

CU 37/11

The Embassy of Malaysia in Washington, D.C. presents its compliments to the Department of State of the United States of America and with reference to the annual publication by the US Department of Labor called "List of Goods Produced by Child Labor or Forced Labor Report 2010", has the honor to extend herewith the Government of Malaysia's response on issues raised concerning allegations of forced labor in the Malaysian palm oil industry raised in the U.S. Department of Labor Report.

The Embassy would appreciate it very much if the esteemed Department of State could transmit the response of the Government to its high destination.

The Embassy of Malaysia avails itself of this opportunity to renew to the Department of State of the United States of America the assurances of its highest consideration.

U.S. Department of State
Washington, D.C.

19 August 2011



INPUT ON THE ISSUE OF FORCED LABOUR IN THE MALAYSIAN OIL PALM INDUSTRY

1. Objective

The purpose of this paper is to provide detailed information on Malaysia's foreign labour management to address the allegation of forced labour in the Malaysian Oil Palm industry raised by the US Department of Labor (US DOL) in its annual publication entitled "List of Goods Produced by Child Labor or Forced Labor Report 2010".

2. Introduction

- In 2010, there are 4,237 oil palm estates (planted area exceeding 100 acres) in Malaysia of which, 2,443 are located in Peninsular Malaysia with a total planted area of 2.52 million hectares, 1,477 estates in Sabah (1.41 million hectares) and 317 in Sarawak (0.92 million hectares). The number of estates in 2010 had increased by 14% from 3,720 estates in year 2000.
- Based on the responses from 4,049 estates in 2009 (around 96% of the estates), the estimated number of workforce in the oil palm estates in Malaysia is 446,368 workers of which 41% or 185,384 of them are employed in Peninsular Malaysia, 39% or 172,630 in Sabah and 20% or 88,354 in Sarawak. From the above total, about 69% or 308,000 are foreign workers. Due to its bigger area, estates in Peninsular Malaysia employed the highest number of workers compared to Sabah and Sarawak. Based on the planted area, the oil palm industry would require a total of 493,512 workers to operate the planted acreage of 4.18 million hectares under estates in 2010. As such, there is still about 8.6% shortage of labour faced by the industry.
- The International Labour Organization (ILO) defines "Forced or Compulsory Labour" as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him voluntarily.

- Malaysia as a member of ILO follows the ILO's Convention No. 29 concerning 'forced labour'. In this respect, Article 6 of the Federal Constitution stipulates that no person shall be held in slavery and forced labour is prohibited. The Government of Malaysia has enacted the Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 (Act 670) and in December 2008, the first trafficking offender was convicted under this law.

3. Malaysian Labour Law and Policy

- Based on the year 2000 census, the population of Malaysia in 2010 was forecasted at 28.5 million. The total Malaysian workforce was estimated at 10.5 million. The number excludes about 3.5 million of both registered foreign workers and illegal immigrants in the country. With such a high percentage of foreign workers, it is prudent for the Government to regulate them to ensure the security and social harmony of the Malaysian population is maintained.
- To facilitate in handling the recruitment and management of foreign workers, the Government has appointed a number of outsourcing companies. Those companies are bound by conditions stipulated and failure to comply can cause administrative actions to be taken against them by the Ministry of Home Affairs, these include being blacklisted from applying new recruitment of foreign workers. The stipulated conditions to be followed are:
 - (a) Payment of levy to the Government upon approval of the application prior to the foreign worker entering the country;
 - (b) Ensuring foreign workers have jobs and are paid minimum salary even if they are jobless after they arrived in the country;
 - (c) Ensuring all foreign workers passed the medical check-up before Visit Pass (Temporary Employment) being issued;
 - (d) Workers are paid salaries and allowances as stipulated in the employment contract;
 - (e) Provision of proper accommodation and transportation;
 - (f) Provision of medical benefits and foreign workers compensation insurance;

- (g) Any change of sectors that have been assigned for the workers must have prior approval from Ministry of Home Affairs;
- (h) Provide information on foreign workers in the company to the Labour Department;
- (i) Submit monthly report on information of foreign workers in the company to the Ministry of Home Affairs;
- (j) Workers to be sent home if company failed to provide job within 6 months or if they are found to be medically unfit to work;
- (k) Ensure that paid up capital of the company is not less than RM100,000.00;
- (l) Exchange and amendment of Directors of the company which involved changes of equity must obtain approval from Ministry of Home Affairs;
- (m) Company must comply to all the immigration regulations, employment acts and policies on foreign workers; and
- (n) Compliance to any new policies and conditions by the Government.

Policy on Recruitment of Foreign Workers

- (a) The recruitment policy of foreign workers in Malaysia is meant as a temporary measure to assist the industries as well as sustaining national economic growth. This policy allows employers to request for foreign workers after their effort to recruit local workers has failed.
- (b) Any application to recruit foreign workers must be made by employers individually in order to avoid and prevent any mistreatment on foreign workers.
- (c) Currently the country's sources of foreign workers are from Indonesia, Philippines, Cambodia, Laos, Myanmar, Thailand, Vietnam, Nepal, India, Pakistan, Turkmenistan, Uzbekistan and Kazakhstan. However, the government has frozen recruitment foreign workers from Bangladesh since 2007.

- (d) The Government has established One Stop Centre (OSC) to process the application for recruitment of foreign workers in Peninsular Malaysia. Members of OSC include among others the Labour Department of Peninsular Malaysia, Ministry of Human Resources (MOHR), Ministry of Home Affairs (MOHA) and Ministry of Plantation Industries and Commodities (MPIC). For Sabah and Sarawak, there are separate immigration and labour laws governing the recruitment and management of foreign workers.
- The Labour Department's task is to ensure that the foreign workers are protected according to the laws and regulations;
 - Several sections under the Employment Act 1955 states the responsibilities of employers in hiring foreign workers. For example, Section 61 of the Employment Act 1955, stipulates that a employer has to keep a register of employees and to notify other information regarding the establishment of business/company to the Director General of Labour. Section 63A is used to ensure regular monitoring of foreign workers in the country and Section 60K requires employers to submit information and statement on return of foreign workers under their employment. The recruitment of non-resident in Sabah and Sarawak are stipulated in Chapter XIV A of the Sabah Labour Ordinance (Cap 67) and Chapter XIV A of the Sarawak Labour Ordinance (Cap 76).
 - Foreign workers with a valid Temporary Visit (Employment) Pass are protected under the country's current labour laws in force. Such laws include:-
 - (a) Entitlement to statutory benefits under the Employment Act 1955, Sarawak Labour Ordinance (Cap 76) and Sabah Labour Ordinance (Cap 67) such as payment of wages, working hours, working shift, overtime, rest day, holidays, annual leave, sick leave etc.;
 - (b) Conditions of employment to be stipulated in the contract of services;
 - (c) Legal remedy through the Labour Court or Industrial Court system;
 - (d) Terms and conditions of service via the contract is enforceable in the Labour Court or Industrial Court;

- (e) The right to redress for grievances under the labour laws also apply to foreign workers, provided that foreign workers should:
- (i) Complaint of non-compliance of the law by employers to the Labour Department;
 - (ii) Filing of claims against employers to the Labour court on matters governed by the contract of services and/or the provisions of the laws; and
 - (iii) Report of unjust or wrongful dismissal to the Industrial Relations Department for conciliation and later arbitration, if merit, at the Industrial Court;
- (f) Social security provided through the Workmen's Compensation Act 1952 whereby:-
- (i) Every employer is required to insure his foreign workers under the Foreign Workers Compensation Scheme;
 - (ii) Every legally employed foreign workers in this country is entitled for compensation (injury or death) sustained while at work or commuting to work; and
 - (iii) Labour Department is empowered to assess claims, receive payment and manage the distribution / disbursement of compensation to the foreign workers / beneficiaries;
- (g) Right of foreign workers to join trade union is also stated under Employment Act 1955 and Industrial Relation Act 1967. Collective agreements between employers and trade union recognized by the Industrial Court also cover foreign workers who are legally employed in the company; and
- (h) Under the Workers' Minimum Standards of Housing and Amenities Act 1990 [Act 446] which is applicable for plantation and mining sectors, employers are obliged to provide housing and amenities in accordance to the specification stipulated under the Act. For other sectors, the housing and amenities provided must be in accordance with any regulations or rules specified by the local authority.

4. List of Malaysian Labour Laws

- (a) Employment Act 1955 (Act 265);
- (b) Sarawak Labour Ordinance (Cap 76);
- (c) Sabah Labour Ordinance (Cap 67);
- (d) Workmen's Compensation Act 1952 (Act 273) which includes Foreign Workers Workmen Compensation Scheme;
- (e) Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446);
- (f) Child And Young Persons (Employment) Act 1966;
- (g) Private Employment Agencies Act 1981;
- (h) Employment Information Act 1953;
- (i) Wages Council Act 1947;
- (j) Weekly Holidays Act 1950;
- (k) Sarawak Weekly Holidays Ordinance (Cap 79);
- (l) Anti-Trafficking in Person and Anti-Smuggling of Migrant Act 2007 (Act 670) - ATIPSOM;
- (m) Holidays Act 1951;
- (n) Industrial Relations Act 1967;
- (o) Trade Unions Act 1959;
- (p) Occupational Safety and Health Act 1994; and
- (q) Internal Security Act 1960, including Internal Security (Registration of Labour) Regulations 1960.

- The lists of ILO Convention that have been ratified by Malaysia are as follows:-

Convention	Country	Ratification date
C11 Right of Association (Agriculture) Convention, 1921	Malaysia (Peninsular)	11:01:1960
C11 Right of Association (Agriculture) Convention, 1921	Malaysia (Sarawak)	03:03:1964
C12 Workmen's Compensation (Agriculture) Convention, 1921	Malaysia (Peninsular)	05:06:1961
C12 Workmen's Compensation (Agriculture) Convention, 1921	Malaysia (Sarawak)	03:03:1964
C14 Weekly Rest (Industry) Convention, 1921	Malaysia (Sarawak)	03:03:1964
C16 Medical Examination of Young Persons (Sea) Convention, 1921	Malaysia (Sabah)	03:03:1964
C16 Medical Examination of Young Persons (Sea) Convention, 1921	Malaysia (Sarawak)	03:03:1964
C17 Workmen's Compensation (Accidents) Convention, 1925	Malaysia (Peninsular)	11:11:1957
C19 Equality of Treatment (Accident Compensation) Convention, 1925	Malaysia (Peninsular)	11:11:1957
C19 Equality of Treatment (Accident Compensation) Convention, 1925	Malaysia (Sarawak)	03:03:1964
C29 Forced Labour Convention, 1930	Malaysia	11:11:1957
C45 Underground Work (Women) Convention, 1935	Malaysia (Peninsular)	11:11:1957
C50 Recruiting of Indigenous Workers Convention, 1936	Malaysia	11:11:1957

Convention	Country	Ratification date
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	Malaysia	11:11:1957
C65 Penal Sanctions (Indigenous Workers) Convention, 1939	Malaysia	11:11:1957
C81 Labour Inspection Convention, 1947	Malaysia	01:07:1963
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	Malaysia (Sabah)	03:03:1964
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	Malaysia (Sarawak)	03:03:1964
C88 Employment Service Convention, 1948	Malaysia	06:06:1974
C94 Labour Clauses (Public Contracts) Convention, 1949	Malaysia (Sabah)	03:03:1964
C94 Labour Clauses (Public Contracts) Convention, 1949	Malaysia (Sarawak)	03:03:1964
C95 Protection of Wages Convention, 1949	Malaysia	17:11:1961
C97 Migration for Employment Convention (Revised), 1949	Malaysia (Sabah)	03:03:1964
C98 Right to Organise and Collective Bargaining Convention, 1949	Malaysia	05:06:1961
C100 Equal Remuneration Convention, 1951	Malaysia	09:09:1997
C119 Guarding of Machinery Convention, 1963	Malaysia	06:06:1974

Convention	Country	Ratification date
C123 Minimum Age (Underground Work) Convention, 1965	Malaysia	06:06:1974
C138 Minimum Age Convention, 1973	Malaysia	09:09:1997
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	Malaysia	14:06:2002
C182 Worst Forms of Child Labour Convention, 1999	Malaysia	10:11:2000

Source : www.ilo.org

5. Foreign workers' management in Malaysia

- The Foreign Workers Management Division, MOHA is the Secretariat to the OSC for foreign workers recruitment approval process. It is located at the Immigration Department Headquarters, Putrajaya.
- There are two ways for a Malaysian employer to employ foreign workers. One is by applying directly to the OSC themselves or by using the services of an outsourcing companies (OC). These OC must hold a valid license to supply foreign labor to the respective employer. Under this method, the employer and the OC must have a valid mutual consent through contract agreement before submitting the application to the OSC.
- The recruitment procedures of foreign workers in Malaysia as in **Attachment A**.

6. Allegation of forced labour in the Malaysian plantation sector

- Under its Standard Operating Procedure (SOP), the Labour Department investigated every complaint / case related to employment. The five cases cited in the Tenaganita's article which was referred to by the US

DOL were not reported to the Department. Nonetheless, MOHR took the initiative to investigate the cases based on the report published in Tenaganita's website. Due to insufficient information, the relevant agencies could not proceed further with the investigation.

- As of May 2011, there were no complaints pertaining to forced labour in the plantation sector. The statistics of labour cases are as follow:

**Labour Cases Involving Foreign Workers in
Plantation and Textile**

Sector	Plantation			Textile		
	2009	2010	2011	2009	2010	2011
No. of Cases Handled	7	4	1	-	1	1
No. of Cases Settled	7	4	-	-	1	1
No. of Active Cases	-	-	1	-	-	-

Source: Ministry of Human Resources

- However, none of the cases reported above fall under "forced labour" category. Cases referred to the Labour Court are pertaining to dispute on payment of wages and other cash payments, including overtime, annual leave, payment in lieu of termination notice and public holiday.
- Employment Act 1955 provides the power to the Director General to settle disputes between employees and employers through the Labour Court.
- The power to settle disputes in the Labour Court of Sabah and Sarawak are provided to their respective Directors of Labour as stipulated in the Sarawak Labour Ordinance (Cap 76) and Sabah Labour Ordinance (Cap 67).
- On the issue of passport holding by the employer, according to Passport Act 1966, paragraph 12 (f) stipulated that any person who without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit (RM10,000) or to imprisonment for a term not exceeding five (5) years or to both".

7. Actions taken by Government of Malaysia to improve foreign labour management

• General actions taken:-

- (a) In the event of receiving any complaints pertaining to denial of rights under the labour laws or any other employment related issues, MOHR through its relevant agencies will commence immediate investigation in accordance to the provisions of the laws;
- (b) Based on the SOP by the Labour Department, any complaints received must be investigated within 30 days from date of received. However, investigation on complaints related to Foreign Workers must be completed within 7 days (refer to **Attachment B**);
- (c) Awareness programmes:-
 - (i) Inspections by the Labour Department;
 - (ii) Industrial Dialogue;
 - (iii) Seminar on the Employment of Domestic Servant; and
 - (iv) Related information channeled through Ministry's and Department's websites.
- Various mechanism are being used by the agencies to enforce laws and regulations pertaining to employment (including foreign workers) namely:
 - (a) Enforcement of Labour Laws (Legislation & Regulations);
 - (b) Labour Inspections to places of employment;
 - (c) Special Labour Inspections focusing on the plantations sectors;
 - (d) Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007 (ATIPSOM) - inspections and enforcement; and
 - (e) Investigations on reports & allegations received.
- Presently, it was estimated that there are about two million illegal immigrants in Malaysia. Some of these immigrants may be employed as plantations workers. Since they are illegal they have no avenue to complain without risking being deported. As such, the Government is currently embarking on a comprehensive exercise to register all the illegal immigrants.

- This exercise is part of the Government's 6P programme to register, pardon, legalize, monitor, enforce and deport the illegal immigrants. Under the programme, all employers (all sectors) are encouraged to register all illegal immigrants under their employment. The Government hopes to register and collect the bio-data of all the estimated two million illegal immigrants. Those who are eligible and fit to work will be legalised, while those not eligible to work will be sent home.
- After the first three steps are completed, the Government will monitor the situation and strengthen enforcement which includes deportation.
- Among the incentives provided by some employers to the foreign workers are:-
 - (a) Benefits recognized by the Government: Annual leave, paid holidays, sick leave, insurance and permits/passport renewal;
 - (b) Attendance allowance (from RM50 to RM85 per month) will be given for those who report for work every day on normal working hours (not including weekend rest and public holiday);
 - (c) Housing with basic furniture/ kitchen utensils and clean water supply up to 35 gallons per worker (see photos in **Attachment C**);
 - (d) 5 kg of Rice and Cooking Oil once in two (2) months;
 - (e) Telephone allowance (RM5 per month);
 - (f) Medical costs to be borne by the employer;
 - (g) Eligible for a maximum bonus of RM200 if can maintain the quality of the fruit and achieve the set productivity target;
 - (h) Posting allowance (RM50);
 - (i) Festive Bonus (RM100 per year);
 - (j) Death Benefits / Burial Assistance (RM2000) ;
 - (k) Ex-gratia payment after three (3) years of service being completed;
 - (l) Air tickets to their home countries to be fully borne by the estate for those who work three (3) years or more; and
 - (m) FOMEMA to be fully borne by the estate (RM180 per person).

8. Future actions and trends

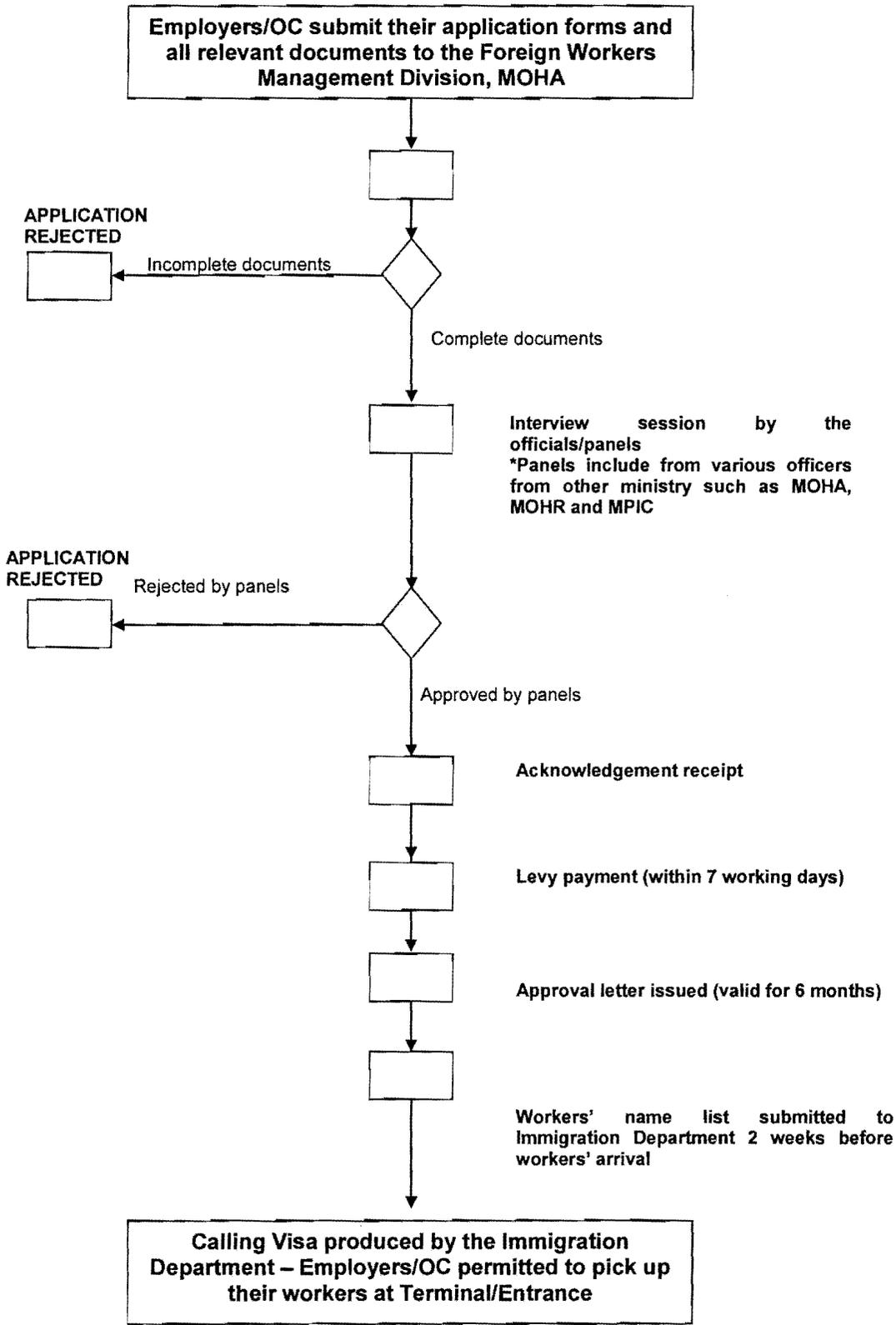
- Malaysia is looking into the current enforcement mechanism to enhance its effectiveness in combating labour trafficking and reducing employment related complaints through:
 - (a) Regulatory Framework:-
 - (i) Increase statutory inspections;
 - (ii) Special inspection without prior notice via 'flying squad';
 - (iii) Prosecuting recalcitrant employers-aggressively.
 - (b) Awareness campaign:
 - (i) Collaboration with Malaysian Media to educate employees, employers and general public on their rights and obligations under ATIPSOM through national radio and televisions, newspapers and other electronic media (internet) etc.;
 - (ii) Promotional / Development inspections by the Labour Department;
 - (iii) Industrial Dialogue; and
 - (iv) Seminar on The Employment of Domestic Servant.
 - (c) Speedy settlement of cases; and
 - (d) Strengthen Labour Department's SOPs;
 - (e) Amendment of the Labour Laws:-
 - (i) To improve Labour Law in line with Decent Work Agenda, National Action Plan for Employment and current labour policies; and
 - (ii) To enhance the enforcement of Labour laws:
 - Expand coverage of Workmen's Compensation Act 1952 for domestic worker;
 - New provisions under Employment Act 1955; and
 - Expand the Minimum Standards of Housing and Amenities Act 1990.

9. Conclusion

- There is no genuine case of forced labour reported in the oil palm plantations in Malaysia. The Labour Department will investigate every complaint, allegations and news report from media or other sources. Malaysia does not condone any form of forced labour and the Government always promotes decent work agendas.
- The Government will always play its role in combating and preventing forced labour in Malaysia. Therefore, cooperation from the public at large, NGO and stakeholders alike are welcomed in order to provide better protection to the rights of workers; and
- Malaysia aspires to develop and implement a comprehensive strategic plan for the enforcement of Labour Laws, taking into consideration the implementation of integrated enforcement through inspections with other related enforcement departments, ministries and agencies.

Taskforce to Address Forced Labour Issue in the Plantation Sector
Ministry of Plantation Industries and Commodities
30 June 2011

FOREIGN WORKERS APPLICATION WORKFLOW



FLOW CHART AND PROCESS ON HANDLING COMPLAINTS

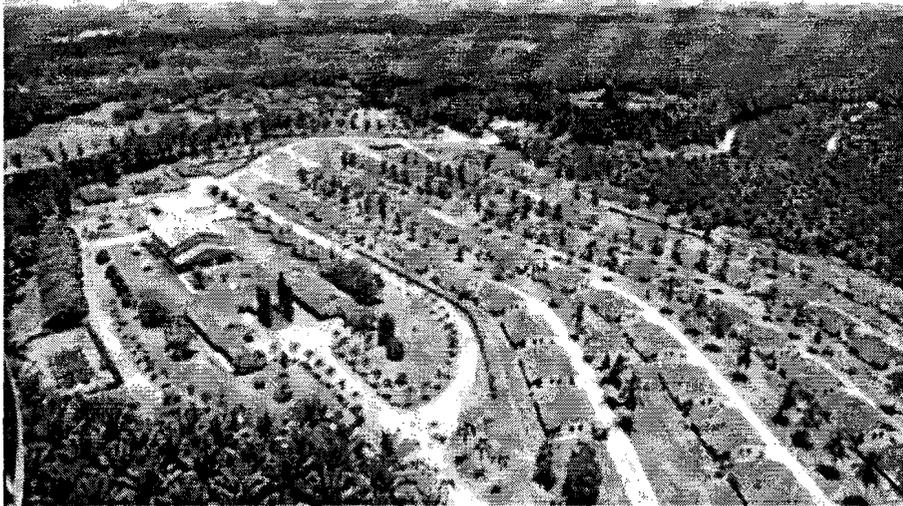
FLOW CHART	PROCESS
<pre> graph TD 1((1)) --> 2[2] 2 --> 3[3] 3 --> 4{4} 4 --> A[A] 4 --> B[B] A --> 5[5] B --> 5[5] 5 --> 6((6)) </pre>	<ol style="list-style-type: none"> 1. Complaint received: <ul style="list-style-type: none"> - File - Registration in Labour Market Database (LMD). - Send complaint acceptance feedback. 2. Determine the complaint category based on the period required for investigation. <ul style="list-style-type: none"> - All investigation must be completed within 30 days. 3. Distribution of complaint files by head of department to investigating officers for further action.

FLOW CHART	PROCESS
<pre> graph TD 1((1)) --> 2[2] 2 --> 3[3] 3 --> 4{4} 4 --> A[A] 4 --> B[B] A --> 5[5] B --> 5 5 --> 6((6)) </pre>	<p>4. Means of investigations:</p> <ul style="list-style-type: none"> - interview and statement recording (complainant, employer and other parties if necessary) - determination of issues:- <ul style="list-style-type: none"> A) Involving breach of law. B) Involving policy matter, religion and employment. <p>Types of investigation:</p> <p>A- Involving Breach of law (offence or omission)</p> <ul style="list-style-type: none"> - Verification, takes possession of relevant documents. - Interview and statement recording from employee or witness. - inform/explain to the employer on provisions of the labour law <p>B- Involving policy matter, religion and employment.</p> <ul style="list-style-type: none"> - Inspection to the place of employment. - hold discussion with employer on government policies, religion & belief or custom issues related to the complaint. - hold separate discussion with employee to inform employer's view and stand on the issues related to the complaint.

FLOW CHART	PROCESS
<pre> graph TD 1((1)) --> 2[2] 2 --> 3[3] 3 --> 4{4} 4 --> A[A] 4 --> B[B] A --> 5[5] B --> 5[5] 5 --> 6((6)) </pre>	<p>5. Investigating officer submit a report of the investigation. Recommendation & suggestions:</p> <ol style="list-style-type: none"> i. Close – employer agree to solve the issue complaint and complainant is satisfied with the resolution. ii. File for Labour case – For complaint which involves financial disputes and unable to settle through discussion. iii. Compliance notice – for minor offences/omissions. iv. Compound – violation of provision under Employment Act 1955. v. Prosecution –violation of other provisions under the labour law which compound is not permissible. vi. Negotiations – For issues involving policy matter, religion and employment which requires agreement between employer and employee. vii. Recommendations or counseling to employers who refuse to tolerate in issues involving policy matter, religion and employment. viii. If the finding of the investigation/inspection lead to issues not related to jurisdiction of the Labour Department, the complain will be submitted to relevant government agencies for further action.

FLOW CHART	PROCESS
<pre> graph TD 1((1)) --> 2[2] 2 --> 3[3] 3 --> 4{4} 4 --> A[A] 4 --> B[B] A --> 5[5] B --> 5[5] 5 --> 6(((6))) </pre>	<p>* A complete report of the investigation/ inspection and recommendations given to the employer, must be presented to the Labour Department Head Quarters, if it involves the directive from the head quarters.</p> <p>6. Office Chief to check the investigation report and decide the following:</p> <ul style="list-style-type: none"> • Further investigation (revert to process 4) • Start Legal Action • Close case file.

i) Housing for workers



An aerial view of workers' quarters at United Plantations Bhd. Jenderata, Malaysia



Front view of workers' quarters at United Plantations Bhd. Jenderata, Malaysia

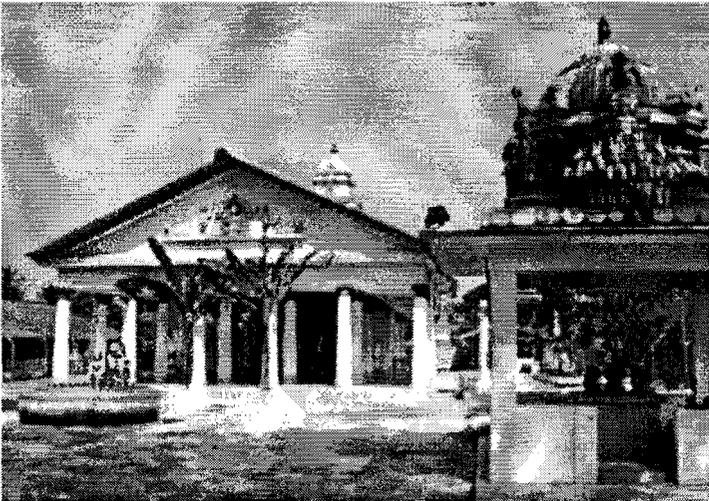
ii) Places of Worship in United Plantations Bhd. Jenderata, Malaysia



A Mosque

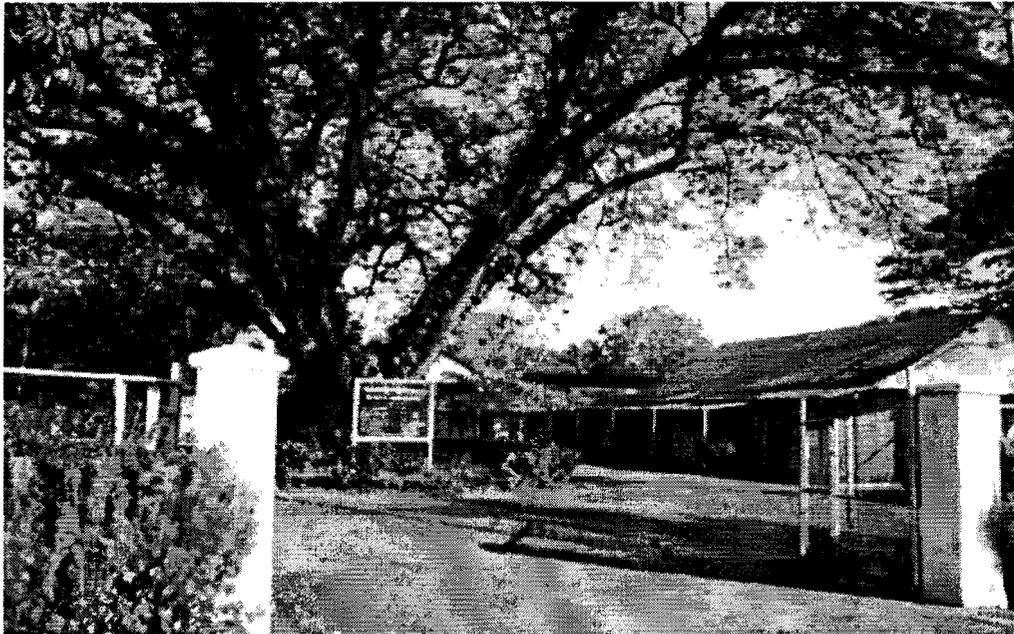


A Church

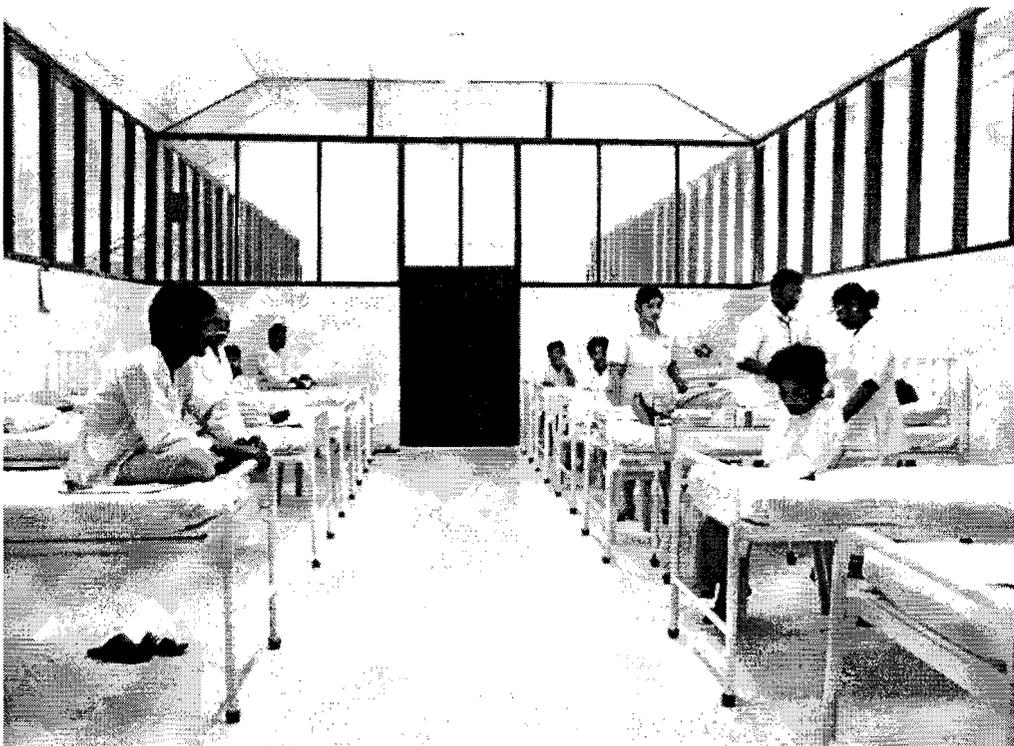


A Hindu Temple

iii) Group Hospital at United Plantations Bhd. Jenderata, Malaysia



Front view of Group Hospital with 18 beds. The hospital has 1 visiting Medical Officer, 2 qualified Medical Assistants (MA) and 1 trainee MA.



Inside the hospital's ward