

MALAYSIA

RESPONSE TO ALLEGATIONS OF FORCED LABOUR IN THE OIL PALM AND TEXTILE INDUSTRIES

A. INTRODUCTION

Malaysia has been listed as one of the countries which is believed by the US Department of Labor (US DOL) to practice forced labour in the palm oil and textile industries as reported in *The Department of Labor's List of Goods Produced By Child Labor or Forced Labor* in two consecutive reports in 2009 and 2010. In the latest report dated 3rd October 2011, Malaysia is still retained as one of the countries which practices forced labour in these two industries.

2. As a member of International Labour Organization (ILO), Malaysia adheres to 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.

3. In an effort to dispel this allegation, Malaysia has submitted a report to US DOL dated 19 August 2011. The objective of this present report is to provide clarifications to the letter from US DOL dated 19 December 2011 regarding issues related to the employment of labour.

CURRENT STEPS TO PROTECT THE RIGHTS OF LABOURERS

B. LAWS AND REGULATIONS

4. Malaysia has a comprehensive framework of laws and regulations to protect labourers, irrespective of whether local or foreign. In addition, there are nine laws and regulations specifically to address the issue of forced labour as follows:

Table 1: Law and Regulations Relating to Forced Labour

LAW	EXPLANATION	OFFENCE & PENALTY
<p>i. Employment Act 1955</p>	<ul style="list-style-type: none"> ○ Provides minimum protection to employees with regard to their terms and conditions of service consisting of working hours, wages, holidays, retrenchment benefits, etc. 	<p><u>Section 99A. General Penalty</u></p> <p>Any Person who commits any offence under, or contravenes any provision of, this Act, or any regulations, order, or other subsidiary legislation whatsoever made thereunder, in respect of which no penalty is provided, shall be liable, on conviction, to a fine not exceeding ten thousand ringgit.</p>
<p>ii. Workers Minimum Housing Standards and Amenities Act 1990 (Act 446)</p>	<ul style="list-style-type: none"> ○ To prescribe minimum standards of housing, provision of nurseries for workers and their dependents, to require employers to allot land for cultivation and grazing in the place of employment, to require employer to provide medical and social amenities. 	<p><u>Section 33. General Penalty</u></p> <p>Liable to a fine not exceeding RM2000 and to a further fine not exceeding RM100 a day for each day during which the offence continues.</p>
<p>iii. Workmen's Compensation Act 1952 (Act 273)</p>	<ul style="list-style-type: none"> ○ Provides payment of compensation for injuries sustained in accidents during employment. In general, this Act covers foreign workers who are legally employed in this country. 	<p><u>Section 26 (6). Compulsory Insurance By Employer</u></p> <p>Any employer who fails to insure himself in accordance with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding RM20000 or to imprisonment for a term not exceeding 2 years or to</p>

LAW	EXPLANATION	OFFENCE & PENALTY
		both.
iv. Occupational Safety and Health 1994	<ul style="list-style-type: none"> ○ Provides regulations to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work and providing industrial codes of practices to maintain or improve the standards of safety and health. 	<p><u>Section 51. General penalty.</u></p> <p>A person who by any act or omission contravenes any provision of this Act or any regulation made thereunder shall be guilty of an offence, and if no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction.</p>
v. Children and Young Persons (Employment) 1966	<ul style="list-style-type: none"> ○ Provides regulations to protect children and young persons who are engaged in employment in terms of working hours, type of work, abuse and etc. 	<p><u>Section 14. General penalty</u></p> <p>(1) Any person contravening any of the provisions of this Act or of any regulations or order made there under or who being the parent or guardian of a child or young person knowingly acquiesces in any such contravention in respect of such child or young person shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding five</p>

LAW	EXPLANATION	OFFENCE & PENALTY
		<p>thousand ringgit or to both and, in the case of a second or subsequent offence, shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit or to both.</p> <p>(2) On the conviction of any person for an offence under subsection (1) the Director General shall, if the person convicted is the holder of a license under the Theatres and Places of Public Amusement Enactment 1936 (<i>F.M.S. 47/36</i>) of the Federated Malay States or under any other corresponding written law in force, inform the licensing authority concerned of the particulars of such conviction and the licensing authority may take such action as it considers appropriate.</p>
<p>vi. National Wages Consultative Council Bill 2011 (Act 732)</p>	<p>o Provides regulations in determining the mechanism to impose minimum wage.</p>	<p><u>General penalty</u></p> <p><u>Section 26.</u></p> <p>Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.</p> <p><u>Penalty in the case of a continuing offence</u></p>

LAW	EXPLANATION	OFFENCE & PENALTY
		<p><u>Section 27.</u></p> <p>Any person convicted of an offence under this Act shall, in the case of a continuing offence, be liable, in addition to any other penalty to which he is liable under this Act in respect of such offence, to a daily fine not exceeding RM1,000 for each day the offence continues after conviction.</p> <p><u>Penalty in the case of a repeated offence</u></p> <p><u>Section 28.</u></p> <p>Any person convicted of an offence under this Act shall, in the case of a repeated offence, be liable to a fine not exceeding RM20,000 or to imprisonment for a term not exceeding five years.</p>
<p>vii. Labour Ordinance (Sabah Cap. 67);</p>	<ul style="list-style-type: none"> ○ Provides minimum protection to employees with regard to their terms and conditions of service consisting of working hours, wages, holidays, retrenchment benefits, etc. in Sabah. 	<p>General Penalties</p> <p><u>Section 130M.</u></p> <p>Any Person who commits any offence under this Ordinance or any rule, order or other subsidiary legislation made thereunder, in respect of which no penalty is provided, shall on conviction be liable to a fine not exceeding RM10,000.00</p>
<p>viii. Labour Ordinance (Sarawak Cap. 76);</p>	<ul style="list-style-type: none"> ○ Provides minimum protection to employees with regard to their terms and conditions of service 	<p>General Penalties</p> <p><u>Section 130M.</u></p> <p>Any Person who commits</p>

LAW	EXPLANATION	OFFENCE & PENALTY
	<p>consisting of working hours, wages, holidays, retrenchment benefits, etc. in Sarawak</p>	<p>any offence under this Ordinance or any rule, order or other subsidiary legislation made thereunder, in respect of which no penalty is provided, shall on conviction be liable to a fine not exceeding RM10,000.00</p>
<p>viii. Factories and Machinery Act 1967 (Act 139); .</p>	<p>o Provides the control of factories with respect to matters relating to the safety, health and welfare of person therein, the registration and inspection of machinery and for matters connected therewith</p>	<p><u>Section 51. Penalties.</u></p> <p>(1) Any person who contravenes subsections 19 (1), section 31, subsections 34 (1), 36 (1), section 37, subsections 38(1), 39 (1) and 40(3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM5,000</p> <p>(2) Any person who contravenes any other provision of this Act for which contravention no penalty is expressly provided shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM2,000</p> <p>(3) Where the offence of which any person is convicted is a continuing offence, such person shall, in addition to the punishment inflicted in respect of that offence, be further liable to a fine not exceeding RM100 for each day or part of a day during which the offence continues after the first day in respect of which the conviction is</p>

LAW	EXPLANATION	OFFENCE & PENALTY
		recorded.
ix. Passports Act 1966 (Act 150);	<ul style="list-style-type: none"> ○ Provides control over the possession and production of travel documents by persons entering or leaving, or travelling within, Malaysia and for matters connected therewith. 	<p>Offences</p> <p><u>Section 12.</u></p> <p>(1) Any person who—</p> <p style="padding-left: 40px;">(f) without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself;</p> <p>shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding RM10000 or to imprisonment for a term not exceeding five years or to both.</p>

5. Malaysia has also enacted the *Anti-Trafficking in Persons Act 2007* (ATIP) in April 2007 and was enforced in February 2008. This Act provides for criminal action to be instituted for involvement in trafficking of persons. Subsequently, the Act has been amended to include offences for smuggling of people. The Act is now known as *The Anti-Trafficking in Persons and Anti-Smuggling of Migrants 2007 (Act 670)*. This Act aims to stop human trafficking and smuggling of people activities, which may lead to forced labour. In addition, the maximum penalty for offences under this Act has been increased from RM500,000.00 to RM1,000,000.00.

C. ENFORCEMENT

6. In addition to having strict laws and regulations relating to forced labour Malaysia has taken measures to beef up enforcement activities

under the Employment Act 1955 and the Workers Minimum Housing Standards and Amenities Act 1990 to ensure employers abide by the law. The statistics in Table 2 below show the number of complaints received, Table 3 shows the number of labour inspections carried out and Tables 4, 5 and 6 show the number of cases reported and resolved between 2007 to 2011:

Table 2: Number Of Complaint Cases Involving Foreign Workers

Year	Cases Received	Cases Settled	Percentage of Cases Resolved
2007	646	633	98%
2008	712	695	98%
2009	758	744	98%
2010	710	689	97%
2011	635	628	98%
TOTAL	3,461	3,389	97%

Table 3: Number Of Inspections On Premises

Year	Audit	Inspection of Work Premises	Inspection of Estate Premises
2007	32,293	5,324	1,171
2008	47,215	4,389	1,488
2009	53,640	4,200	1,107
2010	48,128	5,377	1,237
2011	45,887	5,424	1,743
TOTAL	227,163	24,714	6,746

- *Audit Inspection: to inspect in terms of fulfilment of labour terms and conditions.*
- *Development Inspection: to inspect work premises.*
- *Estate Inspection: Specifically to inspect estates.*

Table 4: Number of Labour Cases at the Labour Court and Amount Entitled to Claimant

Year	Cases Received	Cases Settled	Amount Claimed(RM)
2008	13,792	11,621	18,396,593
2009	12,891	11,174	20,753,323
2010	14,384	12,794	25,687,106
2011	13,862	11,717	22,452,797
Total	54,929	47,306	87,289,819

Table 5: Number Of Labour Cases Involving Foreign Workers

Year	Cases Received	Cases Settled	Percentage of Cases Settled
2007	58	55	94%
2008	52	43	82%
2009	36	36	100%
2010	99	94	94%
2011	208	205	98%
TOTAL	453	433	95%

Table 6: Number of Cases Prosecuted and Fines Imposed

Year	Cases Prosecuted	Amount (RM)
2007	500	10,000.00
2008	114	287,350.00
2009	118	363,339.76
2010	357	130,437.00
2011	453	219,020.61
TOTAL	1,542	1,010,147.37

7. The complaints and cases shown in the tables above are related to, among others, disputes on:

- (i) payment of wages and other cash payments, including overtime;
- (ii) leave;
- (iii) payment in lieu of notice of termination;
- (iv) termination and lay-off benefits;
- (v) advancement of wages;
- (vi) reductions of wages; and
- (vii) public holidays.

8. Meanwhile, from 2008 until 2011, there were 18 recorded cases of labour trafficking involving 133 charges in which two were convicted in 2010.

D. SPECIAL COMMITTEE ON LABOUR TRAFFICKING

9. On 28 May 2009, The Council on Anti-Trafficking In Persons and Anti-Smuggling of Migrants agreed to establish a Special Committee on Labour Trafficking chaired by the Ministry of Human Resources (MOHR). The objective of this Committee is to resolve problems and cases involving labour trafficking.

10. Members of the Special Committee include:

- (i) MOHR;
- (ii) Ministry of Home Affairs (MOHA);
- (iii) Ministry of Women, Family and Community Development;
- (iv) Attorney-General's Chambers;
- (v) Ministry of Foreign Affairs; and
- (vi) Malaysian Immigration Department.

11. The Terms of Reference (TOR) of this Committee are as follows:
- (i) To identify and categorise policies and procedures in handling foreign workers' complaints;
 - (ii) To discuss and propose the best mechanism for processes and procedures in handling and resolving foreign workers' cases;
 - (iii) To discuss and propose mechanisms to handle labour trafficking issues;
 - (iv) To monitor and propose improvements for investigation and enforcement activities; and
 - (v) To monitor the implementation of improvement proposals.
12. The special committee has met eight (8) times since 2009.

E. SPECIAL COMMITTEE FOR LABOUR ISSUES IN OIL PALM PLANTATION

13. In 2011, Malaysia established a special committee under the Ministry of Plantation Industries and Commodities to obtain information and monitor the labour issues in oil palm plantation. The committee comprises members from MOHR, MOHA, Malaysian Palm Oil Associations, Malaysian Palm Oil Board and Malaysian Palm Oil Council.

14. To date, the committee has conducted five (5) meetings in 2011 to discuss various issues relating to the labour situation in the palm oil industry and has set forth various measures, including the proposal to institute a communication channel between plantation workers with employers and authorities.

F. CREATING AWARENESS

15. Apart from enforcement activities, efforts have been strengthened to create awareness on labour rights in Malaysia, especially relating to forced labour, trafficking in persons and smuggling of migrants. These programmes focus on educating foreign labourers on the rights as stated in the Malaysian labour law. Among the awareness programmes conducted are:

- (i) Public awareness campaigns through printed and electronic media, for example trailers, jingles, and billboards;
- (ii) Campaign and Seminars conducted by the National Council of Women Organisation (NCWO) – 29 campaigns (target groups were teachers, school students, government officers and nurses);
- (iii) Seminars by the Ministry of Information, Communications and Culture – 7 seminars involving 1015 participants have been organised with one slot focusing on forced labour;
- (iv) Cooperating with out-sourcing companies to organise a seminar on human trafficking focusing on migrant workers, which was attended by 50 participants;
- (v) Distributing posters at the country's entry points;
- (vi) Participating in interviews on the issues of trafficking in persons and smuggling of migrants on local radio and television stations; and
- (vii) Circulating pamphlets on people smuggling to foreign workers in various languages.

G. DEVELOPMENT OF HUMAN RESOURCE CAPITAL

16. To ensure that all the laws and regulations relating to labour are properly enforced, the Government has taken the effort to retrain related government officials to keep them up-to-date with current developments. Guidelines and Standard Operating Procedures have also been created

and provided to all enforcement agencies to assist them in implementing the law and regulations. Among the trainings conducted are:

- (i) Training conducted by the Attorney-General's Chambers – Briefing on Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM) for 320 public prosecutors;
- (ii) Training by the Royal Malaysian Police- 4 series of training involving 318 police officers;
- (iii) Training by Immigration Department – 5 series of training involving 480 officers;
- (iv) Training by Royal Malaysian Customs – 2 series of training involving 68 customs officers;
- (v) Seminar On Enforcing ATIP Act 2007 attended by 38 Labour Officers and Legal Officers;
- (vi) Intensive Course on ATIPSOM involving 50 Labour Officers;
- (vii) Intensive Course on Investigation and Enforcement of Forced Labour;
- (viii) Intensive Course Combat Without Weapons attended by 40 Labour Officers; and
- (ix) Seminars conducted by the Ministry of Home Affairs:
 - a. Seminar on ATIPSOM in Perlis involving 75 officers;
 - b. Workshop on Trafficking In Persons In Cooperation With United Kingdom Border Agency (UKBA) which was attended by 88 officers; and
 - c. Border Enforcement Workshop on Trafficking In Persons In Cooperation With Australia Customs and Border Agency involving 175 officers.

H. EFFORTS BY EMPLOYERS

17. Employers in Malaysia are encouraged to provide additional facilities on top of the minimum requirement as stipulated in the laws and regulations. This is to ensure that workers will have a more conducive working environment as well as comfortable living conditions.

Plantation Sector

Among the facilities / perks provided by employers in the plantation sector are:

- (i) Benefits recognized by the Government: annual leave, paid holidays, sick leave, insurance and permits/passport renewal;
- (ii) Attendance allowance (from RM50 to RM85 per month) will be given for those who report to work every day for normal working hours (not including rest day and public holiday);
- (iii) Housing with basic furniture/ kitchen utensils and clean water supply up to 35 gallons per worker;
- (iv) 5 kg of Rice and Cooking Oil once in two (2) months;
- (v) Telephone allowance (RM5 per month);
- (vi) Medical costs to be borne by the employer;
- (vii) Eligible for a maximum bonus of RM200 if workers can maintain the quality of the fruit and achieve the set productivity target;
- (viii) Posting allowance (RM50);
- (ix) Festive Bonus (RM100 per year);
- (x) Death Benefits / Burial Assistance (RM2000) ;
- (xi) Ex-gratia payment after three (3) years of service is completed;

- (xii) Air tickets to their home country to be fully borne by the estate for those who have worked three (3) years or more; and
- (xiii) Health screening by FOMEMA to be fully borne by the estate (RM180 per person).

18. In addition to the amenities provided, recreational and sports facilities are also made available to plantation workers. These facilities also serve the needs of the surrounding communities. The plantation companies also provide transportation for the workers' children to attend school. The employers on a regular basis also organise community activities such as Family Day, sports competitions, Annual Dinner and festive gatherings for the workers.

19. With respect to earnings, the plantation sector had increased the remuneration of all workers in the estates and mills by RM200 a month. The increased remuneration was effective from July 2011 which had raised their basic salary by between 20% to 30% and eased the burden of those plantation workers. The significant increase in earnings for plantation workers' would enable them to increase their purchasing power, have savings as well as to provide better education for their children.

20. In 2010, the Government had also called on plantation companies to take their Corporate Social Responsibility (CSR) seriously, and to make efforts to address the grievances of their workers in a holistic manner. In past years, ad-hoc measures were taken to tackle complaints on poor housing, lack of social amenities and quality of water supply. In addition, officers from the Ministry of Plantation Industries and Commodities visit the estates on a regular basis to discuss problems and measures to address them.

21. These incentives, benefits and efforts by employers are viewed positively as it can significantly increase the potential earnings for a productive general worker.

Textile Sector

22. For the textile industry, among the facilities/ perks provided by the employers include:

- (i) annual leave, paid holidays, sick leave, insurance and permits/passport renewal, maternity leave, casual leave;
- (ii) retrenchment benefits;
- (iii) retirement benefits;
- (iv) festival gifts;
- (v) annual increment;
- (vi) merit increment;
- (vii) personal loan (not exceeding RM2,000) for purposes such as:
 - a. medical expenses for employee and immediate family members;
 - b. purchasing of house, motor vehicles and repair/renovation place of residence;
 - c. higher education for employee & children; and
- (viii) Transport allowances.

I. 6P PROGRAMME

23. The 6P Programme is another initiative by the Government which aims to provide a comprehensive solution for Illegal Foreign Workers and Illegal Immigrants. This Programme consists of six stages of action, starting with Registration, followed by Regularisation, Amnesty, Monitoring, Enforcement and Deportation. Through this programme, the Government will have a comprehensive database of illegal immigrants in the country.

24. The objectives of the 6P Programme include:

- (i) To obtain data/ information on illegal immigrants in the country;

- (ii) To strengthen the management of foreigners in the country, including the ability to monitor the entry and exit of foreigners thus enabling identification of their residency locations;
- (iii) To strengthen law enforcement involving all the enforcement agencies as a concerted and consolidated effort to reduce the number of illegal immigrants. Scheduled and continuous series of operations and collaborations will be effective in preventing the entrance and presence of illegal immigrants in Malaysia. With proper enforcement, crime involving illegal immigrants can also be reduced and prevented; and
- (iv) To address the problem of shortage of manpower in certain sectors by changing the status of illegal immigrants working in this country to legal workers who are placed to work with registered employers.

25. In addition to the 6P Programme, the Government has also embarked on registering biometric information of legal foreign workers in the country. This move is to ensure that the wellbeing and rights of the foreign workers are protected. Once the foreigner database is completed, enforcement officers will be able to verify a foreigner's biometric information (including foreign workers) through online application in real time. This is to ensure that only foreigners with valid and appropriate documents can remain in the country, within the stipulated time period. Having the biometric data will also facilitate and expedite the verification process of foreigners' status and can help to reduce the instances of foreigners being detained for this purpose. In addition, the biometric registration will also include the information of the foreign workers' respective employer. This will further secure the status of the workers and ultimately it can help to reduce issues of foreign workers being manipulated by employers as they (employers) are held responsible and accountable for their employees.

J. COMPLAINT MANAGEMENT

26. Any complaints received must be investigated within 30 days from the date received. However, investigation on complaints related to

Foreign Workers must be completed within 7 days as shown in the flow chart on **Appendix 1**.

NEXT STEPS TOWARD ELIMINATING THE PRACTICE OF FORCED LABOUR

The Government of Malaysia will continue to increase its effort to eliminate any sorts of practice that can be categorised under the definition of forced labour.

K. LAWS AND REGULATIONS

27. The Government has played a prominent role to further protect the rights of labourers in Malaysia by taking the following approaches:

(i) Amendment of legislation:

- a) Amending the Employment Act 1955- the amendment of the Employment Act 1955 Bill has been approved in the House of Representatives on 6 October 2011 and in the Senate on 22 December 2011. This Act was amended to meet the current scenario of labour structures and movements and to enhance enforcement to better cater to the needs of employers and employees in terms of labour. The amended provisions are as below:

Table 5: Amendment of Employment Act 1955

ITEM	AMENDMENT	JUSTIFICATION
Wages	<p>Section 25</p> <p>Payment of wages to foreign workers including domestic servant through bank account.</p>	<ul style="list-style-type: none"> • Payment of wages through bank account as a proof/record to avoid failure in the part of employers to pay wages to their employees.

ITEM	AMENDMENT	JUSTIFICATION
	<p>Section 25A</p> <p>Exception to Section 25 in which payment of wages to the employee may be made in legal tender or cheque provided there is a written request from the employee and in the case of a domestic servant the Director General's approval shall be obtained by the employer.</p>	<ul style="list-style-type: none"> • This amendment is to help employers to pay wages in legal tender or cheque to ease employees who works in rural area and no banking facilities.
Contractor for labour	<p>Section 33A</p> <ul style="list-style-type: none"> • To impose a duty on the contractor for labour who intends to supply or undertakes to supply any employee to register with the Director General in the prescribed form within 14 days before supplying the employee. • Contractor for labour to keep or maintain information on the 	<ul style="list-style-type: none"> • To monitor the supply of employees by the contractor for labour and to strengthen enforcement so that contractor for labours will comply on all terms relating labour.

ITEM	AMENDMENT	JUSTIFICATION
	<p>employee he supplies in a register and the register shall be made available for inspection.</p>	
<p>Duty on the employers to inform on employment and termination of foreign domestic servants.</p>	<p>Section 57A Duty to inform the Director General of Labour within 30 days from the date of the employment of foreign domestic servants.</p> <p>Section 57B Duty to inform the Director General of Labour within 30 days if the contract of service of the domestic servant is terminated (by either party) / abscond / expiry of work permit or repatriation.</p>	<ul style="list-style-type: none"> • To collect information on the actual number of foreign domestic servant working in Malaysia and ease the monitoring of the employment of the said workers.
<p>Duty on the employers to inform on the termination of foreign workers</p>	<p>Section 60 K (3) Duty to inform the Director General of Labour within 30 days if the contract of service of the foreign workers is terminated (by either party) / abscond / expiry of</p>	

ITEM	AMENDMENT	JUSTIFICATION
	work permit or repatriation.	
Complaints on Sexual Harassment	<p>Part XVA</p> <ul style="list-style-type: none"> • Procedures relating complaints, case investigations, and other relevant provisions in handling issues relating sexual harassment in work place and outside work place which involves work. • Imposes duty to Director General of Labour to investigate cases relating sole proprietors. 	<ul style="list-style-type: none"> • This provision shall apply to all employees irrespective of their wages. • Wider protection to employees from any sexual harassment incidents.
Power to compound offences	<p>Section 101A</p> <ul style="list-style-type: none"> • Director General of Labour to authorize any officer to compound any offences committed under the Act. 	<ul style="list-style-type: none"> • to smoothen and fasten the enforcement effectively.

- b) Amending the Children and Young Persons (Employment) Act 1966;

Table 6: Amendment of Children and Young Persons (Employment) Act 1966

DETAILS	PROVISIONS
Age	<p>Section 1A</p> <p>Child means any person who has not completed his fifteen year of age.</p> <p>Young person means any person who not being a child and has not completed his eighteen year of age.</p> <p>(To be in line with ILO Convention No. 138 on Minimum Age).</p>
Offence by body corporate	<p>Section 9A</p> <p>If an offence under the Act has been committed by body corporate, partnership, society or trade union shall be deemed to offences and may be charged jointly or severally.</p>
Penalties	<p>Section 14</p> <p>General Penalty:</p> <p> LIABLE on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding RM5,000 or to both and, in the case of a second or subsequent offence, shall be liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding RM10,000 thousand or to both.</p>

- c) Amending the Workers Minimum Housing Standards and Amenities Act 1990 - to have provisions that meet the current standard needs of plantation workers. The review would

cover the aspects of health, water and electricity supply and other daily facilities. The review is in line with today's necessities and for the workers' welfare.

- (ii) Establishing the National Wages Consultative Council Act 2011 which has been approved in the House of Representatives on 30 June 2011 and in the Senate on 12 July 2011. The Act has been enforced on 23 September 2011. This Act is to establish a National Wages Consultative Council with the responsibility to conduct studies on all matters concerning minimum wage and to make recommendations to the Government to make minimum wage orders according to sectors, types of employment and regional areas, and to provide for related matters; and
- (iii) Reviewing and enhancing the Private Employment Agencies Act 1981 – currently outsourcing companies are operating administratively through the Ministry of Home Affairs. In order to control and monitor the employment of workers hired by outsourcing companies, the Government is in the midst of reviewing the Act to make it mandatory for outsourcing companies to be registered under the Private Employment Agencies Act 1981.

L. ENFORCEMENT TARGET FOR 2012

28. In 2012, the Government has set the following targets for enforcement activities to reduce the mismanagement of labour:

Table 7: Enforcement Activities Plan For 2012

Year	Audit	Inspection of Work Premises	Inspection of Estate Premises
2012	45,000	4800	1500

Source: Labour Department, Malaysia

29. It is estimated that enforcement activities may incur additional expenses of RM900,000. This is to cover the cost of logistics, rewards, workshops/seminars, investigations and other relevant costs.

M. DEVELOPING HUMAN RESOURCE CAPITAL

30. The Government will continue to develop human resource capital through retraining related government officials to keep them informed of current laws and regulations for optimal enforcement. One of the examples is by providing training to labour officers to familiarise them with the Anti-Trafficking and Anti-Smuggling of Migrants Act 2007, so that forced labour cases can also be investigated/ charged under this act. Enforcement agencies will also be provided with guidelines and Standard Operating Procedures to assist them in implementing this Act.

31. The Labour Department under MOHR has also established a special unit under the Anti-Trafficking Division to handle cases or issues relating to human trafficking and forced labour. In addition, the Ministry has established a special committee for Anti-Trafficking of Labour in 2009, in which the main function includes monitoring the progress of handled cases and conducting relevant programmes.

N. AWARENESS PROGRAMMES FOR 2012

32. Malaysia will continue to undertake awareness programmes for employers and employees. These include special seminars for plantation managers to enhance their management knowledge, especially relating to labour laws and management.

O. SPECIAL STUDY ON LABOUR ISSUES IN OIL PALM INDUSTRY

34. The Government is also planning to conduct a special study on labour issues, especially in the palm oil industry. The study is to cover the following areas:

- (i) The distribution of labour in the palm oil industry including the ratio between local and foreign labour;
- (ii) The dynamics of foreign labour recruitment, including seasonal workers;
- (iii) Policies relating to foreign labour (including hiring, working conditions, salary and welfare);
- (iv) System or method used by the Government and Industry to monitor the labour conditions in the palm oil industry;
- (v) The effectiveness of the monitoring system/method;
- (vi) Issue(s) pertaining to labour in the palm oil industry particularly with regard to foreign labour such as salary, housing, basic amenities and insurance together with the course of action to overcome these issues; and
- (vii) Efforts taken to improve the welfare and standard of living for labourers in the palm oil industry including discharge of corporate social responsibility by the employers.

P. CONCLUSION

35. Since the first report was published in 2009, Malaysia has taken various efforts to eliminate any activities that can be considered as forced labour. Although Malaysia will continue to disagree with the forced labour allegation as stated in the US DOL reports, it does not stop the Government from taking the initiatives to improve the labourers' working conditions and welfare. However, Malaysia strongly feels that this allegation is unfair as well as one-sided due to the sources quoted for the report and the fact that no Malaysian Government officials were contacted or consulted to verify these claims before the report was published.

36. Malaysia does not condone any form of forced labour and the Government will continue to play its role in preventing forced labour

activities from taking place in Malaysia. Cooperation from the public at large, NGO and stakeholders alike is always welcomed in order to provide better protection of the rights of workers. At the same time, employers are always encouraged to provide better facilities and working environment for their workers regardless of whether they are locals or foreigners.

FLOW CHART AND PROCESS ON HANDLING COMPLAINTS

FLOW CHART	EXPLANATION OF THE 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>1. <u>Complaint received:</u></p> <ol style="list-style-type: none"> File Registration in Labour Market Database (LMD). Send complaint acceptance feedback. <p>2. <u>Determine the complaint category based on the period required for investigation.</u></p> <ol style="list-style-type: none"> All investigation must be completed within 30 days. <p>3. <u>Distribution of complaint files by head of department to investigating officers for further action.</u></p> <p>4. <u>Means of investigations:</u></p> <ol style="list-style-type: none"> interview and statement recording (complainant, employer and other parties if necessary) determination of issues: <ol style="list-style-type: none"> Involving breach of law. Involving policy matter, religion and employment. <p>Types of investigation:</p> <p>(A) Involving Breach of law (offence or omission)</p> <ol 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> <ol style="list-style-type: none"> Inspection at the place of employment. Hold discussions 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. <p>5. <u>Investigating officer submit a report of the investigation.</u></p> <p>Recommendations & suggestions:</p> <ol style="list-style-type: none"> Close – employer agree to resolve the

FLOW CHART	EXPLANATION OF THE PROCESS
	<p>complaint and complainant is satisfied with the resolution.</p> <ul style="list-style-type: none"> ii. File for Labour case – For complaints which involve 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 in which compound is not permissible. vi. Negotiations – For issues involving policy matters, religion and employment which requires agreement between employer and employee. vii. Recommendations or counseling to employers who refuse to tolerate issues involving policy matter, religion and employment. viii. If the findings of the investigation/inspection lead to issues not related to the jurisdiction of the Labour Department, the complain will be submitted to relevant government agencies for further action. <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 a directive from the head quarters.</p> <p>6. <u>Office Chief to check the investigation report and decide the following:</u></p> <ul style="list-style-type: none"> a. Further investigation(revert to process 4) b. Start Legal Action c. Close case file.

**Response from the Government of Malaysia to the Observation of CEACR,
2009/80th Session**

Minimum Age Convention, 1973 (No. 138)

Malaysia (ratification: 1997)

1. The ILO Committee of Experts on the Application of Conventions and Recommendations submitted an observation to the Government of Malaysia regarding the application of the Minimum Age Convention, 1973 (No. 138) in Malaysia.
2. Based on the observation, the Government would like to inform that the Amendment to CYP Act has been in force from the 1st day of March 2011. The following comments will be answered according to the new amendment of the said Act.

CEACR's comments

- 2.1 Noting once again that the government had referred to the legislative review of the CYP to take the necessary measures to ensure that the tripartite technical committee seriously considers raising the minimum age for admission to employment or work to 15 years, as specified by the Government at the time of ratification, and that the relevant amendments are adopted as soon as possible. It requests the Government to provide information on the progress made in this regards with its next report.

Response by the Government

Definition of "child" in the CYP Act is in accordance with **Article 2(3)** of the Convention. It is provided under **Section 1 A** of the Act, as follows:

- "Child" means any person who has yet completed his fifteenth year of age.

Definition of "young person" in the CYP Act is in accordance with **Article 3(1)** of the Convention. It is provided under **Section 1 A** of the Act as follows:

- "Young Person" means any person who, not being a child, has not completed his eighteenth year of age.

CEACR's comments

- 2.2 The committee strongly urges the Government to take necessary measures to ensure that the tripartite technical committee seriously considers the prohibition of the employment or work of persons under 18 years of age, in accordance with article 3(1). Moreover, it firmly hopes that the determination of types of hazardous work to be prohibited to people below 18 years of age will be reviewed and adopted by the Department of Labour after consultation with the organizations of employers and workers concerned, in accordance with Article 3(2) of the Convention, it urges the Government to take the necessary measures to ensure that the relevant legislation is adopted as soon as possible and request it to provide information on the progress made in this regard in its next report.

Response by the Government

Section 2(5) of CYP Act has been amended as follows:

- *"No child or young person shall be, or be required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machineries Act 1967 [Act 139] or the Occupational Safety and Health Act 1996 [Act 514] or the Electricity Supply Act 1990 [Act 447]."*

In addition to **Section 2 (5)**, another subsection is included in **Section 2** of the CYP Act, namely **Section 2(6)**.

- *"For the purpose of this Section, "hazardous work" means any work that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister."*

In Malaysia, any child or young person shall not be required, or permitted be engage in any **hazardous work** or any other employment that is not specified in **Section 2 (2) and (3)** of the CYP Act.

CEACR's comments

- 2.3 **The Committee urges the Government to take the necessary measures to ensure that the activities of the tripartite technical committee lead to the adoption of national legislation authorizing the performance of types of hazardous work done by young person between 16 and 18 years of age only in accordance with the requirements of Article 3(3) of the Convention. It requests the Government to provide information on the progress made in this regard in its next report.**

Response by the Government

Under Section 2(4), any child or young person is not allowed to engage in work (in addition to Section 2(1), Section 2(2) and Section 2(3), that is dangerous to life, limb, health, safety and morals.

Section 2(6), CYP Act defined hazardous work as any work that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and

health determined by the Minister.

CEACR's comments

- 2.4 The committee urges the Government to take the necessary measures to ensure that the CYP Act is reviewed and amended in conformity with the requirements of the Convention on the following points: (i) that the minimum age of 13 years for light work be established by legislation; (ii) that, in the absence of a definition of light work in the legislation, the competent authority should determine what is light work and should prescribe the number of hours during which, and the condition in which, such employment or work may be undertaken. It requests the Government to provide information on the progress made in this regard in its next report.

Response by the Government

There is no minimum age of 13 years established in CYP Act. However, the general protection of such person is stipulated in the **Child Act 2000**.

After the 2011's amendment, definition of light work is specified under **Section 1 A**. The definition provides the description of light work as follows:

- **"Light work"** means any work performed by a worker-

(a) while sitting, with moderate movement of the arm, leg and trunk;

or

(b) while standing, with mostly moderate movement of the arm.

Number of days for child and young person is allowed to work is explained in **Section 4** of the CYP Act where a child or young person shall not be

required or permitted to work for more than six days in any period of seven consecutive days.

Hours of work differ for a child and a young person.

- i. According to **Section 5** of the CYP Act, a child shall not be required or permitted to work as follows:-
 - a. Work between 8pm to 7am.
 - b. Work for more than 3 consecutive hours without any rest for a minimum of 30 minutes.
 - c. Work more than 6 hours in a day or during schooling days, not exceeding 7 hours (includes the schooling hours).
 - d. Work commencing on any days, without having a minimum of 14 consecutive hours, free from work.

- ii. According to **Section 6(1)** of the CYP Act, a young person shall not be required or permitted to work as follows:-
 - a. Work between 8pm to 6 am.
 - b. Work for more than 4 consecutive hours without any rest for a minimum of 30 minutes.
 - c. Work more than 7 hours in a day or during schooling days, not exceeding 8 hours (includes the schooling hours).
 - d. Work commencing on any days, without having a minimum of 12 consecutive hours, free from work.

CEACR's comments

- 2.5 The Committee once again strongly urges the Government to take the necessary measures to ensure that the provisions giving effect to the Convention are effectively enforced. The Committee also urges the Government to take the necessary measures to ensure that sufficient data on the situation of working children in Malaysia is

available, in accordance with the Convention. It requests the Government to provide information on the progress made in this regard and once again asks the Government to provide including, for example, statistics on the employment of children and young person and extracts from the reports of inspection services, as soon as this information becomes available.

Response by the Government

The Labour Department under the Ministry of Human Resources is taking necessary measures to ensure that data on working children is collected in accordance with the Convention.

CEACR's comments

- 2.6 Finally, in response to the Government's request for technical assistance from the office, the Committee requests for technical assistance from the Office, the Committee requests the Office to take the necessary measures to respond positively.

Response by the Government

The Government would like to consider engaging technical assistance of the ILO to facilitate the Government in data collections.

OBSERVATION BY THE COMMITTEE OF EXPERTS ON THE APPLICATION OF
CONVENTIONS AND RECOMMENDATIONS 2009 / 80TH SESSION

WORST FORMS OF CHILD LABOUR CONVENTION, 1999 (No. 182)

Malaysia (ratification: 2000)

1. The International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations submitted an observation to the Government of Malaysia regarding the application of the Worst Forms of Child Labour Convention, 1999 (No.182) in Malaysia.

2. In this connection, the Government of Malaysia has studied the observation and presents herewith the official response which was prepared subsequent to consultations with the relevant authorities in Malaysia.

3. *The Committee requests the Government to take immediate and effective measures to ensure that, in the framework of the amendments to the Child Act, legislation is adopted to prohibit the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances, in accordance with Article 3(b) of the Convention, as a matter of urgency. It requests the Government to provide information on the progress made in this regard in its next report.*

Response by the Government

4. There are specific provisions under the Child Act 2001 [Act 611] which prohibit the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances, in accordance with Article 3(b) of the Convention. Such prohibition and punishment can be seen in **paragraph 31(1)(b) of Act 611** which provides that any person who, being a person having the care of a child sexually abuses the child or causes or permits him to be so abused, commits an offence and shall on conviction be liable to a fine

not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding ten years or both.

5. As paragraph 31(1)(b) is under Part V of Act 611, the words "sexually abuse" shall be read with **subparagraph 17(2)(c)(i) of Act 611** which provides as follows:

17(2) For the purposes of this Part, a child is—

- (a)
- (b)
- (c) sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of—
 - (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or
 - (ii)

6. Hence, the above provisions are sufficient to protect the children as recommended by the committee.

7. *As the Committee needs further information to assess whether section 32 of the Child Act can be applied effectively to prohibit the use, procuring or offering of a child for the production and trafficking of drugs, it requests the Government to provide information on the effect given to this provision in practice, including statistics on the number of persons prosecuted and found guilty under section 32 of the Child Act of using, procuring or offering a child under 18 years for illicit activities, in particular for the production and trafficking of drugs.*

Response by the Government

8. With reference to the previous comments given by the Government the provision under **paragraph 32(b) of Act 611** is sufficient to cover the offences of using, procuring or offering of a child for the production and trafficking of drugs. The words "*other illegal activities detrimental to the health or welfare of the child*"

are very wide to include offences of procuring or offering of a child under 18 years of age for illicit activities, in particular for the production and trafficking of drugs, where any person who causes or procures any child or, being a person having the care of a child, allows that child to be on any street, premises or place for the purpose of performing or offering anything for sale or carrying out illegal activities detrimental to the health and welfare of the child will be liable to fine and imprisonment or both.

9. In addition, the Dangerous Drugs Act 1952 (Act 234) is a specific legislation that deals with offences relating to the possession and trafficking of drugs which applies to everyone regardless of age. This can be seen in **subsection 39B(1) of Act 234** which provides that any person who on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia—

- (a) traffic in a dangerous drug;
- (b) offer to traffic in a dangerous drug; or
- (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drugs, if convicted shall be guilty of an offence against Act 234 and shall be punished on conviction with death.

10. Both offences under Act 611 and Act 234 can be tried together. However, where both of the offences are tried together, the court in its wise discretion may consider Act 234 which provides death penalty in relation to punishment of drug traffickers. To date, no death sentence has been applied to a child even though the sentence was given.

11. Up to date, nobody has been charged under Section 32 of the Child Act.

12. *The Committee strongly urges the Government to take effective and immediate measures to ensure that the tripartite technical committee seriously considers the prohibition of the employment or work of persons under 18 years of age, in accordance with Article 3(d) of the Convention. Moreover, it firmly hopes*

that the determination of types of hazardous work to be prohibited to persons below 18 years of age will be reviewed and adopted by the Department of Labour after consultation with the organizations of employers and workers concerned, in accordance with Article 4(1) of the Convention. It urges the Government to take the necessary measures to ensure that the relevant legislation is adopted as a matter of urgency and requests it to provide information on the progress made in this regard in its next report.

Response by the Government

13. The Government would like to inform that the Amendment to the Children and Young Persons Act, 1966 (CYP ACT) has been in force from the 1st day of March 2011. The amendments are as follows:

- i. **Definition of "child"**
"Child" means any person who has yet completed his fifteenth year of age.

- ii. **Definition of "young person"**
"Young Person" means any person who, not being a child, has not completed his eighteenth year of age.

- iii. **Section 2(5) of CYP Act has been amended as follows:**
"No child or young person shall be, or be required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machineries Act 1967 [Act 139] or the Occupational Safety and Health Act 1996 [Act 514] or the Electricity Supply Act 1990 [Act 447]."

- iv. In addition to Section 2 (5), another subsection is included in Section 2 of the CYP Act, namely **Section 2(6)**.
"For the purpose of this Section, "hazardous work" means any work

that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister."

- v. **Under Section 2(4)**, any child or young person is not allowed to engage in work (in addition to Section 2(1), Section 2(2) and Section 2(3), that is dangerous to life, limb, health, safety and morals.

- vi. After the 2011 amendment, definition of light work is specified under **Section 1A**. The definition provides the description of light work as follows:

"Light work" means any work performed by a worker-

*(a) while sitting, with moderate movement of the arm, leg and trunk;
or*

(b) while standing, with mostly moderate movement of the arm.

14. *The Committee strongly urges the Government to take the necessary measures to ensure that the provisions giving effect to the Convention are effectively enforced. It requests the Government to provide information on the progress made in this regard and to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied with regard to children engaged in the worst forms of child labour, particularly children working in the palm oil plantations, in the agricultural sector, and in the urban economy.*

Response by the Government

15. The Committee in its report mentioned about the involvement of children in plantation sector in Sabah. In this regard, in Sabah, the employment of immigrant workers are governed by section 118, of the

Sabah Labour Ordinance. The provision states that no person shall knowingly employ any immigrant worker unless he has obtained a license from the Director of Labour to do so. The approved license will prescribed the conditions to be complied by the employer.

16. Employers' application will be considered by a Committee which is chaired by the Director of Immigration Sabah. The employers will be called and be interviewed and if there are doubts as to require a more precise explanation, the Committee will visit the place of employment to seek clarification.

17. In 2010, the Sabah Labour Department carried out statutory inspections at 5,011 places of employment and received 470 complaints on various labour issues. From the inspections and investigations done, 16 employers were found employing children and young persons. However, these employments are in compliance with the law. There was no prosecution done with regard to the employment of children and young persons in 2010.

18. To ensure that the provisions giving effect to the Convention are effectively enforced, the Government will heighten enforcement against breaches of the law.

19. *The Committee requests the Government to supply information on the implementation of the NPAC and on the results achieved with regard to the elimination of the worst forms of child labour in Malaysia.*

Response by the Government

20. The National Policy on Children and its Plan of Action (NPAC) consist the protection strategy which protect children from any forms of neglect, abuse, violence and exploitation. Under this strategy, the children will be provided with basic knowledge

on how to protect themselves from any forms of neglect, abuse, violence and exploitation and on identifying risky situations.

21. In line with the NPAC, the Ministry of Women, Family and Community Development has launched a 24-hours dedicated telephone line for children known as **Childline 15999** on 13 November 2010 which is also in line with the CRC Committee recommendation. The operators for the **Childline 15999** are specially trained to handle calls from children. Since its establishment till 31 October 2011, **Childline 15999** has received 4,127 cases and out of this number, there was only 1 case on child labour being reported and this case has been resolved immediately.

22. In addition, on 13 January 2011, the Government has also approved the alert system known as National Urgent Response Alert (NUR Alert). The system is to coordinate every agency involved in the child protection for immediate action when a child under the age of twelve is reported missing. The implementation of the system will be overseen by a taskforce headed by the Royal Malaysian Police and the Ministry of Women, Family and Community Development. To date, only 2 missing cases have been alerted via NUR Alert.

23. The Ministry of Women, Family and Community Development has also organised advocacy and awareness programmes as below:

- i) Jan-Dec 2010 - 4 series of workshops on "Strengthening Children Service in Child Care Centres run by Non Governmental Organisations".
- ii) Jan-Dec 2010 - 6 series of workshops/ advocating/ seminar programmes in children's institutions under the Department of Social Welfare.
- iii) July 2010 – "National Policy on Children and its Plan of Action Seminar" to media practitioners and corporate sectors.
- iv) November 2010 and October 2011- "Training of Trainers to Volunteers" on National Policy on Children.

24. *The Committee welcomes the efforts made by the Government and encourages it to pursue its efforts to improve the operation of the education system in the country, in particular by increasing school attendance at the secondary level and reducing school dropout rates. It requests the Government to provide information on the progress made in this regard and the results achieved.*

Response by the Government

25. The Government through the Ministry of Education Malaysia (MOE) has been allocated a budget large enough each year to ensure that education could be operating smoothly and effectively. Nevertheless, the Government has never neglected its responsibility in ensuring that children of this country have access to education by providing good infrastructure to all schools. Hence, no confusion as alleged by the Honourable Member for MOE has issued Professional Circular 13/2007 regarding the repeal of the Special Fees and Payment Package System Guidelines in addition to the services and facilities in government and aided schools. With effect from 1st January 2008, parents do not have to pay special fee of RM4.50 for primary and RM9.00 for secondary school. In addition, in the same year the examination fees were abolished,

26. The Parents and Teachers Association (PTA) and schools are also reminded to comply with the measures recommended in the Professional Circular issued by the Ministry regarding any additional fees.

27. To ensure that the needy or poor children receive the same educational opportunities, MOE also provides various types of special educational assistance to all eligible students, such as assistance for Poor Students Trust Fund, Federal Scholarship and the University Preparatory Class Scholarship. Educational assistance is intended to assist needy students to continue their schooling as well as open space for them to generate excellence as other pupils.

28. On job training is also an important component in the vocational education curriculum. The objective of this component is to train students to perform in the actual

work environment and orient them on a carrier after they graduated. Vocational training has a specific time period and that it complies with the regulations contained in the labour legislations and the Child Act.

29. *The Committee requests the Government to continue providing information on the number of children who have been withdrawn from trafficking and rehabilitated through the shelters homes established for that purpose and through the action of the Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims. The Committee further requests the Government to provide information on the measures taken within the framework of the National Plan of Action to combat trafficking in persons to ensure that child victims of trafficking for labour or commercial sexual exploitation are withdrawn and then rehabilitated.*

Response by the Government

30. As of 22nd June 2011, there 161 children rescued under Protection Order (PO) and 106 of them were given the PO and was placed at the Government Shelter Home.

31. Malaysian Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants appointed a representative from the Malaysian Council For Children Welfare that will focus on the children that being trafficked. This council has come out with their action plan to combat trafficking among children.

32. Besides, the NGOs have also conducted Training of Trainers Programs which also involved the teachers. Through this program, the teachers have increased awareness among the students.

33. *The Committee reminds the Government that migrant children, street children and child domestic workers are particularly exposed to the worst forms of child labour and requests the Government to take effective and time-bound measures to ensure that these children are protected from the worst forms of child*

labour by withdrawing them from these vulnerable situations and rehabilitating them. It requests the Government to provide information on the results achieved.

Response by the Government

34. The Government through the Ministry of Women, Family and Community Development has conducted a pilot study on street children in Sabah, particularly in the area of Kota Kinabalu. The objectives of the study are as follow:

- to identify the number of street children in Sabah;
- to gather information on street children in Sabah by establishing a comprehensive profile database;
- to identify any social problems caused by street children; and
- to develop programmes and comprehensive national strategic plan to address the issues of street children in Malaysia.

35. The study found that:

- i. a number of 2,770 street children has been recorded as of 2010; the study use biometric system for the purpose of keeping records on background details such as race, ethnicity, age, sex and occupation of the street children. This system also has the capacity to store pictures and fingerprints of the street children;
- ii. street children in Sabah mainly work as:
 - shop or restaurant assistants;
 - assisting parents in their businesses;
 - car washers;
 - bus conductors; and
 - construction labourers.
- iii. most of the street children have to work to provide financial support for themselves or their families. 334 children stated that they work every day,

178 children stated that they work all day long and 179 children work only in the morning. Most of the children were self-motivated to work, while, 130 children were encouraged by their parents to work. However, the number of children working with employers are quite high which amounted to 293 children.

Note:

- a. *Employment of children and young persons in Sabah is regulated by Chapter XI of the Sabah Labour Ordinance. Under this Act a "child" means a person under the age of fifteen years and a "young person" means a person who has ceased to be a child but has not attained the age of eighteen years.*

- b. *Under Section 72 of Sabah Labour Ordinance, no child shall be employed in any industrial undertaking: Provided that the Director may permit the employment of children in any specified industrial undertaking or in any specified occupation which forms part of any specified industrial undertaking.*

- c. *It is also provided under Section 77 that where young persons or children are employed in any industrial undertaking, a register of the young persons or children so employed, containing particulars of their ages and the dates on which they enter or leave the service of their employer, shall be kept by such employer and shall at all time be open to inspection by the Director.*

36. Phase 1 of the study (in Kota Kinabalu) has been completed in August 2010. The Government is in the process of drawing up programmes in line with CRC, to address the street children issue. Among them are widening the operation of validation documentation of the children, roping in more local NGOs to provide care and shelter. Expedite the process of registration of the street children status and to integrate them into the local society.

37. Another study on street children has been conducted in Kuala Lumpur particularly in Chow Kit area, Bukit Bintang, Jalan Raja Laut and Harvest Centre which involved 1000 respondents. The objectives of the study are as follow:

- to identify the number of street children in Kuala Lumpur;
- to gather information on street children in Kuala Lumpur by establishing a comprehensive profile database;
- to identify social problems which may potentially caused by street children; and
- to develop a comprehensive national strategic plan and programmes to address the issues of street children in Kuala Lumpur

Early result shows that there are no genuine cases of street children in the area of Kuala Lumpur because most of them live with their families. Hence, the intervention programmes will be focused on family development such as parenting skills and family aid.

38. *The Committee therefore urges the Government to take measures to cooperate with the neighbouring countries, particularly Indonesia and Thailand, and therefore strengthen security measures with a view to bringing an end to child trafficking for labour or commercial sexual exploitation and to the engagement of child migrants in the worst forms of child labour.*

Response by the Government

39. The Government has not yet finalized the draft of the MOU between Malaysia and Thailand. Currently, the enforcement agencies exchange information to strengthen security between both countries.

40. *The Committee requests the Government to provide the statistics compiled in the framework of the database on child trafficking, the commercial sexual exploitation of children and street children in Malaysia, as well as through the One Stop Information Centre on trafficking in persons. The Committee also requests the*

Government to take measures to ensure that data on the number of children engaged in domestic work is available.

Response by the Government

41. For sexual exploitation since 28th February 2008 until 19th June 2011, there were 217 cases recorded by the Royal Malaysian Police.

42. The Committee also strongly urges the Government to redouble its efforts and take the necessary measures to ensure that, during its review of the CYP Act by the tripartite technical committee set up for this purpose, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention, and amendments are made in this regard. The Committee once again requests the Government to provide information on any progress made in the review of the CYP Act in its next report.

Response by the Government

43. Please refer to the Government's reply as in paragraph 13 of this report.