Understanding Remediation

A working paper for the project "New data to detect forced labour in agriculture"

Briefing for Sustainable Agriculture Network (SAN) and ISEAL Alliance
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Disclaimer

Contents

1. Project background and context

This briefing was prepared by Ergon Associates to support the ISEAL-funded research project *Integrating New Data to Improve Risk Assessments and Detection of Forced Labour in Agricultural Supply Chains.* The project seeks to build the evidence base around monitoring and remediating forced labour in agricultural supply chains.

1.1 Project background

The key objective of the project is to scope opportunities for opening new channels of information on the risk and incidence of forced labour, in the first instance in three pilot countries: Guatemala, India and Kenya. In the course of establishing these new sources of information, learnings about the process will be collected and assimilated under a broad framework which will serve as an outline for a methodology on how to implement forced labour detection processes. This will include guidance around principles, prerequisites, specific methods, test activities, deliverables, and processes involved in opening new channels of information.

While the project is primarily focused on information and methods that can be used to detect forced labour, there are important considerations should testimony about forced labour be received or instances of forced labour be found. In such cases it is necessary to protect informants and victims owing to the personal risks often involved in sharing information about forced labour. As such, remediation is not a later stage follow-up after data collection but should be embedded within these new processes as an ethical foundation.

1.2   How this document will be used

This document outlines the components of forced labour remediation and the potential pathways for responding to cases, and highlights considerations for remediation strategies based on the current findings from Kenya, Guatemala and India.

2.   Understanding remediation

2.1   What is remediation?

Remediation, as used here, is the process of ending situations of forced labour and labour trafficking, and as far as possible correcting the harms experienced by victims. Effective remediation for forced labour should:

- be flexible and responsive to the needs and wishes of the victim
- respond to a local understanding of the factors driving forced labour
- understand the risks and sensitivities present in the local context
- build on the strengths and capacities of partner organizations and national authorities
- be delivered in accordance with national law and international labour and human rights standards
- incorporate means of preventing further abuses.

The table below is lists the various components of forced labour remediation and the principles behind them.

Components of remediation	Principles and good practices	Practical examples & inclusion into policy frameworks or initiatives
Gathering and securing information	• Any risks of serious labour exploitation or forced labour, if identified, should be documented and held securely by the responder for future use. • Data collection should observe all victim safeguarding measures including confidentiality, informed consent and personal security protection	SEDEX: Guidance on Operational Practice and Indicators of Forced Labour – Key considerations when forced labour is found or suspected in audits
Case escalation and victim consent	• Where a potential victim is identified, responders should act with the express, informed consent of the victims/ individuals. • Strict confidentiality and discretion should be maintained at all times. • Where information is shared with third parties (i.e. authorities, this should be made explicit). • Responders should provide an overview of how a victim's case information will be used.	UK National Referral Mechanism (NRM) – UK Government system to formally identify victims of modern slavery. Under this process, victims must consent to being referred to the police or another first responder agency like the Salvation Army, Refugee Council or the Gangmasters and Labour Abuse Authority (GLAA)

Components of remediation	Principles and good practices	Practical examples & inclusion into policy frameworks or initiatives
Victim safeguarding	- In some cases, action could be necessary to protect the immediate safety of victims, regardless of their wishes. This action should be led by or done in conjunction with national authorities or expert partners. - Responders should take no action to compromise the personal security of victims. - Security can be enhanced through risk assessment and active management of risks	UN Office on Drugs and Crime (UNODC): Toolkit to Combat Trafficking in Persons – Set of guiding principles in developing responses to trafficking in persons International Organization for Migration (IOM): Handbook on Direct Assistance for Victims of Trafficking – includes Information about specific security concerns around protecting victims of trafficking. Issara Institute – Ethics Review Form
Referral to appropriate authorities or expert organizations	- Where violence or criminality are involved, the case should be referred to national authorities or local expert organizations, as appropriate. - Referrals should be based on a strong understanding of the national mechanisms and pathways for remediation available in a country. - The priority of any legal intervention should be to protect the victim (and their families) from further harm. Responders should be confident that referrals will not put victims at risk of further harm.	Goodweave: Forced, Bonded and Child Labour Remediation Policy – "Remediation actions shall be proportionate to the nature of the situation…[Goodweave will] identify and work with the local legal authorities or partner organization specialized in protection of adult victims to develop a suitable remediation plan". Referral to authorities occurs when an issue is of a certain severity or where a corrective action process has been unsuccessful.
Corrective actions at workplace level	- For situations that can be resolved within a workplace by employers (i.e. they are not linked to violence or criminality), a time-bound plan for correcting the processes that led to the violation should be established including actions that prevent further abuses (see Preventative Measures below) - Responding actors, especially business actors, can support capacity building programs and business requirements that address human rights and labour standards and demonstrate compliance on an on-going basis. Training and guidance for key functions/ departments can be important. - As an immediate step, employers are responsible for correcting all violations associated with forced labour such as returning confiscated passports or cancelling illegal debts.	Marks and Spencer: Modern Slavery Toolkit For Suppliers and Partners – Includes a checklist of practical steps businesses can take to address risks of modern slavery including through good management systems, training staff and suppliers, establishing good labour sourcing and recruitment practices and providing access to a remedy through a transparent grievance process. Nestle/ Fair Labor Association: In Nestle's Turkish Hazelnut supply chain, FLA found instances of wage payment practices that left workers vulnerable to forced labour and recommended actions to replace this practice and remove the risks to seasonal workers.
Rehabilitation & material support	Rehabilitation should be tailored to the needs of the victim and could include provision such as stipends, housing support, legal assistance, medical care, psychological	Free and Fair Labor in Palm Oil Production: Principles and Implementation Guidance – Principles developed by a forum of experts

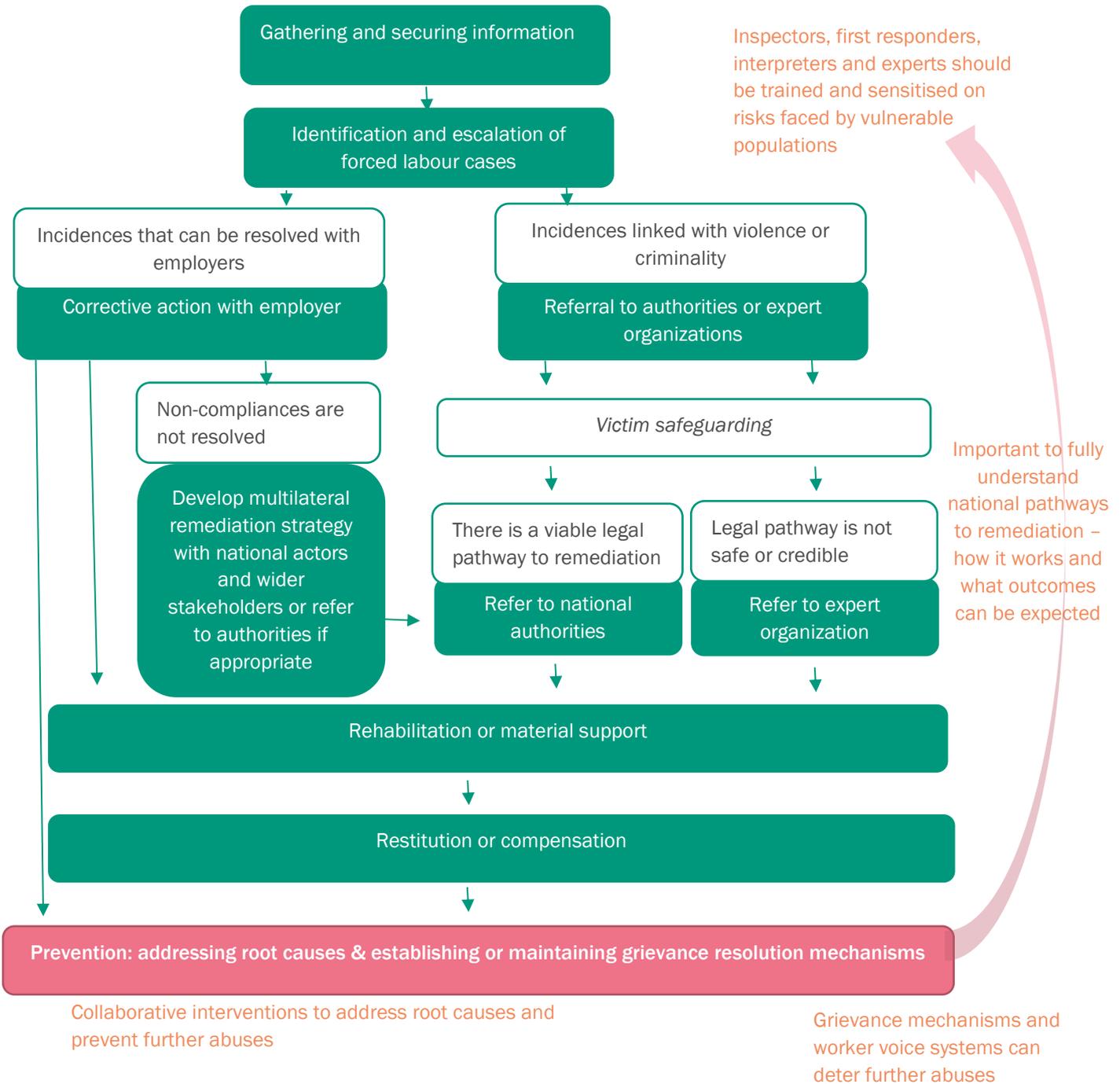| Components of remediation	Principles and good practices	Practical examples & inclusion into policy frameworks or initiatives
	support or other assistance that the victim, owing to their circumstance, may not be able to access on their own. • Material support is separate from compensation or restitution (see below).	including NGOs, workers organizations, donors, investors include XXXX Issara Institute – Empowering Workers & Victims of Trafficking / 'Freedom of Choice' Programme (see below)
Restitution or compensation	Steps should be taken to either compensate the victim or restore their situation to before their ordeal took place, including through possible: • Reimbursement of recruitment fees or illegal deposits • Compensation for lost wages or illegal wage deductions • Compensation for pain and suffering endured • Assistance with repatriation, if desired.	Leadership Group for Responsible Recruitment - Employer Pays Principle - member companies to commit to bearing the costs of recruitment, including the payment of any fees associated with recruitment
Preventative measures	Proactive steps to address the root cause of the labour abuse(s) in question should be taken, including by: • educating and informing vulnerable persons • educating and informing employers • protecting persons, particularly migrant workers, from possible abusive and fraudulent practices; • supporting due diligence by both the public and private sectors to prevent and respond to risks of forced labour; and • establishing or reinforcing access to a viable means of resolving workplace grievances.	International Labour Organization - Protocol of 2014 to the Forced Labour Convention Notable collaborative initiatives • C&A Foundation, Freedom Fund, Terre des Homes • Seafood Task Force • National Pact for the Eradication of Slave Labour (INPACTO) – • International Cocoa Initiative (ICI) • Coalition of Immokalee Workers (CIW)/Fair Food Programmes See also the section below: 'Prevention as Remediation'

2.2   Who should undertake remediation?

Remediation often requires collaboration across a wide range of actors. An effective remediation strategy should identify and assimilate the different levels of leverage, expertise and capacity to influence outcomes amongst the various interested stakeholders.
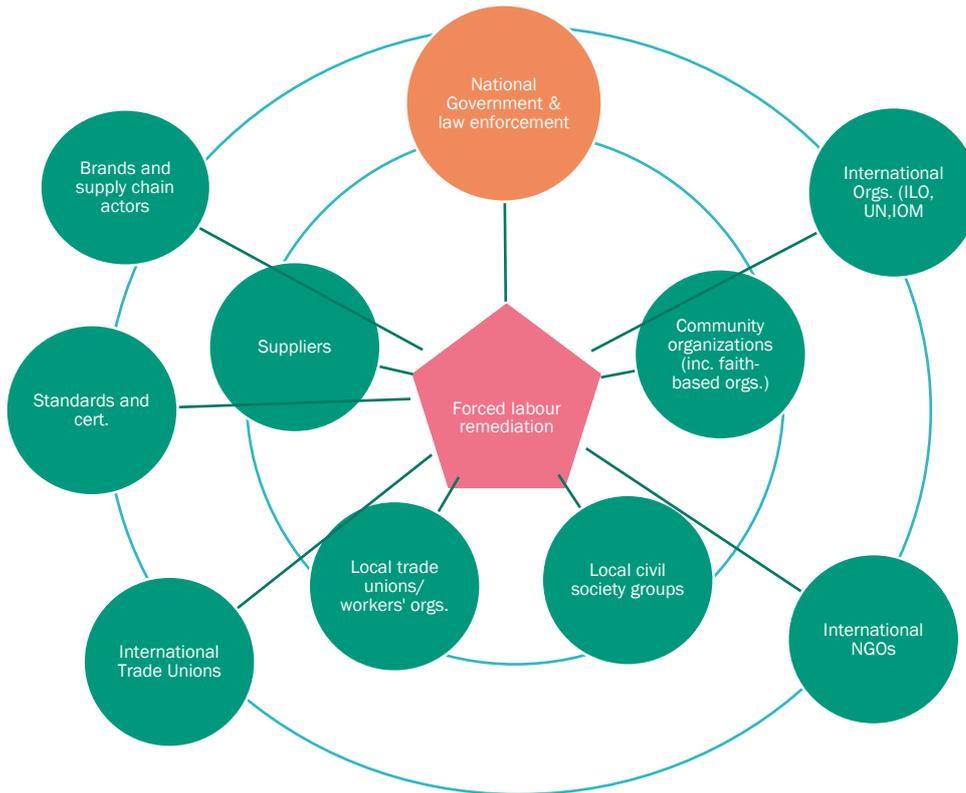
2.3   Remediation pathways

The flow chart below outlines how the different components of forced labour remediation could apply in sequence as a response pathway for different types of forced labour situations.

Gathering and securing information

Identification and escalation of forced labour cases

Incidences that can be resolved with employers

Corrective action with employer

Non-compliances are not resolved

Develop multilateral remediation strategy with national actors and wider stakeholders or refer to authorities if appropriate

Incidences linked with violence or criminality

Referral to authorities or expert organizations

Victim safeguarding

There is a viable legal pathway to remediation

Refer to national authorities

Legal pathway is not safe or credible

Refer to expert organization

Rehabilitation or material support

Restitution or compensation

Prevention: addressing root causes & establishing or maintaining grievance resolution mechanisms

Inspectors, first responders, interpreters and experts should be trained and sensitised on risks faced by vulnerable populations

Important to fully understand national pathways to remediation – how it works and what outcomes can be expected

Collaborative interventions to address root causes and prevent further abuses

Grievance mechanisms and worker voice systems can deter further abuses

2.4   How prevention is linked to remediation

2.4.1   Grievance mechanisms

Data collection and remediation can be closely aligned. An example is a worker grievance mechanism. If this is robust and credible, a grievance process both provides information that can act as an early warning system about the risks of forced labour (including importantly those related to third party labour providers), but it can also provide the process through which remediation can be delivered, so long as the process is confidential, safe to use and trusted by workers. The existence of grievance and whistleblowing procedures can also deter abuses.

2.4.2   Multi-stakeholder collaboration to address root causes

Multi-stakeholder collaboration can be an essential part of both responding to forced labour risks and taking steps to ensure they do not reoccur. Addressing the various root causes of forced labour usually requires different types of specialism - in policy, criminal justice, victim support, supply chains and labour market dynamics to name a few. The best practice examples of anti-forced labour initiatives involve contributions from a range of different kinds of actors. Contributions and input can be coordinated centrally through a membership organization like the Ethical Trading Initiative (UK) or through stand-alone bilateral or multilateral agreements between parties.

Partnerships and multi-stakeholder interventions can be slower than unilateral action as they must incorporate and balance different institutional priorities, but they do, importantly, tend to produce broad-based approaches that draw in varied expertise. Some examples of these are:

- India: C&A Foundation, Freedom Fund, Terre des Homes – Partnerships between NGOs and business organizations to support migrant women workers in Southern India and help them to understand risks around labour and recruitment practices.

- Thailand: Seafood Task Force (international brands and NGOs) – collaborative development of track and trace systems to support traceability of seafood products coming from a region with known issues of forced labour and slavery. Participants include many international brands and retailers along with multi-stakeholder groups and NGOs with input from the government of Thailand.

- Brazil: National Pact for the Eradication of Slave Labour (INPACTO) – partnership between the Government of Brazil, the International Labour Organization (ILO) and participating brands and suppliers to exclude businesses that use slavery from supply chains, building off of Brazil's unique and successful law enforcement campaign against labour practices analogous to slavery.

- Ghana/Cote d'Ivoire: International Cocoa Initiative (ICI) – Chocolate companies, traders and NGOs working through a purpose built multi-stakeholder programme driving a community-centred approach to addressing child labour and child trafficking in Ghana and Côte d'Ivoire cocoa communities.

2.5   Practical examples of forced labour remediation

2.5.1   Freedom of Choice programme – Issara Institute

Figure - Issara Institute 2018

The Issara Institute (formerly 'Project Issara') is a public-private sector platform (see below: Strategic partners) established in 2014, which aims to detect and remediate human trafficking in Southeast Asia, with roots in the Thai seafood scandal. Drawing on a network of partnerships with international brands and retailers, its broad aims are to transform responsible sourcing through increasing use of worker voice and technical capacity on the ground and to "empower migrant workers and victims of trafficking with better information and options". Issara's technology-enabled 'worker voice' input through its mobile phone-based 'Golden Dreams' app has been widely recognized as a good practice model of data collection on forced labour.

Equally important, according to Issara is the programme's comprehensive programme of activities to empower victims identified in the programme. When potential violations are raised, Issara conducts a 'needs' assessment to determine if the person was in a situation of human trafficking based on Thai law and international standards. For victims positively identified under this process, Issara operates a fund to 'empower' migrant workers and support the rehabilitation of victims. Issara, with the backing of their members and funders provide healthcare, legal assistance, relocation, psychosocial care, unconditional cash transfers and assistance obtaining employment or changing employers, according to the expressed needs of victims.

Unconditional cash transfers are a notable and unique component of Issara's remediation strategy. The intention is to enable victims to use the resources made available through remediation as they see fit and as such is considered an empowerment tool.

Key components

Gathering and safeguarding information	Rehabilitation & material support	Victim safeguarding	Worker voice

2.5.2   Industry collaboration: Coca-Cola & ASAZGUA partnership in Guatemala's sugarcane industry

Coca-Cola is implementing a global process to understand and take informed action on social risks in its higher risk countries around the world, and in doing so is working with local partner organizations that are well placed to undertake prevention work and respond to cases as they arise. The company has commissioned research in relation to sugar cane, tea and citrus cultivation in countries like Brazil, Colombia, Guatemala and Honduras with a view to developing partnerships and mitigation strategies for risks identified in the country studies in consultation with stakeholders also identified in the research.

The Coca-Cola Company
Review on Child and Forced Labor and Land Rights in Guatemala's Sugar Industry
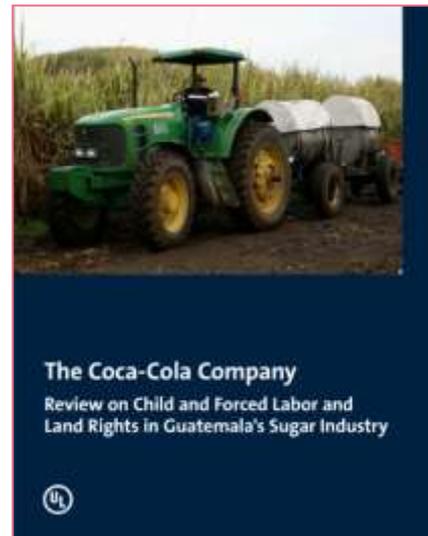
Following the Guatemala study, the company has been working with suppliers, sugar associations and other actors to address findings on risk and to develop a plan of action for prevention and remedying violations. The best example of this is Guatemala, where Coca-Cola is working with the Guatemala sugar association, ASAZGUA to promote good management systems and processes at sugar mills building on their work to develop a set of norms and policies based on international labour standards aimed at promoting the welfare of sugarcane cutters supplying the industry. Included among the risk mitigation strategies in operation in Guatemala, ASAZGUA operates a principles framework and working conditions improvement programme to promote better working conditions for sugarcane cutters in relation to certain defined areas that leave workers vulnerable to exploitative conditions, including by lowering and standardizing working hours, fixing wages at a certain level above the minimum wage and implementation of direct hiring practices to minimize the risk of abuses associated with third partly labour recruiters.

Key components

Work with expert organizations	Corrective action with suppliers	Grievance processes	Collaboration - targeting root causes

2.5.3   Gangmasters and Labour Abuse Authority (GLAA)

The Gangmasters and Labour Abuse Authority is an independent statutory public body in the United Kingdom tasked with protecting workers from labour abuse. The GLAA principally operates a licensing scheme that regulates the use of third party labour providers (or recruitment agencies) in agriculture, horticulture, Shellfish gathering and packing facilities, with some powers of investigation across other sectors. The agency conducts its own inspections which can uncover cases, or cases of modern slavery or labour abuses can be referred to the agency by third parties.

In addition to this, the GLAA works with law enforcement agencies to "identify, disrupt and dismantle serious and organised criminality, people trafficking and other crimes whereby criminals 'seek to exploit human assets for profit'". As such, they are frequently on the frontline of efforts to detect and remediate forced labour. The agency is empowered to carry out investigations of offenses under the Modern Slavery Act of 2015 and to work with authorities to secure injunctive relief targeted at preventing or ending situations of modern slavery.

All GLAA officers receive training in relation to the Modern Slavery Act 2015, Labour abuse prevention officers must hold recognized national qualifications that demonstrate their experience in and practical understanding of interacting with and interviewing vulnerable victims and witnesses. Victims who are identified by the GLAA are interviewed by members of GLAA staff. In line with the National Referral Mechanism framework, there are two routes for referral – with the consent of the victim or without – with separate procedures for victim protection and safeguarding. Victims should be kept informed of what outcomes from the process will be reasonably likely. Through the NRM and the legal process that follows referral, victims may be granted compensation or damages that follow from a court judgement.

Food Manufacture 2017

Key components

| Victim safeguarding | Identification and escalation of cases | Referral to national authorities | Restitution and compensation |

3.   Considerations for in country follow-up

The table below highlights some common challenges and issues faced in relation to each of the components of forced labour remediation set out above in section 2. The list of challenges and key issues was compiled from interviews with technical partners and expert stakeholders in the three pilot countries for this project, Guatemala, India and Kenya. It also includes known issues faced by initiatives undertaking these activities around the world.

Addressing some of the main challenges depends first on asking the right questions and understanding important parts of the local context and so we have set these out as considerations that will be used for engaging with local stakeholders as the project unfolds.

	Key challenges and issues faced	Considerations – What do we need to know
Gathering and securing information	• Lack of access to the workplace granted to third parties or 'outsiders'	• What information sources are available and credible?

	Key challenges and issues faced	Considerations – What do we need to know
	• Organizations working on behalf of workers are not coordinated or do not share information (e.g. trade unions and other organizations) • No physical evidence exists that the practice occurs (contracts/ payslips/ loan documentation) • Workers may not use complaints channels for fear of reprisal	• How can information sources be protected? • What are the likely outcomes of using this information to address a situation of forced labour? • Who should investigate these situations? What expertise and training is required?
Case escalation and victim consent	• Workers do not self-recognize as victims • Workers do not understand what are the likely outcomes of taking action • Workers fear losing their jobs or potentially other reprisals for speaking out • Workers do not trust 'outsiders'	• What do victims need to know about their situation and how can this be communicated? • Who should workers engage with workers? What expertise and experience should they have? • How can workers be encouraged to trust a third party
Referral to authorities or expert organizations	• In some contexts, legal frameworks may not be well developed, adequately resourced or offer the appropriate type of protection for forced labour or trafficking victims. • Victims may not consent for their cases to be passed on to authorities • There are no relevant local experts or NGOs, workers organizations or human rights defenders that can advise on appropriate actions where legal pathways to remediation are unclear	• What national or legal mechanisms exist for the remediation of trafficking and forced labour? How do they work? • What is the legal remediation process? • Do victims want the authorities to intervene and understand the likely consequences of this intervention? • Which local expert organizations can provide advice on the most appropriate course of action?
Corrective actions at workplace level	• Some forced labour situations may be linked to common practices in an industry or supply chain (e.g. passport retention or recruitment fees) and may be difficult to sustainably address on a one-off basis with a single employer • Individual organizations may not have the leverage necessary to change working practices • Difficulty confirming a practice has been reversed • Workplace practices may be concealed	• Are other businesses, civil society groups or multi-stakeholder programmes interested in collaborating to address the issue? • What support do employers need to ensure that corrective actions are viable from a business perspective?
Victim safeguarding	• Where a victim or their family is in danger or are unable to escape from a seriously harmful situation, a quick referral to	• In what situations should emergency actions be taken to safeguard victims?

	Key challenges and issues faced	Considerations – What do we need to know
	authorities or advocates may be needed without the consent of the victims • Risks to workers may not be understood by outsiders • Extra caution needed to avoid unintended consequences where serious risks to victims and investigators are involved	• What are the referral channels and safeguarding contingencies available in the local context? • In each situation, what are the key risks to workers' safety or anonymity and how can these be mitigated?
Rehabilitation & material support	• Rehabilitation needs to align with national law (e.g. in relation to immigration/ resettlement) • Victim assistance and rehabilitation is resource intensive • Programmes must operate consistently and predictability to maintain workers' trust	• What support do workers say they need? • Are there reputable employment services that can help victims find decent jobs? • How will remediation programmes be sustainably funded?
Restitution or compensation	• Employers may not recognize a responsibility to compensate victims, especially where abuses were committed by third parties or their suppliers (e.g. recruiters) • Legal frameworks may not be well developed or afford appropriate levels of compensation for the types of abuses incurred	• What types of restitution can be delivered through the justice system? • What are the responsibilities of private actors for abuses among contractors or suppliers?
Preventative measures	• The workplace may not have a channel for reporting similar abuses in the future • Workers may not feel comfortable using a complaints or grievance mechanism • Root causes may involve wider structural issues to do with the industry or supply chain	• For each case 1) what are the factors that led to this a situation 2) what is needed to address these factors and 3) what are we in a position to influence? • Is there a complaints mechanism in place that would allow workers to report a similar situation? Do workers feel comfortable using this system? • What are the root causes of this situation? (e.g. informal recruitment channels, worker accommodation, working practices) • What organizations are currently working in or are specialised in addressing these root cause issues?