



PROTECTIONS AGAINST TRAFFICKING IN PERSONS¹

Worker Engagement: Enabling Workplace Communication, Worker Agency, and Grievance Management

The ability for workers to gain awareness of and advocate for their rights, to discuss workplace issues of concern and interest, to have channels for individual and collective advocacy and to communicate grievances is essential to the fight against human trafficking. When workers know their rights and are able to participate in safe and secure forms of workplace dialogue — both as individuals and collectively — they are better positioned to protect themselves against coercion, deception, discrimination, and other forms of exploitation.

An environment in which workers can raise issues of concern promotes a general atmosphere of collaboration and trust, allowing potential issues to be addressed before they escalate. It can also serve to provide companies with effective means for information exchange on workplace conditions and potential risk areas. In fact, workers themselves are often the best source of information regarding labor conditions.

However, in sectors and contexts in which vulnerable workers are employed, issues are often underreported; it has not been a normative trend to seek information from such workers in part because of the factors that make them vulnerable. As this trend shifts, three points are important to keep in mind when instituting a worker engagement program:

- **Communication with workers is one of the surest ways to prevent forced labor and broader labor violations.**

While effective worker engagement and communication is preventative and best practice for effective due diligence systems, achieving robust and reliable communication channels can be hard; this tool provides guidance on how to do that.

¹ The United States recognizes two primary forms of trafficking in persons: forced labor and sex trafficking. For the purposes of this and other tools in the set, several terms are used such as “trafficking in persons,” “human trafficking,” and “forced labor.” In relation to these tools, they refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor.

- **The surfacing of complaints or issues is a sign of healthy communication and trust; to maintain the trust, responding to the issues surfaced is key.**

If workers do not trust a grievance mechanism, they will be less likely to use it; a silent complaint line may suggest conditions are fine, but in reality, issues may be going unreported.

- **All workplaces, even ones with the most conscientious employers, will face problems.**

Hidden problems will not suddenly be discussed; companies need to utilize multiple avenues and devote extra effort to developing the best ways for worker-management communication.

- **Workers' rights to freedom of association and collective bargaining must be protected to the full extent of the law.**

These core labor rights are critical protections for workers. (See the section *Collective Organizing and Advocacy* below for more information on strategies to protect and respect these rights). However, these rights may be limited by national law, particularly for migrant workers. In those situations, other means of advancing worker-management communication and engagement should be pursued to provide worker agency and representation. Research has shown that engagement can bring mutual benefit to employers and employees alike, with demonstrated links between workers' sense of value (through engagement) and productivity.

The avenues for engagement described below are not mutually exclusive. Wherever possible, companies should support multiple avenues for worker communication and engagement. Regardless of the forms of worker organization legally available to workers, companies should ensure the following underlying principles are in place:

- communication and grievance mechanisms are based on careful analysis of the country and sector context and workers' levels of literacy, language fluency, technology access, and preferences
- communication and grievance procedures are easy to understand and assure worker confidentiality

- workers with concerns are provided access to additional support or advocacy as needed (e.g., interpreters, counseling), particularly in situations where workers have had potentially traumatic experiences
- there is a clear process for follow-up and remediation for reported issues, and workers can monitor the status of grievances and resolutions
- a process for appealing decisions that workers are not satisfied with are in place
- there are protections in place to prevent retaliation for raising an issue
- measures are taken to ensure that migrant workers can access avenues for organization, advocacy, and grievance reporting.
- where digital worker engagement platforms are used, any personal data that is collected must be well protected to ensure worker safety and security as a top priority. Although such tools may be referred to as “worker voice” tools, worker input generated from digital outreach may not constitute genuine “worker voice” unless it results in actual outcomes for workers or a specific worker and positively impacts the structure of the business in which they work.ⁱ

WORKER EDUCATION AND ONGOING COMMUNICATION

Efforts to educate workers on their rights and to keep lines of communication open are critical ingredients for effective worker engagement. The provision of resources and information can enable workers to more fully participate in other forms of workplace communication. Educational materials, sources of information, and modes of on-going communication can take many forms.

It is essential for workers to know their rights. In this regard, worker-to-worker education has been shown to be a successful and effective method for creating an informed workforce. Examples of specific worker education activities can include posters at the worksite, employer-provided trainings on worker rights, orientation and on-going trainings, messages from call/text apps or platforms, and collaboration with local civil society or worker centers. Ongoing worker-management communication can include the educational efforts above as well as regular meetings between workers and management.

The following are good practices in worker education and communication:

- The design and implementation of workplace education and communication approaches should include robust and meaningful consultation and collaboration with worker representation bodies and workers themselves.
- All materials and verbal presentations should be available in a language workers understand. In some cases, it may be helpful to complement written materials with drawings or comic book-style illustrations if workers have lower literacy levels.
- Print/written materials provided should be widely available for workers to take home; workers should ideally have access to materials in a private location so that they can review them without observation by their labor agent or employer.
- Materials on worker rights should clearly explain legal protections available to workers and venues available to workers for reporting and resolving grievances.
- Management should regularly and actively solicit areas of concern from workers, worker committees, and/or union representatives, and actively follow up on issues noted by workers or identified through grievance mechanisms.

Collaborating with civil society organizations, in both the country in which a company employs workers and in workers' home countries (if they are migrant workers) is another avenue for worker education. In general, it can be helpful to collaborate with civil society organizations to fully understand the vulnerabilities workers may experience. Such collaborations may be particularly helpful regarding efforts to educate migrant workers about their rights, international labor standards, and ethical recruitment.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Labor and Trade Unions

Workers' agency and representation in the workplace are essential for protecting and ensuring workers' rights. The rights to freedom of association and collective bargaining are defined and protected by ILO Conventions 87 and 98. ILO Convention 87 establishes the right of workers and employers to join organizations of their own choosing without prior authorization; and the right of these organizations to draw up their own rules and constitutions, elect their own representatives, and organize their own affairs without outside intervention. It calls for the protection of workers'

organizations from governmental interference and from being dissolved or suspended by administrative authority; and calls for the right to affiliate with international worker organizations. Convention 98 grants workers the right to adequate protection against anti-union discrimination, such as dismissals and demotions based on union membership and participation, and against business interference; and encourages countries to take measures to promote collective bargaining.

Collective bargaining can be leveraged to directly address systemic human trafficking risk and compensate for weaknesses in labor law in countries where goods are produced. For example, approximately 300 multi-national companies have negotiated Global Framework Agreements (GFA)² with labor unions to safeguard worker rights defined by the ILO Fundamental Principles and Rights at Work.³ Unions can also serve as a venue for grievance mechanisms and the resolution of individual workers' grievances

Employers must establish a policy on neutrality and non-retaliation regarding workers' organizations. Further, an enabling environment should be created for the rule of law. Workers should not be contractually prohibited from organizing, and in no case should a worker face retaliation for participation in attempts to organize, union leadership, or union activities. Where trade unions exist, employers should refrain from any acts of interference with the operation of union or worker representation bodies; if there is a collective contract agreement or collective wage agreement in place, management should bargain with the union or worker representatives in good faith.

Below are some benchmarks for protecting workers' right to the freedom of association and steps for employers and brands to establish clear and open communication with labor or trade unions where they exist.

- A policy of neutrality and non-retaliation toward any worker who attempts to organize or express grievances through any legally permissible venue; company

² GFAs are negotiated on a global level between trade unions and a multinational company. They put in place the very best standards of trade union rights, health, safety and environmental practices, and quality of work principles across a company's global operations, regardless of whether those standards exist in an individual country.

³ *Fundamental Principles and Rights at Work Fact Sheet*, International Labor Organization, 2020: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms_741333.pdf

and employer policies and procedures do not conflict with workers' rights to freedom of association and collective bargaining.

- No restrictions on issues that can be addressed in collective negotiations.
- Employer has written policies and procedures that recognize and respect the rights of all workers to freedom of association and collective bargaining.
- Employer provides communication and training to management and workers on policies and procedures for upholding workers' rights to freedom of association and collective bargaining.
- Where labor agents are engaged in recruitment, screening, or management of workers, the employer requires the agent to adhere to the employer's policies on freedom of association and collective bargaining and monitors the performance of the contractor to ensure that the policies are being adhered to.
- Employer does not deny or restrict in any way union representatives' access to workers.
- Worker representatives are allowed to perform their representative responsibilities during normal working time.
- Remedies are in place to address retaliation against workers exercising their right to representation, advocacy, freedom of association, organizing, and/or collective bargaining should it occur.

Worker Committees

The rights and abilities of some workers to freely associate in unions or to bargain collectively can be limited by law, regulation, long-standing patterns of discrimination against union members, and/or the absence of unions in some countries, regions, and sectors. It has traditionally been difficult to unionize in key parts of the facilities services sector due to high rates of migration, seasonal employment, and the presence of contract workers. While temporary migrant workers are often among the most vulnerable to a variety of labor abuses, including human trafficking, they are often legally denied the right to form or join unions; they may also have the most at stake in terms of the risk of employer retaliation. These contextual limitations may create a need for alternative forms of collective worker engagement.

Worker committees — consultative bodies established to improve the welfare of workers and foster the development of the business through participation and cooperation between workers and employers — are one venue for ongoing

communication between workers and management, as well as collective engagement, when unionization is not possible. Even when unions are in place, democratic and transparent worker committees can serve as valuable forums where management and employees may air concerns and discuss workplace issues. These councils can help to resolve disputes and act as a mechanism for submitting a grievance. A worker committee should ideally represent all categories of workers and all worker nationalities/languages. Elections are typically held on a fixed schedule and elected leaders meet on a regular basis with human resource managers and other key company officials to discuss workplace matters of concern and interest.

It is important to ensure that either form of worker representation — union or worker committee — can effectively uphold workers' rights and interests. The following benchmarks can help ensure effective operation of unions and worker committees:

- Worker representatives are elected democratically and directly by workers/worker representatives
- The procedures governing election, voting rights, and position responsibilities and rights are clear
- Union leaders or worker representatives have a clear understanding of their responsibilities and meet regularly
- Workers are aware of the union and/or worker representative body and are familiar with their functions and authority

GRIEVANCE MECHANISMS

All workers, including migrant workers, should have access to grievance mechanisms that allow them to voice concerns without fear of punishment or retribution.

In addition to helping to improve working conditions, grievance mechanisms can have many helpful benefits for companies: They can serve to channel conflict into an institutionalized mechanism for peaceful resolution; they facilitate communication between workers and management regarding problems that arise; they enable workers to file complaints with dignity, knowing that there is a system of appeals leading to an impartial decision maker; and, finally, they assist companies in ensuring that staff is complying with company standards on ethical conduct.

Grievance mechanisms should be constructed as two-way communication channels that both collect information on worker experiences and provide timely and clear information to workers on their rights and progress towards remediation and resolution. Grievance mechanisms can also provide workers with information on how to resolve grievances internally and make referrals to government and NGO service providers. Good grievance mechanisms for migrant workers should be accessible to workers beginning at the point of recruitment in their home country. Such a mechanism allows workers to raise concerns related to recruitment and employment or that may manifest only after their return home and in advance of a subsequent departure if they intend to work for the same employer again. Additionally, companies can enhance their understanding of particular issues that might face migrant workers by communicating and building relationships with NGOs and CSOs in workers' home countries.

As a minimum baseline, all grievance mechanisms should conform with benchmarks for robust grievance systems, as defined by Principle 31 of the UN Guiding Principles on Business and Human Rights. Under this framework, ethical and effective grievance mechanisms should be:

- *Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes*
- *Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access*
- *Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation*
- *Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms*
- *Transparent: keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake*
- *Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights, and*
- *A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.ⁱⁱ*

Effective grievance mechanisms are worker-driven and developed in collaboration with worker representation bodies and workers themselves. The following categories with accompanying questions can be used to guide development of effective grievance mechanisms in conformance with the principles listed above:

- Regular Communication
 - Does the company have clear communications channels that encourage workers to report violations or issues of concern?
 - Does the company seek opinions and suggestions from workers before making significant worker-related policy/procedural changes related to wages, working hours, rest and vacation, occupational health and safety, insurance, training and discipline etc.?
- Access
 - Do workers have an ongoing opportunity to provide guidance on the design of grievance mechanisms and offer feedback on remediation processes and outcomes?
 - Can migrant workers directly access the company's grievance channels?
 - Are there any language, literacy, or technology barriers that prevent all workers from accessing the grievance mechanism?
 - Can workers give feedback or report grievances to the company without having to first contact their direct supervisor or labor agent?
 - Do the grievance procedures of both the company and labor agents allow immigrant workers to seek assistance from their embassies?
- Confidentiality
 - Is there a secure means of expressing grievances that is handled by an objective third party?
 - Can the grievance mechanism be used to report grievances privately and confidentially, including those relating to unethical management practices, without threat of reprisal?
- Non-retaliation and non-reprisal
 - Do the company's grievance procedures clearly provide a mechanism that protects workers from reprisal?
- Resolution and Redress

- Do the company's grievance procedures provide a mechanism for immediate grievance resolution?
- Is there a clear procedure for management follow-up of reported grievances and is this procedure clearly communicated to workers?
- Do workers have an opportunity to provide input on how grievances are resolved?
- Does the company transparently report to workers (and ideally to the public) on progress toward remediating issues raised both on a case-by-case and systemic basis?
- Is there a process for workers to appeal the resolution of a grievance with which they disagree?
- Capacity
 - Are the responsibilities of supervisors and managers related to worker grievance, feedback, and participation clearly defined and documented?
 - Does the company orient and train its supervisors and managers on the handling of worker grievances?
 - Does the staff assigned to receive and act on worker grievances speak the languages of the workers?
 - Where translators are present, are they independent, trained to act on grievances, and are their functions and availability to assist with grievances clearly communicated to all workers?
 - Are there opportunities for local civil society organizations to participate in the receipt and resolution of worker grievances?
- Transparency and Documentation
 - Does the company have a written statement of management's commitment to solving workers' grievances and soliciting feedback from workers?
 - Does the company have written standards or procedures for solving workers' grievances and soliciting feedback from workers?
 - Does the company communicate its grievance policies and procedures to all workers? Do workers have an opportunity to give fully informed consent before participating in any grievance mechanism?

- Are grievance proceedings, including any follow-up actions, properly documented and filed?
- Does the company have a policy of when and under what circumstances law enforcement should be engaged?

ⁱⁱ Lea Esterhuizen, “Are Worker Voice Tools Really About Workers’ Voices?,” Ulula, May 3, 2016 <http://ulula.com/are-workervoice-tools-really-about-workers-voices/>.

Bassina Farbenblum, Laurie Berg and Angela Kintominas. “Transformative Technology for Migrant Workers: Opportunities, Challenged, and Risks.” Open Society Foundations. 2018.

ⁱⁱ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf