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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Trafficking in persons, especially women and children**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, submitted pursuant to Human Rights Council resolution 35/5.

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\* [A/74/50](#).



## **Report of the Special Rapporteur on trafficking in persons, especially women and children**

### *Summary*

In the present report, submitted to the General Assembly pursuant to Human Rights Council resolution [35/5](#), the Special Rapporteur on trafficking in persons, especially women and children, outlines activities undertaken during the reporting period and identifies good practices and defines guidelines and recommendations for implementing long-term viable remediation responses for workers who are victims of trafficking in persons and severe exploitation in businesses' operations and supply chains. She analyses the specific challenges to acquiring access to State judicial and non-judicial mechanisms, as well as operational grievance mechanisms, the difficulties with regard to operational grievance mechanisms providing responses to workers who are victims of trafficking and/or severe exploitation and the role that legislation on companies' obligations for due diligence reporting can have in improving access for workers to those mechanisms.

## I. Introduction

1. In the present report, submitted to the General Assembly pursuant to Human Rights Council resolution 35/5, the Special Rapporteur on trafficking in persons, especially women and children, outlines activities undertaken during the reporting period and sets out a thematic analysis of challenges faced by workers who are victims of trafficking and other forms of severe exploitation when seeking access to remedies, the types of remedies at their disposal and those remedies' effectiveness in addressing their needs.

## II. Activities undertaken by the Special Rapporteur

2. On 27 May 2019, the Special Rapporteur participated as a keynote speaker at the seminar organized by La Strada International, on the theme "Justice at last: European action for compensation for victims of crime", at the invitation of the organizer.

3. On 10 June, she conducted a visit in the Netherlands to interview workers in the road transportation sector for input for the present report.

4. On 13 June, she made the welcoming remarks in a webinar organized by the International Centre for Migration Policy Development for the launch of their report entitled, "Study the strength to carry on: resilience and vulnerability to trafficking and other abuses among people travelling along migration routes to Europe".

5. On 25 June, she was a speaker in a side event to the forty-first session of the Human Rights Council, organized by the Permanent Mission of Austria to the United Nations and other international organizations in Geneva on the work of the Committee on the Elimination of Discrimination against Women on its forthcoming general recommendation on trafficking in women and girls in the context of international migration.

6. On 26 June, she was a panellist in another side event to the session, organized jointly by the Permanent Missions of the Republic of Moldova and the United Kingdom of Great Britain and Northern Ireland to the United Nations and other international organizations in Geneva, the Council of Europe and the Office of the United Nations High Commissioner on Human Rights (OHCHR) on the theme, "Fighting trafficking in human beings: fostering partnerships and co-ordination: good practices".

7. On 27 and 28 June, she presented to the Human Rights Council her report on innovative and transformative models of social inclusion of survivors of trafficking in persons into societies (A/HRC/41/46). The report was informed by two expert consultations, which she convened in Geneva on 13 and 14 December 2018, and in Addis Ababa from 31 January to 1 February 2019, as well as submissions from various stakeholders on the subject. The Special Rapporteur also presented the report on her country visit to Nigeria, which she carried out from 3 to 10 September.

8. On 28 June, she was a panellist in a side event to the session of the Human Rights Council, on the subject of on trafficking in children and access to remedy, organized by the Permanent Mission of the Philippines to the United Nations and other international organizations in Geneva.

9. Also on 28 June, she was a speaker at a side event to the session of the Human Rights Council, on the subject of the critical role of judges in combating trafficking, organized by the Permanent Mission of Israel to the United Nations and other international organizations in Geneva.

### **III. Thematic analysis: access to remedy for victims of trafficking for abuses committed by businesses and their suppliers**

#### **A. Introduction and methodology**

10. The present report contains an analysis of the specific challenges faced by workers who are victims of trafficking and other forms of severe exploitation when seeking access to remedies, the various types of remedies at their disposal and those remedies' effectiveness in addressing their needs. The report builds on previous reports of the Special Rapporteur (A/66/283, A/HRC/17/35 and A/HRC/20/18), reports of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (A/HRC/36/43) and the work of the OHCHR Accountability and Remedy Project, which was launched in 2014. The project is aimed at helping States to strengthen implementation of the third pillar of the Guiding Principles on Business and Human Rights (A/HRC/17/31; see also A/HRC/32/19).

11. In addition, the report has been informed by the outcomes and findings of the mandate holder's project and work on multi-stakeholder initiatives and how they tackle trafficking in persons through their standards and monitoring mechanisms. Of particular note is that workers must play a role in the design, governance and monitoring of standards in order for the mechanisms to be legitimate and effectively address cases of trafficking and severe exploitation in the context of businesses' operations and supply chains. In addition, a mapping of stakeholders, including trade unions, multi-stakeholder initiatives, lawyers and representatives from academia, was conducted to gather their feedback on the challenges to enabling access to State judicial and non-judicial mechanisms and operational grievance mechanisms, the difficulties with regard to those mechanisms providing responses to workers who are victims of trafficking and/or severe exploitation and the role that legislation on the companies' obligations for due diligence reporting can have in improving access for workers to these mechanisms. Those contributions were further enriched by consultations held in June 2019 in the Netherlands with members of the road transportation trade union, whom the Special Rapporteur interviewed to solicit concrete examples of the conditions of work and challenges to access to effective remedy for workers in the sector.

12. The Special Rapporteur also reflects on the concept of a continuum of exploitation. With the new forms of legislation focusing on the reporting obligations of companies and their actions in tackling trafficking in persons, forced labour or modern slavery, it seems that business conduct is solely examined through their success in tackling extreme cases of labour abuse, as trafficking or forced labour could be defined, and are therefore left unchecked for other types of labour abuses. Trafficking and other types of extreme labour abuses are nevertheless rarer and, given the higher threshold that is necessary for their determination as a criminal offence, they are less likely to be identified in the conduct of everyday business. However, as the Special Rapporteur has expressed in previous reports and interventions, today's economy is built largely upon a system that relies on the exploitation of vulnerable workers. Trafficking in persons, as an expression of the most egregious violations at the workplace, is one extreme in a continuum of exploitation. Exploitation, and therefore trafficking, begins with the enabling of a breeding ground for the disregard of fundamental labour rights, such as by placing limitations on the rights to join or form a trade union and to collective bargaining and disregarding basic workers' rights, such as the right to safety. Minor labour abuses, although common working conditions, are recognizable everywhere in everyday business practices, such as delayed payment of wages, excessive overtime, non-paid holidays or payment of

recruitment fees to recruitment intermediaries. They are so common that often workers do not recognize their abusive nature. The normalization of labour abuse at that level has a direct impact on the odds of recognizing more severe forms of exploitation. Workers, finding themselves in a spiral of a continuum of exploitation in which each practice and step have been normalized, are reluctant to come forward to State authorities or other types of grievance mechanisms. Because the first stages of the continuum of exploitation have only contributed even more to enhancing their position of vulnerability, by the time the situation has worsened and turned into a severe form of labour exploitation or trafficking, workers are even less likely to speak out.

## **B. Main challenges for victims in acquiring access to remedy through criminal proceedings and the role of the State**

13. The human rights of persons who are victims of trafficking should be at the centre of all efforts to prevent and combat trafficking, however, the ways in which justice is administered to the victims of trafficking raises many concerns in terms of both access to justice and the remediation obtained by victims.

14. In all interviews, as well as in stakeholder contributions, when workers were asked about the type of remediation they sought or the type of assistance they needed, the answers were similar. For most workers, victims of labour abuse and victims of trafficking, their main concern was recovering unpaid wages, maintaining their working contracts and improving conditions at the workplace. However, in most cases, resorting to grievance mechanisms, whether they are State-based or not, will result in the loss of jobs for workers and uncertain results regarding recovering wages and other payments due. It was made clear in interviews with workers that they only resorted to external aid and denounced their situation when their physical safety was in danger. In that regard, the main challenge identified was the overarching fear of vulnerable workers in the supply chain, both migrant workers and non-migrant workers alike, of losing their livelihoods.

15. Regarding access to remedies, isolation is often highlighted as a key barrier to access for workers wishing to bring their cases before State judicial mechanisms. Other issues that have been raised in the context of the Special Rapporteur's most recent consultations, affecting workers in cases of labour exploitation in particular, is the lack of understanding by workers of both the judicial and non-judicial system and how it can effectively provide reparations. Beyond understanding the complexities of the systems in place, workers often do not trust those mechanisms, and especially their capacity to bring appropriate reparations.

16. In addition, migrant workers' fear of being deported prevents them from raising complaints with the authorities, in particular when employers make repeated threats that their visas, work permits and/or residence permits depends on their contracts with those employers. This is a consequence of current migration policies in many jurisdictions, which promptly remove undocumented migrants, without allowing time for an initial assessment, despite national and international standards and policies on official recovery and reflection periods.

17. Even when migrants in irregular migration patterns are allowed to bring a case to a State-based judicial mechanism, their status adds an additional barrier. Migrants must be allowed to work during the time that their cases are being considered, which can take years, because they will not be able to stay without an income. As interviewees have underlined, migrant workers send remittances back home on which entire families depend. Even if the worker could be supported for the whole process by assistance from the State or civil society, it would still be an issue regarding the

income expectancy for the family in the country of origin. Together with the difficulties in following their case when they are returned to their home country, it makes access to effective remedy through State-based mechanisms cumbersome. Regarding the cost of the process, interviewees from the field across Europe have raised concerns that the cost to bring a case to court can be very high, in particular given the uncertainty with regard to the result. In a context in which the defendant, a company, normally has much greater economic resources to expend on such a process, it is difficult to obtain the balance needed for a due process and fair trial.

18. Moreover, at the core of the challenge in obtaining justice are the difficulties faced by victims in the context of the legal framework through which such cases are processed. Legal frameworks are often poorly prepared for the prosecution of cases of trafficking in the context of businesses' operations. There is a lack of understanding within law enforcement, the prosecution and the judiciary of the indicators of trafficking in persons, especially in the field of labour exploitation. In many cases, prosecutors understand trafficking to be present only in cases in which individuals are physically restricted from leaving their employer, or in which there is physical violence or threats of abuse. Even in scenarios in which law enforcement personnel are aware of the indicators and can identify cases of trafficking in persons, workers are not ensured that the "slightest indication" criterion for identifying victims of trafficking is applied consistently by the authorities; in such cases, the first responders are usually those within State authorities, namely, police officers and labour inspectors. In the current system, in which an official identification is needed in order to trigger the provision of assistance to victims, if those making such determinations are not aware of, or do not apply in their assessments, the known indicators of trafficking, workers are not identified as victims of trafficking and are not treated and protected as such. A good example of a trade union facilitating access for workers to remedies by raising awareness among those actors is found in Italy. The Italian Federation of Agro-Industrial Workers facilitates access to justice for workers by sensitizing public prosecutors and police authorities at the local level and by supporting victims. The Federation provides workers with free transportation and financial assistance for the duration of the legal proceedings.

19. In the case of trafficking for labour exploitation in businesses' operations and supply chains, the added procedural difficulty is that each element needed to complete the trafficking in persons definition is performed by various actors in the global economy. The exploitation is only visible at the employer level, but the crime often begins much earlier in the process, at the level of an unethical recruitment intermediary that imposed a fee on the worker and condemned him or her into debt bondage. Each actor has often performed a piece of the crime, but the connection between them is not one of a criminal network but that of an intricate web of business relationships. In that regard, cases of trafficking for labour exploitation focus on its symptoms, the related labour violations, and charges are often brought separately. Feedback from the field reveals that it is very difficult to determine who is in charge. Before a case is brought to court, a mapping of responsible parties for each violation must be performed, and legal practitioners often struggle with finding the violation and the offender that will be most easily identified and prosecuted for the violation.

20. Moreover, the threshold criteria that must be met to prove a case of trafficking for labour exploitation are more challenging than for other offences, such as migrant smuggling. The lack of cases being brought to court results in lack of experience for prosecutors and judges and leaves little opportunity for building jurisprudence on such cases. In that regard, shifting the focus to other related offences rather than to trafficking has been shown to have some degree of success in bringing cases to court, according to feedback from civil society. Prosecutions based on fraud and corruption,

or even migrant smuggling, have offered an opportunity for cases to be brought to court and be analysed on the merits, including for indications of trafficking in persons.

21. Other challenges reported at the procedural level include poor or non-existent access to legal aid funding for participation in judicial procedures, lack of translation and interpretation services for victims and failures in law enforcement investigations. The result of such failures is that, even when victims are identified following an evaluation through the national referral mechanism, often no corresponding criminal charges are brought and, when they are brought, fewer cases result in a conviction.

22. With a few exceptions, when a conviction has been pronounced, compensation is rarely awarded, and, if awarded, is not actually granted owing to a lack of confiscated assets, as a result of poor investigation methods.

### C. Judicial and non-judicial mechanisms

23. Regarding obtaining remediation through means other than criminal proceedings, stakeholders were asked to what extent non-criminal judicial mechanisms and non-judicial State mechanisms could be an adequate venue for victims of trafficking and severe exploitation. In particular, stakeholders were asked about the adequacy of civil and labour courts and of other non-judicial procedures, such as conciliation and mediation mechanisms.

24. Victims of trafficking and severe exploitation often have claims for unpaid wages and/or holiday pay, which can allow them some remedy in cases in which criminal law and linked compensation schemes may fail them. Civil or employment tribunals may also allow the victims to provide more input than in criminal proceedings, in which victims are often considered as witnesses to be called upon, rather than parties integral to the case. Involvement in a procedure and a sense of ownership and can be a way for victims to regain their sense of self-determination.

25. Owing to the failures of the criminal justice system set out above, remedies through civil and labour law are often the only way of securing any compensation for victims of trafficking.<sup>1</sup> However, companies higher up in the supply chains that set the conditions in the supply chains often escape responsibility in the courts because they are not the direct employers.

26. Moreover, procedures under civil and labour law are also often inappropriate for dealing with severe forms of exploitation, and elements of trafficking must be brought under torts and constructs, such as harassment, which are inadequate and focus on physical assaults and breaches of contract.<sup>2</sup> Trafficking and severe labour exploitation are not generally civil claims of themselves, therefore the seriousness of the exploitation is not communicated through a successful claim in the same way as would be a criminal charge to uphold the public good. However, the bar is higher, and the burden of proof greater, in a criminal case, and law enforcement, the prosecution and the judiciary are hesitant to apply such a high bar.

27. Moreover, civil procedures can be more complicated to use, since the burden of proof lies with the claimant. The costs at stake, derived from a claim for economic

<sup>1</sup> In the case concerning the International Transport Workers' Federation and the fishers in Ireland, seven of the victims of trafficking assisted by the Federation in their claims against the fishing industry there have so far been awarded a total of around €110,000 before the Workplace Relations Commission of Ireland.

<sup>2</sup> See, for example, *Antanas Galdikas and others v. DJ Houghton Catching Services Ltd and others*, the case concerning "chicken catchers" trafficked from Lithuania for the purpose of labour exploitation in the United Kingdom. Available at [www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2016/1376.html](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2016/1376.html).

compensation, can be much higher, and employers will do everything in their power to weaken the credibility of workers. Even if there is a positive court outcome, it will still be difficult to receive the compensation awarded. As the Special Rapporteur learned in the context of her consultations, in order to facilitate access for workers to that type of remedy, in the generally binding road transport agreement in the Netherlands, there is a clause on reversing the burden of proof. If the workers raise a complaint with the trade union, the company must prove that they followed the rules of the agreement. In such a case, a worker's name remains anonymous. In addition, in the civil law system, there is a clause on chain liability for workers' wages. Under the law, workers can claim compensation from the top of the supply chain.

28. Under the law in the Netherlands, the advantage of raising a criminal case is that, if compensation is awarded, the so called "civil damage measure" will often be applied. This is a measure through which the State will front the awarded damage to the victim (who is always paid) and then try to reclaim the money from the defendant, thereby sparing the victim from having to try to factually claim the money and damage. However, the measure is only available in criminal law cases.

29. Stakeholders emphasized the centrality of adequate and accessible judicial mechanisms. However, where they fail, there is a need to rely on effective non-judicial mechanisms.

30. The key non-judicial mechanisms are the following: national labour inspectorates, if they are well funded, have a mandate to engage effectively with workers, and a strong channel for complaints and are able to provide remedy;<sup>3</sup> national human rights institutions and ombudsmen; and national contact points for responsible business conduct under the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises. Regarding the national contact points, it was reported at the end of May 2019 that Sherpa, a non-governmental organization based in France, was pursuing a legal case against the company Bolloré to enforce an agreement that had been mediated at the national focal point level in relation to working conditions at its palm oil plantation in Cameroon.

31. With regard to the role that national labour inspectorates and labour mediation mechanisms can play in providing effective remedies for victims of labour exploitation, they may not be adequate in cases of serious labour abuses, given that labour inspectors are not used to identifying them and have no law enforcement powers. A good example in enhancing labour inspectorate capabilities and powers in identifying and facilitating access to assistance and justice for victims of labour exploitation may be found in Portugal. In 2014, the national referral mechanism was improved to ensure that trafficking for labour exploitation was appropriately addressed. The success of that model was based on the work of regional multidisciplinary teams, which included labour inspectors, among a wide range of actors. In addition, workers who are identified as victims of trafficking now benefit from an integration programme that includes access to the labour market.

32. Regarding the relation between remedies at the State level and grievance mechanisms at the company level, stakeholders reported that those were often seen as two separate universes, with the latter being more relied upon in countries where the rule of law was weaker, an attitude that helps to perpetuate the problem. One way to help to address the situation is to organize meetings between civil society, companies and labour inspectorates in which can share information in an anonymous way. Similarly, in previous consultations with the auditing industry, auditing

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<sup>3</sup> See also the Gangmasters and Labour Abuse Authority in the United Kingdom, whose mandate was expanded by the Immigration Act 2016 to cover the investigation of labour exploitation offences.

companies suggested that they would be ready, if allowed by the companies that had hired them to audit their operations and suppliers, to share auditing results in an aggregated anonymous way. Although it may not help in an individual case, it would allow for labour inspectorates and other stakeholders to have a clear view of the main issues and to be able to prioritize areas of concern and actions to follow.

#### **D. Transparency legislation and its impact on the accountability of businesses in cases of trafficking or severe exploitation identified in their operations and supply chains**

33. After the passage of the California Transparency in Supply Chains Act in 2010 in the United States and the Modern Slavery Act 2015 in the United Kingdom, other countries have followed suit in the area of corporate reporting obligations on the risks of forced labour and trafficking in persons. Australia has recently passed the Modern Slavery Act 2018, which addresses some elements of weakness found in the above-mentioned laws; Canada and the United States, among others, are considering similar legislation to request companies to report on their efforts to tackle trafficking in their operations and supply chains. However, as public reports and feedback from the Special Rapporteur's consultations have shown, stakeholders are not universally optimistic. The criticism on the laws in California and the United Kingdom generated by the lack of enforcement and lack of positive action required – companies are complying with the law even if they report that they are taking no action – has been analysed by the Special Rapporteur (see [A/HRC/35/37](#)). More recent reports and feedback from consultations have raised concerns about the minimal impact that the legislation has had on changing companies' behaviour.

34. Most reports and an analysis of the literature on companies reporting as a result of the legislation is that companies have been weak in their reporting, information on their performance is quite limited and more needs to be done in improving disclosure requirements to allow civil society and Governments to monitor businesses' abuses.<sup>4</sup> Transparency legislation may have initiated the first changes in attitudes towards shifting some element of responsibility for labour exploitation along the supply chain, but it has not yet led to any significant changes in businesses' behaviour. Information disclosed publicly through their statements is not sufficient for other stakeholders to challenge company actions on the facts. In addition, companies that are doing better at complying with the legislation had already been identified as leaders in that area. For others, the impact has been rather limited, because their reporting has been focused on activities that do not address any of the issues related to the business models at the root of exploitation and abuse.

35. Some civil society actors claim that such legislation has shifted the focus of companies towards the extremes of the exploitation spectrum, leaving them off the hook for key issues, such as respect for the work of trade unions.

36. The Special Rapporteur wishes to highlight that legislation providing for more stringent obligations might achieve better results, taking into consideration that the establishment of effective mechanisms to identify the worst forms of exploitation sheds light on the whole spectrum of labour law violations.

37. Regarding the content of due diligence reports, they must include policies aimed at identifying and addressing relevant risks. Reporting on outcomes is controversial, however, even among civil society stakeholders. For some, reporting on outcomes

<sup>4</sup> See International Corporate Accountability Roundtable and Focus on Labour Exploitation, "Full disclosure: towards better modern slavery reporting", March 2019. Available at [www.icar.ngo/s/ICAR-Full-Disclosure-Report\\_Apr10-WEB.pdf](http://www.icar.ngo/s/ICAR-Full-Disclosure-Report_Apr10-WEB.pdf).

and their impact could have a positive effect on the way companies reflect on their achievements in tackling trafficking in persons and labour abuses. Nonetheless, others highlighted that a report on specific outcomes may deter workers from raising a complaint if they think that the details of their cases may become public. That concern could be tackled through an aggregated sharing of data. However, public disclosure of outcomes could prevent employers from engaging with relevant stakeholders, which is necessary for achieving the efficiency and effectiveness that are desirable and that might be outside of the scope of the applicable law on transparency.

38. Some civil society stakeholders claim that legislation should incentivize the reporting of identified cases of trafficking in persons and severe exploitation through the creation of a safe haven, to allow companies to report without harming themselves. That approach poses several challenges. Trafficking in persons is a grave violation of human rights and an amnesty accorded to companies that have participated in trafficking or profited therefrom would contravene victims' rights to access justice and effective remedy. An alternative would be to allow for an amnesty for reporting companies only when a remediation plan addressing the needs of workers is already being implemented.

39. Regarding the effect of current legislation on due diligence reporting obligations on access for victims to remedies, due diligence along the supply chain is essential to allow grievance mechanisms to operate. The publication of a list of suppliers and subcontractors, as well as parent company subsidiaries, would be key to allowing external stakeholders and workers to hold companies or "economic employers" higher up the supply chain to account. Workers along the chain must be informed of the relationship that their companies may have with each company or economic employer along the supply chain. Otherwise, hotlines enabled by companies and claiming to reach and cater to workers along their supply chains would be useless. It is a company's responsibility to trace its supply chain or otherwise simplify their operations in a way that makes that traceability possible. In that regard, national legislation on transparency can also facilitate access to remedies for workers.

40. Aware of the concerns held by many companies on suppliers' disclosure, trade unions have suggested that, if not entirely public, supplier information could be provided to the union on a regular basis through a global framework agreement, which could assuage business concerns about confidentiality by limiting the distribution of the information. It would work for suppliers in the same sector, given that the global union federation would have affiliates on the ground in the relevant geographical areas to assist workers in using the information for their protection.<sup>5</sup> A similar initiative was discussed in the previous consultation held by the mandate holder on the topic of strengthening the input and perspectives of workers in multi-stakeholder initiatives. The group suggested that multi-stakeholder initiatives operating in the same region or country could optimize resources by establishing common grievance mechanisms based on a national network of stakeholders.

41. Whereas laws in California and the United Kingdom do not establish any enforcement mechanism, under the recent law in France on the duty of vigilance and the Responsible Business Initiative in Switzerland, a civil liability system is established for victims to submit claim damages. That type of civil liability will constitute a stronger deterrent for businesses than a public naming and shaming.

42. Some civil society stakeholders, commenting on the duty of care clause on parent company liability in France, highlight the difficulty in proving civil liability for a failure to address risks. In order to prove a company's liability, the affected

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<sup>5</sup> An example provided in consultations was the global framework agreement between ASOS and IndustriALL and the accompanying grievance mechanism for workers.

worker would have to show that she or he would not have suffered damage had the company implemented an adequate vigilance plan, implying that either the company does not have a plan at all, the plan is not adequate or the plan, which may have been adequate, was not implemented. It constitutes a very high bar for a claimant to prove that, if the company had implemented an adequate plan, they would not have suffered the damage.

43. Even confirming the absence of a plan depends on the interpretation of the courts in France. Many companies mention it in recent company reports, but the extent is only a few generic paragraphs that may mention some examples of actions taken, without the process gone through to identify the particular risks, the measures, the outcomes and any assessment of improvements based on identified indicators. That does not equate to a vigilance plan, as foreseen in the law, which should be interpreted as requiring a thorough plan including the itemization of real actions. The courts could therefore take a firm lead to ensure a real impact from the legislation.<sup>6</sup>

44. Company liability for failure to address risks is essential to ensuring that businesses take obligations to address such risks seriously. Without that type of liability clause, due diligence obligations remain voluntary. Experiences in operational level grievance mechanisms in recent years, or in companies' transparency efforts in tackling trafficking in their supply chains, indicate that many businesses will not take meaningful steps without being compelled or incentivized to do so, especially those less exposed to the consequences of naming and shaming practices on which legislation on transparency has largely been based until now.

45. For that reason, and despite the above concerns, the legislation in France is a sign of real progress, especially regarding the inclusion of a civil liability clause, in a direction that will ultimately benefit workers. In that regard, the ongoing discussion at the international level of a legally binding instrument on transnational corporations and other business enterprises with respect to human rights might and should foster further debate and progress at the national level, in order to facilitate workers' access to remedies, especially for abuses committed by a business enterprise abroad.<sup>7</sup>

46. The stakeholders consulted have suggested that companies could also be further encouraged to take positive steps in tackling trafficking in persons and addressing labour abuses in their operations and supply chains through a policy of incentives for compliant companies. Such incentives could include a facilitated access to government procurement. In a similar way as in the Federal Acquisition Regulations in the United States, bidders to public contracts should be able to demonstrate that they tackle the risks of trafficking and labour abuse by addressing specific risks, such as payment of recruitment fees by workers.

<sup>6</sup> Concerns on the enforceability of the liability clause were also raised in the submission received from the International Transport Workers' Federation.

<sup>7</sup> See the International Trade Union Confederation position paper on the zero draft of the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. Available at [www.ituc-csi.org/zero-draft-of-the-legal-binding?var\\_mode=calcul](http://www.ituc-csi.org/zero-draft-of-the-legal-binding?var_mode=calcul). The Confederation suggests the inclusion of the following into the zero draft: the enabling of class action suits or granting of procedural rights to victims; the requirement to eliminate claimants' security for costs; shifting costs from the defendant to the claimant regarding the article on access to remedy; and the reversal of the burden of proof, which should be recognized under domestic law and not left to the discretion of domestic courts, regarding the article dedicated to the civil liability of companies.

## **E. Role of companies in establishing grievance and/or other redress mechanisms**

47. Companies' obligation to establish or participate in effective operational-level grievance mechanisms for individuals and communities that may be adversely affected by their activities is set out in principle 29 of the Guiding Principles on Business and Human Rights. In the principle and commentary thereon, it is determined that operational-level grievance mechanisms must be accessible directly to individuals and communities that may be adversely affected by a business enterprise and are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. In order to determine their effectiveness, the Guiding Principles offer a set of criteria for use in determining whether the mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-based and a source of continuous learning. In addition, operational grievance mechanisms should be based on engagement and dialogue.

48. In the commentary to principle 29, the double purpose of operational grievance mechanisms, as a monitoring system and as a mechanism to resolve disputes, is recognized. However, operational level grievance mechanisms for workers have been used by companies only as an alternative monitoring system, rather than a mechanism aimed at resolving disputes and providing redress to workers. In building their grievance mechanisms, companies have used systems allowing victims or witnesses to report issues that could constitute labour abuse at the workplace. Those systems sometimes include anonymous hotlines or other whistle-blower protection mechanisms. Although they can constitute a successful source of information on the actual situation of labour rights in the workplace and can give companies a sense of ongoing issues of general non-compliance, they will be less useful in addressing the concerns of individual workers. Moreover, workers, whenever the mechanisms exist, are often not aware of the type of grievances that can be raised through the mechanism, the procedure to follow-up or the result that can be expected, all of which are criteria that should have been addressed by companies following the recommendations contained in the Guiding Principles on Business and Human Rights.

49. Labour abuses and workplace conditions are better addressed in the context of a dialogue with worker representatives or when the grievance mechanism is fully supported by a civil society partner acting as a third party in charge of the mechanism. Through trade union representation or a civil society actor third party, issues of power imbalance are more easily addressed. Whereas workers may often lack trust in grievance mechanisms, their trust in the organization that represents them – and both civil society and trade unions are strong firewalls that can more effectively call upon companies to commit to the Guiding Principles and other criteria on grievance mechanisms – is translated into trust in the such mechanisms. However, that means that companies must allow those organizations to operate, allow workers to join them and facilitate their activities in the workplace.

50. As highlighted by contributors in previous consultations led by the Special Rapporteur on the subject, workers must be fully involved in designing grievance mechanisms. Only they are aware of the problems to be addressed, and they will have the best sense of a process that is both fair and accessible. As for the fairness of the process, there is no reason to think that an independent oversight agency – a civil society partner that could lead the mechanism – that is not biased against workers would be any less fair than the vast majority of existing oversight mechanisms.<sup>8</sup>

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<sup>8</sup> As in the Fair Food Programme initiated by the Coalition of Immokalee Workers.

Moreover, existing worker-led mechanisms, such as the Fair Food Programme (see para. 64 below), have proven to be fair and effective.

51. Regarding the relationship between State-based mechanisms and operational grievance mechanisms, it is reported that companies are still seeing the latter as a way to avoid judicial adjudication. On the contrary, the prior use of operational grievance mechanisms should be without prejudice to access to judicial remedies, and their users should not be asked to sign waivers of their right to resort to State-based mechanisms. To avoid deficits in relation to complementarity of grievance mechanisms and judicial remedies, companies and stakeholders must be careful in the design of operational grievance mechanisms and in how these interact with State-based mechanisms.<sup>9</sup>

52. There should be an opportunity, and indeed an obligation, for referral from the internal mechanism to the national State authorities, in cases in which potential crimes are identified. It means that it is essential for those mechanisms to operate independently and have adequate training in place for those operating within them and dealing with complaints, including in relation to internationally recognized indicators of trafficking. Indeed, the same can apply for all non-judicial remedies.

53. Whether operational grievance mechanisms are appropriate for cases of trafficking in persons and severe exploitation of workers has been the subject of some debate in recent multi-stakeholder discussions about grievance mechanisms that are not State-based. Some stakeholders are of the opinion that, even in a situation in which workers are reassured enough to trust in the independence of a remedy and resolution mechanism, it is not appropriate for trafficking in persons. Nevertheless, internal mechanisms can present an opportunity to resolve more easily and quickly certain issues such as back payment of wages, without prejudice to subsequent criminal or civil proceedings.

54. On a practical level, operational grievance mechanisms can also be a useful path by which to resolve grievances, owing to the significant – and grey area – of overlap. What may appear at first to be less severe cases of labour exploitation, such as payment infringements, can be evaluated, under greater inspection of available evidence on indicators of trafficking, to be sufficiently serious to warrant the determination of a case of trafficking in persons. Victims of trafficking, in particular in a situation of labour exploitation, often do not make the connection between their own situation and trafficking. They may be more likely to come forward under an operational grievance mechanism with complaints that may then reveal further individual indicators of trafficking.

55. A good practice is the programme implemented by the Leadership Group for Responsible Recruitment, a company-led programme that seeks to offer a form of redress to workers for one of the recurrent labour abuses in companies' supply chains, namely, the payment of recruitment fees. The Group is a collective advocacy platform harnessing the leverage of major international companies to promote responsible recruitment practices among businesses, the recruitment industry and Governments. In addition, the coalition seeks to repay workers for the fees that they have incurred because of the unethical practices of some recruitment intermediaries.

56. Another good practice is found in a State-led coalition with private sector and other stakeholders to address trafficking in businesses' operations and supply chains, under the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. The Bali Process Government and Business Forum is a platform for collaboration. It brings together business leaders and ministers from 45 countries

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<sup>9</sup> International Commission of Jurists, report on effective operational grievance mechanisms (forthcoming).

and four United Nations organizations. The focus is on implementing regional strategies that complement global efforts to eradicate forced labour, modern slavery, trafficking in persons and child labour under target 8.7 of the Sustainable Development Goals. Based on the implementation of the Acknowledge, Act and Advance Recommendations (also referred to as “AAA Recommendations”), the Forum seeks to encourage stronger collaboration between businesses and Governments through, among other efforts, the strengthening, of transparency in supply chain legislation, ethical recruitment, protection for victims and access to redress mechanisms.

## **F. Access for workers to redress mechanisms in the supply chain**

57. Regarding access for workers to parent company grievance mechanisms and parent companies’ relationships with grievance mechanisms operated by their suppliers, an economic employer should at least ensure that its suppliers operate a grievance mechanism that is adequate and fulfils essential criteria such as worker engagement and respecting the right to freedom of association.

58. Regarding access for workers to the operational grievance mechanisms of parent companies, some considered that it would be a good practice for suppliers’ workers to have direct access to economic employers’ grievance mechanisms, at least in cases in which a parent company has 100 per cent ownership. However, others have raised concerns about the parent company performance in effectively addressing the issues raised when they have occurred at the workplace of a distant supplier. Parent companies are not at the workplace and would not know or understand what has occurred at suppliers’ workplaces. Workers, on the other hand, would not trust the parent company to protect them from potential retaliation from the supplier. In addition, providing the parent company with information relating to an individual worker on highly sensitive issues creates privacy and data retention problems for both the worker and the company.

59. From a monitoring perspective, access for workers to parent company operational grievance mechanisms can also act as an alert mechanism for the parent company, to notify it that its suppliers are not operating under the terms of their business contract. In that regard, it is good practice to incorporate basic labour rights and other human rights standards and due diligence expectations into contracts with suppliers and subcontractors. In addition, as an improvement in workers’ chances to obtain compensation for certain labour abuses, stakeholders suggested the inclusion of an explicit provision in the supplier business contract stipulating that, where there is non-payment of wages or other labour exploitation practices, monies otherwise due to the supplier may be paid directly to the supplier’s workers suffering exploitation.

60. A possible barrier to access to a parent company operational grievance mechanism lies in the many business relationships that suppliers have with various companies. In order to overcome that issue, a suggestion has been made that, in cases in which suppliers work for multiple companies, it should be a principle that, for easiest access to a remedy for the victim, all companies should be equally responsible, in a similar way to joint liability in civil law. The peer economic employers should be responsible for negotiating their relationship and responsibility, when they benefit from shared facilities. Where those circumstances are ongoing and expected to continue in the long to medium term, a more stable agreement, such as the Accord on Fire and Building Safety in Bangladesh, including all companies purchasing from the relevant factory and global unions, can be helpful.

61. Regarding the enforceability of the agreement reached through company-level operational grievance mechanisms, the agreements and resolutions emanating from

an operational grievance mechanism must be legally enforceable. That is resolved in mechanisms such as the Fair Food Programme or grievance mechanisms led by multi-stakeholder initiatives through a binding clause in a company's contract of engagement with an initiative.

## **G. Role of social actors in designing, implementing and monitoring grievance and/or other redress mechanisms**

62. Regarding the role of trade unions in operational-level grievance mechanisms, in its Due Diligence Guidance for Responsible Business Conduct, OECD explicitly references the global framework agreements between companies and global union federations as a means of establishing legitimate remediation mechanisms, as well as collective bargaining agreements and enterprise supply chain grievance mechanisms. In that regard, there is a new project by the International Transport Workers' Federation and the road transportation trade union in the Netherlands, aimed at creating a due diligence model for companies in the road transportation sector, under which companies will be required to incorporate due diligence expectations and labour standards into their procurement arrangements and contracts with suppliers, in addition to involving workers in the design, operation and monitoring of the model and the operational grievance mechanisms.

63. Another good practice, found in the agriculture sector, is the Fair Food Programme, a project initiated by the Coalition of Immokalee Workers to respond to labour abuses in the tomato-picking sector in Florida, United States. The programme is a partnership among farmers, farmworkers and retail food companies aimed at ensuring fair working conditions for the workers in the participating agricultural supply chains. The programme is worker-driven and, as such, workers play a leading role throughout the programme, from their participation in the design and setting of standards to the monitoring of compliance by farms and employers with those standards. The success of the programme is also based on consumer demand for ethically produced vegetables and the purchasing power of companies with whom the programme signs binding agreements to respect the labour standards established by the programme. The programme, based on a policy of zero tolerance of labour abuses, encompasses a channel of communication with workers, including a complaint mechanism free from retaliation and a formal monitoring process that guarantees a continuous flow of communication. Responders and case managers of the complaints mechanism are the same programme auditors who carry out the monitoring process, assuring that, when workplace complaints are raised, responders are already aware of the circumstances of the case. To overcome the main challenges of the programme, such as gaining workers' trust in its ability to promptly find effective solutions to the labour abuses reported, grievances are resolved under two weeks and a worker-to-worker capacity-building programme to enhance workers' participation reinforces the mechanism.

64. Worker-based grievance mechanisms, if properly designed, are, for many reasons, more effective than other mechanisms. Programmes such as the Fair Food Programme allow workers to raise issues without fear of retaliation. That type of grievance mechanism also allows for grievances to be resolved at a much quicker pace than a State-based mechanism, which poses time-consuming procedural hurdles for victims, thereby not only addressing unwanted behaviour in a timely manner, but also reinforcing for other workers that they do not have to endure such abuses. In addition, because, in a properly designed system, severe exploitation of workers is not tolerated, and because the employer loses business if it occurs, the employer becomes an ally in relaying the message to middle management that preventing such behaviour, not just addressing it after the fact, is a job requirement. Furthermore,

because it is designed as a market-based enforcement programme, it does not require workers to waive any right or remedies that they are legally entitled to outside of the programme's code of conduct. The grievance mechanism can therefore serve as an expedited way to investigate the most egregious cases. In addition to remedies provided by the programme, referrals can be made to law enforcement and civil attorneys for additional sanctions, with the advantage of most of the investigative work and witness interviewing process having already been done by agents of a trusted mechanism.

65. Enforcement of decisions taken by the multi-stakeholder initiative is ensured through a legally binding agreement with the parent company or upstream buyer that requires the buyer to cease purchasing from suppliers that are out of compliance and only resume purchasing once the supplier has remedied its practices, as determined by an independent oversight organization.

66. Another promising initiative is the one proposed in the remediation guidelines for victims of exploitation in extended mineral supply chains of the International Organization for Migration (IOM). The guidelines were developed in consultation with downstream companies in the electronics industry, audit programmes, smelters and refiners, Governments, intergovernmental organizations, non-governmental organizations and IOM experts, relying upon case studies and the experience of IOM in protecting hundreds of thousands of victims of exploitation and supporting Governments and civil society organizations to better protect victims of trafficking.

67. The guidelines contain a six-step operational process that, when put into practice helps companies to establish operational grievance mechanisms that operate in partnership with existing national referral mechanisms, including those of the State authorities and civil society. The recommendations respond to a growing concern heard in the context of various consultations held by the Special Rapporteur. Although many guidelines existed on how an operational grievance mechanism should be configured, there was no guidance on how such a mechanism could work in practice, the type of remediation that would be more adequate for cases of trafficking in persons and how the wealth of experience of civil society and State actors in identifying and providing assistance to victims of trafficking could be leveraged in companies' mechanisms. In helping companies to structure their operational grievance mechanism and deal with cases of exploitation of workers, IOM designed a system that was based largely on national referral mechanism good practices and Government and civil society case management experiences, which allowed for it to cater to the many varying needs that victims of trafficking and severe exploitation may have, through referral to and the coordination of service providers.

68. In the operational process of IOM, remediation and victim assistance is led by the "remediation facilitator". Recognizing that companies may not have the required capacity or expertise, the remediation facilitator is an entity with expertise in remediation for victims of exploitation that has a presence in the country where the incident occurred. As with any grievance mechanism, geographical proximity is key to being able to provide meaningful and adequate assistance and to monitor recovery. The remediation facilitator's role is to advise and support the company in providing remediation. It constitutes the entry point to the local service delivery system, which usually comprises State, non-governmental organization and private service providers, works with local stakeholders to design the most appropriate remediation action plan for workers and oversees the implementation and monitoring of the plan. Its role also includes working in collaboration with law enforcement to remove victims of trafficking from the workplace, where appropriate. Remediation plans should be the result of a consultation with the supplier, victims and other affected populations, government and non-governmental actors and other local experts.

69. On the company's end, the remediation facilitator guarantees that the supplier and the downstream company are regularly updated on progress. Depending on the context and capacity, that role is performed by a mandated government entity, a local non-governmental organization, an international non-governmental organization or a specialized international organization. The first step in the remediation action plan, once the victim has been referred by the company to the remediation facilitator, is the identification of a victim service coordinator on the ground. The victim service coordinator, or case manager, provides direct assistance and protection to the victim and coordinates between multiple service providers in the delivery of remediation assistance. Depending on the local context and the organization of the national referral mechanism, where it exists, the victim service coordinator role is performed by a government body, local non-governmental organization, a community or faith-based organization or an international organization. Although the IOM guidelines were designed for mineral supply chains, the process and principles can be applied to other sectors. The objective is to ensure that victims of exploitation have access to remediation wherever they have been harmed by exploitative business practices.

## **IV. Conclusion and recommendations**

### **A. Conclusion**

70. Lack of awareness among workers of their rights, coupled with bureaucratic and resource-intensive procedures, seriously limits workers' trust in, and the likelihood that they will raise complaints on labour abuses through, mechanisms whose procedures and results are uncertain. Successful complaints, whether through State or non-State mechanisms, are often filed by a non-governmental organization or trade union that has the resources to follow the procedures. Although the mechanisms and the procedures linked to them are well intended and aimed at meeting effectiveness criteria for grievance mechanisms, workers will very likely not regard the offered avenues for complaints as being accessible and trusted.

71. However, awareness is greater today, at both the State level and in companies, and more actions are implemented in tackling trafficking in businesses' operations and supply chains. If at one point companies had allowed themselves to ignore or deny that trafficking in persons could affect them, today that thought is unthinkable, and companies are increasingly implementing their own initiatives or joining civil society and trade union initiatives to address risks. However, such initiatives should become more effective and, importantly, should offer adequate remediation when cases of exploitation are identified.

72. Transparency legislation passed in certain Member States has to date offered results for which there is call for cautious optimism. However, it is undeniable that it has succeeded in putting trafficking in persons on the radar for many companies in the supply chain, which would otherwise continue to do business without giving much thought as to how their behaviour as a company affected the rights of workers down the supply chains or in their own operations. It is now necessary to go beyond minimal reporting obligations and require a higher level of commitment from companies.

73. The most recent legislation, such as the law in France on the duty of vigilance, takes an important step forward by compelling large companies to adopt a plan based on risk mapping, procedures to assess the situation of subsidiaries, subcontractors or suppliers, actions to mitigate risks, an alert mechanism on actual risks and a monitoring scheme. Monitoring measures must address not only the direct operations of the company, but also those of companies it controls, as well as operations of the subcontractors or suppliers with which it maintains an established commercial

relationship, when such operations derive from the relationship. Furthermore, the author of any failure to comply with its duties should be liable and obliged to compensate for the harm that would have been avoided had due diligence been exercised. Following that example, national legislation could go even further.

74. Going forward, States and private and civil society stakeholders must find the balance in a smart mix of public and privately led efforts, building and learning from setbacks and weaknesses in current systems. Legislation should provide for basic obligations, including reporting, addressing risks and establishing the civil liability of companies failing to comply with their due diligence obligations to protect human rights in their operations and supply chains. Voluntary initiatives by businesses should establish more effective mechanisms aimed not only at identifying situations of trafficking and exploitation, but also at enabling workers, including workers in their supply chains, to acquire access to grievance mechanisms. Such initiatives should also provide workers who are found to be in situations of exploitation with viable solutions, such as through a plan imposed on a subcontractor to improve working conditions and provide redress to workers or, when a contract with a subcontractor has been terminated, by providing workers, in cooperation with national referral mechanisms, with opportunities for alternative employment.

75. The obligation of companies to establish effective grievance and redress mechanisms, stemming from the Guiding Principles on Business and Human Rights, does not preclude workers and their representatives from taking the lead and establishing worker-led tools, following the example of the Fair Food Programme. Initiatives based on cooperation between public institutions, businesses and social actors should also be explored and developed.

76. Grievance mechanisms and other internal redress mechanisms should be easily accessible to workers and based on trust, which can be achieved only when workers and workers' representatives are involved as central actors in the design, implementation and monitoring of remediation tools. Such mechanisms should be available to workers without prejudice to eventual subsequent prosecution, in cases in which situations of exploitation show indications of a serious crime such as trafficking, or to previous or subsequent civil or labour lawsuits.

77. The Special Rapporteur's central message in the present report is that companies should not limit their efforts to those that have a direct impact on practices enabling labour abuses: profound and structural changes are needed in the way that business models function today; to achieve that objective, the voices and interests of workers must be embedded into any due diligence efforts.

## **B. Recommendations**

**78. States should ratify all relevant international instruments prohibiting trafficking in persons, forced labour, slavery and slavery-like practices, including the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), of the International Labour Organization (ILO), and align their domestic legislation with international standards.**

**79. States should also ratify other relevant international labour conventions, such as the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), or the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), of ILO. States should ensure that the conventions are implemented for all types of workers, including migrant workers.**

80. With regard to access to remedy through State-based mechanisms for workers who are victims of trafficking in persons or severe exploitation, States should:

(a) Ensure that workers, victims of trafficking or severe exploitation, are granted non-conditional residence and work permits, regardless of their willingness to cooperate with State authorities in the prosecution of the crime;

(b) Ensure that State authorities that are likely to encounter workers who are victims of trafficking and severe exploitation as first responders, such as police officers or labour inspectors, are well trained in identifying indicators of trafficking for labour exploitation, increase the number of qualified and well-trained labour inspectors, granting them sufficient powers to acquire access to company facilities without advance notice, access to translation services when required and the authority to speak to workers in the absence of employers;

(c) Establish training programmes for prosecutors and judges on trafficking in persons for the purpose of labour exploitation, with special consideration to identifying indicators and adequate remediation measures, in collaboration with civil society actors with experience in providing support to victims of trafficking and who can incorporate the input and perspectives of workers;

(d) Establish firewall protections for undocumented workers so that they may come forward to raise complaints or avail themselves of other opportunities to approach certain authorities, without fear of investigations or reprisals from immigration authorities;

(e) Ensure that companies domiciled in a State's territory profiting from trafficking or labour exploitation can be prosecuted, even if the exploitation occurred abroad.

81. Regarding eliminating barriers to access to remedies in cases of trafficking or severe exploitation in the context of businesses' operations and their supply chains and, specifically, in order to address power imbalances, States should:

(a) Establish the civil liability of companies larger than a given size, even those whose head office is located abroad, for failure to comply with their due diligence duties and the obligation to compensate workers for the harm caused;

(b) Enable class action lawsuits for workers;

(c) Enact measures to grant victims access to information on available options for enabling access to both judicial and non-judicial remedies at the State level;

(d) Eliminate claimants' costs for proceedings and establish a fund for victims that provides them with legal and financial aid, as well as compensation that is paid up front, regardless of the outcome of the proceedings, when exploitation is evidenced;

(e) Consider, with due regard given to issues of an appropriate balance between considerations of access to remedy and fairness to all parties, reversing the evidential burden of proof.

82. Regarding sanctions and other remedies that may be imposed on companies involved in a case of trafficking in persons or severe exploitation of workers, States should ensure that the following represent effective remedies for workers:

(a) Sanctions imposed through criminal proceedings should include financial penalties and/or non-financial remedies, such as orders for restitution,

measures to assist persons who are victims of trafficking or workers who are victims of severe exploitation and/or resources, satisfaction, such as through public apologies, and guarantees of non-repetition, such as cancellation of operating licenses, mandated compliance programmes, education and training;

(b) Sanctions must be proportional to the gravity of the abuse and the harm suffered, reflect the degree of culpability of the company, minimize the risks of repetition or continuation of the abuse, constitute a credible deterrent for the company, and others, from engaging in the prohibited behaviour and take into account gender-related issues and the particular needs of individuals or groups at heightened risk of vulnerability or marginalization. To that end, workers, through their representatives, must be consulted in the design and implementation of sanctions and other remedies;

(c) Implementation of the remedy should be monitored and workers should be able to report and seek remediation in cases of companies' non-compliance with the decision.

83. Regarding national legislation on transparency in supply chains, States should adopt or revise legislation requiring human rights due diligence throughout the supply chain, public reporting and disclosure by businesses. The legislation should:

(a) Include the requirement for companies to disclose not only policies and procedures implemented to address risks of trafficking or severe exploitation in their operations and supply chains but also outcomes and the impact of such policies and procedures. Such disclosure should take into account concerns regarding workers' data protection, be anonymized and stripped of any information that would allow for the identification of individual complainants;

(b) Establish the areas companies must report on; they should include, at a minimum, recruitment practices, the methodology used in monitoring compliance with the company policy, use of alternative sources of information, such as information gathered through internal audits, grievance mechanisms and coordination with relevant stakeholders, such as trade unions and civil society representatives. With regard to information from grievance mechanisms, information could include the number of complaints or reports submitted through each mechanism, from where along the supply chain and from which operations they were received, the steps taken towards resolution, the parties level of satisfaction with the outcome and the proportion of grievances that remain unresolved;

(c) Establish sanctions, including financial fines, for companies that fail to fulfil their obligations and equip law enforcement agencies with the resources necessary to follow up on reports of lack of compliance, create and regularly update a central registry that collects the information that is published by companies each year and establish an independent body to monitor compliance and quality of disclosure, with special consideration given to companies operating in high-risk environments where legal systems are weak, especially regarding access to remedy for victims of trafficking or labour abuse or where workers are not represented, and make publicly available the lists of companies that are subject to legislation on transparency;

(d) Use a gradual change approach, incentivize due diligence by rewarding companies that implement policies and procedures and show evidence of their having an impact on reducing risks of trafficking and severe exploitation in a specific period of time and encourage good behaviour and reporting through facilitated access to government procurement for compliant bidders.

84. In order to improve access for workers to companies' operational grievance mechanisms and offer adequate assistance and remediation for victims of trafficking or severe exploitation, companies should:

(a) Establish a grievance mechanism, in collaboration with other companies in the region operating with the same suppliers, in coordination with local civil society actors that are fully aware of the local context, sensitivities and solutions, consult with State authorities to ensure that the mechanism is aligned with the national referral mechanism when a case of trafficking arises through companies' operational grievance mechanisms and establish a cooperation protocol with the national referral mechanism to channel companies' resources for assistance and remedy for identified workers who are victims of trafficking or severe exploitation;

(b) Ensure that the mechanism is designed in collaboration with workers and their representatives and consider having its implementation managed by a third party, including workers representatives, or a civil society partner that is trusted by workers and is in close geographical proximity to and well established in the area where the mechanism operates;

(c) Clearly define the type of grievances that can be addressed through the mechanism and design and implement an awareness-raising campaign on workers' rights and how the mechanism works to address abuses, together with workers and their representatives, taking into account gender-related issues and the particular needs of individuals or groups at heightened risk of vulnerability or marginalization;

(d) Address concerns of data protection and prevent potential reprisals through a discussion with trade union and workers representatives and civil society;

(e) Ensure that decisions by the above-mentioned mechanisms are enforceable and include a clause in contracts with suppliers in that respect;

(f) Ensure that workers are not asked to sign a waiver of their right to access State-based mechanisms when enabling access to the operational grievance mechanism and ensure that suppliers do the same in their own operational grievance mechanisms;

(g) Ensure that there is independent advice for workers signing settlement agreements so that the content is fully understood, clearly worded and that it can be enforceable;

(h) Organize meetings between civil society, companies and labour inspectorates so that they may share information in an anonymous way and share auditing results in an aggregated anonymous way to allow labour inspectorates and other stakeholders to have a clear view of the main issues and be able to prioritize areas of concern and actions to follow.