International Labour Organization

MINISTRY OF HUMAN RESOURCES

REPORTING AND REFERRAL STEP-BY-STEP GUIDE

For Forced Labour and Human Trafficking

JUNE 2021

Definitions

Forced Labour

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

ILO Forced Labour Convention, 1930 (No. 29)

Scan to access national and international frameworks on forced labour and trafficking:

Trafficking

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

Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM)

Act

- Recruitment
- Transport
- Transfer
- Harbouring
- Receipt of persons

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Means

- Threat or use of force
- Coercion
- Abduction
- Fraud
- Deception
- Abuse of power or vulnerability
- Giving payments or benefits

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Purpose

- Exploitation including
  - Prostitution of others and other forms of sexual exploitation
  - Forced labour
  - Slavery or similar practices
  - Removal of organs
  - Other types of exploitation

Reference: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

TRAFFICKING

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

Step 1. Reporting on Forced Labour and Human Trafficking

Who can report: Anyone

Report to whom?

- Police
- Department of Labour (including labour inspectors)
- Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO)
- Trade unions
- Non-government organizations (NGOs)

Scan here for contact information of agencies that could assist with your complains:

The "Working for Workers" or WFW mobile application was launched in 2021 by the Malaysian Government to allow all workers to file their complaints and grievances without having to physically be present at the Department of Labour Offices.

There are currently 17 categories of complaints, including issues related to wages and benefits, dismissal, housing and accommodation, working conditions.

Information to give when you report potential forced labour case.

Anonymous reporting is an option but you may also provide your contact details if you prefer. The more details provided, the easier for follow-up action to be taken:

Information About the Potential Victim

- Name
- Sex
- Age
- Nationality
- Current address (if known)
- Permanent address
- Phone number and/or email
- Languages spoken
- Current employment
- Working condition encountered (refer to the list on the right)
- Dangers faced by the potential victim (narrative)

Report if you encounter at least one of the following:

- Was given inaccurate information about nature of and conditions at work
- Passport, legal documents or other valuables withheld
- Physical or sexual violence
- Emotional or verbal abuse
- Threats of violence to self or family members
- Threatened to be reported to the authorities
- Threatened to be sent back home
- Threatened with non-renewal of work permit
- Threatened with increased debt
- Threatened with being "blacklisted"
- Owing money to recruiters or employers with unfair terms of payment
- Excessive recruitment fees
- Wages withheld
- Unjust wage deduction
- Being made to do illegal work
- Dangerous work without personal protective equipment
- Being locked in
- Not allowed to communicate to family members or friends
- Excessive working hours
- Not allowed to take day off
- Degrading living conditions
- Not given enough food

Principles on Dealing With Victims

Respect for and protection of human rights

All assistance and protection efforts should seek to restore the victim's rights and prevent further violations without discrimination and re-victimisation. Some victims may have been involved in criminal activities as a part of their exploitation and others might have entered a country illegally as part of their trafficking and/or exploitation process. It is important that these victims of forced labour or trafficking are perceived not as criminals but as victims of crimes and they should not be detained, charged or prosecuted for involvement in crimes arising as a direct consequence of their forced labour or trafficking experiences.

Unconditional support to victims of forced labour and trafficking

The provision of care and protection included in ATIPSOM and other laws should not be made contingent on the willingness of the victims to cooperate with the investigation/ prosecution of the alleged offender.

Confidentiality and data protection

Potential victims must be informed about the purposes of collecting their information, how this information will be stored and used, their right to access and remove their personal information at any time. All information exchanged between a victim and a professional providing medical, psychological, legal or other assistance services is confidential and sharing of information should only be on a "need-to-know" basis, with the victim's informed consent.[1] The information must not include data that can expose the victim to further danger or discrimination or which do not concern the concrete work of the case.[2]

Non-discrimination

Victims must be treated fairly regardless of their race or ethnicity, sex, sexual orientation, age, disability, religious beliefs and practices, legal status, political affiliations, social and cultural background, and without prejudice related to the fact that they were exploited or forced to engage in illegal activities.[3]

Informed consent

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

Child protection

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

1 UNODC, Model Law Against Trafficking in Persons; East Africa Guidelines. | 2 Bulgarian Guidelines. | 3 Bulgarian Guidelines; East Africa Guidelines.

Step 2. Collect Further Information from the Victim

Who does this?

Police, Department of Labour's labour inspectors, Immigration Department, MAPO Officers, staff of NGOs, trade unions or other organizations which receive reports of forced labour and human trafficking as per Step 1

Why? To enable the interviewer to assess both the factors surrounding the victim and the responses to the interview questions to make a more accurate identification of the best referral pathway

Interviewing Techniques

Some useful pointers for effective and safe interviewing are set out below[4] :

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

What to ask?

The following is non-exhaustive list of questions and should be adapted based on the circumstances of the potential victim. Carefully document the responses of the potential victim and during the course of interview ask for evidence to support such response.

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

Interviewing the Victims regarding the Presence of Potential Forced Labour Indicators

Indicators are not proof of the crime; they are the starting point for investigation.
Indicators of forced labour must be understood from the point of view of the victims.
Important to look for indicators of both INVOLUNTARINESS and MENACE/THREAT OF PENALTY.

Deception
Deception involves deceit surrounding the nature of the work, working conditions, living conditions and/or wages. This also includes contract substitution

Examples of questions to ask

- What was promised by the recruiter or employer in terms of type of work, identity of employer, working hours, pay, living arrangements, etc? Are any of these not fulfilled in the actual employment?

In the case of children, add questions related to false promises made to the child or their parents, concerning school attendance or the frequency of visits by or to their parents.

Contract substitution
- Is there a contract in the workers' language signed before starting work?
- What are the terms and conditions of employment?
- Has these terms and conditions changed?

Excessive working hours

Examples of questions to ask

- How many hours of overtime per week did the victim incur?
- Check if in compliance with the labour laws
- How often is the victim asked to work overtime?
- Is there any sanction if the person refuses to or cannot do overtime?

Overtime in order to earn at least the minimum wage
- How many hours of overtime per week did the victim incur?
- How much is the hourly rate?
- If paid at hourly rate, does the total fee for 8 hours of work meet the minimum wage?

Hazardous working conditions

Examples of questions to ask

- Are there violations of occupational safety and health standards in the workplace?
- Is the victim provided with PPEs and paid for by the employer (should be the case)?
- Did the victim know about the hazardous nature of the job before accepting the job?

Abuse of vulnerability
This includes excessive reliance on employer for food and lodging and threat of non-renewal of work permits. Work permits tying workers down to one employer is an example of dependency created by the legal framework.

Examples of questions to ask

Excessive dependency on the employer
- Does the victim personally receive her/his own money from wages?
- Can the victim freely choose where to buy her/his basic necessities?
- Does the victim have the option to choose her/his accommodation?
- Can the victim withdraw her/his own money anytime from bank account without asking permission from the employer?
- Are there threats that certain needs (including work permit) or provisions will not be provided or withdrawn if the worker refuse to work?

Restriction of movement
A common means by which labour is extracted by duress from workers is through their confinement. Workers are locked up, guarded to prevent them from escaping, have their movements controlled outside the workplace. Communication with family and friends are also restricted.

Examples of questions to ask

- Does the victim have freedom of movement?
- Is the worker locked up at the workplace?
- Is the worker forced to sleep at the workplace?
- Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
- Is the worker prevented from leaving the workplace?
- Does the worker have days off?
- Can the victim freely contact friends and family?
- How did the victim find the employer?
- Did someone use force/blackmail to get the victim to work for the employer?
- Has the worker attempted to run away?
- Are the living area and workplace heavily guarded?
- Has the victim contacted family members or friends?
- Are the absence of the worker monitored?
- On his/her free time, is the worker free to leave the workplace/ accommodation?

Unsuitable accommodation and amenities

Examples of questions to ask

- Pertaining to the dimension and provisions of the housing, does it comply with the Employee's Minimum Standards of Housing, Accommodations and Amenities (Amendment) Act 2019 (Act 446)?
- Are there separate rooms for male and female workers?
- Are there available clean drinking water?
- Is the accommodation, unhealthy and overcrowded?
- Does the victim have privacy in the housing?
- Are there children living in the workplace?

Withholding of wages

This creates coercion that often acts to prevent a worker from exercising their right to leave an employer. Workers feel that will lose the chance to get back the due wages if they leave.

Examples of questions to ask

- How are wages being paid?
- Is there any illegal wage deduction?
- Has the worker received any wage at all?
- Does the victim receive little or no payment?
- What is the amount of the wage in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

Physical violence

Forced labour is frequently exacted from workers by the threat and application of physical or sexual violence. Some physical abuses by their employers can potentially amount to torture. Some sexual violence by their employers can potentially amount to rape.

Examples of questions to ask

- Does the worker have any sign of maltreatment, such as bruises? If so, did they receive medical treatment?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion or traces of violence?
- Do supervisors/employers demonstrate violent behaviour?

Debt bondage

Occurs when a person becomes a security against a debt or loan; or when debts are inflated to cause the person to continue working.

Examples of questions to ask

- Does the worker have to repay high/inflated recruitment or transportation fees? If so, are these deducted from the salary?
- Is the worker forced to pay excessive fees for accommodation, food or working tools and safety gear that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer? (Exorbitant interests)
- Has there been any complaint about the employer before?

Threats and intimidation

Workers are threatened denunciation to the authorities, loss of wages or access to accommodation, further worsening of working conditions or withdrawal of "privileges" such as the right to leave the workplace. Verbal and emotional violence, constant insult, isolation, denial of a private life and individual autonomy, prohibition of communication with their family and various forms of daily harassment and reproaches undermine the victim's sense of self-efficacy and personal dignity and increase their sense of vulnerability. This is just as effective as physical violence but much more difficult to identify.

Examples of questions to ask

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion?

Retention of passport/ identification document

Retention of identity or travel documents is a common form of coercion

Examples of questions to ask

- Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why?
- Does the worker have access to the documents at all time without need to ask permission from any other person?

Step 3.
Assess Immediate Needs

Who does this?

Police, Department of Labour's labour inspectors, Immigration Department, MAPO Officers, staff of NGOs, trade unions or other organizations which receive reports of forced labour and human trafficking as per Step 2

Why? To ensure that the victim will be taken out of the immediate situation of exploitation and given access to some support

Guiding questions[5] :

- **Is someone in immediate danger?** Those in danger can include other victims or relatives and friends of the victim. Circumstances where a presumed victim has been seriously assaulted or raped and suggest both high levels of severity and likelihood of injury, psychological trauma etc.
- **Are there outstanding presumed victims?** Outstanding victims could increase overall risk levels in a number of ways, primarily the risks to the presumed victims themselves. Exactly what the level of risk is will depend on the answers to other questions here. Have traffickers previously threatened or used violence? Factors that would affect the risk rating include the nature of the violence (severity) and frequency (likelihood). If there is evidence of previous violence or threats the risk level is likely to be higher.
- **What knowledge do the traffickers have?** Do the traffickers know the victim's home/work address or telephone number or details of those of his or her family? Knowing this type of information will raise the likelihood of risk.
- **What support services, including physical protection, are available?** Good support services such as health care, counselling and secure accommodation can reduce the likelihood of risks such as attacks on victim-witnesses, withdrawal of testimony, etc. Those support services also reduce the severity of risk, for example by improving the chance of recovery to health.
- **What is the victim's social network?** Is he/she married? Does the victim have any children? A social network may help a victim recover (reducing the severity of risk) or provide an informal victim protection (reducing the likelihood of risk) and thus the overall risk rating. In other cases suspected traffickers may have the ability to intimidate the family or social network, increasing both the severity of risk (for example by persuading the victim-witness not to testify) and the likelihood of it occurring.
- **Do the traffickers know (or claim to know) the locations of safe houses for victims of trafficking, home addresses of family etc?** Actual knowledge will increase the likelihood of risk to victims. Claimed knowledge, even if not true, impacts on risk because it may be difficult to assess the likelihood of them knowing this information and the severity of risk increases because it may have the effect of intimidating the witness.
- **Who do the traffickers have the ability to attack?** Does it appear they have associates in place in locations that could enable them to attack the victim, his or her family or friends, thereby increasing the likelihood or a risk of injury to someone or preventing a witness from testifying.
- **How "secure" is the investigation?** Threats to the security and integrity of the investigation may come in a number of ways. Traffickers with a previous history of bribing public officials would increase the severity of risk of a total failure of the investigation; money in the hands of those same traffickers would increase the likelihood or bribery taking place. Other issues affecting security and integrity include (for example) weak exhibit management systems, wide access to intelligence/information resourcesm, among others.

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

Risk on repatriation

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

Step 4.
Preliminary Assessment and Referral Whether Potential Trafficking or Non-trafficking Case

Who does this?

Police, Department of Labour's labour inspectors, Immigration Department, MAPO Officers, staff of NGOs, trade unions or other organizations which receive reports of forced labour and human trafficking as per Step 2

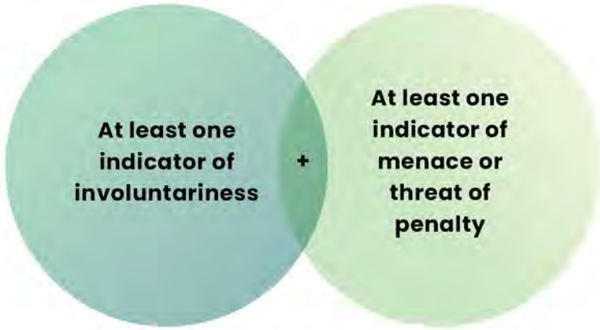
Why? To have an initial analysis of the information collected and refer the case to either Police (for trafficking) or Department of Labour (non-trafficking)

How to assess?

Based on the information collected, do you meet the following for it to be considered:

Potential Human Trafficking

Potential Forced Labour



Scan to access 11 ILO indicators on forced labour:

Whom to refer?

- If meets all trafficking elements: refer to the Police (step 5)
- If does not meet all trafficking elements: refer to the Department of Labour (Step 6)

Step 5. Taking Action on Referred Potential Human Trafficking for Forced Labour Case

Who does this?

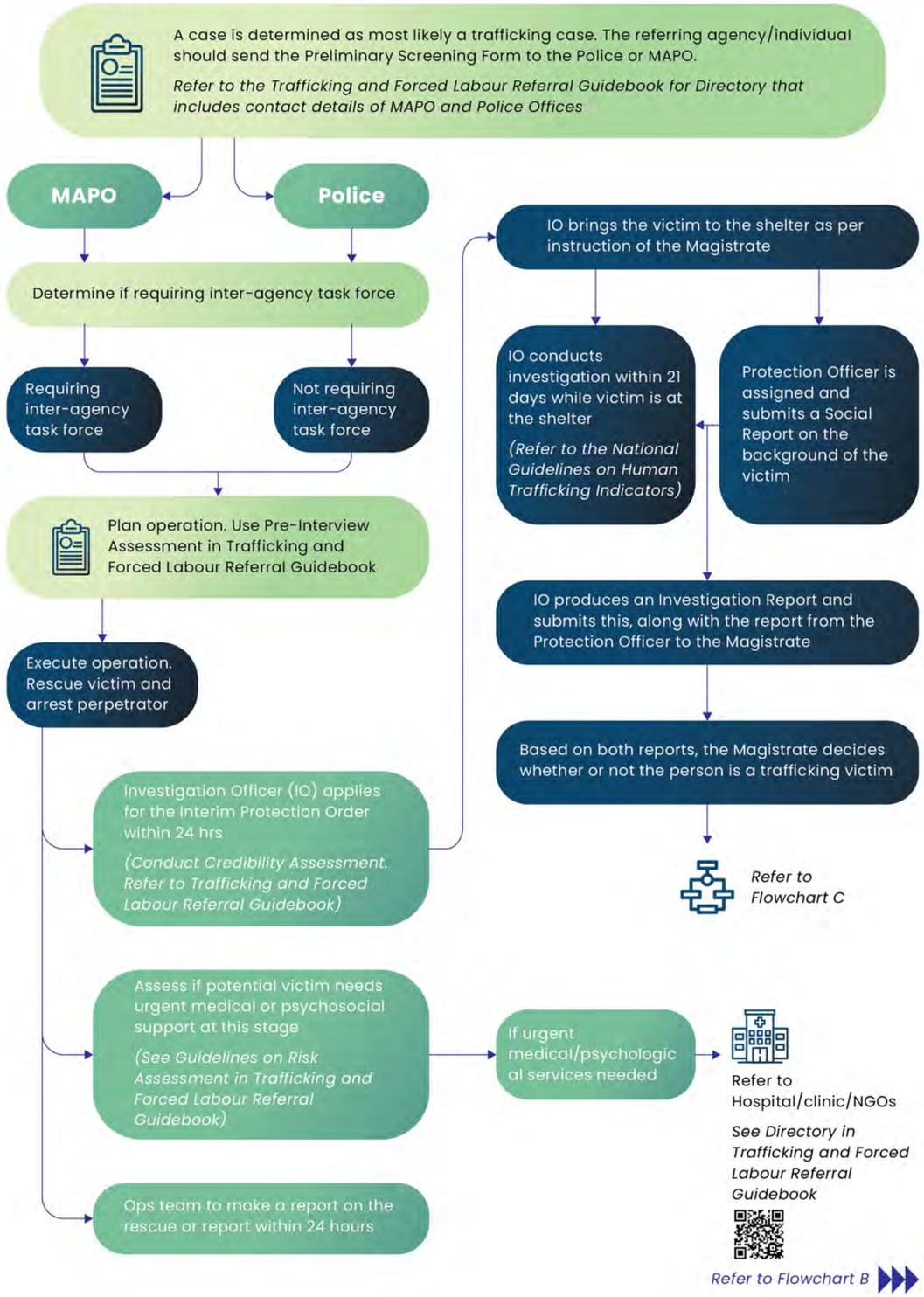
Investigation Officer, Prosecutor, Protection Officer, MAPO officers and Magistrate

What action?

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

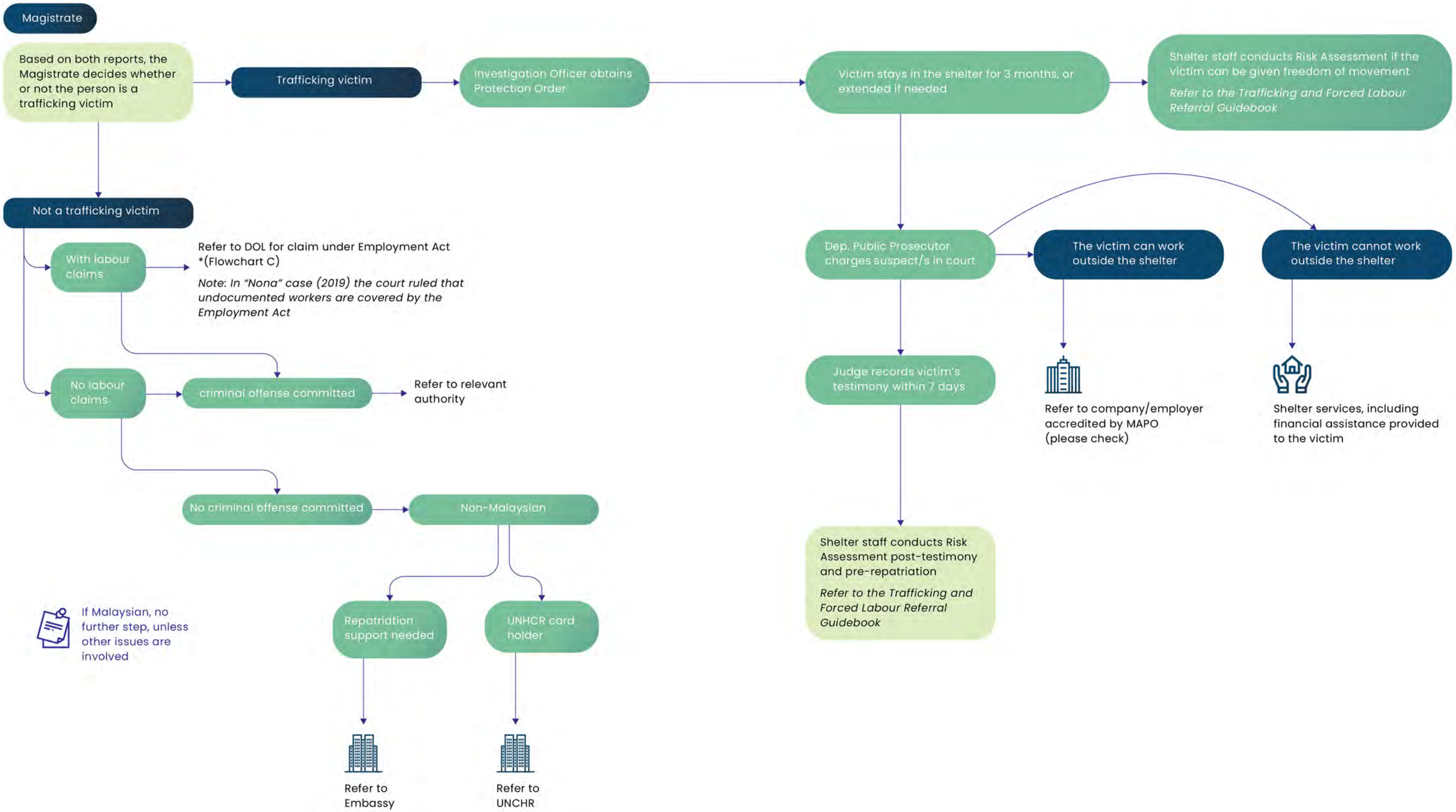
Flowchart A: Current actions undertaken **if most likely a trafficking for forced labour case**

Note: ILO has provided recommendations to the government to revise legislation and policies to provide similar protection for non-trafficking forced labour cases



Flowchart B: Actions undertaken after the Investigation Officer's investigation and Protection Officer's Reports are submitted

(current practice applies only to trafficking cases)

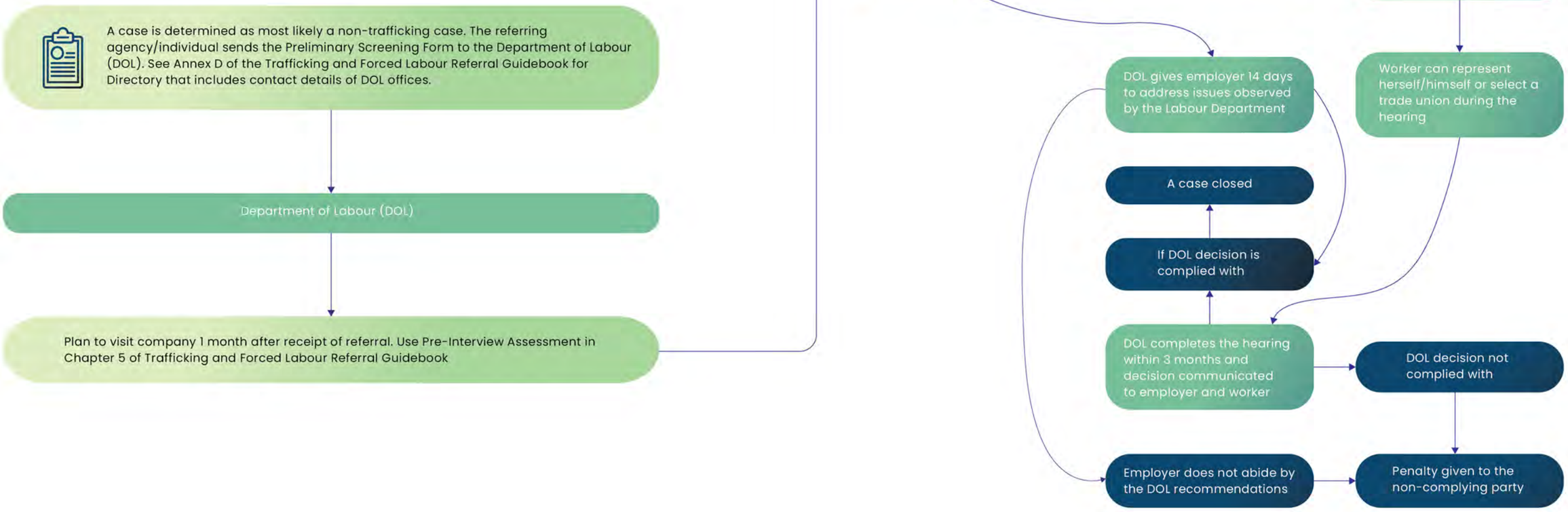


Step 6.
Taking Action on Referred Non-Human Trafficking Case

Who does this?
DOL as mandated under labour laws

What action?

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



Acknowledgment

This guide was developed by the ILO project From Protocol to Practice: A Bridge to Global Action on Forced Labour (Bridge). ILO Consultants involved in developing these were Archana Kotecha and Liva Sreedharan. Technical inputs were provided by the Ministry of Human Resources, National Strategic Office to Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, Royal Malaysia Police, Department of Immigration Malaysia, Royal Malaysia Customs Department, Malaysian Maritime Enforcement Agency, Department of Labour Peninsular Malaysia, Malaysian Trades Union Congress and the civil society organizations. This document is designed by Ratio Cause Consultancy.

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