for the olive campaign) has significantly succeeded in providing housing solutions to seasonal workers through provisional solutions, including a network of hostels that are set up for temporary workers during the campaign. However, it must be noted that it attracts less numbers of workers and for shorter periods. The government of Andalusia (Migration policies department) is considering different housing solutions for Huelva and Almeria: using abandoned premises, hostels, shelters.

<sup>41</sup> According to a study by CEPAIM "Informe Asentamiento de la Urba", 2016, in the settlement of Ubasur, in Lepe, 74.06% of the residents have a valid work permit.

<sup>42</sup> The ILO Committee of Freedom of Association held that Spanish Act No. 8/2000 on the Rights and Freedoms of Foreigners violated the freedom of association rights of irregular foreign workers, recognizing the right of workers, without distinction, to establish and join organizations. This has been confirmed by the Spanish Constitutional Court (STC, 259/2007).



**Social Rights Restrictions:** More flexible labor relations adversely affect the enjoyment of other social and economic rights. For instance, the non-declaration or partial declaration of workers to the Social Security, by the employers affects migrant workers. It undermines their ability to record the number of worked days necessary to regularize the status of the migrant workers.

**Health and Safety:** Health risks need to be considered, together with other factors, in relation to the higher risks that migrants can suffer due to language barriers, the lack of understanding of safety instructions and inadequate training. These factors can also aggravate physical disorders and lead to psychological ones. Inadequate sanitation at substandard housing prevents removing chemical farming residues from the skin of workers. In Huelva, the relatively scarce workers are preferred for raspberry and blueberry picking, which involves a relatively comfortable ergonomic position is more comfortable, while strawberry picking, less comfortable, is generally assigned to migrants.

**Vulnerable Groups: Risks for Women:** In Huelva, women pre-dominantly work in the strawberry farms, creating a feminized work force and ethnic division of labor. Growers argue that women are compliant, less conflictive and have the appropriate dexterity (explained in terms of physiological differences) for strawberry picking. They prefer RMO female workers, alleging that women are more likely to return to their countries (due to family responsibilities). Recruitment criteria set in the Morocco RMO agreement require that workers be women with children, which has faced criticism on the grounds of discrimination. Men are predominately employed on citrus farms where work is harder and requires less dexterity.

Social norms of what is considered gender appropriate work are deeply rooted. Females are typically assigned lower-level, manual duties (that justify lower wages). This in turn determines differences in wage and types of contracts (more permanent for planning/administrative work; temporary, flexible, short term for manual tasks). However, women are not a homogenous group. Different origin situations (by nationality, economic status, age or cultural values) determine a different insertion of women in the labor market.

Packinghouses (where almost 100 percent of workers are female) is demonstrative of gender representations. Majority of the workers are women except in tasks that require physical strength, such as loading. This labor force is built on women qualities, such as their willingness to assume repetitive, meticulous, unskilled work, rather than on their qualifications or capacity<sup>43</sup>. Men do not apply for employment in the areas of packing or selection in the packinghouses. In cases where men and women perform equal activities, there is no evidence of gender discrimination in terms of wages or other labor rights.

Women may be sexually harassed<sup>44</sup>, mostly at production sites, given the predominance of men among employers and managers<sup>45</sup>. The asymmetry between roles and the persistence of a “macho” culture in these rural societies, fuels these kinds of abuses. A condition of vulnerability exists, and rises when women are employed at the farms, often living with male workers and in remote areas. This condition is exacerbated by the low union presence and the difficulties and social barriers for documenting the allegations of abuse.

Moroccan RMO workers raised in poverty and in rural backgrounds, with low level of literacy, with no or limited understanding of Spanish, who are provided housing by the employers, are the most vulnerable group. Migrant women, due to cultural reasons, social and physical exclusion, and fear of losing employment, are reluctant to raise their voices and seek remedy.

#### 4.1.5. Worker Feedback and Grievance Mechanisms (WFGMs)

Spanish law does not require having a WFGM to process workers' claims. CBAs only foresee the figure of the bipartite committees (*comisión paritaria*), formed by the parties to the CBAs, that sometimes are used as a complaint channel. Where WFGMs exist at corporate level, may be inadequate, with workers lacking real access to or the knowledge or confidence to use them. WFGMs are used mostly for minor requests or not used at all.

At the farm level, WFGMs such as suggestion boxes (the most common form), are not appropriate or accessible for a workforce that is highly temporary (and therefore hardly familiar with company mechanisms), physically moves from farm to farm constantly, makes little use of the company's physical premises (where the WFGMs are located), or does not understand or know about these channels. There is also a cultural barrier: speaking up about problems or using grievance channels is foreign to Spanish culture, notably within unskilled, temporary workers. The issue is also significant amongst migrant workers, who may not feel culturally comfortable with corporate WFGMs. Importantly, workers are often strongly fearful of raising grievances against employers or the labor intermediary, with whom they may have personal links.

<sup>43</sup> Ibid.

<sup>44</sup> El País, “Víctimas del oro rojo”, June 2010, [http://elpais.com/diario/2010/06/13/domingo/1276401156\\_850215.html](http://elpais.com/diario/2010/06/13/domingo/1276401156_850215.html). (accessed 24 May 2018).

<sup>45</sup> Gadea Montesinos, E., Pedreño Cánovas, A., de Castro Pericacho, C., Ramírez Melgarejo, A.J. “Almaceneras: género y trabajo en los almacenes de manipulado de fruta en la región de Murcia”, 2012.





The main WFGM remains is raising issues with the union representatives (where they exist). This is the case in all types of suppliers. Considering the frequent inappropriateness of the WFGMs, together with the low union presence at farm level, this is a serious concern for migrant workers in Spain.

## 4.2. Seasonal Workers in the Cotton Industry in Uzbekistan

### 4.2.1. Country Context

Agriculture at large and cotton in particular are important for the economy of Uzbekistan. Uzbekistan exports about 60 percent of its raw cotton to China, Bangladesh, Turkey, and Iran; generating more than US\$1 billion in annual revenue, or about a quarter of Uzbekistan's GDP, from sales of one million tons of cotton fiber.

As part of agricultural modernization -a current priority for the Uzbek Government- it carried out a process of farm consolidation that has increased the average size of farms. In Uzbekistan, agricultural land is leased to the farmers. While they can grow other commodities, most farmers have to grow cotton or wheat and meet the governmental set production quotas for either commodity as a condition of leasing land. Both crops are labor intensive. Farmers are interested in mechanizing cotton harvesting but have limited knowledge about it<sup>46</sup>. The government sets annual quotas for cotton cultivation and prices. Based on the quotas, the farmer can take out a low-interest loan (3 percent) from the government that covers the estimated costs of cotton cultivation. When a farmer meets the quota, his/her expenses are reimbursed, and it may be possible to earn a profit. If the quota is not met, the farmer will need to repay the loan from income earned from other crops or in the following year. If the quota is not met over three consecutive years, the farmers' lands may be confiscated and eventually reallocated to another farmer<sup>47</sup>. The government no longer requires all cotton to be sold to the state. A decree created a number of pilot textile clusters that permit domestic textile enterprises to order and purchase cotton directly from the farmers<sup>48</sup>. Recent consultations (June 2018) between the FLA and the ILO in Uzbekistan indicate that there would be no quotas for 2018 harvest and the farmers will be responsible for recruiting workers. This has been announced and remains to be implemented at the field level.

Various labor inputs are required throughout the cotton cultivation cycle, for which farmers typically use permanent workers and temporary workers from local villages. During springtime, farmers require some additional seasonal labor for weeding, but the major requirement for seasonal labor arises during the harvest, when farmers need an influx of workers for three "passes"<sup>49</sup> from September to November. Each pass lasts for about ten days, and with each pass, the quality and volume of cotton gathered decreases. Productivity – and, by extension, workers' earning potential – is highest during the first pass, when around 75 percent of cotton bolls are open. During the second and third pass, picking becomes more laborious, as open cotton bolls are fewer and harder to reach<sup>50</sup>.

### 4.2.2. Labor Recruitment Process

Recruitment of seasonal labor is an organized activity in Uzbekistan, coordinated by different ranks of the government. The Ministry for Agriculture and Water Resources and its local departments are responsible for setting annual harvest quotas, which provide the basis for projecting seasonal labor requirements. These harvest quotas are then distributed to province and district *hokimiyats* (local government) in August of each year. Each *hokimiyat* establishes a cotton committee (*pakhta shtab*) to organize, coordinate and monitor the harvest, including the mobilization of the necessary seasonal labor required by the farmers. *Hokimiyat* officials may face severe consequences if the assigned quota is not met. The *pakhta shtab* usually includes representatives of the *hokimiyat*, *mahalla* offices (village level administrative body), and other local organizations. Once the *pakhta shtab* is established, farmers (who also have certain government prescribed quota for cotton production) submit their requests for seasonal labor to the committee<sup>51</sup>. Each farmer has a cotton cultivation schedule, with a timeline for each activity that is approved and monitored by the *hokimiyat*<sup>52</sup>.

Almost all seasonal pickers are asked by someone with some level of authority to participate in the planned tasks. The majority of pickers are raised through three main recruitment channels:

- Heads of enterprises or organizations (including medical, educational and governmental institutions) who are usually the largest labor recruiters;

<sup>46</sup> <http://www.worldbank.org/en/country/uzbekistan/publication/social-impact-of-cotton-harvest-mechanization-in-uzbekistan>

<sup>47</sup> ILO, Recruitment practices and seasonal employment in agriculture in Uzbekistan, 2014-15 / International Labour Office, Fundamental Principles and Rights at Work Branch - Geneva: ILO, 2017.

<sup>48</sup> Decree of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to introduce modern forms of cotton-textile production".

<sup>49</sup> Seed cotton is harvested in three cycles (pass) each season.

<sup>50</sup> ILO, 2017.

<sup>51</sup> Ibid.

<sup>52</sup> Swinkels, Romanova, and Kochkin, 2016.



- Representatives of mahallas (neighborhood or community councils), who usually mobilize local unemployed persons, women and other community members; and
- Farmers or their representatives.

Seasonal labor activities involve the participation of non-agricultural workers including students, teachers, doctors, medical staff, public sector and private sector employees. The largest category of seasonal workers is the economically inactive population (excluding students). These are mainly women who are responsible for household or work on family farms or are retired<sup>53</sup>.

Around 3.2 million seasonal pickers are involved in the Uzbek cotton harvest annually. Nearly 25 percent of the total population aged 18 to 50 years participates in the cotton harvest. Most pickers are from the rural areas working in their own community or sometimes in the neighboring region. Some pickers are recruited from the urban areas but not in each year. In some locations, such as Jizzak, local communities provide only 35-70 percent of cotton pickers in a district, and the rest are brought in from elsewhere<sup>54</sup>. The process of recruiting non-local workers is coordinated by the *pakhta shtab*. This committee approaches organizations located outside their immediate area to ask them to recruit cotton pickers. The *pakhta shtab* then organizes these workers into brigades and helps arrange their transportation to the fields and accommodation.

#### 4.2.3. Working Conditions

A lot has been documented about the working conditions in the Uzbek cotton industry and specifically on the issue of forced labor.

**Forced Labor:** The cotton production quota imposed by the government on the farmers presents a forced labor situation for both farmers and cotton pickers. Even though the farmer may have a guaranteed selling option, the production and selling of cotton may not always be a financially sound option for them. Reports have suggested that in some case the cotton farmers have to subsidize the cost of cotton production with other crops. This is primarily due to the government set deflated cotton prices at which the government buys cotton from the farmers<sup>55</sup>.

The ILO defines the seasonal workers in Uzbekistan into three categories:

Table 3. Seasonal Workers Categories in Uzbekistan	
▪	Voluntary: those who participated willingly without being subject to pressure or coercion (66 percent)
▪	Reluctant: those who participated because they did not want to damage positive relationships with others ("social pressure") (20 percent)
▪	Involuntary: those who participated primarily in response to a perceived risk of dismissal, wage reduction, expulsion from educational institution, loss of scholarship, or harassment by authorities; or inability to pay for a worker to replace them (14 percent)

Table 3. Source: 2017 ILO Research on recruitment practices and seasonal employment in agriculture in Uzbekistan

The "involuntary" category aligns with the definition of forced labor in the ILO Convention on Forced Labor (C29)<sup>56</sup>. The majority of workers who participate in the harvest on a voluntary basis (around 66 percent in 2015) do so to increase their incomes, especially rural women. Colleges and enterprises were the most significant recruitment mechanism for involuntary workers in 2014 and 2015. There are individual reports that educational institutions threatened to expel students who did not participate in the harvest or required students to sign statements indicating their "voluntary" participation in the harvest. In 2015, involuntary pickers were more likely to come from urban areas and to be recruited later in the season<sup>57</sup>. Farmers with cotton fields that are far from densely populated areas (50-120 km) have difficulty attracting villagers to pick cotton, also because their yields tend to be low. The risk of state-mobilized and involuntary labor may be highest here<sup>58</sup>.

In 2016, the Uzbek government prohibited the mobilization of teachers and doctors in the harvest. Nevertheless, such mobilizations continued. Independent reports suggested that the forced mobilization of adult state workers increased to compensate for the loss of underage workers. Authorities continued to force many teachers and school administrators to participate in the harvest, as either supervisors or cotton pickers, leading to some facilities closing or cancelling classes in certain regions due to staff shortages. Similar conditions prevailed in the health sector. Hospitals and clinics were understaffed and the loss of public-sector workers during the harvest adversely affected communities<sup>59</sup>.

<sup>53</sup> ILO, 2017.

<sup>54</sup> Swinkels, Romanova, and Kochkin, 2016.

<sup>55</sup> [http://www.cottoncampaign.org/uploads/3/9/4/7/39474145/shtaltovnahornidge\\_kazuzb\\_farmers\\_study\\_2014.pdf](http://www.cottoncampaign.org/uploads/3/9/4/7/39474145/shtaltovnahornidge_kazuzb_farmers_study_2014.pdf)

<sup>56</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029)

<sup>57</sup> ILO, 2017.

<sup>58</sup> Swinkels, Romanova, and Kochkin, 2016.

<sup>59</sup> US Embassy in Uzbekistan, 2016.



Human Rights Watch and the Uzbek-German Forum documented forced and child labor in a World Bank project area and systematic forced labor throughout the Uzbek cotton sector in 2015 and 2016<sup>60</sup>. According to HRW, older children and adults were forced to work from early September until the beginning of November in the cotton fields. Regional authorities, police, and school administrators transported children and adults by bus to the cotton fields; those far from their homes were assigned temporary housing. The workers picked cotton for weeks at a time and were not free to leave<sup>61</sup>. Nevertheless since 2013, the ILO and the World Bank have been supporting national monitoring and third-party monitoring. In particular, the World Bank contracted the ILO to monitor forced and child labor in 2015 and 2016. The World Bank also undertook to support the creation of a grievance redress mechanism through which people could anonymously report evidence of forced labor related to Bank projects.

**Under-Age Workers:** Over the past ten years, Uzbekistan has made some progress in reducing child number. This is given the number of international campaigns<sup>62</sup> and the actual or threat of international sanctions. As a result of recent changes, the presence of young children is a localized or individual occurrence rather than nationwide mobilization. Nevertheless, continued vigilance is recommended by international agencies to monitor this progress, especially amongst the 15 – 17-year-old. According to the HRW, to compensate for the loss of younger children in 2012, the government forced larger numbers of adults and older children, ages 15-17, to work in the harvest<sup>63</sup>. Some university students were sent to pick cotton for as long as eight weeks, during which time they stayed in tented work camps or schools near the fields. Some activists attempting to monitor living conditions for student workers in these areas reported interference by law enforcement officials, including through physical abuse.

According to the US Department of Labor, despite formal directives, national prohibitions on child labor continued to be implemented inconsistently at the local level. Although, there was no evidence of centrally-coordinated forced mobilization of children, local officials mobilized children to pick cotton in the region of Khorezm and the Republic of Karakalpakstan<sup>64</sup>.

**Working Hours:** From 2014 to 2015, there is a decrease in the proportion of seasonal workers who worked more than eight hours per day, on average has been reported. Though, there is an increase in the proportion of reluctant and involuntary workers who worked more than eight hours a day on the third pass. The main reason that pickers worked more than eight hours a day was to increase their income, but there was an increase in 2015 in the proportion of some categories who said that they also did so in response to instructions<sup>65</sup>.

**Compensation:** In 2016 adults were expected to pick 120 to 154 pounds (an avg. of 60 kilograms) of cotton boll per day, resulting in a daily wage between 15,400 - 18,200 som (\$4.72 to \$5.57). Local cotton pickers prefer manual picking because the payment is made regularly and in cash – a significant advantage over other daily agricultural wage activities<sup>66</sup>.

**Health and Safety:** Working conditions vary greatly by region and farm. There are several reports of inadequate food and lodging. According to the law, health and safety standards should be applied in all sectors. The law remains not enforced in the informal economy<sup>67</sup>.

According to a report published in 2016, workers live in filthy and sub-optimal conditions, contract illnesses, suffer serious injuries, and work from early morning until evening. Health and safety measures are seldom implemented. The daily harvest quota for all the workers is the same irrespective of their physical capabilities, with younger children required to meet slightly lower quotas<sup>68</sup>.

**Discrimination:** Discrimination is legally prohibited in employment. However, no reliable data on employment or working conditions related discrimination exists to make any informed assessment of the situation. Enforcement of employment law is weak, primarily due to insufficient labor inspection and endemic corruption<sup>69</sup>. Foreign migrant workers enjoy the same legal protections as Uzbek workers as long as their employers follow all legal procedures for their employment.

**Lack of Contracts and Lack of Clarity on Employer:** Very few workers have written contracts<sup>70</sup>. Within the given recruitment structure, the ultimate responsible party for the workers welfare is unclear especially for safe

<sup>60</sup> HRW, We can't refuse picking cotton: Forced and child labour linked to the World Bank Investment's in Uzbekistan, 27 June 2017.

<sup>61</sup> HRW, Uzbekistan: Forced labour widespread in cotton harvest. January, 2013.

<sup>62</sup> For more information see: [www.cottoncampaign.org](http://www.cottoncampaign.org) and [www.sourcingnetwork.org/the-cotton-pledge](http://www.sourcingnetwork.org/the-cotton-pledge).

<sup>63</sup> HRW, Uzbekistan: Forced labour widespread in cotton harvest. January, 2013.

<sup>64</sup> US Dept. of Labour, Child Labour and Forced Labour Reports: Uzbekistan, 2016.

<sup>65</sup> ILO, 2017.

<sup>66</sup> US Embassy in Uzbekistan, 2016 Country Reports on Human Rights Practices: Uzbekistan, 2016.

<sup>67</sup> Ibid,

<sup>68</sup> Ibid.

<sup>69</sup> US Embassy in Uzbekistan, 2016.

<sup>70</sup> ILO, 2017.



transportation, living conditions and working conditions. While the cotton committee (*pakhta shtab*) and the local administration (*mahalla*) is responsible for recruitment, people nominated by the *pakhta shtab* acts as supervisors in the farms for the brigade of workers. Farmer is partly responsible for food and lodging as the local administration instructs the local schools or other institutions to provide housing to the workers.<sup>71</sup>

**Gender Issues:** Rural women, who are otherwise economically inactive and seek cash incomes, make-up the bulk of cotton pickers, as there are limited alternatives for income generation for women in rural areas. Women represent nearly three quarters of the seasonal workforce during harvest. The law does not explicitly prohibit sexual harassment, but it is illegal for a male supervisor to coerce a woman who has a business or financial dependency, into a sexual relationship. Social norms, lack of reporting, and lack of legal recourse makes it difficult to determine the scope of the problem<sup>72</sup>. Numerous cases were reported where local authorities threatened young mothers that their child benefits would be curtailed if they refused to pick cotton. There are alleged complaints about pregnant women forced to pick cotton and at least one report of an abortion due to strenuous work<sup>73</sup>. As a consequence of this incident, the district authorities suspended sending pregnant women to the fields, including those who were only 1-2 months pregnant.

**Freedom of Association and Collective Bargaining:** The law protects the right of workers to form and join independent unions and bargain collectively. The law neither provides for nor prohibits the right to strike. The law on trade unions state that workers cannot be fired due to trade union membership, but it does not clearly state whether workers fired for union activity must be reinstated. Workers generally do not exercise their right to form and join independent unions due to fear that attempts to create alternative unions would be quickly repressed. There are no independent unions, as the existing unions are all dependent on the government. Therefore, unions are government-organized institutions with little bargaining power aside from some influence on health and work safety issues<sup>74</sup>.

#### 4.2.4 Worker Feedback and Grievance Mechanisms

There are two formal feedback mechanisms, administered by the Ministry of Labour and Social Protection (MOL) and the Federation of Trade Unions of Uzbekistan (FTUU), respectively, that provide workers with an avenue to report problems and request assistance, with a particular focus on child and forced labor during the cotton harvest<sup>75</sup>.

According to the ILO, from September to October 2016, there were 1902 requests to the FTUU, of which 85 complaints/requests related directly to cotton picking. Six cases of child labor were confirmed, two cases were recognized as presenting risks of forced labor, and others referred to sub-standard working conditions. The MOL's feedback mechanism received 3,919 inquiries during the cotton harvest: 30 were registered as grievances, of which two related to child labor and three to forced labor. An additional five infringements related to child labor and nine related to forced labor were identified by labor inspectors<sup>76</sup>.

According to the US Department of Labor, in 2016, the Government of Uzbekistan took steps to improve the feedback mechanisms, nevertheless public confidence in these mechanisms remained low, and some users reported retaliation for filing complaints. Members of civil society who attempted to conduct independent monitoring of child labor in the cotton harvest reported experiencing harassment by the local authorities. A Presidential Decree was issued in October 2016 prohibiting unannounced inspections in private businesses, including labor inspections<sup>77</sup>.

Additionally, in 2016 the President's office established a free phone call and online compliant box where anyone can register their complaints<sup>78</sup>. While some consider this to be one of the most effective channels but the sheer

<sup>71</sup> ILO, 2017

<sup>72</sup> Ibid.

<sup>73</sup> Uzbekistan Service of Radio Liberty.

<sup>74</sup> ILO, 2017.

<sup>75</sup> During the 2015 and 2016 harvests, the MOL and the FTUU conducted a nationwide public awareness raising program, disseminating messages regarding child and forced labor across the country, via banners, posters, leaflets, radio, SMS texts and television notices. In 2014, the Uzbek Government, its social partners and the ILO signed the first Decent Work Country Programme (DWCP), extended in 2017. One of the DWCP's priorities is to ensure that conditions of work and employment in agriculture, including in the cotton sector, conform with international labor standards. An important starting point for the ILO's work program with its Uzbek partners was to establish an in-depth research program on recruitment and seasonal employment in cotton cultivation. ILO disseminated guidelines on the implementation of international labor standards to ministries, government departments, employees of higher and secondary education institutions, public health institutions, local authorities and youth and women's groups. Overall, 312 workshops were conducted, covering 73,040 individuals from government authorities, educational and medical institutions, and students. The ILO arranged training seminars for more than 40 professionals from ministries, law enforcement agencies and NGOs, and the International Trade Union Confederation arranged seminars for staff involved in the Feedback Mechanism.

<sup>76</sup> ILO 2017

<sup>77</sup> US Dept. of Labor, Child Labour and Forced Labor Reports: Uzbekistan, 2016.

<sup>78</sup> <https://www.rferl.org/a/uzbekistan-mirziyaev-hotline-problems/28110929.html>



number and variety of complaints received also require designating large number of people who could follow up and resolve complaints.

### 4.3. Migrant Workers in the Palm Oil Sector in Malaysia

#### 4.3.1. Country Context

Malaysia has achieved significant economic growth in the last decades, bolstered by oil revenues, foreign direct investment targeted at the manufacturing sector, presence of cheap labor and high global demand for its commodities, notably the palm oil<sup>79</sup>. The palm industry has grown dramatically since the 1990s. Malaysia currently produces 39 percent world's palm oil and is responsible for 44 percent of world exports. As the country's top export commodity, the government promotes it as a "leading contributor to the alleviation of poverty and social development"<sup>80</sup>.

The palm oil industry in Malaysia is labor intensive. Palm is grown by both small holder farmers and in large plantations. Palm plantations demand a large workforce for the three stages of operation: planting, harvesting and renewal of trees. This workforce is mostly composed of foreign migrant workers, who began to arrive in the 1970s, when the industry faced labor shortages. By regions, peninsular Malaysia's plantations employ the highest numbers of migrant workers.

Malaysian palm oil is on the latest (2016) U.S. Department of Labor's "List of Goods Produced by Child Labor or Forced Labor"<sup>81</sup> and has been on it since 2009. Similarly, in 2014, the U.S. State Department's Annual Trafficking in Persons report gave Malaysia the lowest rating; in 2017, Malaysia was upgraded to the Tier 2 level due to government efforts, although there is wide agreement among trafficking experts that the abuses continue. The Malaysian palm oil supply chain is complex and involves multiple actors (growers, mills, refineries, etc.) and many small-holder units. Most of the efforts undertaken so far to eliminate abuses have not integrated all the actors in the supply chain.

The Government of Malaysia is making efforts to eliminate human trafficking, by expanding investigations, prosecutions, and convictions, strengthening law enforcement, prohibiting passport retention, and approving a National Action Plan 2016-2020. A special court is being developed to specifically target the rising number of trafficking in persons cases, while the government has called for greater commitment from source countries to tackle human trafficking issue<sup>82</sup>.

Nevertheless, despite bilateral agreements with certain neighboring countries in order to facilitate legal avenues for migration and recruitment, the opportunities for safe migration for low-skilled migrants remain inadequate<sup>83</sup>. Furthermore, despite heightened recognition of trafficking for labor exploitation, efforts concentrate on trafficking of women and children for sexual exploitation. Human Rights Watch's report of 2017 states that the Malaysian government has failed to effectively implement amendments passed in 2014 to Malaysia's 2007 anti-trafficking law, in particular by taking the necessary administrative steps to provide assistance and work authorization to all trafficking victims who desire it, while ensuring their freedom of movement<sup>84</sup>.

The Malaysian legal framework remains inadequate especially for migrant workers. The country has not ratified two ILO Conventions on Migrant Workers (Convention 97 and Convention 143); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Domestic Workers Convention (No. 189) and the Protocol of 2014 to the ILO Forced Labour Convention, 1930. Moreover, the immigration laws of the three key Malaysian plantation areas -- peninsular Malaysia, Sabah and Sarawak -- differ. Each region requires different conditions towards the approval of work permits for migrant workers, even differentiating the countries of origin from which workers are allowed, hampering united action<sup>85</sup>.

The lack of records and public information also prevents improvement and fight against poor working conditions, as the official reports show no statistics on workplace inspections to ensure that worker's rights are not being

<sup>79</sup> Accessed from the Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, June 15, 2015, A/HRC/29/38/Add.

<sup>80</sup> Malaysian Palm Oil Council, a government agency responsible for palm oil promotion.

<sup>81</sup> [https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labour/findings/TVPRA\\_Report2016.pdf](https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labour/findings/TVPRA_Report2016.pdf). (accessed 15 May 2018).

<sup>82</sup> The Straigh Times, "Malaysia calls for greater commitment from source countries to tackle human trafficking issue", 16 April 2018. Available at <https://www.nst.com.my/news/nation/2018/04/362099/malaysia-calls-greater-commitment-source-countries-tackle-human>

<sup>83</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children. Ut supra

<sup>84</sup> Human Rights Watch "Malaysia: Events of 2017". Available at <https://www.hrw.org/world-report/2018/country-chapters/malaysia> (accessed 27 June 2018).

<sup>85</sup> Accessed from an internal Fair Labor Association Report on Forced Labor issues in the Palm Oil Sector in Malaysia and Indonesia.





breached, except statistics on occupational health and safety<sup>86</sup>. Finally, the remoteness and size of the palm oil plantations prevent government inspections from being effective in tackling abuses.

The situation of migrant workers in Malaysia is difficult because Malaysian law ties migrants' work permits to a specific employer or sponsor, making workers dependent on them for their legal status, and thus, vulnerable to exploitation. This sponsorship makes it extremely difficult for workers to change jobs (which would require changing the sponsor), or leave them (as the work permits are discretionary renewed yearly by the sponsors). Cases have been reported of sponsors, possibly deliberately, failing to pay processing fees and securing work permits<sup>87</sup>.

Most recently, in an effort of the government to liberalize the migrant labor recruitment market by empowering intermediaries, outsourcing companies have been legally authorized to sponsor migrant workers, as opposed to the employers themselves having to do so. These agents can (i) be responsible for recruiting workers and "placing" them with employers, not sponsoring work permits (and leaving employers responsible for the workers. There are known as **Private Employment Agencies**; or (ii) manage and employ the migrant workers, sponsor and lease them to employers, in which case, employers are not legally responsible for these workers. These are called **Outsourcing Agencies**<sup>88</sup>. Following the 2012 amendment to the Employment Act,<sup>89</sup> a large number of traditional PEAs sought licenses to act as Outsourcing Agencies as well. As of 2014, there were 241 licensed Outsourcing Agencies in Malaysia. Most agencies offer labor demanding parties a choice from three services, namely, (1) Recruit and supply (Recruitment Consultancy); (2) Recruit, supply and manage (Total Management), and (3) Recruit, supply, employ, and manage (Outsourcing). The first can be undertaken by either a PEA or an out sourcing agent; the third, only by Outsourcing Agents.

This has brought a certain level of precariousness in the labor recruitment process as these private employment agencies or the outsourcing agencies are not monitored for ethical recruitment process. According to Amnesty International, this approach of introducing policies to liberalize the migrant labor recruitment market by empowering labor supply intermediaries, has instigated the blurring of employment relations in that recruitment agencies can increasingly also act, by law or if such basis is unclear, in practice, as a direct employer and made it more difficult to hold parties accountable for human rights violations<sup>90</sup>.

Businesses seem to be increasingly having strategies to tackle human and labor rights breaches in the plantations<sup>91</sup>. However, controlling whether workers have paid fees to brokers to get a job in their plantations (or those of their suppliers), and ending forced labor and trafficking and other abuses of migrant workers in Malaysia, remains widely uncommon. Two voluntary certifications schemes - the Roundtable for Sustainable Palm Oil – RSPO; and the International Sustainability and Carbon Certification (ISCC), implement certification schemes that comprise social audits, but have fallen short in preventing and identifying labor rights violations in the certified plantations<sup>92</sup>.

#### 4.3.2. Labor Recruitment Process

Malaysia's palm oil sector depends heavily on foreign migrant workers. There is an influx of migrants from neighboring countries (Indonesia, Nepal, Bangladesh, Burma, Philippines, Vietnam, India, Cambodia, and Thailand). It is estimated that about 70 percent of the workforce is Indonesian, with workers drawn by the possibility to earn higher wages. These workers are generally low- and semi-skilled. They come from poor regions with few job opportunities. The workers migrate mostly leaving their families behind. Often, migrants are forced to sell their belongings or spend all of their family savings to afford the cost of migration<sup>93</sup>.

Many workers cross borders on their own to enter Malaysia and some are directly employed by the plantations. But in most cases, the passage to Malaysia is done through smugglers, networks, traffickers and brokers. Many workers find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers (including recruitment agencies) associated with their journey when promises of well-paying employment turn into exploitative situations<sup>94</sup>.

<sup>86</sup> According to ITUC-CSI, the Human Resources Ministry quarterly report 3/2017 September (Malaysian Employment and Labour Statistics) shows there are no statistics on workplace inspections to ensure that worker and trade union rights are not being violated. Similarly there are no statistics to record the investigation and prosecution of employers who have violated labour laws and fundamental worker rights, or about information or complaints received or about employers found guilty. The only available labour statistics concern occupational health and safety

<sup>87</sup> Amnesty International, 'Trapped: The Exploitation of Migrant Workers in Malaysia'.

[http://www.amnesty.org.au/images/uploads/ref/trapped-migrant\\_workers\\_in\\_malaysia.pdf](http://www.amnesty.org.au/images/uploads/ref/trapped-migrant_workers_in_malaysia.pdf). (Accessed 14 May 2018).

<sup>88</sup> Asian Migrant Center, Malaysia.

<sup>89</sup> Verite, 'Forced Labour', referred in Asian Migrant Center, Malaysia. Ut Supra.

<sup>90</sup> Amnesty International, "Trapped". Ut Supra

<sup>91</sup> For example, see <https://www.neste.com/nestes-human-rights-program-making-gradual-impacts-labor-issues-within-palm-oil-industry> or <https://www.business-humanrights.org/en/ioi-group>

<sup>92</sup> <https://eia-international.org/report/who-watches-the-watchmen>

<sup>93</sup> FLA's internal report on the Palm Oil Sector in Indonesia and Malaysia.

<sup>94</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children. Ut supra



The use of labor recruiters inevitably creates power imbalances between the workers, on one hand, and recruiters and employers on another hand, increasing the risk of violating workers' rights, providing ample room for widespread trafficking for labor exploitation. Labor intermediaries make enormous profit from connecting migrant workers to jobs.

The breaches of migrants' rights often start at the origin towns. Sometimes, the recruiters are part of the worker's family or village, and are known from the rural communities. Recruiters lure prospective workers with false promises of legitimate work and charge them a fee for finding a job and for transportation. The recruitment fees may vary depending on the nationality of the worker, with, for example documented cases of Bangladeshi workers having paid significantly more for their jobs than Indonesians or Indians<sup>95</sup>.

**Box 3: Variations in the recruitment fees paid to recruiters (Finnwatch, 2016)**

Indonesia - € 342  
Bangladesh - € 2188  
India - € 121-1206  
Nepal - € 588-1010  
Myanmar - € 395

Thus, a significant number of the migrant workers start the job indebted to the agents. This can lead to situations of debt bondage and thus, forced labor. Many migrants borrow money from future employers in order to be able to get the jobs and pay for recruitment fees. When bonded to their employers from loans or to cover their accommodation or food, entire families, including children, may be forced to work long hours in poor conditions to pay off debts<sup>96</sup>.

Regarding the journey, cases have been reported of armed men threatening and beating migrant workers, not providing food and water during the boat journeys, which are dangerous with reported deaths. Even formally established migration channels are prone to corruption, and recruiters approved by authorities often use unapproved subcontractors. There have been reports of police and maritime enforcement officers being implicated in or turning a blind eye to trafficking in persons. Further, the process is long and onerous, thus conducive to labor exploitation and the use of irregular channels. Despite the seriousness of the abuses committed during the recruitment process, most of the actions to monitor social abuses are focused in the ill treatment experienced by the migrant workers once they are in the plantations, so the former are left out of the radar<sup>97</sup>.

Many workers face deception about the type and conditions of employment. Once in Malaysia, many workers are hired without any kind of written contract. The scale of undocumented migration working in Malaysian palm plantations is difficult to determine, although the numbers are likely to be similar to those of documented migrants. A 2013 World Bank report estimated that the total number of migrants in the nation was somewhere between 2-4 million, of which 1.817 million were documented<sup>98</sup>. The undocumented migrant workers are those more vulnerable to abuse, and particularly to trafficking.

Migrant workers in the Malaysian palm oil plantations are predominantly men, usually below 40 years, as the job is a physically demanding. Fewer women are employed usually in tasks such as distributing pesticides and herbicides. Thus, gender discrimination is systematic during the worker recruitment process and deepens gender divisions, leading women to subordinated positions. The tasks are divided between local and migrant workers. While local workers are employed in harvesting, driving and administration, migrants are employed as harvesters, fruit collectors (the two most labor intensive categories), and other tasks that local workers reject due to the tough working conditions and low wages.

#### 4.3.3. Working Conditions

Malaysia faces challenges as a destination country for migrant workers, as well as a transit and source country for migrants subjected to human trafficking. Civil society groups have documented extensive allegations of serious abuses as presented below.

**Trafficking and Forced Labor:** Large scale force labor and human trafficking are reported in in Malaysia and the palm oil sector. Some of the indicators mentioned are recruitment through fraud and deception about the type and conditions of employment, dependency on employers for work permits, debt bondage, withholding of passports<sup>99</sup>, etc. In addition, there is breach of contract, lack of workers' understanding of their rights is poor and too often their employment contracts are written in a foreign language, excessive recruitment and immigration fees,

<sup>95</sup> Finnwatch, Working conditions at the IOI Group's oil palm estates in Malaysia: a follow-up study, May 2016.

<sup>96</sup> Worldvision. "Forced, child and trafficked labour in the Palm Oil industry". Available at <https://campaign.worldvision.com.au/wp-content/uploads/2013/04/Forced-child-and-trafficked-labour-in-the-palm-oil-industry-fact-sheet.pdf> (accessed 15 May 2018).

<sup>97</sup> <http://www.mtuc.org.my/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations/>

<sup>98</sup> Asian Migrant Center, Malaysia, <https://www.asianmigrantcentre.org/malaysia#> (accessed 15 May 2018).

<sup>99</sup> The migration scheme has also given rise to widespread situations of withholding of identity documents by employers, arguably so that these can renew workers' visas on their behalf, or for safety and security reasons. The withholding of passports increases workers' vulnerability and employers control over them. The practice is common despite being illegal under Malaysian law (actually, the authorities would process a worker's documentation for registration during three months, after which, the documentation is returned to the worker).



excessive working hours and lack of rest days, reduction or non-payment of salary and use of family members to fulfill the daily production quota or coercive practices, such as violence or threats of denunciation to Malaysian immigration authorities<sup>100</sup>. One indicator may not point towards forced labor but if these indicators are evaluated together they conclusively point towards forced labor.

**Compensation:** The legal minimum wage varies across different palm oil regions in Malaysia. Wages of palm oil workers are normally performance-based, with widespread cases of payment below the minimum statutory wages, especially outside of the oil palm harvesting season. The minimum wage in Malaysia's palm oil industry has become the industry's average pay. In practice, increasing incomes requires workers to work longer hours or more days or working faster to earn extra compensation for achievements.

Given migrant workers' limited knowledge of the laws and understanding of their own contracts, misunderstandings and ambiguities concerning wage payment are common, taken to a higher level by the fact that often workers are not given pay slips. Wage manipulation results in underpayment, arbitrary reductions, wage theft and even the withholding of wages entirely. Other reported cases of violations regarding wages are the lack of payment on rainy days to the workers in charge of applying pesticides (which are not applied when it is raining).

When migrant workers have incurred debts with recruiters or employers, it can take them years to repay the debts, incurring in chronic indebtedness. The obligation to repay the debts leads migrant workers to accept most unacceptable conditions to guarantee an income.

**Under-age Workers:** An additional issue is that of stateless children, born to migrants with no documents to prove their nationality, or lack the legal status of migrants, being prevented from accessing government services, including health and education. Undocumented children are in the greatest danger of being forced to work on plantations. Child labor has also been reported in palm plantations in Sabah and Sarawak, mainly due to the high harvesting quotas imposed by the plantations on parents who would have brought their families with them to Malaysia<sup>101</sup>. The high productivity targets, and the inability to meet them, leads children to help their parents in order to achieve the quotas, working invisibly and without contract or insurance.

**Isolation and Poor Social Support System:** Large-scale palm plantations provide housing, healthcare, food and social services such as schools for the children of the workers. In certain cases, this is a legal obligation for the employer, as sponsors are responsible for this provision<sup>102</sup>. In practice, and most typically on large-scale plantations, migrant workers are provided with accommodation in huts in remote plantations in isolated rural areas, far from cities. With no available transportation, they are obliged to buy supplies from contractors, who often set artificially high prices, putting the workers partially in debt. Likewise, the accommodations provided are often in poor condition, without access to clean water, electricity, and basic facilities. Migrants are further isolated by a lack of social support, cultural barriers and discrimination. There have been reports of workers being forced into camps near plantations, which are locked at night and guarded by security, with workers finding themselves trapped<sup>103</sup>.

**Health and Safety:** The work in the plantations is challenging and physically strenuous. Palm fruit grows on trees as high as 65 feet high that can weigh 15-25 kilograms. Workers saw off fruit bunches and lift the heavy clumps of fruit onto trucks. This leads to ergonomic problems related to heavy lifting and physically demanding working positions. Most workers do not use adequate equipment or protection and suffer cuts, scratches and abrasions. High temperature and long hours increase the risks. Some workers (especially women) are employed in handling pesticides without adequate training or equipment, and apply substances restricted in certain countries due to their toxicity, leading to skin irritation, difficulty in breathing and other symptoms<sup>104</sup>.

**Freedom of Association and Collective Bargaining:** ITUC classifies Malaysia as experiencing systematic violations of collective rights. Freedom of association remains a major hurdle. The government still has not adopted the ILO Core Convention (No. 87) guaranteeing freedom of association. For example, there is only one trade union in Peninsular Malaysia that represents workers in the plantation (estate) sector, the National Union of Plantation Workers (NUPW), which remains a timid organization that faces practical operational obstacles. In addition, in the East (Borneo) region of Malaysia there is absence of local trade unions and the NUPW does not

<sup>100</sup> The poor conditions have led to a trend of migrant workers escaping their workplaces before their contracts were completed. However, there are several barriers to early termination, trapping the workers in their employment circumstances, such as the loss of wages, insurance, or their passports, and most importantly the fear to be denounced to the authorities. Working in Malaysia in an undocumented status is a source of stress for migrant workers, who fear detention and deportation as well as intimidation and abuse.

<sup>101</sup> Unicef, Status Report on Children Right's in Malaysia. available at:

[http://www.unicef.org/malaysia/Child\\_Rights\\_Coalition\\_Report\\_on\\_Childrens\\_Rights\\_FINAL.pdf](http://www.unicef.org/malaysia/Child_Rights_Coalition_Report_on_Childrens_Rights_FINAL.pdf). (accessed 25 May 2018).

<sup>102</sup> Amnesty International, 'Trapped: The Exploitation of Migrant Workers in Malaysia'

<sup>103</sup> Worldvision: "Forced, child and trafficked labour in the Palm Oil industry". Ut Supra.

<sup>104</sup> Stiftung Asienhaus, "Workers in the palm oil industry", 2016, available at

[https://www.asienhaus.de/archiv/user\\_upload/Palm\\_Oil\\_Workers\\_Exploitation\\_\\_Resistance\\_and\\_Transnational\\_Solidarity.pdf](https://www.asienhaus.de/archiv/user_upload/Palm_Oil_Workers_Exploitation__Resistance_and_Transnational_Solidarity.pdf). (accessed 15 May 2018).





represent workers there. Freedom of association and collective bargaining are widely restricted for palm oil migrant workers, who are authorized to join union but cannot hold office. Illiteracy, language barriers or lack of information largely prevent migrant workers from joining unions, which leaves them with limited or no bargaining power vis à vis employers. Additionally, the use of recruiters serves as a way of limiting workers unionization. Finally, although illegal, it is common for contracts to contain prohibitions on workers joining unions and participating in union activities<sup>105</sup>.

For migrant workers, exercising collective rights is more difficult due to high worker turnover and their vulnerable position, that makes their being fired easier. This acts as a deterrent for migrant workers to join unions and simultaneously impedes their representation within palm plantations<sup>106</sup>. Migrant workers trying to organize and join trade unions are usually punished, dismissed or transferred to another plantation. It is also not unusual for employers to revoke work permits when the workers are known to be active in labor organizing.

**Discrimination:** Migrant workers suffer discrimination in the process of requesting (and renewing) work permits in Malaysia, being subject to a mandatory health checks in which they will be disqualified if any of the set medical conditions are detected (including HIV seropositive status and pregnancy). The approach of Malaysia to migration relies on the criminalization of irregular migrants. This criminalization makes their situation in the country more arduous and increases their vulnerability to becoming victims of trafficking. There is a danger that trafficking victims may be misidentified as irregular migrants, resulting in their detention and deportation<sup>107</sup>. Finally, there are widespread unfair negative stereotypes on migrant workers within Malaysian society<sup>108</sup>.

#### 4.3.4. Worker Feedback and Grievance Mechanisms

Migrants still work without adequate protections, stemming from both weak enforcement of laws and an outdated patchwork of labor laws dating from the 1950s and 1960s<sup>109</sup>. Civil society reports that migrant workers usually do not have access to grievance mechanisms, and that they cannot join unions<sup>110</sup>.

For the migrant workers there are several types of existing grievance mechanisms, however if they are widely known or if they are culturally sensitive, accessible, remains a question. The first level of grievance mechanism is the business or company operated systems, that is reported to receive the most grievances from the workers. The second available mechanism is operated by the Malaysian Employers Association (MEP) and the third one is provided by the local authorities and complaints mainly handled by the Labor Department and fourth are through the labor unions<sup>111</sup>. Business initiatives like the Roundtable on Sustainable Palm Oil (RSPO) Complaints System provide certain avenues to file complaints against any RSPO company members, which are not intended as a replacement for legal requirements and mechanisms in force, but provide an additional resource for workers that have seen their rights abused.

Regarding legal avenues, seeking legal protection or securing remedy for rights' violations appears very challenging for migrant workers, often unaware of their rights and not benefiting from legal assistance. Breaches of labor law are largely overlooked as law enforcement focuses on detecting undocumented migration. Undocumented migrants rarely protest, as they are afraid that the contractor or the employer would alert the authorities. The policy inclination towards criminalizing irregular migrants makes them fear reporting abuses, including trafficking and labor exploitation, as they risk exposing themselves to being charged for the offence of "irregular entry or stay", detained, and ultimately expelled.

For those with a work permit, reporting abuses entails the risk of employers revoking their work permit, turning them into irregular migrants who will lose their livelihood. Furthermore, it is important to remark that the Malaysian Anti-Trafficking Act does not envisage compensation for trafficking victims<sup>112</sup>. In 2015, amendments were made to the this act to increase the number of trafficking victims to obtain employment and routinely authorize victims of trafficking, nevertheless as per the most recent US Department of State's Trafficking in Persons Report, the implementation of these amendments needs to be improved<sup>113</sup>.

#### 4.4. Migrant Workers in the Sugarcane Sector in Brazil

<sup>105</sup> FINNWATCH "The laws of the jungle". Ut Supra.

<sup>106</sup> MTUC: Labour Justice for Migrants—and Malaysian Workers, Too, 13 November 2015.

<sup>107</sup> Preliminary findings, UN Special Rapporteur on Trafficking in persons, especially women and children, Maria Grazia Giammarinaro Visit to Malaysia (23 -28 February 2015). Ut Supra

<sup>108</sup> Asian Migrant Center. Malaysia. Ut Supra.

<sup>109</sup> MTUC (ITUC member in Malaysia): <http://www.mtuc.org.my/labour-justice-for-migrants-and-malaysian-workers-too/> (accessed 15 May 2018).

<sup>110</sup> Daryl Delgado, in The Guardian, "Vulnerable and exploited: 7 things we learned about migrant labour in palm oil", 10 June 2016. Available at <https://www.theguardian.com/sustainable-business/2016/jun/10/vulnerable-exploited-7-things-we-learned-about-migrant-labour-in-palm-oil>

<sup>111</sup> [http://www.mef.org.my/Attachments/MEFReport\\_PGERPERFWM.pdf](http://www.mef.org.my/Attachments/MEFReport_PGERPERFWM.pdf)

<sup>112</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, Addendum Mission to Malaysia, A/HRC/29/38/Add.1

<sup>113</sup> <https://www.state.gov/documents/organization/282802.pdf>



#### 4.4.1. Country Context

Before the 2014 recession, Brazil was amongst the world's fastest-growing economies. In recent years, and specially in the lead-up to major international sport events in 2014 and 2016, the country has experienced an increased number of migrant workers and new migration flows, including from Africa. Prior to 2014, Brazil had a large number of immigrants from Haiti after the 2010 earthquake, to whom Brazil provided humanitarian visas<sup>114</sup>. A large number of Bolivian, Lebanese, Italian immigrant have settled in Brazil and most recently immigration from Venezuela post economic crisis has increased significantly<sup>115</sup>. Additionally, internally displaced persons migrating from rural areas to the cities, in search of work or escaping natural disasters, underdevelopment or violence, are experimenting new routes for slave labor<sup>116</sup> and represent a significant issue.

Brazil is one of the leading agricultural exporters.. Export agriculture is largely dominated by large-scale soya and sugarcane production (about 39 percent of the global sugarcane production)<sup>117</sup>. The Brazilian sugarcane industry has expanded significantly in recent years. In 2017, Brazil exported sugar to 121 countries<sup>118</sup> and produced 661,069 million tons and exported 2,300 million tons<sup>119</sup>. In addition to the workers and other actors present in value chain (i.e., manufacturers, transporters, importers, etc.) the particular characteristics of Brazilian sugarcane industry result in the existence of additional actors: from businesses (which may be diverse, including growers and producers owning or managing farms or integrated business involved all through the supply chain), financial institutions, banks, investors (as significant capital investment are required), to commodity traders.

Despite increasing mechanization, cutting of sugarcane is still mainly done manually, requiring a large workforce for seasonal peaks. The demand for workers for the harvest attracts migration flows, that will continue as long as foreign direct investment flows in the industry increase, together with the expansion of the area planted. The sugarcane industry employs over 1 million people, or nearly a quarter of the country's total rural workforce<sup>120</sup>. Most of the domestic sugarcane production is located in Brazil's Southeast, with a marked prominence of São Paulo. The main sugarcane producing states are: Goias, Mato Grosso do Sul, Minas Gerais, Parana, Sao Paulo, Alagoas<sup>121</sup>. Between 2003 and 2013, more than 10,000 workers were rescued by Brazil's Ministry of Labor from forced labor in sugarcane production<sup>122</sup>.

Despite increased formalization of labor relations in the context of sugarcane companies, forced labor and degrading work persists in the sugarcane industry. Sugarcane is mostly harvested by rural migrant workers who work long hours for low wages in hazardous conditions. In 2014, 25 sugarcane producing entities were identified as using forced labor<sup>123</sup>. The various agreements signed by companies, unions and the states have so far had limited implementation and the impact on "slave labor" (as defined in the Brazilian law) inspections in improving conditions for migrant cane cutters has fallen short. Further, mills have put in place diverse strategies for evading labor law, especially in the Southern cane region.

Brazil has a documented problem of modern slavery, debt bondage and forced labor which remains largely a rural phenomenon, most common in the agricultural sector (e.g., cattle ranches, sugarcane plantations, farms in remote areas). Agricultural workers, particularly migrants that make the bulk of the workforce, are at most risk of abuse. Activists report that the workers ("cortadores"), are effectively slaves and point to a shadowy world of middlemen and human rights abuses<sup>124</sup>.

The U.S. State Department reported in 2014 that an estimated 50,000 people work in slave-like conditions in Brazil<sup>125</sup>, with its sugarcane industry being flagged for using illegal child labor. Similarly, the UN Working Group on Business and Transnational Corporations 2016 report found labor rights abuses at sugar plantations and mills, noting cases of child labor, forced labor, dangerous working conditions, health and safety concerns and limitations on labor unions<sup>126</sup>. In 2016, the USDOL's TVPRA List linked forced labor to sugarcane in 5 countries, including Brazil<sup>127</sup>. Likewise, according to the US State Department's 2017 Trafficking in Persons Report,

<sup>114</sup> <http://labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2014-149-165.pdf>

<sup>115</sup> <https://www.bloomberg.com/news/articles/2018-05-03/flow-of-venezuelans-into-brazil-set-to-increase-police-say>

<sup>116</sup> [http://www.ilo.org/global/topics/forced-labour/WCMS\\_090984/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/WCMS_090984/lang-en/index.htm)

<sup>117</sup> Food and Agriculture Organization, 2015.

<sup>118</sup> According to the Brazilian Sugarcane Industry Association (UNICA), available at [https://www.usda.gov/oc/forums/2018/speeches/Leticia\\_Phillips.pdf](https://www.usda.gov/oc/forums/2018/speeches/Leticia_Phillips.pdf)

<sup>119</sup> ILO "Child labour in the primary production of sugarcane", May 2017

<sup>120</sup> Sugarcane, <http://sugarcane.org/sustainability/responsible-labour-conditions>. (accessed 15 May 2018).

<sup>121</sup> Reporters Brazil, "As condições de trabalho no setor sucroalcooleiro", available at [https://reporterbrasil.org.br/wp-content/uploads/2015/02/26.-Folder\\_Sucroalcooleiro\\_web\\_baixa.pdf](https://reporterbrasil.org.br/wp-content/uploads/2015/02/26.-Folder_Sucroalcooleiro_web_baixa.pdf)

<sup>122</sup> <http://reporterbrasil.org.br/dados/trabalhoescravo/>

<sup>123</sup> ILO citing Reporter Brazil, "Ut Supra

<sup>124</sup> The Guardian, "Brazil's ethanol slaves: 200,000 migrant sugar cutters who prop up renewable energy boom", March 2007. Available at <https://www.theguardian.com/world/2007/mar/09/brazil.renewableenergy>

<sup>125</sup> United States Department of State, Country Reports on Human Rights Practices for 2014: Brazil.

<sup>126</sup> Report of the Human rights and transnational corporations & other business enterprises to the United Nations General Assembly, 4 August 2016.

<sup>127</sup> <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/brazil>



Brazilian Government “did not fully meet the minimum standards for the elimination of trafficking although it is making significant efforts to do so, by passing a comprehensive anti-trafficking law, investigating and prosecuting suspected traffickers under the new law, conducting more prevention campaigns, beginning the development of a centralized judicial database to track trafficking cases, and making efforts to reduce demand for forced labor”.

In Brazil, the phenomenon of slave labor has been confronted by a range of actors and through different actions. Government efforts have been progressive and varied. In 1963, the Rural Worker Statute (Estatuto do Trabalhador Rural) was passed, extending labor rights to rural workers. According to the Brazilian labor law, workers face conditions amounting to slavery if they are subject to forced labor, debilitating workdays (punishing conditions for more than 10 hours a day), degrading working conditions (squalor and safety violations), or debt bondage. Brazilian government officially acknowledged the existence of slave labor by enacting a series of legal instruments from 1995. ILO’s Special Action Program to Combat Forced Labor described Brazil’s recognition of the existence of widespread abusive labor recruitment practices in Brazil as a big step.

From 2003 to 2014, citizens and corporations who were caught benefiting from slave labor were entered in a public transparency database. This was established by the Ministry of Labor, and referred to as the ‘dirty list’<sup>128</sup>, which has included sugar and alcohol producing publicly listed companies, which stocks suffered significant decreases in the market. The “dirty list” has been a key tool to combat slave labor and has been hailed by the United Nations as a leading instrument in the global fight against this crime. However, an injunction issued by the Supreme Court in 2014, prevented the Federal Government from publishing this list of employers caught exploiting workers in conditions analogous to slavery<sup>129</sup>.

According to the US Department of State in 2017, the inspection mobile units conducted inspections on properties in which forced labor was suspected or reported. These teams impose fines and require employers to pay benefits to workers, although only civil penalties could be applied and many cases could not be criminally prosecuted<sup>130</sup>.

The relative success of the National Pact to Eradicate Slave Labour<sup>131</sup>, was the result of the articulation of efforts by the state, civil society and industry actors<sup>132</sup>. InPACTO was founded in 2013, as the result of the National Pact, in order to manage and expand its actions. InPACTO’s purpose is to engage the private sector, civil society organizations, multilateral organizations and governmental agencies to prevent and eradicate slave labor in the production chains<sup>133</sup>.

The National Commission to Eradicate Slave Labor coordinated government efforts to combat forced and exploitative labor and provide a forum for input from civil society actors. The commission’s members included representatives from 10 government agencies or ministries—including Human Rights, Justice, Federal Police, Agriculture, Labor, and Environment—and 20 civil society groups. The ILO was also a member<sup>134</sup>.

However in practice, resources are limited and the geographic areas are huge. There are not enough labor inspectors to provide sufficient coverage of the workforce<sup>135</sup> and the inspection corps has been hit by an austerity drive and in 2017 the labor inspectors were on strike for four months. The Ministry of Labor had in 2017 four mobile inspection units, down from nine in 2009. The number of slaves rescued declined from a high of 5,999 in 2007 to 749 in 2016, although last year did feature a prolonged strike by inspectors. The number of inspectors has likewise fallen, from 3,142 in 2008 to 2,450 in 2017, according to SINAIT, their national union<sup>136</sup>.

At the same time, the number of companies in this sector is expanding, making it difficult to tackle abuses. Further, the government presented a proposal of decree in October 2017 that would change the country’s definition of slavery and weaken the hand of inspectors (which would be required to include a police report as evidence). The proposal has been criticized by human rights organizations that report that victims of forced labor

<sup>128</sup> Interview with Leonardo Sakamoto, at Open Democracy. Available at <https://www.opendemocracy.net/beyondslavery/lgscpd/leonardo-sakamoto/leonardo-sakamoto-yes> (Accessed 28 June).

<sup>129</sup> Leonardo Sakamoto, “<http://accountabilityhub.org/blogs/access-to-information-act-generates-new-dirty-list-of-slave-labour-in-brazil/>,” Available at <http://accountabilityhub.org/blogs/access-to-information-act-generates-new-dirty-list-of-slave-labour-in-brazil/>, accessed 28 June.

<sup>130</sup> Country reports on Human Rights Practices for 2017, United States Department of State, available at <https://www.state.gov/documents/organization/277557.pdf>, accessed 27 June 2018.

<sup>131</sup> ILO report on the Pact for the eradication of Slave Labour, available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/genericdocument/wcms\\_189835.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/genericdocument/wcms_189835.pdf)

<sup>132</sup> CONECTAS, “Human rights of migrants and refugees in Brazil: Incompatibility of existing immigration legislation with human rights and arbitrary practices in repatriation and impediment to entry”, 2016.

<sup>133</sup> <http://www.inpacto.org.br/en/inpacto-2/quem-somos/>

<sup>134</sup> Country Reports on Human Rights Practices for 2017, Brazil, available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>135</sup> US Department of State, “2016 Findings on the Worst Forms of Child Labor Brazil”. Available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/brazil>, accessed 28 June.

<sup>136</sup> Matt Sandy, “The world’s most celebrated anti-slavery program is being gutted”, 28 April 2017, available at, <https://www.ozy.com/fast-forward/the-worlds-most-celebrated-anti-slavery-program-is-being-gutted/76804>, accessed 28 June



would be less likely to be rescued<sup>137</sup>. Currently, the decree is temporary suspended by order of Brazilian Supreme Court.

#### 4.4.2. Labor Recruitment Process

The employment of migrant workers in the Brazilian sugarcane sector is also shaped by the phenomenon of internal trafficking and the power dynamics that structure the relations between workers, intermediaries and cane growers, thereby forming the employment conditions. Although the recruitment systems are changing, the recruitment and selection of workers is mostly carried out by networks of diverse agents (gatos, recruiters, team leaders, supervisors, contractors). For the employers, these agents are useful in identifying workers that are productive, flexible, compliant and cheap; and sometimes in organizing housing, meals and transportation for the workers. These intermediaries come from the same home locations as migrant workers (normally far from the mills)<sup>138</sup>.

The predominant recruiters act as 'labor brokers', where the workers are formally employed by the mills (which is not the case of the contractors). Gatos normally recruit groups of workers; sometimes they give workers monetary advances, organize transport from the hometown, arrange accommodation and are responsible for wage payments<sup>139</sup>. This provides an environment for debt bondage, which can trap workers. Also, recruitment can be done through friendship networks in which migrants are inserted, that ensure a worker profile that meets the growers' interests in maximizing profits. Leaders/recruiters are long-term employees of the industry with knowledge of sugarcane production and the work rules of the mills, also belonging to the migrant workers' networks from their home regions<sup>140</sup>. When they are responsible for groups of workers, greater control is ensured<sup>141</sup>.

The recruitment channels ensure a dominant relationship for the sugarcane harvest<sup>142</sup>. The workers that plant and cut sugarcane are mainly internal migrant workers. The migration of sugarcane workers occurs from the poorest regions of Brazil (e.g., the North-Northeast region) to more affluent regions of Southern Brazil, with Sao Paulo state, the richest and the most important producer of sugarcane in Brazil, receiving the highest numbers of migrant workers. Migrants are mainly seasonal workers, although some may stay in the destination regions from season to season and others may settle there. Most migrants are young, with little schooling, and come from farmer families. This workforce consists mostly of men who flee poverty, forced from their homes by the lack of work. Despite the hard conditions, they prefer the hardships and risks of sugarcane employment to unemployment at home<sup>143</sup>.

This predominance of young males (17 - 30 years old) is explained by the type of worker profile searched by the cane mills or plantations: workers who are strong, healthy, apt for the hard work of cane cutting, coming from a farmer family. They usually have low education level. The sugarcane harvesters prefer employing migrants because they willing to receive lower wages, are highly motivated, meet the high productivity rates, and are less likely to be organized. Migrant workers are always "available", as a consequence of their departure from home regions, and family responsibilities<sup>144</sup>.

#### 4.4.3 Working Conditions

Migrant workers are more vulnerable to rights' violations, which appear to be less severe among workers who are able to return to their homes at the end of the work day<sup>145</sup>. Male Afro-Brazilian migrant workers represent the demographic group most at risk.

<sup>137</sup> Thomson Reuters Foundation (Brazil), Karla Mendes, "Campaigners say new ruling changes the circumstances under which slavery is defined, limiting it to a victim's freedom of movement". Available at <https://www.reuters.com/article/us-brazil-slavery/brazils-fight-against-slavery-seen-at-risk-with-new-labor-rules-idUSKBN1CO2PW>

<sup>138</sup> McGrath, Siobhán, "The Political Economy of Forced Labour in Brazil: Examining labour dynamics of production networks in two cases of 'slave labour'". University of Manchester, 2010.

<sup>139</sup> Aparecida de Menezes, Marilda: "Migrant Workers in Sugarcane Mills. A Study of Social Networks and Recruitment Intermediaries in Brazil". Agrarian South: Journal of Political Economy, 1(2) 161–180, Centre for Agrarian Research and Education for South August, 2012.

<sup>140</sup> Aparecida de Menezes, Marilda: "Migrant Workers in Sugarcane Mills. A Study of Social Networks and Recruitment Intermediaries in Brazil". Ut Supra.

<sup>141</sup> Ut Supra.

<sup>142</sup> Aparecida de Menezes, Marilda: "Migrant Workers in Sugarcane Mills. A Study of Social Networks and Recruitment Intermediaries in Brazil". Ut Supra.

<sup>143</sup> Danielle Milenne Príncipe Nunes, Marcelo Saturnino da Silva, Rosineide de Lourdes Meira Cordeiro: "Work and risk experience among Northeastern migrant works in sugarcane plantations in the state of São Paulo, Brazil". Universidade Federal de Pernambuco, 2016.

<sup>144</sup> Danielle Milenne Príncipe Nunes, Marcelo Saturnino da Silva, Rosineide de Lourdes Meira Cordeiro: "Work and risk experience among Northeastern migrant works in sugarcane plantations in the state of São Paulo, Brazil". Up supra.

<sup>145</sup> McGrath, Siobhán, "The Political Economy of Forced Labour in Brazil: Examining labour dynamics of production networks in two cases of 'slave labour'". University of Manchester, 2010.





**Forced Labor:** The working conditions of this labor migration widely imply labor exploitation in different forms, including forced, trafficked and slave labor, as well as restriction on freedoms to varying degrees<sup>146</sup>. Apart from cases that are comparable to slavery, breaches of labor laws, such as excessive working hours, degraded living conditions, high accident risks and disease, occur commonly. Migrant workers often enter the job already in debt, as they had to borrow money to pay for transportation (often clandestine). Threat, abuse or violence, as well as other means of pressure (e.g., the *gancho*, that implies a suspension without pay), serve to impose restrictions on freedom. According to the Ministry of Labour and Employment, the sugarcane sector was responsible for 31 percent of slavery cases discovered in 2009<sup>147</sup>. Between 2003 and 2013, the prosecutor office registered 10,709 workers in conditions analogous to slavery<sup>148</sup>.

**Discrimination:** Discrimination operates at different stages of employment. During the selection process, workers are approached in their places of origin by agents, who preselect workers and obtain information about them (i.e., their behavior in their places of origin and previous jobs or their productivity level). The agents seek workers who are capable to meet production targets, as well as being obedient, controlled, resigned to face the and that are not hard to manage<sup>149</sup>. A recent study of major producers in Brazil found a similar gendered division of labor<sup>150</sup>.

**Compensation:** Salaries for sugarcane industry workers are among the highest in Brazil's agriculture, which leads workers to accept hard working conditions. The most common occupation is cane cutting, for which companies often use piecework payment, resulting in workers working to surpass imposed production targets. Companies normally have wage floors that act as the minimum monthly salary paid. Given that pay by production determines wages for most cane cutters, there often arise problems of transparency (on determining area cut, weight and quality of sugarcane cut, etc.). Other compensation related issues include cases of underpayment or non-payment of wages, not informing workers of their daily production levels; along with other deductions for medicines, meals, leading to instances of workers<sup>151</sup>.

**Health and Safety:** Workers involved in the manual and mechanized cutting of sugarcane are exposed daily to several factors that pose risks to their health, such as exposure to sun, rain, wind, dust from soil, soot from burned sugar cane, extreme temperatures, pesticide residue, and venomous animals. The remuneration system on the basis of production is an additional factor, as the cutters try to increase their work in order to ensure higher wages and also the maintenance of their jobs in subsequent harvests, neglecting the limits of their own bodies and exposing themselves to constant work overloads and risk to their health<sup>152</sup>.

On plantations where cane is cut by mechanical harvesters, mechanical operators have reported they believed their job posed a risk to their health. Occupational accidents (injuries incurred during machine maintenance, falls and collisions with trucks due to sleepiness or other human failure and contact with the electrical system) were considered to be the highest risk among mechanical operators. Although mechanical harvester operators receive a fixed wage, the work process used in cutting, which aims for high productivity, optimization of time and resources available, subjects harvester operators to an intense work pace determined by the machine<sup>153</sup>.

Frequent work accidents have been reported. Workers are exposed to several physical risks (vibrations, chemical agents, abnormal pressure, extreme temperatures, etc.), as well as ergonomic risks (poor posture), and risks of accidents during the migratory journey (leaving and returning to their cities) and in the workplace itself. Sugarcane cutters with problems caused by the repetitive nature of the job, are not registered as victims of work-related illnesses<sup>154</sup>. Workers are instructed to use Personal Protective Equipment (PPE). However, the discomfort of using PPE can directly influence their use. Often PPEs are inefficient, expensive, extremely uncomfortable in hot environments or incompatible with the required productivity<sup>155</sup>.

<sup>146</sup> Freedom restriction is highly complex, with workers' freedom being restricted more or less and in different ways. It can range from workers' inability to leave the employment due to their legal status and fear to lose the work permit, debt bondage, situations of vulnerability and/or domination, to situations of freedom of movement, ultimately resulting in conditions of employment that can be characterized as more or less degrading, also in different ways. See McGrath, Siobhan (2013) *'Many chains to break: the multi-dimensional concept of slave labour in Brazil.'* Antipode., 45 (4). pp. 1005-1028.

<sup>147</sup> Centre for Agrarian Research and Education for South (CARES), "Migrant Workers in Sugarcane Mills: A Study of Social Networks and Recruitment Intermediaries in Brazil", 2012.

<sup>148</sup> Reporters Brazil, "As condições de trabalho no setor sucroalcooleiro", Ut Supra.

<sup>149</sup> Danielle Milenne Príncipe Nunes, Marcelo Saturnino da Silva, Rosineide de Lourdes Meira Cordeiro: "Work and risk experience among Northeastern migrant workers in sugarcane plantations in the state of São Paulo, Brazil". Ut Supra

<sup>150</sup> ILO, "Child labour in the primary production of sugarcane". Ut Supra

<sup>151</sup> Brazil, Verônica Gronau Luz; Heleno Rodrigues Corrêa Filho; Alessandro José Nunes da Silvall; Erivelton Fontana de LaatlIII; Rodolfo Andrade de Gouveia VilelaIV; Fernando Oliveira Catanho da SilvaV; Lia Thieme Oikawa Zangirolani, "Migrant labor and wear-out in manual sugarcane harvesting in São Paulo".

<sup>152</sup> Fernanda Ludmilla Rossi Rocha1, Maria Helena Palucci Marziale2, Oi-Saeng Hong, "Work and health conditions of sugar cane workers in Brazil." Revista da Escola de Enfermagem da USP. December, 2010.

<sup>153</sup> Ut Supra.

<sup>154</sup> IPS News, Fabíola Ortiz Face of Slave Labour Changing in Brazil, 30 April 2014, available at <http://www.ipsnews.net/2014/04/face-of-slave-labour-changing-brazil/> accessed 28 June.

<sup>155</sup> Work and risk experience among Northeastern migrant workers in sugarcane plantations in the state of São Paulo, Brazil. Ut Supra



The high levels of required productivity (and its impact on compensation), causes workers' exhaustion. In addition to physical pain, being injured or sick implies mental suffering for male workers, who would feel unable to ensure the survival of their family. Ultimately, there exists an intrinsic relationship between the risks that the workers run and their gender identity affirmation<sup>156</sup>. Additionally, mechanization in sugarcane harvesting enables employers to select the most productive workers. Afraid of losing their jobs, migrant workers accept exhausting hours, turning more vulnerable to the mentioned risks.

**Sub-Standard Housing Conditions:** Currently, in the sugarcane regions, migrant workers live mainly in housing often provided by the recruiters or the employers. These are often closer to shacks, crowded and shared by workers from different shifts, without ventilation, potable drinking water or minimal hygienic conditions, or lacking of spaces to store tools and clothes<sup>157</sup>. The price of these lodging facilities, despite their precarious condition, is often much higher than the average paid by the local population. Where migrant workers are not lodged by the employers, housing conditions might also be substandard, as workers would try to save costs and allocate earnings towards the objectives underlying the labor migration. When migrants travel with their families, it is also difficult to find suitable family accommodations<sup>158</sup>.

Also, violence is also sought to be common in debt bondage in Brazil sugarcane, where workers perform their duties under the supervision of armed guards and deaths are often simply reported as farming accidents<sup>159</sup>.

**Freedom of Association and Collective Bargaining:** All workers in the sector of sugarcane industry are represented<sup>160</sup> in collective bargaining negotiations (irrespective of their decision to join a trade union). According to UNICA, the sugar industry association, 99% of agricultural workers in Brazil are covered by collective-bargaining agreements. However, in practice, the workers who engage in strikes are often blacklisted, and have difficulty in being hired in subsequent harvests. Also, while waged workers may be represented by formal worker organizations, other workers are represented by cooperatives and producer organizations<sup>161</sup>.

#### 4.4.4. Worker Feedback and Grievance Mechanisms

The Ministry of Finance, houses the National Contact Point for implementation of the OECD Guidelines for Multinational Enterprises, which is responsible for receiving complaints and issuing recommendations. In 2013, the Ministry of Justice developed the Atlas of Access to Justice, a portal via which any citizen can find the correct body (judicial or otherwise) for filing a complaint. It has also prepared a guide entitled the "ABC of Rights", which explains the meaning of legal terms in a simple and accessible manner. Other grievance mechanisms are either corporate established or run by the NGOs.

In Brazil, ILO is mainly working towards the elimination of forced labor in the country through the Programme to Combat Forced Labour, which is also strengthening the National Committee for Eradicating Forced Labour (CONATRAE). This program is responsible for the formulation and monitoring of the First and Second National Plans to prevent and eradicate forced labor; the creation of the Special Mobile Inspection Group under the Ministry of Labour, combining the efforts of specially trained and equipped labor inspectors and police officers; the establishment of labor courts in the areas most affected by forced labor; the government's 'dirty list', regularly updated, which names and shames those enterprises found to be employing forced labor; and the National Pact for the Eradication of Slave Labour, through which major companies not only commit to prevention and eradication of forced labor within their own organizations and their supply chains, but also agree to be monitored. Brazil has also developed a mass media campaign to raise general awareness of the problems caused by forced labor in the country today, and to mobilize public opinion for intensified action against it.

Since 2012, the US Department of Labor has funded a forced labor project in Brazil. The project aims at (1) increasing evidence-based knowledge of forced labor; (2) raising awareness of forced labor and enhance coordination among stakeholders to implement forced-labor policies; (3) providing technical assistance to companies to address forced labor in their supply chains; and (4) supporting *Integrated Action* program, a state-of-the-art program to assist persons vulnerable to forced labor in Mato Grosso state. Other ILO initiatives include the Digital Observatory of Slave Labour in Brazil, a joint project with the Federal Labour Prosecution Office.

At a different level, there are several multi-stakeholder initiatives in the sugar industry that are also present in Brazil. These set different standards regarding social compliance, and operate at different levels, such as the Brazilian Sugarcane Industry Association or Bonsucro (a worldwide organization that sets up a certification System standard for sustainable farming and milling of sugarcane). However, the low level of certified sugarcane

<sup>156</sup> Work and risk experience among Northeastern migrant works in sugarcane plantations in the state of São Paulo, Brazil. Ut Supra

<sup>157</sup> The Guardian, "Brazil's ethanol slaves: 200,000 migrant sugar cutters who prop up renewable energy boom", available at <https://www.theguardian.com/world/2007/mar/09/brazil.renewableenergy>.

<sup>158</sup> Grist: "Amnesty International: forced labor in Brazil's sugarcane fields", by Tom Philpott, 31 May, 2008

<sup>159</sup> ILO, "Child labour in the primary production of sugarcane". Ut Supra.

<sup>160</sup> Ut Supra.

<sup>161</sup> Ut Supra.



production compared with global production and the existence of alternatives to sugarcane, add complexity to exercising leverage in this sector.<sup>162</sup> Additionally, standards tend to focus on the multi-stakeholder process itself rather than verifiable outcomes and human rights are often poorly addressed in environmental and social impact assessments and audits<sup>163</sup>.

## 5. Analysis of Seasonal Agriculture Migrant Workers

The profile of seasonal (or seasonal migrant) agricultural workers worldwide has **many similarities, with a number of particular issues that prevail** in each of the four studied contexts. The contextual elements, such as the culture, the importance of the agricultural sector for the country, livelihood options and the legal and institutional frameworks, are key to understanding the workers' situation, and thus, the particular practices of abuse that they experience. This is even more acute in contexts where the State is unwilling or unable to fulfill the duty to protect. In addition to the structural precariousness that is inherent to all seasonal agriculture, with workers generally earning considerably lower wages and working only for certain periods, violations of their labor rights are widespread and grievance mechanisms are inexistent or not used by workers.

The issues that more or less prevail within the migrant workers in the four cases analyzed are similar in many cases to those that have been identified concerning the migrant labor workers in Turkey, especially in the hazelnuts sector. These being: employment arrangements; recruitment fees (wages paid to labor contractors); lack of language knowledge at destination; lack of contracts and informality; wage discrimination and low wages (particular difference between local and migrant workers); excessive work hours and unpaid overtime; lack of access to housing with minimum conditions; harassment; discrimination of most vulnerable groups and individuals (especial vulnerability of women); fear for retaliation; mobility and temporary work conditions; health and safety issues; and, transportation, among others.

In the case of workers in the hazelnuts sector in Turkey, based on the analysis carried out by the FLA team, workers refrain from raising grievances formally and demanding resolution because of their fear of being dismissed or not being drafted for work the next year. They rely on customary grievance-handling mechanisms for the most part, whereby they appeal to supervisors and labor contractors when they encounter a problem (such as not getting their full payment). Grievances regarding the workers lodging in camp areas during the harvest season are usually sought to be resolved by public authorities and not directly by employers.

It is clear from the analyzed cases that national laws and policies play a critical role. Where the law authorizes sponsor schemes or provides for other ways of linking the legal status of the migrant workers to their jobs, workers' vulnerability increases, and thus, **the use of irregular channels** and the chances of labor exploitation. Likewise, when the agricultural commodity in question is key to the economy of the country or region (as it is the case in all four case studies), a number of interests come together that result in **ignoring of the abuses at different levels (society, authorities and business organizations)**.

Several factors, more or less present in all the case studies, as well as in the case of the migrant workers in the hazelnuts sector in Turkey, combine to render migrant workers more vulnerable to labor exploitation, including:

- i. the lack of knowledge about their rights and the inexistence of grievance mechanisms or trustworthy grievance channels that fulfill the eight UNGPs effectiveness criteria;
- ii. the state's inability to provide and ensure protection or even the complicit role it has in relation to workers' poor working and living conditions or forced labor (in particular in Uzbekistan);
- iii. the intervention of smugglers, networks, traffickers and brokers of different nature, that increases the chances of fraud and deception when accepting the jobs at the home site and of exploitation once in the destination;
- iv. language, gender or social barriers and discrimination, the desperate need for an income and poor context of origin, the fear of being reported to authorities in case of undocumented workers;
- v. limited levels of unionization, even where the local laws provide for the exercise of collective rights (due to different reasons, such as high worker turnover or fear of retaliation); and
- vi. the fact that in most cases the agricultural farms and plantations are remotely located from the cities, difficult to find and sometimes mainly made up by smallholdings, which renders the task of controlling and inspection bodies very difficult if not impossible to implement.

Undeniably, the permanent availability of flexible workers is key for the functioning of export-oriented, labor-intensive and growingly specialized agriculture. Nevertheless, also weaved in are the **labor issues that arise both during high season (long hours, precarious contracts) and low season**, when this workforce faces fewer working days and meager incomes, thus becoming even more vulnerable. The market competition for low prices in the agricultural sector worldwide puts a major pressure on this type of unprotected workforce by pushing

<sup>162</sup> Report of the Human rights and transnational corporations & other business enterprises to the United Nations General Assembly, 4 August 2016.

<sup>163</sup> Ut Supra.



farmers or governments to lower wages and working conditions and extracting productivity as much as possible to meet global demands.

One of the problems migrant workers face when raising a complaint is precisely the **short period of time the harvesting lasts** (e.g. Hazelnut harvesting lasts two months in Turkey). In some of the analyzed cases, as in Spain, workers change farms constantly during the harvesting and make little use of the company's physical premises, what added to the appropriateness and inaccessibility of the grievance mechanisms, makes it harder to access to an effective remedy in time.

**Migrants are, in general, more vulnerable to suffering labor abuses than other workers**, often arising from language barriers, misinformation, their dependency on employers to obtain legal status (migration law links their legal status to having employment), or the fear that complaining may result in loss of their jobs or reporting to authorities in case of irregular migrants<sup>164</sup>. Poor conditions are facilitated by certain factors, such as migration policies that link employment to legal status, recruitment channels, or the growers' strategies to lower wages and imposing flexibility (e.g., by stigmatizing groups that have improved their legal status or started claiming their rights<sup>165</sup>, and replacing them with more submissive groups)<sup>166</sup>. Research carried out by FLA at the Turkish hazelnut sector, states that some workers in the Western Black Sea region are concerned about the difficulty of remaining anonymous when using written channels, as they stay at the cottages provided by the garden owners. And, on the other hand, even if workers would feel more comfortable using verbal channels, they need to talk to someone they fully trust. For example, workers do not trust State hotlines as they think that the principle of anonymity will be breached and that the security forces will come and make the situation more complicated. Within this context, certain trade union members and NGOs point to "plain and simple labor exploitation of migrants", and "slave-like conditions". Therefore, WFGM and policies also need to evolve according to the changing landscape of seasonal migratory labor.

In most cases, gender discrimination is systematic during workers' recruitment and deepens **gender divisions**, leading women to a subordinated position and lower wages in general. As reflected in the case of seasonal migrant workers in Turkey (see companion research paper on Turkey), majority of workforce for hazelnuts is women with often no or limited freedom with in their families and work context.

The analysis also highlights the **different roles and levels of leverage** that the various stakeholders have regarding workers' living and working conditions. As shown in the different analyzed cases, the working conditions of seasonal workers are often the result of the formal and informal relationships that take place within the various stages of their journey. In the case of Turkey, for example, familial and communal bonds through which the individual workers are employed, restrict the workers' options to complain against unfavorable conditions. Relations of dependency, especially familial and communal ties, are more restraining for young and female workers due to traditional patriarchal norms in the Turkish agricultural environment.

The following table shows the main stakeholders playing a role in the analyzed contexts:

Table 4. Main Stakeholders in Seasonal Workers Contexts
• Workers and their families <sup>167</sup> .
• Garden owners/producers/farmers (employers).
• Agricultural intermediaries, brokers, labor contractors and other informal recruiters or recruitment agencies.
• Trade unions or other worker representative structures such as Farmers' Association, Women's Association, etc.
• Local authorities/village level governance structures and local governmental agencies.
• National public institutions (ministries) and national governmental agencies.
• Community leaders.
• Brands / companies / suppliers (both national and International).
• International organisations (IOM, ILO, WB, UNDP, EU, etc.).
• International Non-Governmental Organizations.
• Local NGOs.

<sup>164</sup> Ramírez-Melgarejo, A. J., "Tras el velo de la externalización del reclutamiento: organización y conflictos del trabajo en un enclave productivo agrícola del sur de Europa", Conference Paper, September 2015.

<sup>165</sup> "Nuevos y viejos conflictos jornaleros en Murcia", 1890-2012, Ut Supra.

<sup>166</sup> In Murcia, and after the racist episodes in El Ejido and Lorca, a slow ethnic replacement was operated, substituting Moroccan workers (perceived as more controversial), with Latin American (mostly Ecuadorian).

<sup>167</sup> The term "family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.





- Others (multi-stakeholder initiatives, consumers' campaigns, etc.).

Table 4. Source: Authors' elaboration based on the text.

In particular, it is important to note that the analyzed cases highlight the key role that intermediaries (private companies or governmental organizations), labor contractors, brokers and other informal recruiters play in the setting of working and living conditions for seasonal migrant workers in the majority of analyzed profiles. While some cross-border recruitment is facilitated by public employment services or agencies, other social and informal networks, private employment agencies and informal labor recruiters play an enhanced role in matching labor demand and setting working conditions. The analyses show that there are **growing activities of informal labor recruiters and intermediaries in the recruitment process on a worldwide scale** with an increasing risk of poor practices impacting seasonal workers. These agents often target low-skilled workers and those desperately searching for work in context of poverty and lack of livelihood opportunities. This tendency conduces to a wider range of abuses, from the lack of transparency in employment, unclear labor links between the worker and the employer, to trafficking situations. Lack of formal contracts limit the workers' options for seeking judicial remedies in case of disagreement with employers or allegations of maltreatment.

Indeed, workers are most vulnerable to abusive recruitment practices especially when they are seeking jobs in an environment of high unemployment, lack of other livelihood opportunities, poverty, fleeing crisis situations like wars, violence or disasters, or when there is intense competition for jobs and when workers are not protected by transparent laws and effective enforcement. These problems are even more severe where local governments have not laid down clear legal requirements for fair recruitment, adopted bilateral or multilateral agreements to prevent abuses in major recruitment and migration corridors, or when they lack the capacity or determination to develop or enforce the law<sup>168</sup>.

It is also important to notice the role and leverage that governments play when the analyzed commodity has a strong weight in the economy (e.g., hazelnut in Turkey, cotton in Uzbekistan, etc.). This could lead to better working conditions because of the governmental planning and control over the labor scheme but, in fact, this is provoking even worse conditions for workers such as forced labor.

Finally, a common issue in all the studied commodities is that **workers don't know about the existence of grievance mechanisms and their own rights**. Even if they are aware of their workplace rights, workers may not complain about for fear of being blacklisted and unable to return next season.

<sup>168</sup> ILO, Decent Work for Migrants and Refugees.



## PART III: WORKER FEEDBACK AND GRIEVANCE MECHANISMS CASE STUDIES

### 6. Mechanisms analyzed

The assignment consisted on the analysis of four WFGMs in the agricultural sector that were selected in agreement with FLA. All WFGMs assessed varied in form and scope – the issues they address, the standards they apply, the companies and/or stakeholders within their scope (if applicable), how they function, their authority and governance. Complaints may be led by the victims of business-related human rights violations (such as directly affected workers, communities or individuals) and/or by the civil society organizations directly or representing others. The outcomes delivered by each mechanism also varied greatly.

The profile of the mechanisms were:

- 1) **Sectoral and multi-stakeholder grievance mechanisms:** These are mechanisms set by self-regulatory initiatives in different sectors to handle complaints in the event that standards are breached.
- 2) **Corporate-level grievance mechanisms:** These are mechanisms set by business enterprises, and vary from well-established mechanisms to hotlines. They are owned and operated by the companies.
- 3) **NGO grievance mechanisms:** These are mechanisms set by non-governmental organizations that provide support to workers, individuals and communities affected by business operations, and vary also from well-established mechanisms to hotlines, SMS or phone app.

Other existing mechanisms, such as intergovernmental grievance mechanisms, National Contact Points (NCP), national human rights institutions and mechanisms associated with Development Finance Institutions, though can be considered as part of the grievance resolution channels ecosystem, they were not subject of this mapping exercise. Considering the objective of the exercise to identify best practices and case studies that exist globally for WFGMs, the project team decided to focus attention on the three profiles of mechanisms selected, in view to provide recommendations for the development of a system for the hazelnuts sector in Turkey.

### Overview of the WFGMs

The WFGMs analyzed vary in scope. For instance, the sectoral and multi-stakeholder grievance mechanisms address the actions or omissions of company members and make recommendations to businesses on how to better regulate and perform. They address recommendations directly to company members and impose sanctions on them (when required). In the case of the corporate grievance mechanism, this enables workers, family members and other affected stakeholders to raise a complaint or grievance directly to the company (related to its operations). But since it is owned and operated by the same actor who may have allegedly committed the abuse, often this profile of mechanisms may lack the confidence of stakeholders. The NGO grievance mechanism can be used when end target groups or individuals (workers or stakeholders affected by a company operation) have any concerns, questions or claims which might also go beyond the scope of any of the above-mentioned mechanisms. Hence, probably is the most comprehensive mechanism of all in terms of scope.

**Table 5. WFGMs analyzed**

Mechanism	Grounds for complaint	Target	Commodity	Country	Year established
-----------	-----------------------	--------	-----------	---------	------------------



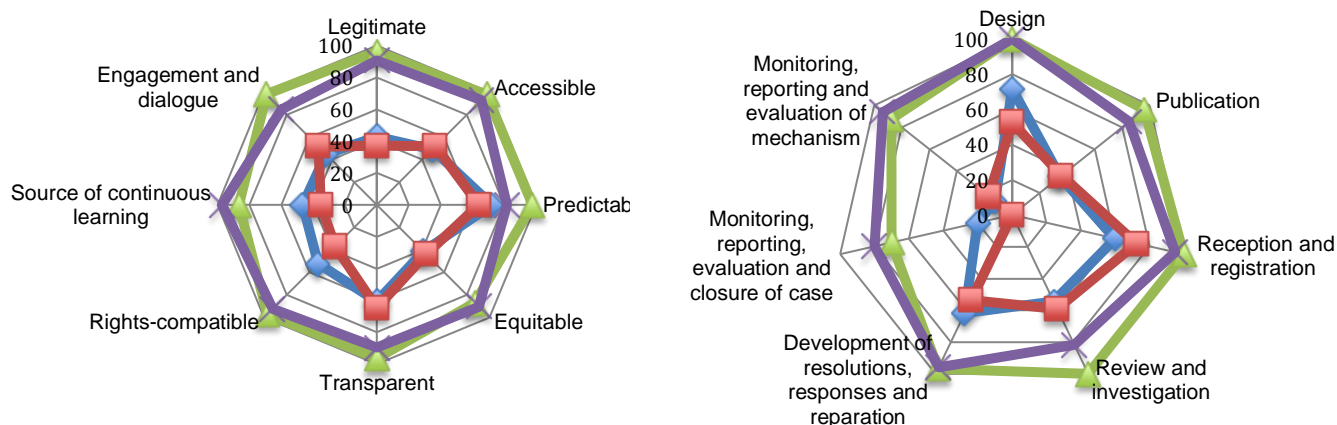
Sectoral and multi-stakeholder grievance mechanism 1	Complaints regarding an organization member's alleged breach of the Governance Documents.	Any stakeholder (worker, company member, or third party) who wishes to lodge a complaint or grievance.	Sugarcane	Countries where the organization's members are operating (45 countries).	2010
Sectoral and multi-stakeholder grievance mechanism 2	Breach of the provisions of one or more of the provisions of the organization's key documents.	Organization's members and non-members including affected communities (and their nominated representative), workers (and their nominated representative) and other interested parties.	Palm Oil	All countries where the organization's members are operating (89 countries)	2006
Corporate grievance mechanism (operational level)	Complaints about Code breaches and workplace issues affecting business and other complaints about situations that may potentially affect business.	Mainly company's workers and their family members who wishes to raise a complaint or grievance. Suppliers and their employees, smallholder farmers, teachers and students can also contact the company to raise a complaint or grievance.	Tea sector	Kenya	Available from the beginning of production in the 1920's and revised subsequently
NGO grievance mechanism	Any concerns, information, questions or claims. In the case of issues that cannot be dealt by the organization, that go beyond their area of work, they are referred to other specialized organizations or entities.	Migrant workers, in particular, but open also to local workers (Thai nationals).	Sea food and other commodities	Thailand, Cambodia, Laos and Myanmar. Planning to expand to Malaysia and Indonesia.	2009



**Graph 2. Results of the assessment against the 8 effectiveness criteria and process criteria contained in the UNGPs**

(Each colored line represents one analyzed WFGM. Full individual reports were provided to the respective organization)

For more detailed information on the interpretation of the graphics below see annex 3 and 4.



All WFGMs clearly state its purpose, scope, channels and procedures, but some impose minimum restrictions on the type of issues that can be addressed. This means that while in some cases the grounds for complaint relate to Code of Conduct breaches and activities limited to the mission of organization (e.g. certification), in other cases the issues complainants can raise could go beyond breaches to the Code of Conduct and relate to other questions of concern to them, for example, living conditions, working permissions, child care etc. They report that they have involved target stakeholder groups (such as members, workers, workers representatives, civil society organizations, and others) in the design and performance of the mechanisms), and they all score well regarding the design process as well as the reception and registration of the concerns, claims or complaints (formal confirmation and records).

Though all mechanisms are free to access (no fee charged), some may pose some constraints regarding the cost of the channel (phone, internet, post mail, etc.) and regarding cultural barriers (e.g. language). These mechanisms should be flexible and provide the necessary resources in view to enable the engagement of the stakeholders in the process on fair, informed and respectful terms (i.e. translation).

Not all mechanisms inform the workers or complainant on other available alternative channels (referrals) that can be used to seek reparation and tackle problems that are beyond the scope of the mechanism. Furthermore, the processes activated to lodge a claim not always are sufficiently simple so as not to require the assistance from others (complexity of the issues, written forms, access to technology, expertise, etc.), although there is clarity about how the process works, the timeline for resolving complaints, and the types of outcomes available. In all cases, confidentiality and secure management of the data provided is assured.

All WFGMs announce that claimants have reasonable access to the sources of information, advice, and the specialized knowledge to enable them to launch a process of complaint or claim in conditions of equality, with total transparency and respect. Investigation reports are developed and shared with the parties, and in the case of problems that are complex and when solutions are not simple and straightforward, discussions are set up with the stakeholders in order to embark on a joint search for possible solutions. However, not in all cases independent and neutral external parties are involved in the investigation and resolution process.

The monitoring and assessment activity allows identification of experiences in order to improve the mechanism and prevent future grievances and damages to ensure that the issue does not re-occur. However, not in all cases the mechanisms are regularly revised to take account of the main impacts and the volume of complaints, claims and enquiries. Results of the monitoring and assessment of the mechanism are not always shared with the target stakeholders for their consultation.

The WFGMs analyzed are either evolving to enhance their effectiveness and be respectful of human rights standards, or are well aware of their constraints and seek to improve. They all have strengths and weaknesses. This report describes some of the learnings and best practices identified.



## 7. WFGM Case Studies

The following four case studies highlight the functioning of each of the WFGMs analyzed, paying attention to their main strengths and learnings in view to consider these practices for the development of a workers feedback and grievance resolution mechanism in the hazelnuts sector in Turkey.

**TABLE 6. CASE STUDY 1: NEED FOR CONSIDERATION OF THE PURPOSE AND PROPORTIONALITY OF THE MECHANISM TO FOSTER STAKEHOLDER ENGAGEMENT**

Public announcements are made by the organization when a company applies for membership, and workers and unions can raise comments at that time, regarding the company performance in regard to human rights and labor standards. This is precisely a good start point to reinforce stakeholder engagement and identify actual and potential risks of human rights impacts to be addressed and monitored. Stakeholder engagement, grievance handling and impact management are complementary parts of an interdependent whole. However, an effective engagement that contributes to better impact management, also requires effective grievance mechanisms that can provide continuous early warning of possible problems and a channel for workers and other potentially affected stakeholders to voice their concerns any time.

For a grievance mechanism to be effective, all stakeholders need to know, understand and support its purpose, including workers and all other potentially affected stakeholders. When carefully designed, properly implemented and embedded in an effective stakeholder engagement program, it provides significant benefits to all, the organization, the company and the stakeholders. However, the complexity of the mechanism features and resources needed may vary. In the current case study, while the grievance mechanism exists, it is not publicized and hence seldom used.

Resources such as staff, infrastructure and finances are an important determining factor in shaping an effective grievance mechanism. Proper allocation of resources ensures that a management system for handling each step or phase of the grievance procedure exists and has clearly defined objectives, assigned responsibilities, timelines, budget, and regular reporting. If the organization anticipates a wide range of grievances due to ongoing risks to or adverse impacts, detailed policy, advanced systems and dedicated staff time and resources are needed. But, if there are few individuals or groups affected and impacts are likely to be low, a less comprehensive grievance mechanism may be sufficient. On the contrary, potential significant adverse impacts that could be diverse, irreversible or unprecedented, and which may pose risks to individuals and groups, will require more extensive and far-reaching grievance mechanisms.

Although the potential impacts already identified in the initial assessment of the company may inform the design or adjustments required in the current mechanism, this must also deal with types of grievances that have not been anticipated. The mechanism should therefore be scaled to all potential risks and adverse impacts. So continual analysis on the workers or other stakeholders affected concerns and complaints should be carried out to help adjust the mechanism.

The task of understanding who will be potentially affected by company members, and who could therefore use the grievance resolution mechanism to lodge complaints (particularly regarding breaches of the Code of Conduct and Production Standards), is not always straightforward and depends on the particularities of each member company. Thus, it is beneficial to review who may be affected by the company members operations, and the nature of the potential impact, which could be explored during the initial assessment process. The focus on the grievance mechanism on the needs of the potentially affected groups or individuals is substantiated by the fact that they are directly, and in some cases significantly, affected by the business operations, but often lack viable options or capacity for raising their concerns or claims through formal structures (company, other non-judicial mechanisms or external judicial mechanisms such as courts).



TABLE 7. CASE STUDY 2: SETTING CLEAR AND TRANSPARENT PROCESSES

Since the establishment of the mechanism in 2006, the organization has involved key stakeholders such as active members of the Complaints Panel and non-governmental organizations that have made a number of changes to usher it into its current phase. The mechanism is under constant review and several public consultations have taken place. As part of the latest assessments undertaken, adjustments have been made regarding, for example, the coherence and adherence to timeline; in cases of urgent action, issue temporary instructions, including a cease and desist order (where strictly applicable) or “stop work” order; inclusion of an independent appeals mechanism mandated to deliberate and deliver final appeals decisions; strengthen the powers of the Complaints Panel to, for example, issue interim or precautionary orders; strict separation of executive powers in handling complaints to ensure independence of the Complaints Panel; powers to warn, suspend, terminate or take urgent action and issue interim measures against a member if they are found to have engaged in any form of retaliation, reprisal, violence, threats, adverse discrimination against, or applied undue pressure upon, the complainant, affected communities or their spokespersons or whistleblowers.

The organization renders reasonable assistance to the Parties to a Complaint that encounter an access barrier to the Complaints and Appeals (e.g. due to language barrier or literacy). In this regard, the Parties to the Complaint may contact the organization for further assistance, and the organization consults with the Parties to the complaint and confirm the working language before appointing the Complaints Panel. Those who may face particular barriers to the Complaints System can be provided assistance. Where possible Complainants are to state the remedies that they seek including any specific corrective actions that they wish the Respondent to take.

The Complaints Panel has the discretion to waive anonymity and engage directly with the parties to the complaints via private hearings, on-site investigations, interviews, conference calls, etc. Information can be kept confidential if the complainant is fearful of any repercussions of making a complaint. To be deemed complete the submission of the complaint, this shall state whether confidentiality is required as to the identity of the complainant. Confidentiality is an important feature of mediation and parties need to feel confident that their open and frank participation will not be compromised. Confidentiality is discussed with the parties at the outset and is included in the terms of reference for mediation and agreed by the parties. In all communications, the organization is respectful about the need to maintain certain information as confidential, particularly in cases where the complainant is fearful of repercussions or involved a whistleblower. All information is presented in a neutral way, preventing judgment or favoring any of the parties.

The processes triggered once the complaint or claim is made sets clear tasks, responsible functions and expected results. If requested by the Board of Governors of the organization, the Complaints Panel can investigate, evaluate and report on matters falling outside the formal complaints systems, but nevertheless linked to a violation of the organization’s Principles and Criteria by a member of the organization. The complaints system is not intended to be a replacement for legal requirements and mechanisms in force by any regional, national, or international governmental body. The organization requirements mandate adherence to such official governmental requirements, and as such, the organization’s complaints system is meant as a support and supplement to them.

The Complaints Panel membership criteria and responsibilities are clearly defined. It shall be the responsibility of the member of the Complaints Panel to be committed to neutrality, fairness, objectivity and where required confidentiality in dealing with all complaints. The Complaints Panel members have knowledge, expertise and/or experience in natural resource management and environmental issues; human rights and labor issues; the organization’s scheme and its associated/key documents; and, environmental auditing and eco-labeling schemes.

The organization delivers a copy of the Complaints Record to each member of the Panel and to the Parties before the Complaints Panel begin deliberations. This Complaints Record contains: the original Complaint; the response from the Respondent; all written submissions made by the Parties containing their arguments; transcriptions of all interviews; reports of independent investigators and experts; all other documentary evidence including photographs, video recordings and maps; where applicable, any information from and any decision of the organization’s bodies; where applicable the grounds of decision to issue an interim measure; and relevant standards, certification requirements, statutes, by-laws, codes of conduct, other normative documents, and any other organization’s Key documents which pertain to the complaint.





TABLE 8. CASE STUDY 3: INTEGRATING CULTURAL CHARACTERISTICS

The company has involved workers in the design of the grievance mechanism. They participate in the election of their representatives, development of the grievance guidelines and are continuously engaged on how to improve the mechanism regarding the management of grievances before they escalate to breach of the Code Policy. As an example, a hotline was recently localized to allow complaints to be raised in Kiswahili which is a national language in Kenya.

The mechanism takes into account specific cultural attributes as well as traditional mechanisms for raising and resolving issues to ensure that the concerns of significantly different groups and subgroups are received and addressed. In complex cases and on need basis, before a sanction is passed after a hearing of a case, the welfare team in the company is tasked to undertake a social impact assessment to understand the likely negative effect and cultural concerns the sanction would have on the families of the complainant and the alleged perpetrator. The assessment helps to generate proposals on how to mitigate the harsh effects of the sanction and reduce any possible cultural conflicts. The company seeks input on culturally acceptable ways to address grievances from significantly different groups; understands cultural attributes, customs and traditions that may influence or impede the ability to express grievances, including differences in the roles and responsibilities of subgroups and cultural sensitivities and taboos; and, agrees on the best way to access grievance mechanisms, taking into consideration the ways workers and other stakeholders express and deal with grievances.

The ethics hotline is toll free and the language of communication is Kiswahili. The hotline is managed by a local third party service provider, confidentiality measures are assured. Complaints can be raised by word of mouth, by phone, by email and even during regular engagement forums. The welfare team in the company trains and supports the workers continuously on how and where to raise complaints. Any challenges or barriers to access are addressed by the team as they are raised. The Business Integrity Committee is also available to advise on any challenges as their contacts are widely communicated. The mechanism allows workers to raise a complaint with any manager they trust, posting all policies in all villages and field offices, and conducts daily employee engagement before work sessions.

The mechanism have no restrictions on the type of issues that can be addressed. Therefore, workers or other affected stakeholders can raise any question that is of their concern, not only related to a breach of the Code of Conduct of the company. If the problems are complex and the solutions are not simple and straightforward, discussions are set up with the stakeholders in order to embark on a joint search for possible solutions. The mechanism adopted and strengthened an existing village elders' dispute resolution mechanism that is led by the Local Administration. The village elders are elected by workers and support in resolving any disputes that are not a breach of the Code Policy. The mechanism also adopted and strengthened an existing chiefs and local police community engagement and awareness sessions where grievances are raised and resolved.

The mechanism is made public, orally through regular workers' engagements and trainings, as well as through documentation widely distributed in all field offices and villages. The company provides also information on the different channels or external parties where workers or other affected stakeholders can lodge a claim or complaint as a recourse to tackle problems that are beyond the scope of the mechanism. The Business Integrity and the Disciplinary Committees are trained on confidentiality and are bound by the company policy to treat all complaints confidentially. The Business Integrity Officer is the custodian of all the complaints raised, the progress and the resolution. For breach of the Code cases, only the Business Integrity Officer has access to the case management system. Measures are also adopted to protect the claimants against reprisals.

All the complaints are submitted to a certain degree of review and investigation based on the type of grievance and the clarity of the circumstances. The more problematic or repetitive issues are submitted to a more detailed examination, and depending on the circumstances of the complaint, claim or enquiry, it may involve several units or departments in the company, including senior management if so required. Different approaches are used to resolve complaints, claims and enquiries depending on the nature of the issue, the frequency of the occurrence and the number of people affected. For example, in cases where the claimant has been traumatized.

All managers are trained on human rights and fair administration to ensure that they propose sanctions that do not infringe on any person's rights. A social impact assessment is done for complex cases and a human rights lens is adopted. All sanctions proposed by the Disciplinary Committee have to be approved by the Business Integrity Committee and Legal Compliance in addition to ensuring that no rights are infringed which is a consideration.



**TABLE 9. CASE STUDY 4: REACHING OUT TARGET GROUPS AND INDIVIDUALS THROUGH TECHNOLOGY**

The organization has engaged users to understand their preferences regarding how and what channels they are comfortable sharing information. This led to the development of a smartphone app in Myanmar language and the expansion of other empowered worker voice channels such as via social media, messaging, and in person, in addition to the multilingual 24/7 free helpline. The helpline is staffed with persons of the same nationalities of the callers and speak the native language of the callers. Information and alerts that are pushed out to workers takes into account cultural characteristics as well as the differing needs, risks, vulnerabilities, support organizations, and legal considerations, etc.

The organization provides resources to make the mechanism equally accessible, and offers due assistance to anyone who may have particular problems in accessing. Resources include making the mechanism available 24/7 and toll free (for the helpline) so that workers can call the staff at a time and location of their choosing. The multiple channels accommodate those who have access to technology barriers (low tech and high tech used), such as in person visits by the organization's outreach and empowerment teams to communicate the inclusiveness, and privacy and confidentiality elements of the information received. Language barriers are addressed by having the helpline and other channels supported by in-house teams from Myanmar, Cambodia and Thai nationalities. These channels are regularly assessed.

Access to the mechanism is free and allows anonymous complaints or claims through the worker voice channels - in-person, in-communities, 24/7 multilingual helpline, smartphone app, social media (closed Facebook chats), and SMS (Line, Viber).

Information on the mechanism is disseminated through awareness raising programs and outreach work; in-person; at source and destination countries for migrant workers, at different facilities (ports, transportation, etc.); in communities; at dormitories; via employers; social media; online; via the organization's ambassadors; posters; advertising, word of mouth; CSO networks; hotline cards handed out to partners, etc. Information is provided on alternative complaint channels that can be used, highlighting the benefits of each mechanism.

The process for presenting complaints, claims or enquiries is simple so as not to require assistance from others. Options are provided to empower workers to decide how and when they would like to proceed. Confidentiality and management of the data provided is assured throughout the process. The channels provided allow complaints, claims and enquiries to be reported and managed confidentially. Strict internal protocols are set for risk assessments and safeguards; case management; data privacy and security; and with a team on the ground working directly with migrant workers (to understand preferences, vulnerabilities, risks of reprisals, potential threats, etc.). Information is kept anonymous, and data privacy measures and protocols are undertaken regarding how and what information is shared, and at what time. Being on the ground allows the organization to know how risks typically can arise and what steps and options could be applied for callers to mitigate risk of reprisals. The organization also seeks collaboration with employers to work on solutions/remedy in this respect.

The investigation team members have no personal or professional relationship with the claimants, witnesses or parties involved in the case. In case of sensitive complaints, claims or enquiries, those which involve multiple interests and when a large number of people are affected, the organization invites external parties to take part in the investigation (NGOs or local authorities, for example) if the claimants agree, always preserving their confidentiality. Though the organization cannot guarantee that reparations comply with internationally recognized human rights, workers are communicated about their rights and are provided with options to seek remedy and follow on action if they choose to pursue them.

The final response from the organization seeks the claimants' ultimate satisfaction with the resolution. If claimants are not satisfied with the proposed resolution, the organization proceeds to work with them through group or individual meetings and with the parties directly responsible in order to come up with a solution to the case. After agreeing on a final resolution and on the corrective actions, proofs are collected that these actions have been carried out.

## 8. Results of the analysis: best practices





In this Section a number of best practices identified in the WFGM case studies are elaborated. All boxes in blue on the right side of the page describe concrete examples of best practices applied.

**Involvement of relevant stakeholders in the design and review of the mechanism:** Strategic interaction with stakeholders (particularly end users to which the mechanism is intended) and the integration of existing traditional mechanisms for raising and resolving issues, helps ensure that the mechanism is acceptable to all affected groups, and reasonably addresses accessibility and other barriers that may prevent them from raising their concerns. Their engagement to understand their preferences regarding how and what platform they are comfortable sharing information builds trust in the mechanism. This can lead to other channels or processes to access it such as apps, social media, or messaging, for example.

**Consideration of cultural characteristics:** WFGMs take into account cultural attributes for raising and resolving issues to ensure that the concerns of significantly different groups are received and addressed. When the company seeks input on culturally acceptable ways to address grievances from different groups, including different ethnic or cultural groups in the countries of operation; understands cultural attributes, customs and traditions that may influence or impede their ability to express their grievances, including differences in roles and responsibilities of groups (especially women, outcast or religious groups, for example) and cultural sensitiveness and taboos; and, agrees on the best way to access the mechanism, taking into consideration the ways communities and groups express and deal with grievances, enhances the effectiveness of the mechanism. Information that is pushed out to stakeholders takes into account cultural characteristics as well as the differing needs, risks, vulnerabilities, legal considerations (i.e. migrant workers, refugees, indigenous groups), etc.

**Anonymous complaints or claims:** The grievance mechanism encourages the stakeholders to share their concerns freely and anonymous, with the understanding that no retribution will be exacted for participation, and confidentially and security measures are ensured. But this requires the company to communicate a policy on anonymous complaints that is clear for stakeholders, particularly for the most vulnerable individuals.

The company involved workers in the design of the workers feedback and grievance mechanism taking into account specific cultural attributes to ensure that the concerns of significantly different groups and subgroups were received and addressed. The organization engaged users to understand their preferences regarding how and what channels they were comfortable sharing information. This led to the development of a smartphone app in a local language and the expansion of other empowered worker voice channels such as via social media and messaging, in addition to the multilingual 24/7 free helpline. Internal bi-weekly reviews are held to assess the functioning of the mechanism.

The mechanism adopted and strengthened an existing village elders' dispute resolution mechanism that is led by the Local Administration. The village elders are elected by workers and support in resolving any disputes that are not a breach of the Code Policy. The mechanism also adopted and strengthened an existing chiefs and local police community engagement and awareness sessions where grievances are raised and resolved. In addition, in complex cases and on need basis, before a sanction is passed after a hearing of a case, the welfare team is tasked to undertake a social impact assessment to understand the likely negative effect and cultural concerns the sanction would have on the families of the complainant and the alleged perpetrator. The assessment helps to generate proposals on how to mitigate the harsh effects of the sanction and reduce any possible cultural conflicts.

At the time of the submission of the complaint, complainants can state whether confidentiality is required. This is an important feature of mediation, parties need to feel confident that their open and frank participation will not be compromised. Confidentiality is discussed with the parties at the outset and is included in the terms of reference for mediation and agreed by the parties. In all communications, the organization is respectful about the need to maintain information as confidential, particularly in cases where the complainant is fearful of repercussions or involved a whistleblower. The Complaints Panel has the discretion to waive anonymity and engage directly with the parties to the complaints via, for example, private hearings, on-site investigations, interviews, conference calls, etc.



**Assurance of confidentiality, data protection and security:**

Strict internal protocols are set for risk assessments and safeguards regarding case management, data privacy and security. Information is kept anonymous, and data privacy measures and protocols are undertaken regarding how, when and what information is shared. The organization also seeks collaboration with employers to work on solutions for remedy in this respect.

A team on the ground works directly with the workers to understand preferences, vulnerabilities, risks of reprisals, potential threats, etc. Being on the ground allows the organization to know how risks typically can arise and what steps and options could be applied for workers or other potentially affected stakeholders to mitigate risk of reprisals.

**Accessibility of the mechanism:**

Grievance procedures work when they present no (or low) barriers to access by the end users. Accessibility depends, in part, on: clear communication, and easy to use. This requires knowing the physical location where workers and other stakeholder potentially affected are located; literacy and education levels; access to conventional communication infrastructure (phone, mail, Internet); and, cost to access the mechanism, among other issues. Minimum restrictions are imposed to lodge a claim, complain or concern. The organization makes the mechanism equally accessible also by offering due assistance to anyone who may have particular problems in accessing. It offers possible options suitable for the different profile of end users and type of possible complaint, claim or enquiry they may wish to report.

Resources may include, for example, making the telephone contact available 24/7 and toll free so that claimants can call at a time and location of their choosing. Multiple channels can also accommodate those who do not have technology access or have technology barriers (low tech), such as in person visits, collection boxes in easy accessible places, etc. Language barriers are also addressed by having the mechanism and all channels supported by in-house teams or external parties who speak local languages. The welfare team in the company trains and supports the workers continuously on how and where to raise complaints.

**Predictability of the process:** Sometimes the process is just as important as the outcome. A predictable grievance mechanism, simple and flexible, provides clarity to potential users about how the process works, the timeline for resolving complaints, and the types of outcome available. Predictability also means that the grievance handling process itself operates in a consistent manner, with clear tasks, responsible functions and expected results. This allows workers and other potentially affected stakeholders to understand what steps will be followed when they submit a complaint, and provides them with a contact point within the company or the organization. It also means providing clarity about what kind of complaints are in scope of the mechanism and the types of outcome available, as well as how agreed resolutions are followed up and monitored. Even if claimants are not satisfied with the final decision, the company reduces the risk of escalation by ensuring that end users of the mechanism are treated with respect and that they understand how the decisions are made. If the company demonstrates that takes grievances seriously and is transparent about the process and decision making, it benefits from improved trust and reputation and a mutually respectful relationship with stakeholders (workers, unions, and other potentially affected stakeholders).

**Engagement in the process on fair, informed and respectful terms:**

Aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a complaints process on fair, informed and respectful terms. Those who may face particular barriers are provided assistance and where possible state the remedies that they seek including any specific corrective actions that they wish the company to take.

The organization ensures that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a complaints process on fair, informed and respectful terms. Those who may face particular barriers to the grievance mechanism can be provided assistance (translation, expertise, confidentiality, security, information...). Workers are communicated about their rights and are provided with different options (i.e. mediation, bilateral engagement or negotiation, external mechanisms...) to seek remedy and follow on action.



**Dissemination of the WFGM in different locations and formats:** The organization promotes awareness of the mechanism and understanding of its purpose and functioning. Publicizing the access to the mechanism is part of the organization's outreach and awareness building. Ensuring that the mechanism is known to all affected stakeholders, regardless of language, gender, age, literacy level or socio-economic standing, enhances the accessibility and stakeholder engagement.

**Other available external mechanisms:** Stakeholders (workers and others) are fully informed of avenues to escalate their complaints or grievances, and of their rights to use alternative remedies if they choose to do so without turning to the business complaints mechanisms. Even if the organization offers a well-designed and well-communicated grievance mechanism, affected workers and stakeholders may still choose to rely on a dispute resolution mechanism that they are more familiar with, and that they trust.

**Different approaches and involvement of several units or departments in the company:** Complaints are submitted to a certain degree of review and investigation based on the type of grievance and the clarity of the circumstances. The more problematic or repetitive issues are submitted to a more detailed examination, and depending on the circumstances of the complaint, claim or enquiry, it may involve several units or departments in the company, including senior management if so required. Different approaches are used to resolve complaints, claims and enquiries depending on the nature of the issue, the frequency of the occurrence and the number of people affected.

**Independence and expertise of the investigation team:** The investigation team members have no personal or professional relationship with the claimants, witnesses or parties involved in the case. In case of sensitive complaints, claims or enquiries, those which involve multiple interests and when a large number of people are affected, the organization invites external parties to take part in the investigation (NGOs or local authorities, for example) if the claimants agree, always preserving their confidentiality.

Information on the mechanism is disseminated in-person (for example, during audit visits or when feedback is requested from unions and workers about the business performance under the certification process), at facilities (business locations, through posters, for example), via social media, networks, etc. The mechanism is also made public, orally through regular workers' engagements and trainings, as well as through documentation widely distributed in all field offices and villages.

The company has a range of ways to let potentially affected groups and individuals know about the external routes of redress available to them. From simply including information about external options in a response to a grievance to providing assistance to those who choose to use traditional or judicial conflict resolution systems. For example, one of the mechanisms analyzed adopted and strengthened an existing village elders' dispute resolution mechanism that is led by the Local Administration. The mechanism also adopted and strengthened an existing chiefs and local police community engagement and awareness sessions where grievances are raised and resolved.

All managers are trained on human rights and fair administration to ensure that they propose sanctions that do not infringe on any person's rights and comply with internationally recognized human rights. A social impact assessment is done for complex cases and a human rights lens is adopted. All sanctions proposed by the Disciplinary Committee have to be approved by the Business Integrity Committee and Legal Compliance in addition to ensuring that no rights are infringed which is a consideration.

The members of the complaints panel, that convenes and makes decisions on the resolution, consist of stakeholders from various categories and sectors who have knowledge, expertise and/or experience in different areas such as natural resource management and environmental issues, human rights and labor issues, environmental auditing and eco-labeling schemes. The complaints panel membership criteria and responsibilities are clearly defined. It shall be the responsibility of the member of the complaints panel to be committed to neutrality, fairness, objectivity and where required confidentiality in dealing with all complaints.



**Complaints record:** The organization delivers a copy of the Complaints Record to each member of the Panel and to the Parties before the Complaints Panel begin deliberations. The enables all parties count with the same information.

**Claimants ultimate satisfaction:** The provisional proposal about the resolution is prepared and the company discusses it with the complainant rather than unilaterally announcing the company's verdict. The company may also indicate other available avenues of remedy. The complainant has the therefore the opportunity to accept the proposition, offer an alternative for further discussion, or reject it or consider another dispute resolution process. The final response from the organization seeks the claimants' ultimate satisfaction with the end decision.

**Appeals provision:** Grievance mechanisms incorporate an appeals provision for complaints. However, these procedures are exceptional. If the appeals process fail to lead to a mutually acceptable resolution, the complainant remains free to pursue other avenues of remedy.

**Proofs of repair and follow-up:** After agreeing on a final resolution and the corrective actions, proofs are collected that these actions have been carried out, for example, through photos or documentary evidence (apologies, restitution, rehabilitation, financial compensation or otherwise, punitive sanctions...). In the case of activities with a significant impact on human rights, or when the events surrounding the complaint or claim are controversial or contentious, the follow-up is done by a neutral third party, if claimants agree with this approach<sup>169</sup>.

**Assessment of the mechanism:** The mechanism monitoring and assessment activities allow measurement of the effectiveness of the mechanism and the identification of patterns and common and recurrent complaints, claims and enquiries, integrating the feedback received from the target stakeholders or end users. The measures and tools for monitoring and assessing the mechanism are regularly revised and restructured to take account of the main impacts and the volume of complaints, claims and enquiries identified. Finally, the results of the monitoring and assessment of the mechanism are shared with the target stakeholders for their consultation and feedback on the findings in view to design future measures and get them engaged.

The Complaints Record contains the original Complaint; the response from the Respondent; all written submissions made by the Parties containing their arguments; transcriptions of all interviews; reports of independent investigators and experts; all other documentary evidence including photographs, video recordings and maps; where applicable, any information from and any decision of the organization bodies; where applicable the grounds of decision to issue an interim measure; and relevant standards, certification requirements, statutes, by-laws, codes of conduct, other normative documents, and any other Key documents which pertain to the complaint.

The Appeals Panel in any event does not include any member that formed part of the Complaints Panel against whose decision the Appeal has been lodged. The appeals process works similar to the Complaint process. The Appeals Panel can remit the matter back to the Complaints Panel for further investigations and for review of its decision and to direct where it deems appropriate that the complaint be re-investigated de novo by a Complaints Panel composed of different members.

<sup>169</sup> At this point could be interesting to consider the IOM Remediation Guidelines for Victims of Human Trafficking in Mineral Supply Chains: <https://publications.iom.int/books/remediation-guidelines-victims-human-trafficking-mineral-supply-chains>



## 9. Initial observations regarding the design of a WFGM

When an organization or a company receives few complaints, it may be an indication that impacts are well managed, but it could equally be a warning sign that the grievance mechanism is unknown, inaccessible or not trusted. Similarly, a large number of complaints may indicate unhappiness with the company or, on the contrary, that stakeholders trust the mechanism and have no hesitation in using it. Consequently, the use of certain indicators to measure its effectiveness may give a clearer picture of the company's performance than the absolute number of grievances received. However, it is important to highlight the following initial considerations that need close attention regarding the profile of the WFGM to be implemented. No doubt that a grievance mechanism, as a system for receiving, investigating and responding to complaints, and workers feedback channels when properly implemented and embedded in an effective stakeholder engagement strategy, can provide significant benefits to both businesses and stakeholders (i.e. workers, communities, etc.).

### **Clear understanding of the target groups and individuals:**

The task of understanding who will be potentially affected by the company, and who could therefore use the workers voice and grievance resolution mechanisms to lodge complaints and concerns, is not always straightforward and depends on the particularities of each stakeholder (e.g. workers in each site or location of production). Thus, it is beneficial to review who may be affected by the company operations, and the nature of the potential impact. The focus on the grievance mechanism on the needs of the potentially affected groups or individuals is substantiated by the fact that they are directly, and in some cases significantly, affected by the business operations, but often lack viable options or capacity for raising their concerns or claims through formal structures such as those established by the businesses, other stakeholders (e.g. business associations, NGOs, networks, police, traditional mechanisms, international organizations...), or external judicial mechanisms such as courts.

### **Proportionality of the mechanism:**

Resources such as staff, infrastructure and finances are an important determining factor in shaping an effective grievance mechanism. Proper allocation of resources ensures that a management system for handling each step or phase of the grievance procedure exists and has clearly defined objectives, assigned responsibilities, timelines, budget, and regular reporting. For a grievance mechanism to be effective, all stakeholders need to understand and support its purpose, including the workers. The complexity of the mechanism features and resources needed may vary.

### **Anticipation of grievances:**

A less comprehensive grievance mechanism may be sufficient where there are few individuals or groups affected and impacts are likely to be low. However, if a comprehensive mechanism is to be set because the company anticipates a wide range of grievances due to ongoing risks to or adverse impacts (working hours, harassment, health and safety issues, discrimination, etc.), detailed policy, advanced systems and dedicated staff time and resources are needed. Cases of potential significant adverse impacts that could be diverse, irreversible or unprecedented, and which may pose risks to individuals and groups (trafficking and forced labor, under-age workers, lack of contracts, etc.), will require more extensive and far-reaching grievance mechanisms. In this case, the company could offer multiple options for addressing complaints, including operation and coordination with third parties.

### **Consideration of all possible impacts:**

Although the potential impacts already identified may inform initial design or adjustments to the mechanism, this must also deal with types of grievances that have not been anticipated. The mechanism should be scaled to all potential risks and adverse impacts. So continual analysis on the workers or other stakeholders affected concerns, situation and complaints should be carried out. This will help adjust the mechanism's design.





## 10. Key aspects relevant from the workers or other affected stakeholders point of view that should be taken into consideration

**Address grievances as early as possible:** The WFGM should be proactive. It should seek to identify potential grievances to address them as early as possible. This is particularly relevant in the case of migrant seasonal workers. It could demonstrate the organization's willingness to take workers and other stakeholder concerns seriously, thereby contributing to better relationships with them.

**Build trust:** Engagement with affected stakeholder groups about the design, performance and results of the mechanism, contributes to building trust. Workers and other stakeholders for whose use the mechanism is intended, must trust it if they are to choose to use it (channels, confidentiality, non-reprisal, gender issues, cultural issues, accessibility, etc.). For this, both the process and its outcomes are important for establishing trust in the mechanism in a secure manner. This is typically one important factor in building stakeholder trust.

**Reach all:** Usually, barriers to access WFGM may include lack of awareness of the mechanism, language, literacy, costs or physical location. The mechanism should be known to all affected stakeholders, regardless of language, gender, age, literacy level or socioeconomic standing. Therefore, any effective mechanism should be readily accessible, culturally appropriate, and should not impede access to other forms of remedy.

**Enable fairness of the process:** The support provided must address imbalances of power or knowledge that normally exist between the company and the complainant. Barriers presented by culture, expertise, language, or socioeconomic status may mean that stakeholders are, or feel themselves to be, at a disadvantage when it comes to engaging with the company about the way grievances are investigated or resolved. In grievances or disputes between business enterprises and affected stakeholders (e.g. workers), the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions.

**Ensure informed participation:** Keeping the parties to a grievance informed about its progress, and providing sufficient information about the performance of the mechanism builds confidence in its effectiveness and meet any public interest at stake. Particularly in the case of a claimant, he/she should have reasonable access to information, advice and expertise necessary to engage in the grievance process on fair and equitable terms. Regular communication and support are essential to retain confidence in the process, always ensuring confidentiality in the dialogue between the parties and of individuals' identities where necessary.

**Empower the workers and other affected stakeholders:** Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights. The company should provide informed support so that claimants are well aware of their rights and empowered to make their own decisions, free and informed.

**Be based on experience and learning:** The more grievances the company is handling, the more experience the team managing the process will have to understand the root causes of workers and stakeholders' concerns and how to resolve them. Regular analysis of the frequency, patterns and causes of grievances will enable the company to identify and influence policies, procedures and practices of the business that should be altered to prevent future harm on workers and other stakeholders.

**Engage stakeholders and foster dialogue:** Both form part of the foundation of any handling process. This applies to the design of the mechanism as well as the way in which the process operates, from the receipt of a complaint or concern through to investigation, resolution and follow-up.



## 11. Final Conclusions and Recommendations for Turkey

Taking into consideration the results from this analysis, and the research carried out by the FLA team on grievance mechanisms among seasonal migrant hazelnut workers from Sanliurfa and Madrin, we provide the following final conclusions and recommendations relevant for the design of the WFGM in the context of seasonal hazelnut workers in Turkey.

Issues in terms of working and living conditions that prevail within the migrant seasonal workers in other commodities and countries studied are similar to those in the Turkish context, although with some particularities (forced labor, under-age workers, recruitment fees, lack of language knowledge at destination, low literacy levels, lack of contracts and informality, labor intermediaries, wage discrimination and low wages, excessive working hours, lack of access to housing with minimum conditions, discrimination of most vulnerable groups and individuals –special vulnerability of women and minority ethnic groups-, mobility, health and safety issues, and harassment, among other issues). But when it comes to the use of grievance mechanisms, these similarities are even greater. Very similar issues arise such as cultural barriers, fear for reprisals, lack of awareness about existing mechanisms, gender issues, no guarantee for confidentiality, complexity to lodge a claim, and lengthy processes, among other issues.

Factors that render migrant seasonal workers including the Turkish hazelnuts workers more vulnerable to labor exploitation, such as the lack of knowledge about their rights; the lack of grievance mechanisms or trustworthy channels that fulfill the 8 UNGPs effectiveness criteria; the state's inability to provide and ensure protection or their complicit role in relation to workers' poor working and living conditions, or forced labor; and, the intervention of networks and brokers of different nature that increases the chances of fraud and deception when accepting jobs at the home site and of exploitation once in destination, among other factors, demand the need to seek solutions that can reach all potentially affected stakeholders (workers, families, community...), empower them and build trust.

For the design of the WFGM for the Turkish seasonal hazelnut workers, the project partners, FLA and Nestlé, should consider that:

- To **empower workers and other affected stakeholders** requires potential claimants to be well aware of their rights to make their own decisions, free and informed. The case of the Kurdish young female worker and peers who found the courage to call the law enforcement agency to report their supervisor (physical violence case) is a clear example of the impact by a human rights training received – from an NGO. Nonetheless, empowerment requires more than training (building the skills and enabling the resources to make informed decisions). However, being well-informed was a factor that contributed to empower them.
- The **deployment of multiple methods, channels and grievance mechanism options simultaneously** (such as, secured complaint boxes located in campsites; channels accessible in the harvest and hometowns; phone, SMS, emails and apps; social media channels (closed Facebook chats); hotlines; and face-to-face grievance collection by community activists and mobilizers through the mediation of grassroots NGOs) is a good strategy to enhance the accessibility of all potentially affected stakeholders, despite their gender, age, ethnic group, etc. to cover workers with varying characteristics, resources, and capabilities. This includes workers with language barriers (those who do not speak Turkish or only speak Kurdish or Arabic), women who do not feel comfortable or safe raising their concerns to a male contact, or married women who do not have access to phones or Internet because their husbands did not allow for them, for example.
- The above-mentioned methods requires the WFGM to be **predictable, simple and flexible**, providing clarity to potential users about how the processes work, responsible functions within the business or the referral organizations, the timeline for resolving the complaints, and the types of resources available to them. If the workers do not know that or are not responded in a timely manner they either not develop trust or will lose trust in the mechanism.
- Whereas third parties, such as NGOs, grassroots activists or community mobilizers, well trusted by the workers and other potentially affected stakeholders, can play an important role to support and mediate between the company and the claimant, the company and all other parties participating in a grievance resolution process (e.g. local authorities, or third neutral or independent investigators) must ensure **minimum guarantees** that are precisely related to those issues that are of concern for the claimants regarding company and public grievance mechanisms. These are: confidentiality, non-reprisal and security, access to information and engagement in the process on fair, informed and respectful terms.



- In this respect, it would be recommendable as well the **assessment of third parties (NGO-mediated) grievance mechanisms against the UNGPs** effectiveness criteria in view to identify potential gaps and measures to strengthen capacities (i.e. grievance handling, investigation, reporting, confidentiality, etc.).
- **A capacity building program on human and labor rights**, could be designed directed as well to all other relevant stakeholders (including Nestlé and its two suppliers) in view to strengthen the current grievance mechanisms ecosystem. Collaboration could be sought from national and international actors. The awareness raising and capacity building strategy should also seek to address some of the major social and cultural challenges that generate some of most challenging barriers with regard to accessibility and empowerment of certain groups and individual (e.g. patriarchal norms and relations in the region that restrain girls and women from fundamental freedom and rights).
- Project partners should **involve relevant stakeholders in the design and review of the WFGM**, including workers and workers representatives, NGOs, businesses and other key stakeholders, to ensure a proper coordination and collaboration between the different actors. This collaboration should be articulated between the public sector, local stakeholders/NGOs, orchard owners, intermediaries, workers, etc. These could include the complaint hotlines such as ALO 170 and ALO 183; company grievance hotlines and field officers; FLA Connect Application; and NGO mechanisms (METIDER, KEDV and others). Clear tasks and responsibilities should be established to enhance the coordination and collaboration. All stakeholders should be well aware also of the minimum guarantees to be provided (effectiveness criteria relevant in each case). A flowchart would be recommendable to describe the full processes that would be activated in each case and the expected outcomes. All these mechanisms should be widely known to workers and other stakeholders.
- It would be relevant to take into account the **pros and cons expressed already by workers and other affected stakeholders** (such as family members and NGOs, among others) regarding the functioning of the different mechanisms. As already noted in the FLA research, workers have different views and experiences with each mechanism based on their gender, origin, marital status, age and relationship with the supervisor, labor contractor or orchard owner, for example. These factors are having currently an important effect on the possibility or not to access the mechanism and trust it, as well as the type of issues addressed in each case. Great efforts should be made to ensure that each one of them enable access on fair and equitable terms, despite the option that the claimant or end user may select. Therefore, project partners should apply if possible their leverage to effect change in the practices that are causing or contributing to negative impacts as mentioned. When these mechanisms can not ensure all the effectiveness criteria and guarantees needed to enable access and a fair and equitable process, project partners should also seek in the meantime solutions to complement and provide the necessary support required to claimants (e.g. translation, access to information, transportation when needed, etc.).
- The WFGM to be designed for the Turkish seasonal hazelnuts workers should take into consideration all other issues or questions that are addressed in chapters 8, 9 and 10 of this report, and all other indicators that have been utilized for the assessment of the WFGM case studies (see Annex 3). Issues that relate with cultural characteristics, language barriers, confidentiality and anonymity, security, gender issues and engagement, are relevant to ensure the effectiveness of the WFGM. No doubt, these element will contribute to enhance the accessibility of the mechanism and will build trust. However, there are other aspects also related to the **handling process of the case** that are relevant to ensure as well, such as the **independence and expertise of the investigation team**, the **involvement of several units or departments in the company** (when required), access to information and complaint records, appeals provision, proofs of the repair, follow-up and proper close out of the case.
- Nestlé and its partners should undertake **continuous monitoring and assessment of the WFGM** taking into consideration all effectiveness criteria contained in the UNGPs, with special consideration on the confidentiality and non-reprisal measures in the grievance process. This is precisely one of the main questions highlighted by workers when asked about the company grievance mechanisms. Partners should take into account that often workers and other affected stakeholders lack confidence on company grievance mechanisms since they are owned and operated by either the same actor who may have allegedly committed the abuse, or is closed or related. This requires great efforts to build trust and engagement from the stakeholders. The monitoring and assessment will allow not only to enhance the effectiveness criteria of the WFGM but also the engagement of the stakeholders, building trust on the mechanism and on the will of the project partners to support workers and other potentially affected stakeholders.
- The mechanism should also establish **minimum restrictions to raise concerns, claims or complaints**. This means that any worker or affected stakeholder should be able to pose any question or concern that might go beyond a breach of the Code of Conduct or any other standard within the company. Often company codes and standards do not address usual or common issues that relate with the everyday life of workers and families, but that may affect their living and working conditions (e.g. medical centers, work permits, emergency numbers, referral services, new regulation, etc.). It is



important to note, for example, that in the case of a concern which might be a question, request for information, or a general perception unrelated to a specific impact or incident, if not addressed to the satisfaction of the complainant, the concern may become a complaint. Although concerns do not have to be registered as a formal complaint, they should be noted in an appropriate management system so that emerging trends can be identified and addressed before they escalate.

- The WFGM should not be set just as internal administrative procedure for handling compliance or grievances. This means that the procedure should not be passive (i.e. wait for problems to arise and then respond) but should be **proactive**. This will enable the possibility to identify potential issues that could be prevented before becoming a harm or mitigating actual impacts the earliest possible.
- While the WFGM should respond to the specificity of the context and profile of stakeholders, all WFGMs must ensure minimum criteria. These are the 8 effectiveness criteria contained in the UNGPs. The **lessons learnt by the project partners from this exercise could be applied in the design or review of any other grievance mechanism in other contexts.**

**Table 10. Preferences suggested by workers consulted by FLA to access grievance mechanisms:**  
Gender approach consideration and additional methods proposed to complement current existing mechanisms.

Writing in all languages (Arabic and Kurdish along with Turkish)	Complaint boxes	Well secured and placed in camp areas that are not in direct sight of orchard owners, supervisors, and labor contractors.
	Smartphone applications	WhatsApp (prevalence of this application and convenience among the workers) and FLA Connect Application
Oral in all languages (Arabic and Kurdish along with Turkish)	Face-to-face	With trusted referral (female contact)
	Phone	Phone hotlines (gender approach). Possibility of audiovisual recording.
Third-party mechanisms	NGO-mediated and hometown mechanisms	Local support organizations, such as METIDER and KEDV



## PART V: ANNEXES

### 1. Bibliography

Amnesty International, 'Trapped: The Exploitation of Migrant Workers in Malaysia', 2010.  
<https://www.amnesty.org/en/documents/ASA28/002/2010/en/>.

CEPAIM, "Informe Asentamiento de la Urba", 2016.

CONECTAS, Human rights of migrants and refugees in Brazil: Incompatibility of existing immigration legislation with human rights and arbitrary practices in repatriation and impediment to entry, 2016.

Cover, Maciel. Centre for Agrarian Research and Education for South (CARES), "Migrant Workers in Sugarcane Mills: A Study of Social Networks and Recruitment Intermediaries in Brazil", 2012.

Danielle Milenne Príncipe Nunes, Marcelo Saturnino da Silva, Rosineide de Lourdes Meira Cordeiro: "Work and risk experience among Northeastern migrant works in sugarcane plantations in the state of São Paulo, Brazil". Universidade Federal de Pernambuco, 2016.

Decree of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to introduce modern forms of cotton-textile production".

Diario de Huelva, "La campaña agrícola de Huelva ha dado trabajo a 22.400 personas al mes hasta mayo", June 2016, available at "<http://www.diariodehuelva.es/2016/06/20/la-campana-agricola-de-huelva-ha-dado-trabajo-a-22-400-personas-al-mes-hasta-mayo/>".

Economy Weblog, "Estructura De La Economía Española Por Sectores Económicos Y Empleo (2015)", <http://economy.blogs.ie.edu/archives/2016/02/estructura-de-la-economia-espanola-por-sectores-economicosyempleo.php> (accessed 14 May 2018) and Eurostat.

EFFAT | European Federation of Food, Agriculture and Tourism Trade Unions "Huelva Agraria, los frutos rojos y los cítricos", Perianes, A., 2016.

El País, "Víctimas del oro rojo", June 2010,  
[http://elpais.com/diario/2010/06/13/domingo/1276401156\\_850215.html](http://elpais.com/diario/2010/06/13/domingo/1276401156_850215.html).

European Social Charter. European Committee of Social Rights. Conclusions XX-3 (2014). Spain. January 2015.

FIDH, "Importing workers, exporting strawberries", January 2012. <https://www.fidh.org/en/region/europe-central-asia/spain/Importing-workers-exporting>.

Finnwatch, The laws of the jungle, 2014. <https://www.finnwatch.org/images/pdf/palmoil.pdf>.

Finnwatch, Working conditions at the IOI Group's oil palm estates in Malaysia: a follow-up study, May 2016. Gadea Montesinos, E., Pedreño Cánovas, A., de Castro Pericacho, C., Ramírez Melgarejo, AJ. "Almaceneras. género y trabajo en los almacenes de manipulado de fruta en la región de Murcia".

HRW, Uzbekistan: Forced labour widespread in cotton harvest. January, 2013.

HRW, We can't refuse picking cotton: Forced and child labour linked to the World Bank Investment's in Uzbekistan, 27 June 2017.

HRW, "Malaysia: Events of 2017". Available at <https://www.hrw.org/world-report/2018/country-chapters/malaysia> (accessed 27 June 2018).

IOM, Remediation Guidelines for Victims of Human Trafficking in Mineral Supply Chains, 2018.

IFC, Addressing Grievances from Project-Affected Communities: Guidance for projects and companies on designing grievance mechanisms; Good Practice Note, September 2009 (nº7).

ILO, International Labour Migration – A Rights-based Approach; 2010.

ILO, ILO Global estimates on migrant workers, Results and methodology, 2015.





ILO, Recruitment practices and seasonal employment in agriculture in Uzbekistan, 2014-15 / International Labour Office, Fundamental Principles and Rights at Work Branch - Geneva: ILO, 2017.

ILO, Decent Work for Migrants and Refugees, 2018. [http://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_524995/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_524995/lang--en/index.htm).

ILO “Child labour in the primary production of sugarcane”, May 2017

Leonardo Sakamoto, “Access to Information Act generates new “dirty list” of slave labour in Brazil”. Available at <http://accountabilityhub.org/blogs/access-to-information-act-generates-new-dirty-list-of-slave-labour-in-brazil/>, accessed 28 June.

IPIECA, Good Practice Survey: Operational level grievance mechanisms; 2012.

IPS News, Fabíola Ortiz Face of Slave Labour Changing in Brazil, 30 April 2014, available at <http://www.ipsnews.net/2014/04/face-slave-labour-changing-brazil/> accessed 28 June.

Matt Sandy, “The world's most celebrated anti-slavery program is being gutted”, 28 April 2017, available at <https://www.ozy.com/fast-forward/the-worlds-most-celebrated-anti-slavery-program-is-being-gutted/76804>, accessed 28 June

MTUC, Labour Justice for Migrants—and Malaysian Workers, Too, 13 November 2015.

OHCHR, “Migration and Human Rights – Other International Standards”. [www2.ohchr.org/english/issues/migration/taskforce/standards.htm](http://www2.ohchr.org/english/issues/migration/taskforce/standards.htm).

Ramírez-Melgarejo, A. J., “Tras el velo de la externalización del reclutamiento: organización y conflictos del trabajo en un enclave productivo agrícola del sur de Europa”, Conference Paper, September 2015.

Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430> (accessed 24 May 2018).

Real Decreto-ley 3/2012, de 10 de febrero, de medidas urgentes para la reforma del mercado laboral. Report of the Human rights and transnational corporations & other business enterprises to the United Nations General Assembly, 4 August 2016.

Report of the Human rights and transnational corporations & other business enterprises to the United Nations General Assembly, 4 August 2016.

Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, 15 June 2015, A/HRC/29/38/Add.

Reporters Brazil, “As condições de trabalho no setor sucroalcooleiro”, available at [https://reporterbrasil.org.br/wp-content/uploads/2015/02/26.-Folder\\_Sucroalcooleiro\\_web\\_baixa.pdf](https://reporterbrasil.org.br/wp-content/uploads/2015/02/26.-Folder_Sucroalcooleiro_web_baixa.pdf)

SEPE- Servicio Público de Empleo Estatal. Observatorio de las Ocupaciones: “Informe del Mercado de Trabajo de los extranjeros, Huelva, Datos 2014”. Available at [http://www.sepe.es/contenidos/observatorio/mercado\\_trabajo/2568-1.pdf](http://www.sepe.es/contenidos/observatorio/mercado_trabajo/2568-1.pdf).

Siobhán McGrath, The Political Economy of Forced Labour in Brazil: Examining labour dynamics of production networks in two cases of ‘slave labour’. University of Manchester, 2010.

SOMO, The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape; SOMO Paper – November 2014.

Stifung Asienhaus, “Workers in the palm oil industry”, 2016, [https://www.asienhaus.de/archiv/user\\_upload/Palm\\_Oil\\_Workers\\_-\\_Exploitation\\_\\_Resistance\\_and\\_Transnational\\_Solidarity.pdf](https://www.asienhaus.de/archiv/user_upload/Palm_Oil_Workers_-_Exploitation__Resistance_and_Transnational_Solidarity.pdf).

Swinkels, Romanova, and Kochkin, Assessing the social impact of cotton harvest mechanisation in Uzbekistan, World Bank Group, 2016.

The Straigh Times, “Malaysia calls for greater commitment from source countries to tackle human trafficking issue”, 16 April 2018. Availble at <https://www.nst.com.my/news/nation/2018/04/362099/malaysia-calls-greater-commitment-source-countries-tackle-human>



UGT “Guía sindical para la reforma laboral”, 2012.

[http://portal.ugt.org/actualidad/2012/octubre/Guia\\_Sindical\\_Reforma\\_Laboral\\_oct2012.pdf](http://portal.ugt.org/actualidad/2012/octubre/Guia_Sindical_Reforma_Laboral_oct2012.pdf).

Unicef, Status Report on Children Right’s in Malaysia.

[http://www.unicef.org/malaysia/Child\\_Rights\\_Coalition\\_Report\\_on\\_Childrens\\_Rights\\_FINAL.pdf](http://www.unicef.org/malaysia/Child_Rights_Coalition_Report_on_Childrens_Rights_FINAL.pdf).

US Department of Labor, Child Labour and Forced Labour Reports: Uzbekistan, 2016.

US Department of State, Country reports on Human Rights Practices for 2017, available at <https://www.state.gov/documents/organization/277557.pdf>, accessed 27 June 2018.

US Department of State, 2016 Country Reports on Human Rights Practices: Uzbekistan, 2016.

US Department of State, Country Reports on Human Rights Practices for 2014: Brazil.

US Department of State, “2016 Findings on the Worst Forms of Child Labor Brazil”. Available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/brazil>, accessed 28 June.

US Embassy in Uzbekistan, *2016 Country Reports on Human Rights Practices*: Uzbekistan, 2016

Worldvision. “Forced, child and trafficked labour in the PALM OIL industry”. Available at <https://campaign.worldvision.com.au/wp-content/uploads/2013/04/Forced-child-and-trafficked-labour-in-the-palm-oil-industry-fact-sheet.pdf> (accessed 15 May 2018).



## 2. List of figures

### Tables

Table 1. A Global Snapshot of Human Mobility.....	Page 5
Table 2. Other Instruments to Protect Migrant Workers' Rights.....	Page 7
Table 3. Seasonal Workers Categories in Uzbekistan.....	Page 14
Table 4. Main Stakeholders in Seasonal Workers Contexts.....	Page 26
Table 5. WFGMs analyzed.....	Page 29
Table 6. Case study 1: Need for consideration of the purpose and proportionality of the mechanism to foster stakeholder engagement.....	Page 31
Table 7. Case study 2: Setting clear and transparent processes.....	Page 32
Table 8. Case study 3: Integrating cultural characteristics.....	Page 33
Table 9. Case study 4: Reaching out target groups and individuals through technology.....	Page 34
Table 10. Preferences suggested by workers consulted by FLA to access grievance mechanisms: Gender approach consideration and additional methods proposed to complement current existing mechanisms.....	Page 43
Table 11. Effectiveness criteria and process requirements against the UNGPs standard.....	Pages 47-48
Table 12. Results on the effectiveness criteria.....	Page 49

### Graphics

Graph 1. Percentage of migrant workers by economic activity (2013).....	Page 6
Graph 2. Results of the assessment against the 8 effectiveness criteria and process criteria contained in the UNGPs.....	Page 30

### Boxes

Box 1. The UNGPs effectiveness criteria.....	Page 4
Box 2. The process requirements of the mechanisms.....	Page 4
Box 3. Variations in the recruitment fees paid to recruiters.....	Page 18



### 3. Effectiveness criteria and process requirements against the UNGPs standard

The BHR Grievance Assessment Tool aims to analyze corporate grievance mechanisms against the eight (8) effectiveness criteria contained in the United Nations Guiding Principles (UNGPs) on Business and Human Rights standard. The tool is comprised of 82 different indicators that relate to each effectiveness criteria and process requirements. Note that each indicator is scored differently.

**Table 11. Effectiveness criteria and process requirements against the UNGPs standard**

		Legitimate	Accessible	Predictable	Equitable	Transparent	Rights-compatible	Source of continuous learning	Engagement and dialogue
A. Design of the mechanism	The target stakeholder group has been involved in the design and/or improvements made to the mechanism. For example, through surveys, discussions, focus groups, Google+ communities and other forums and tools.	✓	✓		✓				✓
	The mechanism states clearly its goal			✓					
	The mechanism states clearly its scope (what it is and isn't capable of dealing with and resolving)			✓					
	The mechanism states clearly the procedures			✓					
	The mechanism states clearly the people/area responsible			✓					
	The mechanism states clearly the available resources			✓					
	The mechanism states clearly the schedule			✓					
	The mechanism imposes minimum restrictions on the type of issues that can be addressed	✓	✓		✓		✓		
	The mechanism is flexible: Instead of prescribing a specific procedure for each particular type of complaint, claim or enquiry, it offers a menu of possible options (channels, procedures and others), it is suitable for the different types of possible complaints, claims or enquiries.		✓	✓			✓		
	The mechanism is flexible: can be used to send or raise any survey questions (short ones) to the end users to which it is intended.							✓	✓
	The mechanism is flexible: can be used to push information (such as news, emergency numbers, etc.) to the end users to which it is intended						✓		
	The mechanism takes into account the cultural characteristics (language, traditions) of the target stakeholders.	✓					✓		
	The mechanism takes into account all the potential impacts to which the stakeholders are exposed through the business operations.	✓	✓	✓	✓				
	The company/organization provides resources to make the mechanism equally accessible to all the people for whom it is intended, and offers due assistance to anyone who may have particular problems in accessing it. Factors that may hinder access may include fear of reprisals or physical location, technology, expertise,...	✓	✓				✓		✓
B. Publication of the mechanism	Access to the mechanism is free.		✓		✓				
	The mechanism allows anonymous complaints, claims and enquiries.	✓	✓						
	There is a verification process for guaranteeing the correct functioning of the mechanism.	✓		✓		✓	✓	✓	
	Public information is available on the aim of the mechanism		✓	✓		✓			
	Public information is available on the scope of the mechanism (what it is and isn't capable of dealing with and resolving)		✓	✓		✓			
	Public information is available on who it is for		✓	✓		✓			
	Public information is available on what and in what particular moment the complaint, claim or enquiry can be presented		✓	✓		✓			
	Public information is available on where or through which channel it can be presented		✓	✓		✓			
	Public information is available on the phases of the process that are triggered once complaint, claim or enquiry is made		✓	✓		✓			
	Public information is available on the types of responses and formats in which they are provided (written or oral)		✓	✓		✓			
	Public information is available on the response and resolution time		✓	✓		✓			
	Public information is available on the alternative channels that can be used, highlighting the benefits to be received by using the mechanism as opposed to other grievance mechanisms	✓	✓	✓	✓	✓	✓		
	The company/organization provides information on the different channels or external parties that can be used as a recourse to tackle problems that are beyond the scope of the mechanism.	✓	✓	✓	✓	✓	✓		
	The company/organization states at the corporate level that it is committed to respecting the rights and guarantees of the people who access the mechanism. This commitment also includes the assurance of confidentiality, data protection, protection of the claimant, objectivity, among others.						✓		
C. Reception and registration of complaints, claims and enquiries	The information provided on the mechanism and the channels available is adapted to the different profiles and features of the target stakeholders. Accessibility to the information is assured by adapting the language, formats and other aspects to the target stakeholders.	✓	✓		✓		✓		
	In the case of a plan to design or establish a new channel to raise complaints, claims and enquiries, the stakeholders are informed beforehand.	✓		✓		✓			✓
	The process for presenting complaints, claims or enquiries is sufficiently simple so as not to require the assistance of others (process complexity, technology access, legal terms utilized, information to be provided ...).		✓		✓				
	The formal confirmation of the reception of the complaint, claim or enquiry is sent within a reasonable time, in the time period established in the procedure.			✓	✓	✓	✓		
	The formal confirmation of the reception of the complaint or claim contains a claim number or other identifier, and a response time.			✓	✓	✓	✓		
	The confidentiality and management of the data provided is assured in the reception and registration process. The channel provided allows complaints, claims and enquiries to be reported confidentially. For example, the physical mailbox must be located in a secure place where people feel comfortable about using it.	✓			✓	✓	✓		
	In the case of registering a complaint, claim or enquiry whose complexity requires a longer than the established time to resolve a case, the claimant receive a communication from the company/organization explaining the actions to be taken, together with a timeline.	✓		✓		✓			
	The mechanism maintains a record of complaints, claims and enquiries, and generates a history containing the following information: the details of the incident described (related to the complaint, claim or enquiry)			✓				✓	
	The mechanism maintains a record of complaints, claims and enquiries, and generates a history containing the following information: the area responsible for managing the case			✓				✓	
	The mechanism maintains a record of complaints, claims and enquiries and generates a history containing the following information: A follow-up field that shows the date the procedure was opened, any updates made, any communication(s) and the estimated date of closure			✓				✓	
	The mechanism maintains a record of complaints, claims and enquiries, and generates a history containing the following information: the corrective actions and the associated documentation.			✓				✓	



		Legitimate	Accessible	Predictable	Equitable	Transparent	Rights-compatible	Source of continuous learning	Engagement and dialogue
D. Review and investigation of complaints, claims and enquiries	A plan of investigation is developed that clearly defines the tasks, people responsible and the expected results.			✓					
	Security and confidentiality requirements are assessed.	✓			✓		✓		
	The investigation team is authorized to organize the process, validate its legitimacy and investigate the case, verifying that there is no conflict of interest. The people who investigate the complaints and claims have no personal or professional stake in the result and that there is no personal or professional relationship with the claimants or with the witnesses.	✓			✓				
	Claimants have reasonable access to the sources of information, advice, and the specialized knowledge to enable them to launch a process of complaint, claim or enquiry in conditions of equality, with total transparency and respect.		✓		✓	✓	✓		✓
	All the complaints, claims and enquiries are submitted to a certain degree of review and investigation based on the type of grievance and the clarity of the circumstances.						✓		
	The more problematic or repetitive issues are submitted to a more detailed examination.		✓				✓		
	Depending on the circumstances of the complaint, claim or enquiry, it may involve several units or departments of the parties involved, including senior management if so required.								✓
	In the case of sensitive complaints, claims or enquiries, those which involve multiple interests and when a large number of people are affected, the company/organization invites external entities to take part in the investigation, and allows the involvement of NGOs or local authorities if the claimants agree, always preserving their confidentiality.	✓	✓		✓		✓		✓
	Measures are adopted to protect the claimants against reprisals.	✓	✓		✓		✓		
	The parties involved in the case are maintained informed throughout the process, and given sufficient information on the advancements made.		✓	✓		✓			✓
E. Development of resolutions, responses and reparations for complaints, claims and enquiries	Once the necessary proofs have been gathered, an investigation report is prepared which includes the facts.							✓	
	Once the necessary proofs have been gathered, an investigation report is prepared which includes the proofs.							✓	
	Once the necessary proofs have been gathered, an investigation report is prepared which includes the declarations of all the affected parties.							✓	✓
	Different approaches are used to resolve complaints, claims and enquiries depending on the nature of the issue, the frequency of the occurrence and the number of people affected.	✓			✓		✓		
	The response on the resolution to the complaint, claim or enquiry is oral and/or written according to the profile of the claimant		✓				✓		
	The response on the resolution to the complaint, claim or enquiry is provided within the time period stipulated in the procedure	✓		✓			✓		
	The response on the resolution to the complaint, claim or enquiry proposes the steps to be followed and the actions that must be taken for its resolution	✓		✓		✓	✓		
	The response on the resolution to the complaint, claim or enquiry guarantees confidentiality and privacy	✓			✓		✓		
	The response on the resolution to the complaint, claim or enquiry guarantees data protection	✓			✓		✓		
	If the problems are complex and the solutions are not simple and straightforward, discussions are set up with the parties involved in order to embark on a joint search for possible solutions.	✓	✓			✓			✓
	It is guaranteed that the result of the reparations complies with internationally recognized human rights.	✓					✓		
	If the company/organization announces it will take no action to resolve the complaint, claim or enquiry it outlines the reasons that have led it to take that decision.					✓	✓		
	If the company/organization announces it will take no action to resolve the complaint, claim or enquiry all the considerations and arguments are documented in the response.					✓	✓		✓
	If the claimants are not satisfied with the proposed resolution, the company/organization proceeds to work with them through group or individual meetings and with the people directly responsible for the areas involved in order to come up with a solution to the case	✓							✓
	If the claimants are not satisfied with the proposed resolution, the company/organization, in more complex cases, it allows the participation of an external agency as a member of the stakeholder group affected or another third party	✓	✓		✓				✓
	If the claimants are not satisfied with the proposed resolution, the company/organization allows for all the claimants to elevate their complaints, claim or enquiry to a mechanism outside the organization's mechanism	✓	✓	✓	✓		✓		
F. Monitoring, reporting and assessing the reparations, and closure of the case	The final response on the resolution and repair provided (if applicable) is based on the results of the investigation.					✓			
	The final response on the resolution and repair provided (if applicable) notifies the proposal for the definitive resolution (apologies, restitution, rehabilitation, financial compensation or otherwise, punitive sanctions...)					✓			
	The final response on the resolution and repair provided (if applicable) establishes the agreements between the parties.	✓				✓			✓
	The final response on the resolution and repair provided (if applicable) seeks the claimants' ultimate satisfaction with the resolution	✓				✓			✓
	After agreeing on a final resolution and on the corrective actions, proofs are collected that these actions have been carried out in order to build a complete record of the complaint, claim or enquiry until the time of its resolution, for example, through photos or documentary evidence.	✓					✓	✓	
G. Monitoring, reporting and assessing the complaints, claims and reparations mechanism	An analysis is made to determine whether the problem has been resolved to the satisfaction of the claimants, and confirmation is obtained.	✓			✓		✓		✓
	The case is only closed when an agreement has been reached with the claimants and reparations for the damage, where applicable, have been assured.	✓			✓		✓		
	The final report on the case is submitted to the competent bodies in the organization/company and parties involved for their information and for a reflection on the future measures to be developed.					✓		✓	
	In the case of activities with a significant impact on human rights, or when the events surrounding the complaint, claim or enquiry are controversial or contentious, the follow-up is done by a neutral third party.				✓			✓	
	The monitoring and assessment activity allows measurement of the effectiveness of the mechanism.						✓	✓	
	The monitoring and assessment activity allows measurement of the efficiency in the use of resources						✓	✓	
	The monitoring and assessment activity allows identification of patterns and common or recurrent complaints, claims and enquiries						✓	✓	
	The monitoring and assessment activity allows identification of experiences in order to improve the mechanism and prevent future grievances and damages (ensure that the issue does not re-occur)						✓	✓	
	The measures and tools for monitoring and assessing the mechanism integrate the feedback received by the target stakeholders	✓			✓		✓	✓	✓
	The measures and tools for monitoring and assessing the mechanism are regularly revised and restructured to take into account the main impacts and the volume of complaints, claims and enquiries identified	✓					✓	✓	
	An analysis is made of how the company/organization approaches both the resolution of structural problems and the resolution of individual problems.						✓	✓	
	The results of the monitoring and assessment of the mechanism are shared with the target stakeholders for their information and consultation (when required).	✓			✓	✓	✓	✓	✓





## 4. Scoring and interpretation of graphics (BHR Tool Assessment)

The BHR Grievance Assessment Tool scores the mechanism against the eight (8) effectiveness criteria contained in the UNGPs along with certain process requirements. Possible scores can be high, medium and low. Each score requires a different level of intervention concerning either an specific effectiveness criteria or a process step.

**HIGH SCORE:** All criteria over 70 are considered as high score. This means that the level of management of the company or the organization is advanced. Many of the effectiveness criteria as well as process requirements indicators are fulfilled.

**MEDIUM SCORE:** All criteria between 40 and 70 are considered as medium score. This means that the level of management of the company or the organization needs some adjustments. Some of the effectiveness criteria as well as process requirements indicators are fulfilled. However, there is room for improvement.

**LOW SCORE:** All criteria below 40 are considered as low score. This means that the level of management of the company or the organization is weak and needs attention. Very few effectiveness criteria as well as process requirements indicators are fulfilled. Therefore, the company or organizations need to take action.

The scoring of each effectiveness criteria or a process requirement is represented as follows. EXAMPLE:

**TABLE 12. RESULTS ON THE EFFECTIVENESS CRITERIA:**

