

Background study
on strengthening national action
to address child labour in Malaysia

Final report

August 2019

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Acknowledgements

This document was prepared by an inter-disciplinary team of consultants, including staff of the USDOL-funded project “From Protocol to Practice: A Global Action on Forced Labour” (Bridge Project - MYS/16/50/USA), led by consultant Birgitte Poulsen-Krogh supported by Andika Ab Wahab, Hairudin Masnin, Jodelen Mitra and Terence Too.

Coordination with relevant stakeholders was provided by the Ministry of Human Resources (MOHR), particularly through Noor Haryantie Noor Sidin. This report will not be possible without the inputs from the MOHR, Malaysian Anti-Trafficking in Persons and Smuggling of Migrants Council, Department of Labour, Malaysian Employers Federation, Malaysian Trade Union Congress, and other relevant national and State-level stakeholders.

Funding is provided by the United States Department of Labor under cooperative agreement number IL-27592-15-75-K—1. 100 per cent of the total cost of the project or programme is financed with federal funds, for a total of US\$ 14,395,138 (Bridge project).

Disclaimer

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Abbreviations

ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
CLC	Community Learning Centre
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
CYP	Children and Young Persons (Employment) Act 1966
DHRRA	Development of Human Resources for Rural Areas
DOI	Department of Immigration
DOSM	Department of Statistics Malaysia
EMPA	East Malaysia Plantation Association
EPF	Employees Provident Fund
EPU	Economic Planning Unit
FOMCA	Federation of Malaysian Consumers Associations
FWCS	Foreign Workers Compensation Scheme
GLC	Government-linked Company
ICT	Information and Communications Technology
ILO	International Labour Organization
IOM	International Organization for Migration
JAKOA	<i>Jabatan Kemajuan Orang Asli</i> , or Department of Orang Asli Development
JTK	<i>Jabatan Tenaga Kerja</i> , or Department of Labour
LFS	Labour Force Survey
MAPO	Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants
MEF	Malaysian Employers Federation
MOE	Ministry of Education
MOHA	Ministry of Home Affairs
MOHR	Ministry of Human Resources
MOU	Memorandum of Understanding
MPI	Ministry of Primary Industries
MSPO	Malaysian Sustainable Palm Oil
MTUC	Malaysian Trade Union Congress
MWFCDD	Ministry of Women, Family and Community Development

NAP	National Action Plan
NAPFL	National Action Plan on Forced Labour
NAPTIP	National Action Plan on Anti-Trafficking in Persons
NGO	Non-Governmental Organization
NRD	National Registration Department
NUPW	National Union of Plantation Workers
OSH	Occupational Safety and Health
PLI	Poverty Line Index
RBA	Responsible Business Alliance
RMK	<i>Rancangan Malaysia (Ke-)</i> , or Malaysia Plans, e.g. <i>Rancangan Malaysia Kesebelas</i> - Eleventh Malaysia Plan
RSPO	Roundtable on Sustainable Palm Oil
SDG	Sustainable Development Goals
SME/I	Small and Medium-sized Enterprises / Industries
SOCISO	Social Security Organization
SPIKPA	Foreign Worker's Health Insurance Protection Scheme
SUHAKAM	Human Rights Commission of Malaysia
TiP	Trafficking in Persons
TVET	Technical and Vocational Education and Training
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNU	United Nations University
UPEN	<i>Unit Perancangan Ekonomi Negeri</i> , or State Economic Planning Unit
VP(TE)	<i>Pas Lawatan Kerja Sementara</i> , or Visitor Pass (Temporary Employment)

1. Introduction and general background information

1.1. General introduction to Malaysia

Malaysia is a federal state located in South-East Asia along the Malacca Strait and in the South China Sea on the Malay Peninsular and the Island of Borneo. The Malay Peninsular gained independence from British colonial rule in 1957 and in 1963, Sabah and Sarawak (as well as Singapore, which left the Federation in 1965) joined the federation to form Malaysia.^{1, 2} Present-day Malaysia occupies 329,847.00 square kilometres (making it slightly smaller than Viet Nam and a little larger than the Philippines) but the country's approximately 32.4 million inhabitants are very unevenly distributed with over 80 per cent of the population living in Peninsular Malaysia, and 71 per cent of the population residing in major urban centres.³ Sabah and Sarawak, on the other hand, are sparsely populated and covered to a great degree by tropical rain forest with limited infrastructure in place.

Figure 1. Map of Malaysia



Source : Geology.com (Malaysia).

Of the total 32.4 million population recorded in Malaysia, 29.1 million (90 per cent) are Malaysian citizens, and another 3.3 million (10 per cent) are non-citizens.⁴ The Malaysian citizens are made up of multiple ethnic and linguistic groups, the largest of which is the *Bumiputera* (comprising the Malay and other native groups in Sabah and Sarawak) that is 20.1 million (69.1 per cent). Nearly 7 million (23 per cent) of the Malaysian population is of the Chinese descent and about 2 million (6.9 per cent) of Indian descent. Moreover, about 0.3 million (1.0 per cent) of the Malaysian citizens are recorded

¹ Government of Malaysia, 1957.

² Government of Malaysia, 1963.

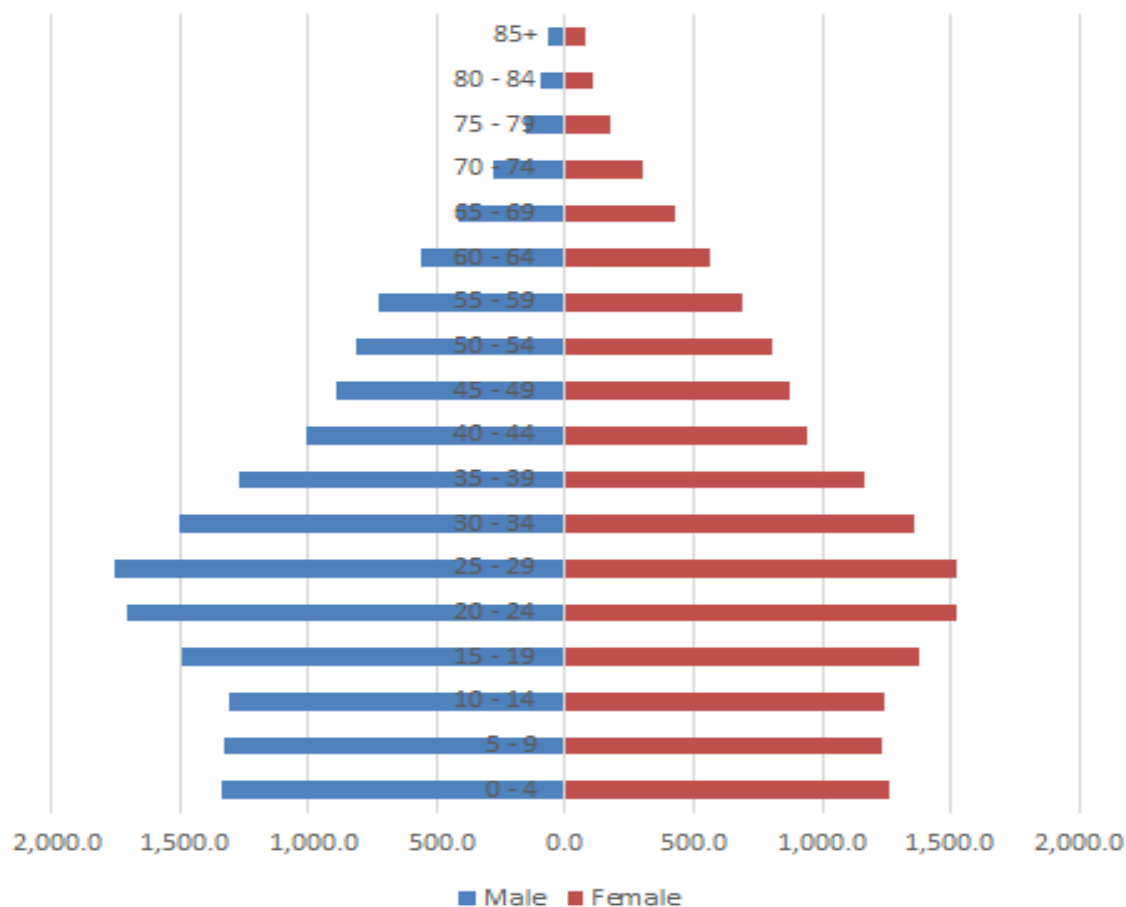
³ DOSM, 2010; 2018a.

⁴ DOSM, 2018.

as ‘others’, referring to various groups of indigenous people in Peninsular Malaysia, each having their own unique indigenous ethnic groups.⁵

The population is relatively young and population growth is stable with an annual growth rate of 1.1.per cent.⁶ As the population pyramid below illustrates, a substantial number of people are middle aged and Malaysia’s population structure therefore resembles that of other South-East Asian countries (e.g. neighbouring Philippines and Indonesia), where the population is ageing gradually. Still, for the foreseeable future, one of the main demographic issues is large numbers of children and young people who need access to education and jobs, when entering the labour market as shown in Figure 2.

Figure 2. Population pyramid of Malaysia



Source : Department of Statistics Malaysia, 2018.

The legal system in Malaysia is a constitutional monarchy. It operates a dual governmental system at federal and state levels, at the same time adhering to a common law legal system. The Federal Constitution is the highest law in the country. It defines the Malaysian government structure and

⁵ Op.cit.

⁶ Op.cit.

guarantees the fundamental rights of all persons, including the right to life, right to equality, right to liberty as well as freedom of religion.⁷

Though the Federal Constitution does not explicitly mention the prohibition of child labour (specifically), Article 5 through Article 13 of the Constitution guarantee fundamental liberties that are also extended to children and their right not to be exploited. For instance, Article 5 of the Constitution guarantees the liberty of all persons; Article 6 prohibits any form of slavery and forced labour including for children; Article 8 guarantees equality and non-discrimination for all; and Article 12 provides the right to education for all, especially children.

Malaysia prioritises education (this will be described in more detail in chapter 4), spending 4.7 per cent of GDP on education in 2017. This is reflected in the overall literacy rates: 96 per cent of adult men and 93 per cent of women can read and write.

Malaysia has experienced significant economic development and diversification since the 1970s. Malaysia has transformed from an agricultural economy to a manufacturing and services-based economy and the country has seen steady growth. Economic growth has translated into increased welfare, such as improved health outcomes, with a life expectancy of just over 75 years on average (78 years for women and 73 years for men).⁸ Malaysia currently has a higher life expectancy than all its neighbours, except Singapore. 98 per cent of the population have access to improved drinking water sources and 96 per cent have access to improved sanitation (the figures are slightly higher for urban than rural areas).

Continuously higher education levels, coupled with economic growth and diversification, has led to a shortage of labour in some of the key economic sectors in Malaysia, such as agriculture, plantations and manufacturing. Malaysia is increasingly relying on migrant labour from other countries and with over 10 per cent of the population made up of non-Malaysians, so Malaysia can be described as a major destination country for migrant workers.

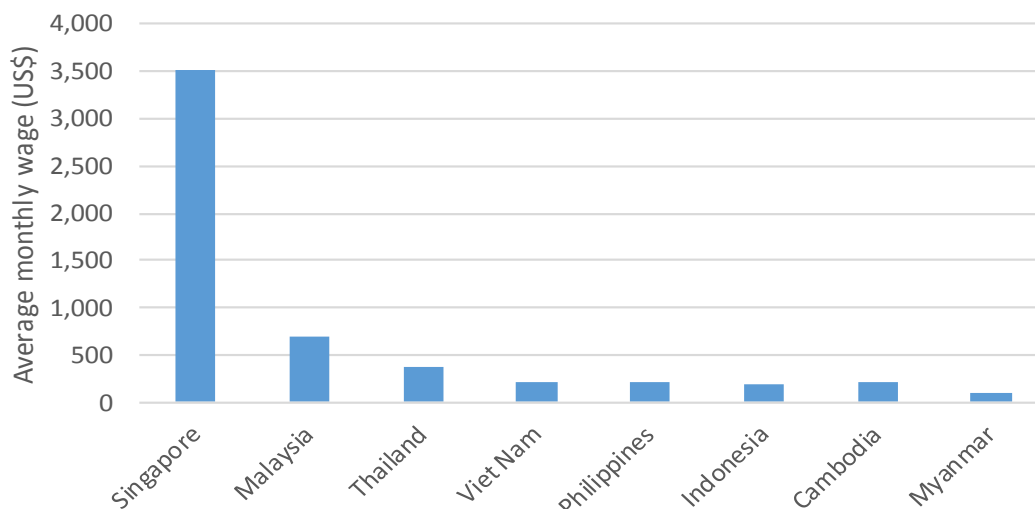
This increase in the number of migrant workers was also driven by Malaysia becoming a regional economic power house and has the second highest average monthly wages in ASEAN as shown in Figure 3. Malaysia's rapid economic growth in the 1980s and 1990s gave rise to large disparities in living standards between Malaysia and neighbouring countries, making Malaysia an attractive destination country for migrant labour. Up until the 2000s, Indonesians accounted for as much as 70 per cent of documented foreign labour in the country; this has since reduced as Malaysian authorities started reducing the quota for Indonesian workers and started recruiting from other countries to avoid the risks associated with over-dependence on one migrant worker sending country.⁹

⁷ Government of Malaysia, 1957.

⁸ DOSM, 2018.

⁹ Azizah et. al. 2014. pp. 242-243.

Figure 3. Average monthly wages in ASEAN, 2016.



Source: International Labour Organization, 2016.

Notes: All data are for 2016, except Myanmar, which is for 2015.

Exchange rates calculated from historical rate tables:

<https://www.xe.com/currencytables/?from=USD&date=2016-12-31> [accessed 18 May, 2019].

Through Asia, safe migration and the risk of forced labour associated with unsafe migration is a major theme and this report will come back to issues around forced labour that are linked with migration throughout the report.

The brief overview in this section is meant to provide context to readers who do not know Malaysia well and it is not meant as a full description of the economic and social developments in Malaysia and all the complexities associated with it. Issues in this brief background section will also be explored in more detail throughout the report.

1.2. International conventions on child labour

The UN Convention on the Rights of the Child (UNCRC) in Article 32 prohibits the economic exploitation of children.¹⁰ More detailed guidance on what that means is contained in the two fundamental ILO conventions on child labour: ILO Convention 138 on Minimum Age and ILO Convention 182 on the Worst Forms of Child Labour (WFCL).^{11,12} Convention 138 sets standards for young people’s work, prohibiting full time employment for anyone below the age of 15 years (14 in developing countries), who have not completed a full cycle of compulsory education, but allows

¹⁰ UN: *Convention on the Rights of the Child*. (New York, 1989).

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [accessed 12 May 2019].

¹¹ ILO: 1973. *Minimum Age Convention (No.138)*. (Geneva, 1973).

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C138:NO [accessed 12 May 2019].

¹² ILO: *Worst Form of Child Labour Convention (No.182)*. (Geneva, 1999). Available at

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 [accessed 12 May 2019].

for light work that does not interfere with education and normal development from the ages of 12-13 years old. C138 also prohibits young people between the ages of 15 and 18 years from doing hazardous work. It is up to countries to put in place regulations on what constitutes hazardous work, but typically this involves heavy work, working with toxic substances, night work, etc.

Further guidance on hazardous work can be found in C182, which outlines the unconditional worst forms of child labour that are always prohibited below the age of 18 years. These include hazardous work as well as the use of children for illicit activities, such as drug trafficking, commercial sexual exploitation and for debt bondage, forced or compulsory labour, including forced recruitment into armed conflicts. Elimination of forced labour among both children and adults is also governed by ILO Convention 29 and its accompanying recommendation and protocol (see below) as well as by other international instruments.¹³

Malaysia has ratified the ILO Minimum Age Convention (C. 138), Worst Forms of Child Labour Convention (C. 182), and Forced Labour Convention (C. 29), which are of particular relevance in combatting child labour, forced labour and human trafficking. ILO C29 in particular, calls for commitments of the Member States to “suppress[ing] the use of forced or compulsory labour in all its forms within the shortest possible period.” Recommendation 203 that accompanies the Forced Labour Protocol (2014) encourages Member States to take preventive measures on forced labour, including initiatives to address child labour and promote educational opportunities for children, both boys and girls, as a safeguard against children becoming victims of forced or compulsory labour. The ILO C182 calls for each Member State to design and implement programmes of action to eliminate the worst forms of child labour. Such programmes of action shall be designed and implemented in consultation with relevant government institutions, employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

1.3. Background to the study

This study was commissioned by the ILO Bridge project ‘From Protocol to Practice: A Bridge to Global Action on Forced Labour’, with a view to strengthen national efforts to eliminate child labour under the 2014 Forced Labour Protocol, and its accompanying Recommendation 203. The project is designed to work with the Malaysian Government, workers' and employers' representatives, and CSOs to increase knowledge, awareness, and ultimately achieve ratification of the ILO Protocol in the country; improve and develop responsive national policies, legislation and an action plan on forced labour; increase efforts to collect reliable data in order to carry out research; share knowledge across institutions at a national level; and strengthen workers' and employers' organizations to support the fight against forced labour in partnership with other interested parties.

This study is one of two reports providing background information to support the development of a National Action Plan (NAP) on forced labour and a NAP on child labour in Malaysia.

The research for both reports was conducted concurrently by the same team, but the findings are presented in two separate reports as it is likely that two NAPs will be developed.

¹³ The international conventions framework that governs the abolition of forced labour are introduced in more detail in the report from the ILO Bridge project background study for the NAP on forced labour that was developed simultaneously with this report.

The background study aims to give stakeholders an overview of the issue and recommendations for the course of action towards adopting a NAP. It is important to note, that this report is not a statistical survey or mixed-methodology research on the nature and extent of child labour in Malaysia. Proving an up-to-date description and analysis of child labour in Malaysia is an extensive undertaking in its own right and not part of the Terms of Reference (TORs) for this research.¹⁴

Rather, the research aims to give a picture of the landscape that the NAP will fit into. This does involve an assessment of the knowledge base and a description of the extent and nature of child labour, based on readily available evidence. Equally important, the study includes an assessment of the policy, legal and institutional environment related to child labour in Malaysia. This assessment concludes with a summary of the key issues and recommendations for possible key strategies that can be considered in the NAP, as well as recommendations for the NAP formulation policy. It is important to note, that these are suggestions. Decisions on the formulation process must be taken by the lead government agencies in consultation with other stakeholders and decisions on the strategic priorities to be included in the NAP will be defined by partners in a consultative process. This background study serves as a reference document in the process.

The study was conducted by a team of three independent consultants, working closely with the ILO Bridge project team and involved desk research as well as focus group discussions (FGDs) and semi-structured key informant interviews (KIIs). Key informants (KIs) included a cross section of stakeholders: Young people, government staff from multiple departments, workers' and employers' organizations and businesses, NGOs and other civil society organizations and international development partners. Information from the FGDs and KIIs are presented in anonymised form in this report and information on KIIs and the KIs and FGDs will be kept confidential. Confidentiality was deemed necessary to foster a frank and open conversation around issues that are sometimes seen as sensitive or controversial. The tentative findings of the KIIs and FGDs were shared with stakeholders for feed-back, verification and further collection of information in a national workshop in Kuala Lumpur in May 2019 and this report includes information gathered through both KIIs, FGDs and the workshop.

KIIs and FGDs were held in Peninsular Malaysia as well as in Sabah and Sarawak in order to capture some of the diversities and similarities that characterise the different regions within Malaysia. It should be noted, though, that fully covering all aspects of the complexities of socio-political, economic and cultural structures and development in Malaysia is beyond the scope of this study and the NAP development process will also have to reflect Malaysia's high levels of complexity and diversity.

Malaysia's complexity is also reflected in the terminology that is used to describe key concepts in Malaysia, where the terms used for certain groups may be different from the terms commonly used in English. This report generally uses the terminology associated with the international convention frameworks. This is primarily for the benefit of non-Malaysian readers and to stay in line with the terminology used in the ILO, as this is an ILO supported study. It is recognised that other terminology may eventually be used in the actual NAP.

¹⁴ The full TORs for this study are attached in Annex 1.

The remainder of the report is structured as follows: Chapter 2 outlines what we know about the nature and extent of child labour in Malaysia. Chapters 3 and 4 look at the legislative and policy framework relevant to child labour in Malaysia. Chapters 5 and 6 look at partners' capacity to implement a NAP and their recommendations for the NAP development process. Chapter 7 summarises key issues and discusses their implications for the NAP strategies.

2. What we know about child labour in Malaysia

2.1. Overview of child labour in Malaysia

There is no child labour survey or other official statistics on the number of working children, or child labour in Malaysia.¹⁵ However, there is evidence available from small-scale academic research and studies, as well as media reports that child labour exists in Malaysia. Early research by prominent scholar K. S. Jomo argued that child labour exists in Malaysia in both urban and rural areas, as well as in selected economic sectors, including in the palm oil plantations.¹⁶ This background study indicates, based on stakeholder interviews and empirical studies conducted, that child labour is still found in Malaysia. Stakeholders shared cases such as sex trafficking (as one form of child trafficking) involving refugee and asylum-seeking children. However, they highlighted such cases may not be reported to the authorities, and hence may not be officially recorded. In addition, stakeholders also raised that cases such as children involved in undertaking hazardous palm oil activities occur in hard-to-reach areas (further refer Section 2.3).

In Sabah, a few empirical studies have been undertaken to understand the actual situation of working children in the State. For instance, a study conducted in Tawau (a district in Sabah) found that children from poor families are employed for between 10 and 12 hours a day, which subsequently denied their right to education.¹⁷ Another study conducted by academics from Sabah's state university (University of Malaysia Sabah) found that children from the local population and immigrant children worked in both rural and urban areas in many sectors of the economy including agriculture, fishing and services doing things such as selling plastic bags, fish and vegetables, being porters and selling cigarettes.¹⁸ Other studies found that poverty and lack of proper documentation are identified as the key factors that forced children to work in their early ages in Sabah.¹⁹

Other than academic empirical research, evidence of child labour in Malaysia are also documented by media reports and international organizations.²⁰ For instance, World Vision documented pockets

¹⁵ Unit Perancang Ekonomi Negeri (UPEN) Sabah; UNICEF: *Children in Sabah: Situation analysis*. Unpublished report. 2015.

¹⁶ K. S. Jomo. *Child labour in Malaysia (ed.)*. Institute for Advanced Studies, University of Malaya. (Kuala Lumpur, 1982).

¹⁷ A. Aziz; R. Suriati; I. Suriati. 2013. "Working children and knowledge of right to education: A study of child labour in Sabah, Malaysia". *Asian Social Sciences* (2013, Vol. 9(8)).

¹⁸ I. Dzurizah; Md. S. Jalihah. *Child labour in Sabah*. (Kota Kinabalu, University Malaysia Sabah Press, 2014).

¹⁹ For example, see I. Dzurizah; J. Md. Shah. *Buruh Kanak-Kanak di Sabah (Child Labour in Sabah)*, 2013. In Ramli Dollah et. al. (ed.) *Wacana Sains Sosial (Social Science Dialogue)*. (Kota Kinabalu, Sabah: Penerbit Universiti Malaysia, 2013). Sabah; Jalihah Md. Shah & Rosazman Hussin. 2010. "Kanak-Kanak di Kawasan Perlumpusan Sampah: Isu dan Harapan. Working paper presented at the Regional Conference Partnership between Industry and Community, 2010. Grand Borneo Hotel, 28-29 July 2010; Ismail Ali. 2008. *Penglibatan dan Sumbangan Kanak-Kanak Warga Filipina dan Ekonomi Perikanan di Sabah: Satu Pengadilan Moral?* *Sosio Humanika*, 1(2), 365-390; Hafidzan Azmi. 2006. *Buruh Kanak-Kanak di Bandaraya Kota Kinabalu: Suatu Penelitian Aktiviti Sosio-Ekonomi*. Academic Exercise, Bachelor of Arts, Sociology and Social Anthropology Programme, Universiti Malaysia Sabah.

²⁰ See for example, S. Sapienza; J. Motlagh. *Lost in the forest: Stateless children in Borneo's palm oil industry*. 2012. <https://pulitzercenter.org/projects/malaysia-lost-forest-stateless-children-filipino-migrant-workers-palm-oil-industry-social-environmental-cost> [accessed 12 May 2019].

of children involved in child labour in the plantation sector in Malaysia (no specific geographical prevalence).²¹ Some of these children work informally but on a full-time basis, hence missing out on education, while others assist their parents undertaking tasks that are harmful to their health and safety, even if they still attend school. The same reports also revealed children from poor villages being recruited by palm oil companies for very little pay. These children carried heavy bunches of palm fruit and spent excessive working hours in the estates. Sometimes children were instructed to harvest fruit or use a large knife to cut down fruit bunches. Often children ended up receiving little or no pay and were exposed to toxic chemicals during spraying without protective gear.^{22,23}

Forced begging among refugee children in urban and semi-urban areas in Peninsular Malaysia was reported for several years by the U.S. Department of State in its 2018 annual Trafficking in Persons (TIP) report.²⁴ Refugee and stateless children were found the most vulnerable to organized begging activities. A report submitted by the Malaysian Child Resource Institute to the Office of the High Commissioner for Human Rights (OHCHR) and several academic researches highlighted cases of Rohingya refugee children (mail order brides) being smuggled from Myanmar into Malaysia to be wed to refugees.^{25,26}

Many if not all stateless children and children at risk of statelessness are denied access to formal education, both at primary and secondary school levels. This particular situation may occur both in Peninsular Malaysia, Sabah and Sarawak. In November 2018, the Ministry of Education announced that it will allow stateless and undocumented children to access government schools in 2019, provided that their parents and/or guardians are able to produce relevant documents.²⁷ The announcement was made despite provisions in the Malaysian Education Act 1966 that requires that every pupil must be a citizen of Malaysia.

²¹World Vision: 2012. *Forced, child and trafficked labour in the palm oil industry*, 2012.

<https://campaign.worldvision.com.au/wp-content/uploads/2013/04/Forced-child-and-trafficked-labour-in-the-palm-oil-industry-fact-sheet.pdf> [accessed 12 May 2019].

²² Note that handling toxic substances, even with protective gear, may be considered hazardous. Often protective gear is developed for adult (often male) workers and may not fit young workers properly. Moreover, children may not have the knowledge required to use protective gear properly and therefore may be exposed to toxic substances, even while wearing protective gear. Hence, handling toxic substances is prohibited for anyone below the age of 18 years in Malaysia (see Annex 3 for further information).

²³ Rainforest Action Network (RAN). *Slave labour for palm oil production*, 2010.

<https://www.ran.org/2010/12/07/slave-labor-for-palm-oil-production/> [accessed 12 May 2019].

²⁴ U.S. Department of State. *Trafficking in persons (TIP) report – Malaysia*. (Washington D.C., 2018).

<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf> [accessed 12 May 2019].

²⁵ Malaysian Child Resource Institute (MCRI). *Preventing and eliminating child, early and forced marriage, with a particular focus on challenges, achievements, best practices and implementation gaps*, submitted to the OHCHR. (New York, 2018). <https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/MCRI.pdf> [accessed 12 May 2019].

²⁶ A. Kassim. Transnational marriages among Muslim refugees and their implications on their status and identity – the case of the Rohingyas in Malaysia. In *Islam and Cultural Diversity in Southeast Asia*, 2015, edited by Ikuya Tokoro, pp. 175-202; See also A. Wahab. “The colours of exploitation: Smuggling of Rohingyas from Myanmar to Malaysia.” *Akademika*, (2018, Vol. 88 1), pp. 5-16.

²⁷ New Straits Times, 2018. “*Lack of education a factor in Orang Asli student dropout rate in Perak*”. 3 December 2018. <https://www.nst.com.my/news/nation/2018/12/436868/lack-education-awareness-factor-orang-asli-student-dropout-rate-perak> [accessed 12 May 2019].

Children who are unable to enrol in government schools still have access to alternative education, though options are limited in rural and remote areas. In Peninsular Malaysia, a local NGO known as Development of Human Resources for Rural Areas (DHRRA) reported about 42 stateless children and young persons aged between 5 and 16 years old engaged in child labour.²⁸ Despite no further explanation on the type and condition of work these children and young persons engaged in, this suggests that working children and young persons among stateless persons also occurred in Peninsular Malaysia.

Another segment of children namely the *Orang Asli* (indigenous people) in Peninsular Malaysia are also at risk of child labour. *Orang Asli* children especially those settling in remote locations have limited, or no access to formal education, or had to stop attending schools due to geographical barriers. Of the total 21,665 *Orang Asli* children/young persons between 13 and 17 years old recorded in 2010, only 14,048 (36 per cent) of them enrolled in secondary education across Peninsular Malaysia.²⁹ With respect to school dropouts among the *Orang Asli* children, education data in 2016 indicated a high dropout rate that is 35.3 per cent (or 1,050 students out of 2,974 *Orang Asli* students registered at secondary level education in 2016).³⁰ It was reported that apart from geographical barriers, limited education awareness among *Orang Asli* parents is one of the factors contributing to the high dropout rate among their children.³¹ Without access to education, some of these children and young people begin to engage in various income-generating activities, including helping their parents in subsistence farming activities.

Young workers are permitted to work in non-hazardous occupations and receive protection from exposure to risks and hazards (see also chapter 3). The annual labour force survey (LFS) captures information on young workers between 15 and 17 (19) years of age. DOSM reports on the age group 15 to 19 years in the regular LFS. In 2017, for instance, the LFS recorded a total of 440,500 individuals between 15 and 19 years old employed in formal sectors throughout Malaysia. In terms of nationality status, about 304,300 (69 per cent) of the total 440,500 employed individuals are Malaysian nationals, and another 136,200 (31 per cent) are non-citizens. Stakeholders in this study, however, suggested that the Government of Malaysia, and especially the DOSM, to consider generating statistics specifically for the young persons in the 15-17 years old age group. This is to facilitate data gathering and monitoring on young persons' involvement in employment in the country. With respect to geographical location (strata) – about 285,900 (65 per cent) of 440,500 employed individuals are in urban areas, while another 154,600 (35 per cent) others are in rural areas. The states of Sabah (118,100), Selangor (58,800) and Sarawak (46,800) recorded the highest number of young workers between the ages of 15-19 years old. Table 3 shows employment of young workers

²⁸ Development of Human Resources for Rural Areas (DHRRA): *Resolving stateless in Malaysia: Strategic plan*. (2017, Malaysia: Petaling Jaya, Selangor).

²⁹ Jabatan Kemajuan Orang Asli (JAKOA): *Data Maklumat Asas (Basic statistics)*. (Kuala Lumpur, 2016).

³⁰ *Ibid.*

³¹ New Straits Times (NST). 2018. “*Lack of education a factor in Orang Asli student dropout rate in Perak*”. 3 Dec. 2018. Available at <https://www.nst.com.my/news/nation/2018/12/436868/lack-education-awareness-factor-orang-asli-student-dropout-rate-perak> [accessed 12 May 2019].

(aged 15-19 years old) by industry, in Malaysia. While the data provides a picture of the sectors where young workers are employed, it does not support an in-depth analysis of exposure to risks and hazards for young workers.

Table 1. Employment of young workers, Malaysia Labour Force Survey, 2017.

Sector	%
Wholesale and retail/repair motor vehicles	25.2
Accommodation, food and beverage services	19.5
Agriculture, forestry and fishing	18.2
Manufacturing industry	16.2
Construction industry	8.6
Support services	2.8
Transportation and storage	2.3
Mining and quarrying	0.3
Water supply and waste management	0.2
Information and communication	0.2
Public administration	0.2
Others	6.3
Total	100.0 (440,500 employed)

Source: Labour Force Survey, Department of Statistics, Malaysia, 2017.

Based on the available evidence it is not possible to draw firm conclusions on the nature and extent of child labour in Malaysia, but the evidence does indicate that child labour exists and is a real issue for children of all ages in both rural and urban areas. Moreover, both boys and girls are vulnerable to child labour, especially if they do not have proper personal identification and documentation. Hence, children from migrant worker families, refugee and stateless children are likely to be particularly vulnerable to child labour.

2.2. Stakeholders' data concerns

Several issues were highlighted by stakeholders in relation to data transparency, availability, methodology and reliability on child labour; media exposure on child labour and anecdotal cases reported and/or studied by scholars; perception of the presence of child labour; and prevalence of child labour by geographical location.

Stakeholders pointed out the lack of reliable data or statistics that could confirm the severity of child labour cases in Malaysia. This gap has been leveraged at times to deny the presence of child labour in Malaysia and some stakeholders highlighted that the issue of child labour is not currently seen as

a priority in Malaysia. The government recognizes the growing number of undocumented children including stateless children. However, there is no recognition that they are engaged in child labour due to the weak evidence base. The limitations in the evidence base were discussed extensively during the national stakeholder workshop and participants highlighted that there are available statistics that can be used as a proxy indicator to estimate the prevalence and potential root causes of child labour, see Table 2.

Table 2. Available statistics (proxy) to identify level of prevalence and root causes of child labour in Malaysia.

Available statistics	Source
Labour Force Survey (section on working ages 15-19 years old).	Department of Statistics, Malaysia (DOSM).
Employment survey in the oil palm plantations in Malaysia.	Ministry of Primary Industries (MPI).
Migrant workers' statistics.	Ministry of Human Resources (MOHR) & Immigration Department, Malaysia.
School enrolment and dropout statistics.	Ministry of Education (MoE).
General demographic statistics (population and demography).	Department of Statistics, Malaysia (DOSM).
Birth registration data and children without birth certificates.	National Registration Department (NRD), Malaysia.
Child marriage (15-19 years old) in national population census.	Department of Statistics, Malaysia (DOSM); <i>Syariah</i> Courts' repository.
Victims of domestic violence (children) statistics.	Ministry of Women, Family and Community Development (MWFCD).
Welfare Department statistics for poor families (bottom 40).	<i>Unit Penyelarasan Pelaksanaan</i> (ICU), Economic Planning Unit (EPU).
Statistics of children in need of protection and rehabilitation; children involved in crimes; children as victims of domestic violence, financial assistance for children, etc.	Welfare Department, Ministry of Women, Family and Community Department (MWFCD).
Number of immigrant and undocumented local children enrolled in alternative education in Sabah and Sarawak.	Humana Child Aid Society and Indonesian Consulate, Kota Kinabalu and Kuching.
Number of Indonesian workers' dependents (including documented and undocumented children).	Humana Child Aid Society and Indonesian Consulate, Kota Kinabalu and Kuching.
Number of refugee and asylum-seeking children in Peninsular Malaysia and socio-economic background.	UNHCR, Malaysia.
Number of stateless children and at risk of statelessness in Peninsular Malaysia.	Development of Human Resources for Rural Areas (DHRRA).

Source: Stakeholders meetings, 2019.

Despite the media exposure and studies described above, several stakeholders contend that child labour is not occurring in plantations and agriculture in Peninsular Malaysia. This is heavily attributed to citing the legal provision that migrant workers are strictly prohibited from bringing their family members into Peninsular Malaysia. This policy applies across the board in all sectors of the economy where migrant workers are allowed to be hired. However, other stakeholders pointed out that, in their experience, this legislation is regularly breached and that migrant children are extremely vulnerable to child labour because they have no access to education or other services.

Stakeholders also highlighted that there are pockets of children in child labour among immigrant children from Indonesia and the Philippines in the state of Sabah. Besides, there is involvement of local children especially in the rural and remote areas in agriculture activities. However, the extent to which their involvement in agriculture activities that amount to child labour is unclear.

Some stakeholders also highlighted that children in Malaysia regularly assist their parents and that they do not think this should be considered child labour. The reason for their claim is linked to the fact that these children (and young persons) are helping their parents voluntarily, and that there is no element of forced employment. Stakeholders noted that children and young persons involved in employment and assisting their parents may range from seven years old to 17 years old. A small number of stakeholders did however recognise that helping out parents voluntarily may still end up becoming child labour if the child is exposed to severe risks and hazards or is unable to attend education due to work obligations.

2.3. Regional variation

2.3.1 Nature and extent of child labour in Peninsular Malaysia

In Peninsular Malaysia, stakeholders highlighted that there are refugee and asylum-seeking children who work in construction and service sectors (e.g. restaurants and dining; low-cost hotels; and night markets). Their involvement in the construction and service sectors is considered informal (or illegal) due to the fact that refugees and asylum-seekers, including children are not permitted to enter the formal labour market in the country. Stakeholders also highlighted that there are Rohingya refugee children involved in economic activities such as selling religious books on the street, selling vegetables and fruit in the market (*pasar rakyat*), and collecting and selling items for recycling. Their involvement in these economic activities is often linked to the limitations in the access to formal and alternative education.

Refugee children in Malaysia (statistics)

Malaysia is not a state party to the UN Refugee Convention (1951). It does not provide refugee children with legal protection and other human rights, including the right to access a formal education and decent employment. As of May 2019, UNHCR (Malaysia) reported a total of 150,379 registered refugees and asylum seekers in Malaysia, of which 25,499 of them are children below 18 years old. About 23,823 of them are of school age.

Source: UNHCR, (Education in Malaysia), 2019.

Estimated stateless children in Malaysia, 2016

As of end 2016, the Government of Malaysia in a parliamentary response estimated about 290,437 stateless children throughout Malaysia, including Sabah and Sarawak. No further breakdown was revealed.

Source: *Utusan Malaysia*, 4 December 2017.

Stakeholders pointed out that there is a high prevalence of street begging among non-citizens particularly refugee, asylum-seeking and stateless children. Their involvement in these activities may occur both in urban and semi-urban areas, with particular concentration in states such as Selangor, Johor, and Penang, as well as the Federal Territory of Kuala Lumpur. Children often do their begging activities in city centres (e.g., Kuala Lumpur city centre); tourist attractions such as *Masjid Jamek* (in Kuala Lumpur); shopping malls and places of worship (e.g. mosques).

While some of these begging activities are done voluntarily, with the consent from their parents and/or accompanied by their elder siblings or parents, there are cases where children are forced and/or lured to beg. In this situation, stakeholders claimed that there may be involvement of syndicates and/or irresponsible individuals behind street begging activities. The U.S. Department of State in its annual Trafficking in Persons (TIP) report 2016 highlighted the involvement of Rohingya children in forced begging in Peninsular Malaysia.

There were also unverified reports by stakeholders of some Rohingya refugee children begging on the street, as well as in public and commercial places (e.g. shopping malls) in order to raise money to sustain their respective learning centre, often religious school or madrasah, to maintain their school operation. Children involved in this form of begging activity are exposed to a variety of safety issues, (i.e. road accidents and being recruited by organized crime for other immoral and illegal activities) an uncondusive environment for their child development.

UNHCR (Malaysia) reported that as of early 2019, there were 133 alternative learning centres established to accommodate refugee children's education across Peninsular Malaysia. UNHCR also

partnered with several implementing partners (e.g. Dignity for Children Foundation, Muslim Aid Malaysia, etc.) to operate several learning centres and coordinate assistance. The Government of Malaysia is fully aware of the presence of refugees' alternative learning centres in Peninsular Malaysia and is working collaboratively with UNHCR and several NGOs to identify, monitor and assist the development of refugee-alternative education initiatives in the country.

Other than refugee, asylum-seeking and stateless children – stakeholders highlighted the involvement of local children in random street begging activities, which are dangerous and harmful to children's health and safety with presence of different types of hazards. Stakeholders pointed out that some of these children are abandoned and neglected by parents, who may be under coercion by syndicates or gangs. These children are also of greater risk of being lured and manipulated to engage in illegal activities such as selling drugs.

In addition to reports on construction, services and organized street begging and hawking, the international media outlet *Aljazeera* in March 2013 reported that hundreds of Rohingya children had been smuggled from Myanmar and Bangladesh into Malaysia as “mail order brides” since 2009.³² In the past, many Rohingya refugees in Malaysia married Indonesian and Myanmar Muslim women who were already in the country. However, the trend had changed since 2009 where more Rohingyas brides, especially children below 18 years old from their villages in Myanmar, or refugee camps in Bangladesh came to Malaysia.³³ Though there is no official statistic of refugee children sold into marriage, the UNHCR identified at least 120 Rohingya child brides in Malaysia.³⁴

2.3.2 Nature and extent of child labour in Sabah and Sarawak

Stakeholders highlighted that Sabah's state government allows migrant workers to bring their family members, including their children through the issuance of dependents passes. The recent legalization of the migrant workers' programme launched by Sabah's state government until September 2019 aims at regularizing undocumented workers and their family members in the agriculture and plantation sectors in the state. Some stakeholders applauded this initiative but there are concerns that without giving these children educational support, they will be at risk of becoming child labourers. Moreover, plantation areas are rarely inspected by enforcement personnel and child labour may go undetected.

³² Aljazeera. 2013. “*Rohingya refugees import ‘mail order brides’*”, 17 Mar. 2013.

<https://www.aljazeera.com/indepth/features/2013/03/201331291132937760.html> [accessed 12 May 2019].

³³ A. Kassim. *Transnational marriages among Muslim refugees and their implications on their status and identity – the case of the Rohingyas in Malaysia*, 2015.

³⁴ Aljazeera. 2013. “*Rohingya refugees import ‘mail order brides’*”. 17 Mar. 2013.

High prevalence of child labour is often linked to specific sectors of the economy such as agriculture, plantations (i.e. palm oil), construction and services in Sabah. Stakeholders stressed that some plantation activities are considered hazardous (e.g. chemical spraying, harvesting), and that children and young persons should not be allowed to engage any of these activities.

Palm oil activities children may be involved in

According to stakeholder reviews and available research, palm oil activities where children and young persons may be working include:

- collecting loose fruits (mostly children and young persons);
- harvesting and manuring (young persons);
- spraying (young persons);
- stacking palm fronds (undetermined category);
- fresh fruit bunches loading (young persons); and
- slashing (young persons).

Source: Earthworm Foundation (Children in Plantations of Sabah), 2018.

Children and young persons are reportedly assisting their parents in palm oil plantation activities to contribute to the income of their families. They undertake these activities alongside their parents either during school holidays or after school (and this is not necessarily child labour if children are protected from hazards). Some young persons are without access to formal education and alternative learning centres, they tend to work independently as informal workers.

Stakeholders highlighted that the pay system in the palm oil plantations is on a piece-rate or productivity basis. Each worker is required to achieve a minimum target on a daily basis, however, beyond this target, the more the workers achieve, the more salary they receive. On this basis, some migrant workers encourage their children to assist them to achieve the daily target, or to exceed the target and earn more income. Often, payment is not paid directly to the children but instead given to the parents.

With respect to the service sector, stakeholders highlighted that there seems to be a trend where more and more local children in Sarawak are involved in helping their parents working in street dining places and restaurants. Stakeholders pointed out that there are local young persons below 17 years old starting work as general workers (e.g. cleaners) in government buildings and universities. Their involvement in employment may be linked to dropout cases from secondary school, or due to poverty. In Sabah, the Filipino children are involved openly in a variety of informal economic activities such as selling smuggled cigarettes, selling plastics in wet markets, work as porters, selling newspapers and DVDs, and selling or assisting traders in selling fish and vegetables in wet markets. Stakeholders highlighted that due to the absence of legal documentation, many Filipino children and young persons are working in construction, undertaking occupations that are not suitable to their ages and are dangerous.

Involvement of children and young persons at work, whether assisting their parents or not, are seasonal in nature. This applies specifically in the agriculture and plantations sector, such as palm oil and other traditional crops, including paddy. During semester break, children may be involved in assisting their parents in undertaking agriculture activities. Stakeholders did not highlight the kind of activities that these children are involved in. Stakeholders also highlighted that some children are assisting their parents after schooling hours, and that such activities do not hinder them from attending school, though it isn't clear from stakeholder's information whether the working children and young people are exposed to risks and hazards unsuitable for their age.

Local children in economic activities are often linked to family-run business, according to stakeholders. Some argued that it is important as part of their education and familiarization to the businesses which the children are expected to inherit. Again, it is not clear whether these activities expose children to undue hazards or impede their school attendance.

2.4 Summary of vulnerable groups, geography and sectors

Table 3. below shows a summary of the different segments of vulnerable children, geographical prevalence and their involvement in selected sectors of economy.

Table 3. Segment of vulnerable children, geographical prevalence and sectors of the economy.

Segment of vulnerable children	Geographical prevalence	By strata	Sectors of economy
Refugee and stateless children. <i>Note: includes IMM13 card holders (Sabah).</i>	Peninsular Malaysia.	Urban and semi-urban.	Construction; services; other informal economic activities (e.g. begging) sometimes associated with child trafficking.
	Sabah & Sarawak.	Urban and semi-urban.	Construction; services; other informal economic activities.
Immigrant children. <i>Note: includes documented and undocumented immigrant children.</i>	Sabah & Sarawak.	Urban, semi-urban and rural.	Plantation and agriculture; construction; services; other informal economic activities.
Local children. <i>Note: includes local children without proper documentation.</i>	Peninsular Malaysia.	Urban, semi-urban and rural.	Services; other informal economic activities.
	Sabah & Sarawak.	Urban, semi-urban and rural.	Plantation and agriculture; construction; services; other informal economic activities.

Source: Stakeholders' meetings, 2019.

2.5 Causes of child labour

Limited or lack of access to education is the most frequently cited cause of child labour in Malaysia. Children without identity cards (e.g. stateless children) and valid travel documents (undocumented

immigrant children) are not allowed to enter government schools. In Peninsular Malaysia, children with the UNHCR card and asylum-seeking letter are permitted to enrol only in NGO-run learning centres (alternative learning centres). Lack of educational facilities in remote areas is also a substantial problem. This is particularly alarming for the children of the *Orang Asli*, those living in the most remote areas where schools are not geographically reachable. This lack of access to education causes pockets of vulnerable children to engage in informal employment, and/or assisting their parents to undertake economic activities in their early ages.

Employment of children and young persons may also be related to school dropout cases. For local children, school dropout predominantly occurs in rural areas, but it may also happen in urban areas. Stakeholders highlighted that many children dropped out from school when they reach secondary education. This is due to a variety of reasons, such as lack of interest from the children themselves to continue studying; or less opportunity to continue their education in non-academic stream education (e.g. vocational). Other stakeholders highlighted that currently Malaysia's education system may not be attractive enough to the new generation of students, and hence some children do not see the value of continuing their education. A study conducted in 2014 found that dropout cases are greater among students in transition from primary to secondary level of education (between 11 and 12 years old), and within the subsequent years of their secondary schooling.³⁵ For instance, in year 2012 alone, about 46,791 students who left the mainstream schooling system during transition from primary (year 6) to secondary (Form 1).

Low levels of awareness among parents, workers and community members about non-permissible work for children (child labour) according to the Children and Young Persons Act is considered a key root cause of child labour. They are also not aware of the risks (e.g. health, emotional, physical implications) of involving children in certain types of activities. Without proper understanding on the potential implications, no proper guidance and monitoring is given to ensure that young persons allowed by law to work are kept safe, and the younger children are only allowed for light work (13-14) and 12 years old and below are not involved in any economic activities and stay in school. Stakeholders pointed out that there are parents in the plantations allowing their children to assist them to collect loose fruits. It is to be noted that though some work may be considered light work, the environment in the plantation itself is a harmful place where children may be exposed to chemicals, sharp tools, snake bites, etc.

Children working alongside parents, either in agriculture or other economic activities are considered a local culture and sometimes a tradition. Parents or the society as a whole do not consider this as child labour. Rather those children and young persons may be admired for being responsible, helping their parents to make a living. Besides, stakeholders pointed out that assisting parents in the field is part of a socialization process where the children will associate themselves with the community members rather than staying at home. In the context of family-run businesses, involving their children in assisting their parents' business is a familiarization process where their children are expected to

³⁵ Institute for Democracy and Economic Affairs (IDEAS): *Dropping out of school in Malaysia: What we know, and what needs to be done?* 2014. <http://www.ideas.org.my/policy-paper-no-14-dropping-school-malaysia-know-needs-done/> [accessed 12 May 2019].

inherit the business in the future. However, stakeholders cautioned that the lack of parental guidance, coupled with the limited awareness among the parents about the potential hazards and safety to their children – would potentially result in children engaging in activities that are harmful to their health and safety. This contravenes the Children and Young Person (Employment) Act, as well as the Sabah and Sarawak Labour Ordinances, as it may also constitute child labour.

Stakeholders highlighted that labour shortages in selected sectors of the economy is a very strong contributing factor towards some employers illegally employing young persons to work in their respective operations. Some companies may be aware of the prohibition of hiring young persons but due to the labour shortage they face, the companies have no option but to hire young people. With respect to labour shortages, the Department of Statistics Malaysia reported a 68 per cent labour force participation rate and a 3.3 per cent unemployment rate for a total of 15.3 million labour force in 2018 (Malaysia).³⁶ Despite these facts, Malaysia still needs to recruit migrant workers to meet labour shortages in critical sectors such as construction and plantations. The local workers are generally reluctant to take up jobs in the construction and plantation sectors for a variety of reasons which includes amongst others, low wages, poor working environment, low job security and unattractive job packages.

Stakeholders also noted that apart from labour shortages, some irresponsible companies hire young persons because they are considered “cheap labourers”. The remuneration to be paid to young workers is lower than adult workers’ remuneration. Moreover, if these young workers are undocumented, they may be easily manipulated and exploited.

Stakeholders highlighted that in some sectors of the economy such as oil palm plantations, wages are paid based on daily productivity (also known as piece rate systems). The more the workers produce in a day, the more income they could generate. In the same wage system, workers are expected to achieve the minimum standard of daily productivity. Stakeholders pointed out that a productivity wage system is becoming a trend in many sectors as it stimulates higher productivity. However, without proper guidelines and enforcement that prohibit and prevent child labour as part of the piece-rate system, it could also encourage workers’ children to assist their respective parents for two reasons. First is to achieve the minimum standards of daily productivity as set by their employer. Failing to achieve the minimum standards, workers may not be able to attain their daily/monthly expected income. Second is to achieve more income. Workers (parents) could increase their productivity by involving their children to assist them on site.

The national poverty rate decreased from 0.6 per cent (2014) to 0.4 per cent (2016), yet poverty has been identified as a cause of child labour, or at the very least, the perceived increase in children’s economic activities in family settings. Insufficient income to cover the rising cost of living has been argued to be occurring in urban and rural areas across Peninsular Malaysia, Sabah and Sarawak.

³⁶ DOSM: *Labour force survey report*. 2018.

https://dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=126&bul_id=ekU0SG1yQk1wcExKUDhvN2RHTlhjZz09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09 [accessed 12 May 2019].

Stakeholders pointed out that not only refugees, stateless and migrant workers population are affected by poverty, but also local populations in urban and rural areas.

The lack of documentation is another root cause of child labour that results in children being unable to access formal education in government school, and/or to continue their education at secondary level. Children who are not attending school are prone to starting work at very young ages.

For immigrant children, the lack of documentation has multiple meanings such as: (i) children without a birth certificate; (ii) children without valid passports; (iii) children without an IMM13 card or failing to renew it; (iv) refugee children without an UNHCR card / asylum claim letter. For local children, lack of documentation means children without a birth certificate and/or Malaysian identity card. Stakeholders highlighted that there are several reasons that contribute to lack of documentation among local children. These include: (i) parents' marriage is not registered; (ii) one of their parents is a non-Malaysian citizen; (iii) geographical barrier – where children live in remote areas without access to a national registration department; and (iv) parents do not value the importance of birth registration and the Malaysian identity card.

This situation occurs the most in rural or remote areas of Sabah and Sarawak. Immigrant children are unable to access government schools. Though they may be allowed to access a community learning centre (CLC) or NGO-run learning centre, some parents are afraid of sending their children to these learning centres due to their irregular immigration status.

Issues surrounding law enforcement were raised several times by stakeholders. The Labour Department and other enforcement agencies carry out regular monitoring and inspection of compliance with legislation, including the Children and Young Persons Act and Sabah/Sarawak Labour Ordinances throughout the country. Nevertheless, stakeholders stressed that gaps in law enforcement cause some companies to ignore their legal and moral obligation not to employ children and young persons in their business operations. In other cases, employers use their full discretion in the hiring of young persons without being monitored by the authorities. There are multiple reasons for the challenges that authorities face in enforcing the law.

Firstly, stakeholders highlighted that the number of labour inspectors is not sufficient to monitor all companies in different sectors of the economy in the country. A report published by the Human Rights Resource Centre in 2011 recorded a total of 552,849 small and medium-sized enterprises, 118 state-owned enterprises and 45 transnational corporations operating throughout Malaysia.³⁷ This does not include the number of small farmers and smallholders especially in the agricultural sector who hire workers to work in their agricultural lands. Stakeholders hence suggested to increase the number of labour inspectors to adequately enforce the existing laws.

Secondly, stakeholders highlighted that in some sectors of the economy, such as the palm oil sector, estates and mills are located in remote areas, isolated from administrative offices including the Labour Department. This makes monitoring and inspection by the enforcement agencies a challenging task.

³⁷ Human Rights Resource Centre: *Business and human rights in ASEAN: A baseline study (Malaysia)*. 2013. <http://hrrca.org/wp-content/uploads/2015/09/Business-and-Human-Rights-in-ASEAN-Baseline-Study-ebook.pdf> [accessed 12 May 2019].

The remoteness of certain work locations also contributes to limited access to health facilities (beyond local clinics), to the registration department (for birth registration), welfare department (for welfare assistance) and other services that directly or indirectly have an impact on the incidence of child labour. This further contributes to non-compliance with legislation.

Third, some states such as Sabah and Sarawak are geographically wide, and geographical distances become an additional barrier for law enforcement officials to monitor and enforce the existing laws.

There is limited awareness about child labour among employers and supervisors, particularly of micro- and small and medium-sized enterprises and some family-run businesses. Stakeholders stressed that many companies are not aware of the laws governing child labour, or to be exact, about permissible and non-permissible work for children and young persons; the limits on workdays and hours and other conditions provided for in the laws. This information is necessary to determine when child labour could occur even working alongside, or just helping out parents.

The lack of children facilities, such as a crèche and/or nursery, learning centre and other recreational facilities (e.g. playground) in some cases may cause children to accompany their parents to work and end up working themselves. Stakeholders highlighted that for large companies, such facilities are provided for and are well managed. Stakeholders emphasized that children with access to a crèche and learning centres are not likely to engage in plantation work. For workers, they are willing to send their children to a crèche provided by employers and prefer not to bring their children to work so that they can work with 'peace of mind'. Many small and medium-sized companies, however, do not provide these facilities (e.g. crèche), or collaborate with NGOs to open community learning centres. Without access to these facilities, parents (workers) have no option but to bring their children on site, and the workplace becomes their playground.

Indonesian community learning centres (CLC) in the plantation sector in Sabah

Indonesian CLCs in Sabah are implemented jointly by the Indonesian Consulate, Kota Kinabalu and the plantation companies. They specifically cater for the Indonesian children in the plantations across the State. CLCs consist of alternative education at primary (known as *Sekolah Dasar*) and secondary (known as *Sekolah Menengah Pertama*) levels.

As of end 2017, the Indonesian Consulate (Sabah) in partnership with more than 40 large and medium-sized plantation companies in Sabah established a total of 210 CLCs across the State. About 69 CLCs (33 per cent) are at primary level and 140 CLCs (67 per cent) at secondary level – accommodating more than 10,000 Indonesian children ranging from 7 to 18 years old.

Another alternative learning education initiative in the plantation sector in Sabah is implemented by the Humana Child Aid Society – with a total of 140 primary education centres in plantations and 13,000 students throughout the state.

Source: Earthworm Foundation (Children in plantations of Sabah), 2018.

Stakeholders highlighted the need to strengthen interventions especially by enforcement authorities and welfare agencies to prevent immigrant children from actively involved in a variety of economic activities that may jeopardize their child development, health and safety. For example, immigrant

children in Sabah are openly involved in selling newspapers, toys and food on the street and at night markets. Some of these children are assisting and/or accompanied by their parents and siblings in their economic activities, while others are doing it alone. The children are also at risk of being recruited and/or influenced to get involved in other immoral and illegal activities including street crimes and gangsterism. As such, the enforcement authorities and welfare agencies need to play a proactive role to intervene by providing necessary support to these vulnerable children. However, it was highlighted that the Welfare Department has a limited mandate especially with regards to immigrant children, as it is only mandated to intervene (or rescue) in cases involving local children. Rather, it is within the purview of the Immigration Department when it comes to immigrants including children. However, stakeholders highlighted that the Welfare Department may still intervene on cases involving immigrant children if there is an evidence of violence (e.g. physical violence) against the immigrant children.

It was highlighted that provision of services and facilities to migrant workers' children is not only an issue for Malaysia. Countries of origin need to play more active roles in providing interventions to enable documentation of children and providing them with educational support, or offering repatriation programmes to the families, with livelihood support and other appropriate services, as in the case of Filipino children and their families in Sabah.

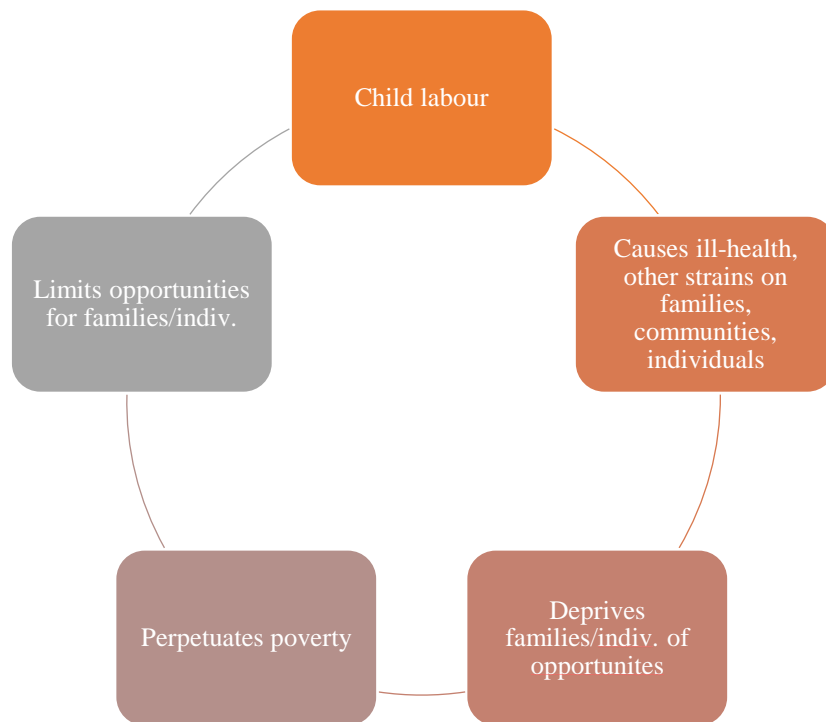
2.6. Consequences of child labour

The consequences of child labour in Malaysia, as in other countries, are at the individual, family, community and national level.³⁸ Child labourers work at the expense of their education, rendering them vulnerable to life-long exploitation in poorly paid, poorly regulated work in the informal sector. Limited literacy, numeracy, cognitive abilities, etc. resulting from poor, interrupted or no education may render children and young workers increasingly vulnerable to deception and other practices associated with forced labour. Moreover, child labourers are vulnerable to negative health effects caused by work-place accidents as well as the cumulative effects of work at an early age, e.g. when exposed to toxic substances.

At the family level, child labour is often part of a complex pattern of intergenerational perpetuation of poverty and marginalisation as illustrated in Figure 4.

³⁸ Information reported in this sub-section is derived from the International Labour Organization (ILO). *Global estimates of child labour: Results and trends from 2012 to 2016*. (Geneva, 2017). https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf [accessed 12 May 2019].

Figure 4. Pattern of intergenerational perpetuation of poverty and marginalization.



Source: International Labour Organization (ILO), Global estimates of child labour, 2017.

These long-term effects also impact growth and development and may negatively impact a country's ability to achieve the SDGs and not only target 8.7 but also other goals, such as Goal 1 on poverty eradication, Goal 4 on education, and Target 16.2 on ending abuse, exploitation, trafficking and all forms of violence and torture against children.

Moreover, being associated with child labour, and particularly child labour in global supply chains, it has substantial reputational risk for countries as well as businesses that operate in the country. Such exposure will have consequences for business earnings – even in businesses that may not harbour child labour, but who are associated with it simply by producing in a country where child labour is an issue. These same businesses are also likely to be disadvantaged as they do not operate in a level playing field but face unfair competition from businesses cutting costs by exploiting children.³⁹

2.7. Implications for the NAP

Despite the gaps in the knowledge base, it is possible to derive a number of conclusions around child labour in Malaysia.

³⁹ ILO: *Child labour guidance tool for business* (Geneva, 2015). https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_27555/lang--en/index.htm [accessed 12 May 2019].

Firstly, it is important to note that child labour does exist, and it may in fact be under-reported. Hence, a child labour NAP is highly relevant and will be even more relevant if it includes strategies and activities to document and analyse child labour in Malaysia and its drivers.

Secondly, the available information paints a picture of diversity across the different regions of the country and this must be reflected in the NAP. It is critically important that the NAP is designed to consider regional variations, for example by defining specific priorities and strategies for the Peninsula, Sabah and Sarawak respectively.

It is also quite clear that child labour in Malaysia has multiple causes and the NAP needs to put in place viable strategies to address these root causes in a coherent and coordinated manner. Among the key root causes identified are:

- Limited awareness among children and parents in vulnerable communities, among employers, in the general public and in some professional groups.
- Limited access to services, especially education for some groups of vulnerable children, notably migrant workers' children and other undocumented children.
- Limited implementation and enforcement of legislation (see chapter 3 as well).
- Business practices that may drive child labour, such as limited or no safeguards / guidelines to ensure that piece rate remuneration of workers does not perpetuate child labour;

The sheer complexity of the drivers of child labour and multiple vulnerabilities that one child may face call for extremely well-coordinated strategies in the NAP and for using all available, existing resources. Putting in place SOPs for support to individual children is of critical importance.

This also goes for measures to protect young workers between the ages of 15 and 17 years. They need to be recognised as young workers (not just workers) who have specific rights to protection from hazardous work.

Overall, the NAP should include measures to prevent child labour, notably through addressing its root causes; measures to protect young workers and prevent them from ending up in the worst forms of child labour; and measures to support individual children, who are already trapped in child labour, with appropriate services, not least education. The latter may require substantial policy changes and a recognition of migrant workers' children as in particular risk of entering child labour.

Gaps in the knowledge base on child labour in Malaysia were clearly identified as a significant issue and strengthening the knowledge base could be a strategic priority in its own right. Stakeholders already identified multiple strategies that may be useful for strengthening the knowledge base. One is the mining and analysis of existing data discussed in Chapter 2. In addition, stakeholders suggested that the government provide research grants and other research facilities to public and private institutions to undertake comprehensive policy and scientific based research on child labour. Such facilities would encourage more academics and researchers to contribute in better understanding the root causes, consequences and prevention and remediation of child labour cases in Malaysia. Their research findings can also be best utilized by policy makers to shape public policy in many areas such as education, human resources, business and legal compliance with respect to child labour.

In addition to continuous support to the academic and research community, it is also suggested for the government to develop a dedicated methodology and strategy to continuously identify, monitor

and report on child labour cases in Malaysia. The government may draw lessons and good practices from other countries, and collaborate with international organizations on how best identification, monitoring and reporting of child labour cases can be institutionalized in the existing mechanisms such as through the population census, labour force survey or other forms of data collection strategies.

3 Legislative frameworks related to child labour

3.1. Existing legislation pertaining to child labour

Malaysia has ratified the ILO Minimum Age Convention, No. 138 (in 1997) and the ILO Convention on the Worst Forms of Child Labour, No. 182 (in 2000) as well as the UN Convention on the Rights of the Child (in 1995). As can be seen from the analysis below, the international conventions framework has been domesticated into national (federal and state) law to a great degree, though some gaps still exist.

Other than the Federal Constitution, the Child Act (2001) is considered the key legislation that governs children issues in the country. Under the Child Act (2001), a child is defined as a person under the age of 18 years old. It is aligned with the definition outlined in the Convention on the Rights of the Child (CRC). The Child Act (2001) provides care, protection and rehabilitation of children – guided by four core principles namely: (i) non-discrimination; (ii) best interest of the child; (iii) right to life, survival and development; and (iv) respect for the views of the child.

However, with respect to employment of children and young persons, it is governed by a different set of legislative frameworks. In Peninsular Malaysia, the employment of children and young persons is governed by the Children and Young Persons (Employment) Act 1966 (Amended 2018) – in which children are defined as persons who have not completed their fifteenth year of age, and young persons are referred to as any persons who have not completed their eighteenth year of age.

In Sabah and Sarawak, employment of children and young persons is governed by the Sabah Labour Ordinance (Cap.67) and Sarawak Labour Ordinance, respectively. The definitions of children and young person follows the CYP Act definitions.

In essence the Children and Young Person (Employment) Act, Sabah Labour Ordinance and Sarawak Labour Ordinance – allows employment of young persons but with certain conditions related to the type of employment; number of working days; and hours of work. It is important to highlight that the Children and Young Person (Employment) Act (Amended 2018) states that children 12 years old and below shall not engage in any form of employment but should attend schooling. It is also worth highlighting that despite no particular reference to the term “child labour” in the existing legislations, in practice, it refers to non-allowable work to be engaged by children and young persons. Refer to Table 4.

Table 4. Comparison between the Children and Young Person (Employment) Act, Sabah Labour Ordinance and Sarawak Labour Ordinance.

Act/Ordinance & differences	Children and Young Persons (Employment) Act (Amended 2018)	Sabah Labour Ordinance	Sarawak Labour Ordinance
Geographical applicability.	Peninsular Malaysia	Sabah	Sarawak
Ages for: (a) Children (b) Young persons	Children – less than 15 years old. Young persons – 15 to 17 years old. <i>Note: No difference between CY, Sabah and Sarawak Labour Ordinances.</i>		
Further clarification on employment according to ages and employment prohibition.	<p>Young persons (15-17 years old) are allowed for employment suitable to their capacity. They must not be engaged to work:</p> <ul style="list-style-type: none"> • More than 6 days a week. • More than 7 hours per day or if attending school, more than 8 hours, including school hours. • More than 4 consecutive hours without a rest of at least 30 minutes. • Between 8pm and 6am (except agricultural undertaking, public entertainment and any vessel). <p>Children (13-14 years old) are allowed in light work, including work carried out by their family. They must not be engaged to work:</p> <ul style="list-style-type: none"> • More than 6 days a week. • More than 6 hours/day or, if attending school, >7 hours, including school hours. • More than 3 consecutive hours without a rest of at least 30 minutes. • Between 8pm and 7am (except public entertainment, which needs permission from MOHR). 	<p>Young persons (15-17 years old) are allowed for employment suitable to his capacity. They must not be engaged to work:</p> <ul style="list-style-type: none"> • More than 6 days a week. • More than 7 hours per day or if attending school, more than 8 hours, including school hours. • More than 4 consecutive hours without a rest of at least 30 minutes. • Between 8pm and 6am (except agricultural undertaking, public entertainment and any vessel). <p>Children (14 years old and below) are allowed in light work, including work carried out by their family. They must not be engaged to work:</p> <ul style="list-style-type: none"> • More than 6 days a week. • More than 6 hours per day or if attending school, >7 hours, including school hours. • More than 3 consecutive hours without a rest of at least 30 minutes. • Between 8pm and 7am (except public entertainment, which needs permission from MOHR). <p><i>Note 1: No difference between Sabah and Sarawak Labour Ordinances.</i></p>	

Children (12 years old and below) – must not engage in any work, but in school.

Note: There is no hazardous work allowed for children and young persons in Peninsular Malaysia. The hazardous work is further defined under the 4th Schedule of the CYP.

Note 2: Similarly, there is no hazardous work allowed for all children and young persons in Sabah and Sarawak.

However, there is no further definition on “hazardous work” provided by the Sabah and Sarawak Labour Ordinances.

Note 3: Definition of light work in Sabah and Sarawak Labour Ordinances is different of the revised CYP (as of 2019).

Source: Analysis from the Children and Young Persons (Employ) Act, Sabah Labour Ordinance and Sarawak Labour Ordinance.

The Children and Young Persons (Employment) Act had recently been amended, in particular the 4th Schedule of the act, which had enhanced definition of “hazardous work” of which children and young persons can and cannot engage. This includes, for example working with heavy machinery and chemical substances or working in generally hazardous environments. The list focuses on physical risks and hazards and less on psychological and social risks. A more comprehensive overview can be found in Annexe 3.

3.2. Implications for the NAP

The gaps in legislation and enforcement can, and should, be addressed through the NAP and stakeholders identified a number of strategic priorities that can be considered when the NAP is developed.

With respect to the existing legislative frameworks governing children and young persons’ employment in the country, most if not all stakeholders pointed out that there is limited awareness and understanding on the legal definition of “child labour” among government agencies, businesses, parents and the community at large. While the laws do prohibit child labour in practice (see section 3.1) there is no explicit mention of child labour and that may contribute to the limited understanding of what the term “child labour” actually means. The lack of clear indicators and guidance for businesses also contributed to wide-spread ignorance and continued practices of hiring children and young persons that contravenes the laws. As such, stakeholders suggested a number of recommendations to be considered in the development of NAP on child labour.

Strengthening legislation

Stakeholders highlighted the need to review and improve the existing laws and regulations concerning child labour in the country. This includes the Children and Young Person (Employment) Act, Sabah Labour Ordinance and Sarawak Labour Ordinance. Stakeholders were aware of the new amendments made in the Children and Young Persons (Employment) Act but highlighted that some of them were not consulted on the process of amendment. However, stakeholders appreciated the progress made

by the government by enhancing the law, in particular on the enhanced definitions of “hazardous work”. Other stakeholders highlighted that the same amendments are needed for the Sabah and Sarawak Labour Ordinances.

In addition, stakeholders pointed out that there is an urgent need for the government to develop specific standard operating procedures and indicators to assist businesses, parents and the community at large to better understand and comply with the existing legislation. Stakeholders however highlighted that the procedures and indicators must be relevant to a particular social context, and sensitive to local tradition and culture. Procedures and indicators should also be clear and practical to facilitate and/or guide young persons to engage in on-the-job training or apprenticeship programmes with the companies of their choice.

Awareness raising and mobilisation around the enhanced legislation

Any further legal improvement must be followed by an inclusive socialization process where every segment of society including businesses, workers, parents and the community need to be engaged and sensitized on any amendment in current or future laws and regulations. Stakeholders even stressed the need to consult businesses, parents and children/young persons themselves during the review or amendment process as they will be the most affected as a result of any changes in legislation. Socialization can be done in many ways including organizing town hall sessions, media announcements and any other public campaign mechanism, focus group discussion and training sessions.

Strengthening law enforcement and social work

To further strengthen law enforcement, stakeholders suggested that the government considers increasing the number of labour inspectors to monitor companies’ compliance in all sectors of the economy, and to increase frequency and coverage of random inspection, especially in the high-risk areas in rural and remote areas. Moreover, stakeholders also recommended increasing the number of social workers to provide necessary support and rescue (not arrest and detention) for children who are in need of protection. It is hoped that companies are closely monitored, and children found working and/or involved in harmful working environments and illegal economic activities can be appropriately rescued and protected.

Stakeholders also highlighted limited knowledge and understanding of child labour issues among some government officials. This impedes effective identification of victims of child labour during their labour inspection or rescue operation. As such, stakeholders suggested the government to widen capacity building and training initiatives targeting government officials dealing directly with children issues. These include capacity building and training for officers of the Welfare Department, Labour Department, Police and Immigration Department.

Capacity building for other non-government stakeholders

Other than government officials, limited understanding and knowledge on child labour also occurs among NGO staff. Stakeholders highlighted that there is much confusion about the legal definition on child labour, and even social workers dealing with children issues may not be able to understand,

interpret and relate the existing legislation and the actual situation facing children on the ground. For example, some stakeholders posed the question whether “child begging” can also be considered “child labour.” Likewise, continuous capacity building and training is also needed for social workers and volunteers.

Additionally, stakeholders recommended the government to continue supporting the work of NGOs in providing services such as temporary shelters, counselling and therapy services to vulnerable children. The failure to sustainably provide these services would likely contribute directly or indirectly to child labour. As such, the government is suggested to continuously provide grants and technical support for NGOs and other stakeholders including the Welfare Department to sustain their child-related services, including expanding the number of shelters and/or shelters’ capacity, as well as other child-care centres. This will substantially improve the implementation of laws as families’ capacity to comply would increase.

Strengthen and/or expand grievance mechanisms at the community level

Stakeholders recommended the government to provide an easy-to-access grievance and complaint mechanism at the community level to enable the community members to lodge issues or report child labour cases to the authorities. At the same time, the government should facilitate more empowerment programmes at the community level, such as organizing paralegal training, case management, medical assistance and other forms of community support to enable community members to act effectively at the community level.

4 National policies and programmes

There is no particular national policy, programme or strategy directly addressing child labour in Malaysia. This is probably due to low levels of recognition on the existence of child labour, and/or lack of official statistics in the country. However, there are national policies and programmes relevant to addressing child labour, primarily through addressing the root causes of child labour. In this section, we take a closer look at several national policies under four critical areas, namely: (i) development policy; children-related policies; (iii) education policy; and (iv) business-related policy.

4.1. National Development Policy

The creation of the New Economic Policy (NEP) which started in 1970, has the overarching objective to reduce socio-economic disparity between different ethnic groups in the country (or poverty reduction). The aims of this development policy were amongst others, to modernize rural life, to drive balanced development between urban and rural areas, and to raise living standards. The NEP is a time-bound policy (five-years), also known as the Malaysian Plan. The implementation of this policy continues until now, with the recent 11th Malaysian Plan (2016-2020) currently being implemented. The 12th Malaysian Plan is under development.

The current 11th Malaysian Plan comprises six strategic thrusts namely: enhancing inclusiveness (Thrust 1); improving wellbeing (Thrust 2); accelerating human capital development (Thrust 3); pursuing green growth for sustainability (Thrust 4); strengthening infrastructure (Thrust 5); and re-engineering economic growth (Thrust 6).

In 2018, the Government of Malaysia further enhanced the 11th Malaysian Plan by introducing a new set of priorities including its reform agenda (e.g. good governance); enhancing inclusive development; pursuing balanced regional development; and enhancing environmental sustainability.

To be specific, Thrust 1 (enhancing inclusiveness) and Thrust 2 (improving wellbeing) are two essential components of the 11th Malaysian Plan that are indirectly related to initiatives to address the root causes of child labour. Table 5. shows commentary and focus areas on each of these two thrusts.

Table 5. Thrusts 1 and 2 of the 11th Malaysian Plan (2016-2020).

Thrust 1: (Enhancing inclusiveness towards an equitable society).

Inclusivity has always been a key principle in Malaysia's national socio- economic development agenda and a fundamental goal of the New Economic Model. This commitment aims to enable all citizens – regardless of gender, ethnicity, socio-economic level, and geographic location – to participate in and benefit from the country's prosperity. It is anchored on a belief that inclusive growth is not only key to individual and societal wellbeing, but also critical for sustaining longer periods of solid economic growth.

Focus areas:

- Area A: Uplifting B40 households towards a middle-class society.
- Area B: Empowering communities for a productive and prosperous society.
- Area C: Transforming rural areas to uplift wellbeing of rural communities.
- Area D: Accelerating regional growth for better geographic balance.
- Area E: Enhancing *Bumiputera* (native) economic community (BEC) opportunities to increase wealth ownership.

Thrust 2: (Improving wellbeing for all).

The Government aims to adopt a balanced development approach that gives equal emphasis to both economic growth and the wellbeing of the *rakyat* (citizens). Wellbeing refers to a standard of living and quality of life that addresses an individual's socio-economic, physical, and psychological needs. Wellbeing is essential to enhancing productivity and mobility, while simultaneously strengthening social cohesion and national unity.

Focus areas:

- Area A: Achieving universal access to quality healthcare.
- Area B: Providing adequate and quality affordable housing to poor, low- and middle-income households.
- Area C: Creating safer living environments for thriving communities.
- Area D: Improving road safety and emergency services to reduce fatalities.
- Area E: Enculturating the spirit of 1Malaysia to foster social cohesion and national unity.
- Area F: Promoting sports for healthy living and unity.

Source: 11th Malaysian Plan (2016-2020).

The primary focus of the plan is on Malaysian citizens and this does leave out some of the groups most vulnerable to child labour, e.g. migrant workers' undocumented children and stateless children.

4.2. National children-related policy

With respect to governance of children's issues, the Ministry of Women, Family and Community Development (MWFCD) is the lead agency to handle and administer child-related matters. To be exact, the Department of Social Welfare (Children's unit) is a dedicated and specialized organ within the ministry (MWFCD) to administer children's issues. Moreover, the Department of Social Welfare is mandated to take charge of rehabilitation and prevention programmes under the Child Act (2001).

There are two key national policies concerning children issues in Malaysia, both of which are within the purview of the ministry (MWFCDD). First is the National Policy for Children, and second is the National Child Protection Policy. Both policies make specific reference to the CRC, and clearly express the government’s commitment to uphold the rights of all children to development, protection and participation. Table 6. below is a summary of these policies, retrieved from Sabah UPEN & UNICEF’s (2015) report. It is important to highlight that though these two policy documents are no longer in effect, they served as an opportunity to link child protection issues with the risk of child labour. At the time of this report writing, it is unclear whether there is an initiative to update the two national policies.

Table 6. Summary of the National Policy for Children (2009) and the National Child Protection Policy (2009).

<p>National Policy for Children (2009)</p> <p>This policy aims at upbringing individuals who are healthy, fit, knowledgeable, innovative, creative, competitive and progressive. They are also meant to embrace a personal identity and noble values based on the Malaysian identity. A Technical Committee chaired by MWFCDD has been established in order to coordinate and monitor the implementation of its plan of action.</p> <p>National Child Protection Policy (2009)</p> <p>This policy is a guiding framework for establishing a child protection system that safeguards every child in Malaysia from all forms of neglect, abuse, violence and exploitation. It focuses on aspects of prevention, advocacy, intervention, reporting and provision of support services to protect children. This policy promotes the practice of common responsibility by each agency, organization and member of society for the protection of children. It also advocates all organizations that deal with children to develop in-house guidelines. The policy is in line with the Child Act (2001) and the CRC in upholding the principle of protecting every child based upon the child’s best interest.</p>

Source: Unit Perancang Ekonomi Negeri (UPEN), Sabah & UNICEF. Children in Sabah: Situation analysis, 2015.

4.3. National Education Policy

Generally, education in Malaysia is managed at four distinct levels: (i) federal (within the purview of the Ministry of Education); (ii) state (by the state’s education department - to coordinate and monitor the implementation of national education policy); (iii) district (by the district education offices – to coordinate and monitor the implementation of national education policy between state’s education department and schools); and (iv) school (to provide education to pupils).

In 2013, the Government of Malaysia launched the Malaysia Education Blueprint (2013-2025) that offers a vision of the enhanced education system in the country. It has three specific objectives: (i) to understand the current performance and challenges of the Malaysian education system, with a focus on improving access to education, raising standards (quality), closing achievement gaps (equity), fostering unity amongst students, and maximising system efficiency; (ii) to establish a clear vision and aspirations for individual students and the education system as a whole over the next 13 years; and (iii) to outline a comprehensive transformation programme for the education system, including

key changes to the Ministry which will allow it to meet new demands and rising expectations, and to ignite and support overall civil service transformation (MoE 2013).

In order to achieve its vision a MoU outlined several focus areas such as: (i) to achieve significant and sustained investments in education; (ii) to ensure dramatic progress on improving access to education; (iii) to ensure that the education system remains committed to developing students holistically; and (iv) to achieve student cognitive performance against international standards. The Ministry emphasized that it is committed to ensure that all students, including those that require special needs such as gifted students, and students of indigenous and minority groups will have high quality education that is relevant to their needs. The Ministry, however, does not specifically include students of immigrants in its commitment under the Blueprint. Table 7. outlines the five outcomes the Blueprint aspires to achieve at the end of its implementation.

Table 7. Five key outcomes of the Malaysia Education Blueprint (2013-2025).

Access

Every Malaysian child deserves equal access to an education that will enable that child to achieve his or her potential. The Ministry thus aspires to ensure universal access and full enrolment of all children from preschool through to upper secondary school level by 2020.

Quality

All children will have the opportunity to attain an excellent education that is uniquely Malaysian and comparable to the best international systems. The aspiration is for Malaysia to be in the top third of countries in terms of performance in international assessments, as measured by outcomes in TIMSS and PISA within 15 years.

Equity

Top performing school systems deliver the best possible education for every child, regardless of geography, gender, or socio- economic background. The Ministry aspires to halve the current urban-rural, socio-economic, and gender achievement gaps by 2020.

Unity

As students spend over a quarter of their time in school from the ages of 7 to 17, schools are in a key position to foster unity. Through interacting with individuals from a range of socio- economic, religious, and ethnic backgrounds, students learn to understand, accept, and embrace differences. This creates a shared set of experiences and aspirations to build Malaysia's future on. The Ministry aspires to create a system where students have opportunities to build these shared experiences and aspirations that form the foundation for unity.

Efficiency

The Malaysian education system has always been well-funded, yet improvements in student outcomes have not always matched the resources channelled into the system. While the Government will maintain current levels of investment, the aspiration is to further maximise student outcomes within the current budget levels.

Source: Ministry of Education (MoE). 2013. Malaysia Education Blueprint (2013-2025) (Pre-School to Post-Secondary Education).

4.4. Business-related policy

In this section, two important national initiatives concerning business practices related to social issues are reviewed. First is the corporate social responsibility (CSR) initiative; second is the Malaysian Sustainable Palm Oil (MSPO) certification standard.

4.4.1 Corporate social responsibility (CSR) initiative

The Human Rights Commission of Malaysia (SUHAKAM 2015) reported that Malaysian companies are familiar with the concept of CSR – a set of voluntary actions companies undertake that goes beyond compliance with the existing laws and regulations.⁴⁰ In fact, Malaysia is deemed to be one of the top emerging economies that is involved in CSR activity.⁴¹ As part of their CSR activity, many businesses, especially Malaysian public listed companies are engaged in corporate disclosures and publicly report their social responsibility activities.

In 2007, the Securities Commission (SC) and Bursa Malaysia began to impose a mandatory requirement for all public listed companies to report their CSR activities.⁴² In addition, the Securities Commission promulgated the Malaysian Code for Corporate Governance and the Bursa Corporate Governance Guide – which encourages corporate directors to consider producing sustainability reports that address a company’s community involvement activities, provision of equal opportunity and diversity, prohibition of child labour, access to grievance processes and freedom of association.⁴³ A recently released 2019 study jointly produced by the ASEAN CSR Network and Mahidol University found that 62 per cent of the total 50 public listed companies in Malaysia have clearly expressed their policy commitment to prohibit the use of child labour.⁴⁴

Furthermore in 2014, the government of Malaysia through its regulatory body, Bursa Malaysia, initiated the FTSE4Good Bursa Malaysia Index, which requires companies who wish to be included in the index to achieve set requirements such as monitoring and reporting a company’s commitment on human and labour rights, supply chain labour standards, tackling climate change and countering bribery.⁴⁵ SUHAKAM, nevertheless stressed that while CSR is a common practice among large companies, these companies are generally unaware of their other social and human rights

⁴⁰ Human Rights Commission of Malaysia (SUHAKAM): *Strategic framework on a National Action Plan on business and human rights for Malaysia*. 2015. <https://www.suhakam.org.my/strategic-framework-on-a-national-action-plan-on-business-and-human-rights-for-malaysia-2015/> [accessed 12 May 2019].

⁴¹ P. Thompson; Z. Zakaria, 2004. “Corporate Social Responsibility Reporting in Malaysia”. *Journal of Corporate Citizenship* (2004, Vol. 13 Spring) pp. 125-136.

⁴² Human Rights Resource Centre: *Business and human rights in ASEAN: A baseline study (Malaysia)*. 2013.

⁴³ *Ibid.*, pp. 232-234.

⁴⁴ ASEAN CSR Network and Mahidol University: *Human rights disclosure in ASEAN*. 2019. http://asean-csr-network.org/c/images/190506-upload/Human_Rights_Disclosure_in_ASEAN-Full_Report.pdf [accessed 12 May 2019].

⁴⁵ R. Nordin; M. K. Ishak; R. Shapie; A. Bidin & M.A. Witbroadt. “Integrating human rights into business: Current initiatives in Malaysia”. *The Law Review* (2016). pp. 99-115.

responsibility, including the prohibition of child labour.⁴⁶ Information in the box below is an overview of the FTSE4Good Bursa Malaysia Index, retrieved fully from Bursa Malaysia's official portal.

Overview of the FTSE4Good Bursa Malaysia Index

In December 2014, Bursa Malaysia and FTSE launched an Environmental, Social and Governance (ESG) index known as the FTSE4Good Bursa Malaysia Index for the Malaysian market. The objectives of ESG Index are:

- To support investors in making ESG investments in Malaysian listed companies.
- To increase the profile and exposure of companies with leading ESG practices.
- To encourage best practice disclosure.
- To support the transition to a lower carbon and more sustainable economy.

The FTSE4Good Bursa Malaysia Index constituents are selected from the top 200 Malaysian stocks in the FTSE Bursa Malaysia EMAS Index and screened in accordance with the transparent and defined environmental, social and governance (ESG) criteria.

The index has been designed to identify Malaysian companies with recognised corporate responsibility practices, expanding the range of the benchmarks of the FTSE Bursa Malaysia Index Series for the Malaysian Markets.

Amongst others, companies are required to meet a variety of ESG inclusion criteria. The criteria are consistent with the global ESG model that FTSE has developed and draw strongly from leading global disclosure frameworks such as the Global Reporting Initiative (GRI) and the Carbon Disclosure Project (CDP). Assessments are made based on publicly available data sources, and therefore companies are encouraged to ensure that high quality data and information is provided publicly on their ESG practices and performance.

Source: Bursa Malaysia (official website).

Transparency and disclosure are important elements in ensuring a business environment that fosters responsible practices, and therefore this initiative is very important. It should be borne in mind, however, that requirements primarily concern larger scale, formal sector, publicly listed companies. Other tools may be required to address and prevent child labour in smaller companies and, especially in informal sector operations.

4.4.2. Malaysian Sustainable Palm Oil (MSPO) certification standard

The Malaysian Sustainable Palm Oil (MSPO) certification standard is the national scheme for Malaysian oil palm plantations, independent and organized smallholdings, as well as palm oil processing facilities (as stakeholders) – to be certified against the requirements of the MSPO standard. The scheme will be made mandatory by the end of 2019 – where all stakeholders will need to be

⁴⁶ Human Rights Commission of Malaysia (SUHAKAM): *Strategic framework on a National Action Plan on business and human rights for Malaysia*, 2015.

audited and certified for their sustainability practices. The MSPO scheme aims to bring about positive social, environmental and economic impacts, while minimising the negative impacts, particularly on people and the environment. It also aligns with many existing national laws and regulations, and best practices on sustainability.

The scheme consists of the development of certification standards; accreditation requirements and notification of certification bodies; application by potential clients for certification audits; supply chain traceability requirements; and the development of procedures to handle complaints. MSPO also consists of seven key principles which form the general requirements for sustainable oil palm management. These include: (i) management commitment and responsibility (principle 1); (ii) transparency (principle 2); (iii) compliance with legal requirements (principle 3); (iv) social responsibility, health, safety and employment conditions (principle 4); (v) environment, natural resources, biodiversity and ecosystems (principle 5); (vi) best practices (principle 6); and (vii) development and new planting (principle 7).

With respect to child labour, the MSPO standard includes a specific criterion to prohibit the use of child labour under Principle 4. Social Responsibility, Health, Safety and Employment Conditions. However, a study conducted by EFECA in 2017, a UK-based consultancy firm found that while the MSPO standard prohibits the use of child labour, it exempts the involvement of children in family farming activities, but emphasizes that the children's involvement must be strictly under adult supervision and does not interfere with their education.⁴⁷ The MSPO certification document under Criteria 4.4.5.14 clearly stipulates that although work by children is allowed for family farming, children must be supervised by adults; not interfere with their schooling; and not be exposed to hazardous working conditions.

It must be noted that none of the initiatives appear to target the piece rate system, found to be a significant driver of child labour in some sectors. Stakeholders highlighted that the piece rate system is a commonly applied pay (wage) system in many sectors including in the plantation sector. The current regulation has clearly stated, regardless of the pay (wage) system that is applied by companies, that there is already a mechanism in place to ensure the workers can earn at least a minimum wage or higher. However, there are not specific guidelines or mechanisms that have been established to prevent the use of child labour in the piece-rate system. Hence, it may be useful to make the NAP a vehicle for dialogue on ways to strengthen the existing regulations concerning wage systems with a view to prevent the use of child labour in the piece rate system.

4.6. Implications for the NAP

There are several recommendations raised by stakeholders with respect to improving and/or expanding the existing national policies with a view to strengthen nation-wide initiatives to eliminate child labour in the country. Many of these strategies do not necessarily require extensive and costly special initiatives but can be implemented within existing frameworks. This is important as experience from developing and implementing NAPs in other countries shows that mainstreaming

⁴⁷ EFECA: *Comparison of the ISPO, MSPO and RSPO Standards*, 2017. https://www.sustainablepalmoil.org/wp-content/uploads/sites/2/2015/09/Efecca_PO-Standards-Comparison.pdf [accessed 12 May 2019].

into existing policies and programmes and making use of existing implementation and oversight frameworks is often a more effective strategy than establishing extensive stand-alone initiatives.⁴⁸ That said, mainstreaming does not preclude special initiatives, for example, to raise awareness on child labour, undertake dedicated research or reach out to groups of particularly vulnerable children when required.

Strengthening education to prevent child labour

Stakeholders are generally aware of the complexity of child labour issues in Malaysia – often linked to migration history and high dependency on migrant workers, labour shortages in select sectors of the economy, as well as the need for economic development, to alleviate poverty and to maintain national security.

Most stakeholders also highlighted that education is essential to prevent child labour to occur. It is the best preventive measure that every state should consider if they wish to eliminate child labour by 2030, as outlined in the SDG 2030. Currently there are pockets of vulnerable children who are not allowed to access formal education in Malaysia. These include asylum-seeking, refugee, stateless and undocumented children that exist in Peninsular Malaysia, Sabah and Sarawak. The existing Malaysian Education Blueprint does not specifically include the need to strengthen education among these “non-citizen” children who are at higher risk of child labour.

Though there are alternative learning schemes available to address the need for education, especially among asylum-seeking, refugee, stateless and immigrant children the capacity is not sufficient to provide quality and recognized education to these children. Stakeholders hence suggested the government consider allowing asylum-seeking, refugee, stateless and undocumented children to access government schools across the country. The government may consider this at least at primary level education.

It is also recommended that the government simplifies administrative requirements for the establishment of alternative learning centres and other related centres (e.g. childcare centres). This includes simpler accreditation/authorization processes and providing technical support to NGOs and community organizations who wish to establish or expand learning centres. Simplification needs to be balanced against the need to ensure that quality standards are maintained and therefore, technical support is essential.

Stakeholders further highlighted that there are significant numbers of children and young persons who are still unable to access learning centres due to geographical barriers or simply there is no available alternative learning centre in their community. By simplifying the administrative requirements, there will be more NGOs willing to establish or expand their learning centres across the country especially in Sabah.

Stakeholders also raised the need to diversify education streams and provide more opportunities for skills-oriented and/or vocational education for students who are not interested in an academic

⁴⁸ ILO: *Mainstreaming child labour issues in key development policies and programmes Sri Lanka: Report of a preliminary review*. (Geneva, 2010). https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_18675/lang-en/index.htm [accessed 12 May 2019]; Also see ILO: *Mainstreaming child labour concerns in education sector plans and programmes* (Geneva, 2011). https://www.ilo.org/global/docs/WCMS_171033/lang-en/index.htm [accessed 12 May 2019].

education. This has the potential to prevent dropouts among, not least in rural areas, as well as indigenous communities (*Orang Asli and Orang Asal*), where dropout levels are higher. This also harnesses young people's full potential in fields other than academia to the benefit of national economic development.

Very significantly, stakeholders also highlighted the need to make primary education compulsory for all children, including asylum-seeking, refugee and stateless children. Compulsory education is recognised globally as one of the most important policy steps towards the elimination of child labour and without free and compulsory education for all children, achieving SDG target 8.7 on elimination of child labour by 2025 is unlikely.⁴⁹ So long as groups of children are excluded from education, they remain highly vulnerable to child labour. Moreover, continuous exclusion of some groups of children will also hinder the achievement of SDG 4 on education by 2030. Hence, promoting educational policy changes to institute free and compulsory education for all children could be considered a strategic priority for the NAP.

Strengthening business responsibility to respect human rights / prohibit child labour

As highlighted several times during stakeholders' engagement, irresponsible companies are the key contributors to child labour cases. Businesses are either unaware or ignorant about the prohibition of child labour and/or simply take advantage of children for cheap labour in order to maximize profit margins. Participants suggested the government to consider implementing the UN Guiding Principles on Business and Human Rights to compensate gaps in business governance and ensure compliance to labour standards – including the prohibition of child labour (SUHAKAM 2019). The government is also suggested to establish a national action plan on business and human rights, support companies and the community to be part of the implementation of national action plan.

Strengthening business standards under Malaysian Sustainable Palm Oil (MSPO) certification

Stakeholders highlighted the need to further improve social and human rights principles and indicators under the MSPO certification standards. Stakeholders acknowledged that the MSPO still needs to be further improved and will be further strengthened based on lessons from earlier implementation. With respect to MSPO which will be made mandatory by the end of 2019, stakeholders highlighted that there are segments of businesses, especially small growers and smallholders that will have challenges to comply with the set standards, including the prohibition of child labour. This is because there are children of small growers and smallholders that are assisting their parents on site for various reasons, including to support their parents to make a living. As such, stakeholders suggested to the government to provide more incentives targeting the small growers and smallholders to commit on these sustainability standards (e.g. provide grants), including strengthening awareness raising and providing alternatives to parents so as to prevent their children being present on site, and/or involved in child labour.

Improve standard operating procedures across policy areas

Stakeholders raised the need for the government to improve standard operating procedures that are currently used by the Welfare Department, Labour Department, Police, Immigration Department or

⁴⁹ ILO: *Child labour and education (official website)* (Geneva, 2019) [https://www.ilo.org/ipec/Action/Education/lang--en/index.htm](https://www.ilo.org/ipec/Action/Education/lang-en/index.htm) [accessed 12 May 2019].

other authorities that deal directly with children. Government officials involved in rescue operations or labour inspections must be supported with appropriate procedures to enable them to respond appropriately, collaborate and to refer children for appropriate services if they find children in child labour. This would also link with the need to improve ways to monitor child labour across different sectors (education, social welfare, labour inspection, etc.) and the standard operating procedures could include steps to record and report on child labour. Establishing such a system of monitoring, recording, reporting and referral is often referred to as a “child labour monitoring system” (CLMS). CLMSs can be established as an element of existing systems, such as child protection systems. Suggestions were made to explore a school based CLMS, where teachers, students and parents could be involved directly or indirectly with the monitoring initiative. A NAP can be a useful vehicle for exploring options and establishing and test a CLMS in any form. Hence, partners in Malaysia may consider including the establishment of a CLMS as a strategic priority for the NAP.

Make social work a recognized profession

Given the limited number of social workers, especially from the side of the government, and the lack of recognition of social workers from the private sector – there was a suggestion to enact a dedicated law to recognize social work as a profession. With this recognition, this profession has the potential to attract more individuals to contribute in widening welfare and social services, such as in providing services to victims of child labour in the country.

Strengthening community/workers/family empowerment

Stakeholders highlighted that parents play a very important role to prevent and discourage their children to get into employment in their early ages. In order to raise awareness among the parents, the government and NGOs have a role to play to reach out to workers and community members in urban and rural areas for awareness raising. The government can also consider leveraging the mainstream media to raise awareness on the negative consequences of child labour. Other mediums of communication including national radio and television stations, as well as social media can be utilized for public messaging about child labour. The Ministry of Education (MoE) also plays an important role in raising awareness among parents on the importance of education. Many parents do not see the value of education. Rather some parents encouraged their children to work or to assist their parents to make a living rather than attending school.

5 Partner capacity to implement the NAP

This chapter looks at the organizations and government departments that are possible implementing partners for the NAP and the departments that can provide leadership and oversight. The chapter is not a full capacity assessment, which is beyond the scope of the background study. Rather, the chapter presents starting points for further dialogue around capacity as an integral component of the NAP formulation process.

5.1. Role and capacity of stakeholders

Stakeholders highlighted that there are various organizations both at federal and state levels whose role and functions, though not specifically dedicated to address child labour issues, have the potential to eliminate root causes and consequences of child labour. A tentative list of these organisations is provided in Table 8.

Table 8. Roles and functions of different stakeholders.

Role and functions	Stakeholder
Law enforcement including ATIPSOM, Employment Act, and Sabah Labour Ordinance.	Various government agencies such as the Labour Department, Royal Malaysian Police, etc.
Approval of workers' dependent passports including workers' children in Sabah and Sarawak.	Immigration Department, Sabah. Sabah and Sarawak's State Governments.
Provide services to children. These include temporary shelter, therapy, mental health and counselling services.	NGOs (e.g. Global Shepherds). Social Welfare Department.
Advocacy and policy reform on child protection and child labour.	NGOs and Bar Associations.
Standard setting or raising standard among businesses.	NGOs (e.g. Earthworm Foundation, Responsible Business Alliance). Malaysian Employers Federation (MEF). Bursa Malaysia / Companies' Commission of Malaysia (SSM). Certification body (e.g. Roundtable Sustainable Palm Oil RSPO) / Malaysian Palm Oil Certification Council (MPOCC) / consulting companies / individual consultants.

<p>Provide training and education and other forms of capacity building to companies on issues related to child labour.</p>	<p>NGOs (e.g. Good Shepherds, Borneo Child Aid Society, Earthworm Foundation).</p> <p>Malaysian Employers Federation (MEF).</p> <p>Certification body (e.g. Roundtable Sustainable Palm Oil RSPO) / Malaysian Palm Oil Certification Council (MPOCC) / consulting companies / individual consultants.</p>
<p>Provision of funds (monetary) to companies for training purposes. This includes training for the prohibition and/or prevention of child labour. Note that this fund was underutilized by many companies.</p>	<p>Human Resource Development fund (HRDF), a government agency.</p>
<p>Community engagement, awareness raising and disseminate information in both urban and rural areas.</p>	<p>NGOs (e.g. Good Shepherds, Borneo Child Aid Society, Earthworm Foundation).</p> <p>Social Welfare Department.</p>
<p>Undertake labour assessments and provide technical support (including prevention of child labour) to businesses in various sectors of economy.</p>	<p>NGOs (e.g. Earthworm Foundation, Responsible Business Alliance).</p> <p>Trade and business associations (e.g. Malaysian Trade Union Congress, Malaysian Employers Federation – MEF).</p>
<p>Providing grievance mechanism to prevent or report cases of child labour (if any).</p>	<p>NGOs (e.g. Earthworm Foundation, Responsible Business Alliance).</p> <p>Trade and business associations (e.g. Malaysian Trade Union Congress, Malaysian Employers Federation – MEF).</p> <p>MAPO (on child trafficking) and Labour Department (Peninsular, Sabah and Sarawak).</p> <p>Social Welfare Department.</p>
<p>Preparation of social report or other form of documentation for intervention. This includes social report to enable children to access shelter.</p>	<p>Social Welfare Department.</p>
<p>Expertise on data collection / identification of child labour and monitoring. Organize community engagement, support and community building.</p>	<p>Department of Statistics Malaysia (DOSM).</p>

	NGOs (e.g. Earthworm Foundation, Responsible Business Alliance).
	International Organizations (e.g. ILO and UNHCR).
	Public and private universities.
Provide technical support (e.g. training) and advice to the government on child labour.	International organizations (e.g. ILO, UNICEF, UNICEF)

Source: Stakeholders' meetings, 2019.

5.2. Strengthening partner capacity

Stakeholders very clearly identified the importance of communication, collaboration and coordination among the different partners that will be tasked to implement the NAP. The recommendations can be used during the NAP formulation process to define and agree upon implementation and oversight mechanisms for the NAP.

Multi-stakeholder collaboration

Stakeholders highlighted that issues of child labour require a concerted effort from various stakeholders. They stressed that the Labour Department alone cannot be expected to solve the issue because child labour has a variety of root causes including limited access to education, no recognition of some children's status, geographical, cultural and language barriers, as well as poverty and social exclusion. Stakeholders hence highlighted the need for multi-stakeholder collaboration to address the root causes and consequences on many fronts. This requires the active participation of multiple stakeholders, such as other government agencies (e.g. Social Welfare Department, Immigration Department, Ministry of Education, etc.), companies and trade associations; as well as local authorities, parents and the community as a whole.

Share information, knowledge and expertise

Stakeholders pointed out that despite the absence of official statistics on child labour, there are existing statistics and case studies that can be best utilized to formulate and implement policies to eliminate child labour. However, stakeholders highlighted that these statistics and case studies are not adequately shared among different stakeholders. As such, stakeholders suggested that there should be a common platform for different stakeholders to share information, knowledge and expertise among themselves. Such a platform would also assist in building trust and knowledge transfer among different stakeholders and would pave the way for more collaboration.

Innovation and exploration

Stakeholders highlighted in many occasions during stakeholders' engagement that there is no one-size-fits all solution to eliminate child labour. As a result of active engagement and collaboration between different stakeholders, it is hoped that there will be more innovation and exploration of

potential solutions to address issues of child labour. For example, stakeholders suggested that there is a need to have a list of companies who are doing well in business and for it to be made public. This will likely create a positive chain reaction among businesses. In doing so, innovative incentives and means to promote good practices must be created to facilitate a chain reaction. Hence the stakeholders suggested that the national policy and strategy should enable a conducive environment to stimulate innovation and exploration of solutions in a multi-stakeholder approach to address good practices including preventing and remedying child labour.

Work in partnership, widening the stakeholder base and building trust

Stakeholders highlighted that collaboration especially between the government agencies, trade unions, businesses and NGOs are limited. There is still an issue of mistrust between different stakeholders. As such, stakeholders suggested that the national policy and strategy to eliminate child labour should pave the way for enhancing the spirit of partnership and trust among different stakeholders. In doing that, the stakeholders, and some mentioned in particular civil society, must be willing to change the way they engage with each other. “Naming” and “shaming” would not result in constructive collaboration to eliminate child labour, according to some stakeholders. Stakeholders also suggested that the stakeholder base must be widened to include other organizations and institutions that are not commonly engaged, such as city council / local authority, as well as religious entities.

Leveraging market-driven initiatives (e.g. certification standard)

Stakeholders noted that the global market requires more efforts from companies regardless of their size and place of operations to prohibit and eliminate child labour. This trend can be seen in the palm oil sector, where global buyers and brands are demanding for a free child labour production of oil palm, including those operating in Malaysia. As a response to this global demand, the global certification standard such as the RSPO, and the national standard such as MSPO – are progressing towards achieving the market demand by introducing their respective standard to prohibit the use of child labour. Stakeholders however, highlighted that the national standard (MSPO) has yet to align with the global standard of prohibiting child labour. Hence, they suggested the government to consider improving the specific criteria with respect to the prohibition of child labour and replicate such an initiative in other sectors beyond the palm oil industry.

Leadership

Stakeholders strongly suggested the government to play a leadership role – by putting in place a strong legislative framework to eliminate child labour. The Ministry of human Resources (MOHR) must be given a strong mandate to implement the law and formulate a coherent policy and strategy to eliminate at scale. Other than the government, stakeholders emphasized that government-linked companies, state-owned companies and other corporate leaders should also play leadership role to build capacity of small and medium-sized enterprises to prohibit and eliminate child labour in the business sector. These big companies should also create incentive-based approach to encourage more small players to play their role in eliminating child labour.

5.3. Implications for the NAP

The background study research and consultations show very clearly, the general agreement on the need for government leadership of the NAP through MOHR and making use of the NAP-TIP framework, is ready to take on the leadership.

Moreover, it was recommended that the partnership for implementation of the NAP should be as inclusive as possible. In addition to relevant government agencies, workers' and employers' organizations, business networks and programmes, youth and child rights organizations, educational institutions, NGOs, faith-based organizations and possible other civil society organizations have potential roles to play in the formulation and implementation of the NAP. To ensure buy-in from all partners, the formulation process must be inclusive (this is discussed further in chapter 6).

The large number of partners involved also makes it critically important for the success of the NAP that solid communication and collaboration channels are established and that these build on trust and mutual respect. The NAP formulation process may in and of itself be a useful vehicle for building trust and partnerships if the process is designed in an inclusive manner.

6 Formulation process of National Action Plan

In terms of the key issues and processes for NAP formulation, stakeholders noted the importance of the NAP as a common platform for cooperation and coordination among all stakeholders. Stakeholders suggested that the NAP should serve as a reference point, agreed upon by all stakeholders, avoid silos, and be properly coordinated, complimentary and avoid duplication.

Stakeholders noted that the NAP will provide an opportunity to coordinate and collaborate among different stakeholders to effect change at the systemic level. However, building trust and willingness to cooperate between stakeholders is important and needed for this to happen. As such, it was suggested that the NAP focus on fostering conversations and new partnerships, and employ a forward-looking, solutions-centred approach.

Stakeholders also emphasised the need for NAP targets to be ‘S.M.A.R.T.’, or specific, measurable, attainable, relevant, and time-bound. However, the NAP should not be too rigid either, and instead be a living document which prioritises issues, but also allows for additional issues to be added later.

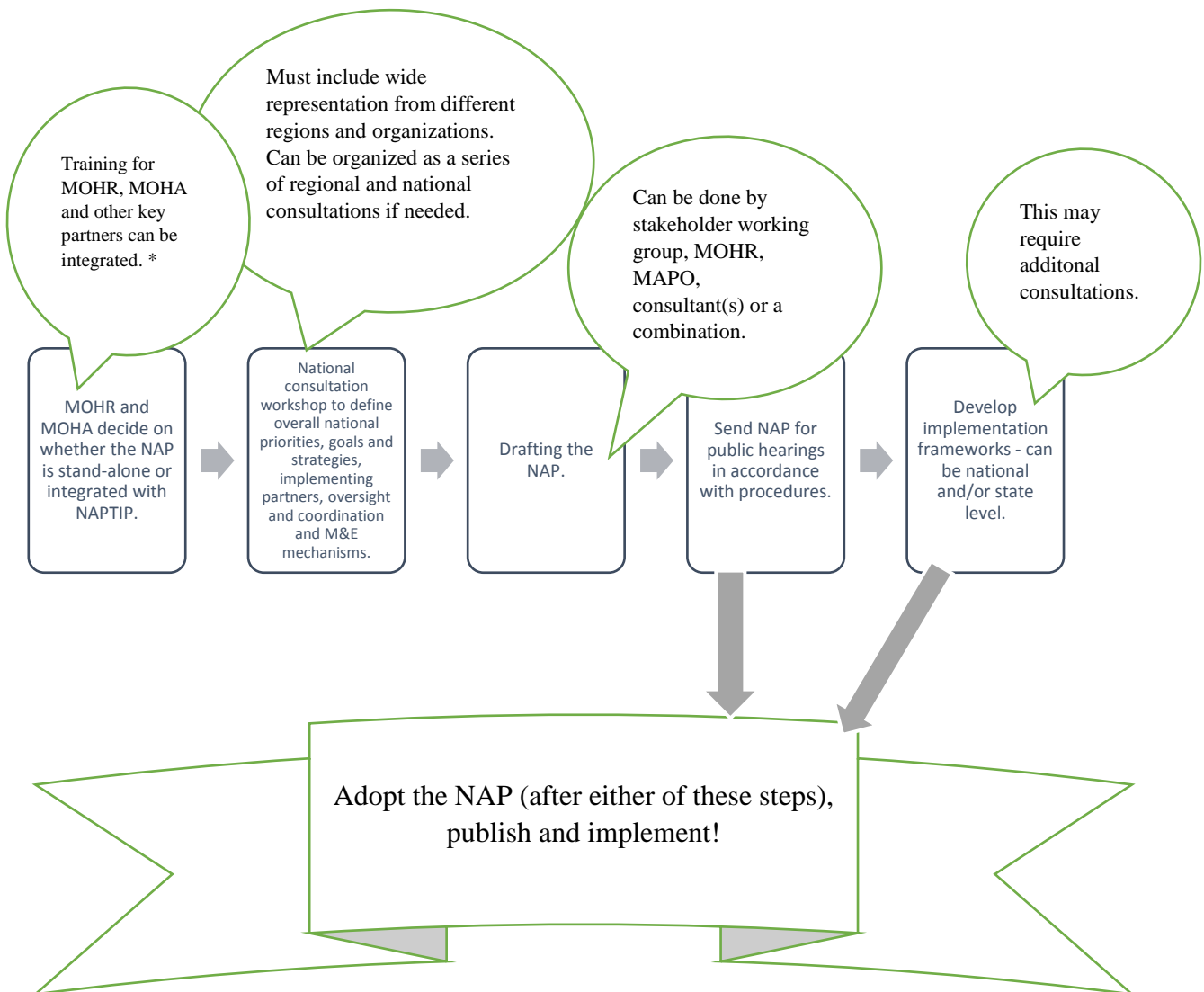
It was highlighted by multiple stakeholders, that the NAP formulation process must be inclusive and engage all possible implementing partners, including (but not limited to) government at federal and state levels, workers’ and employers’ organizations, NGOs, business networks and certification organizations, faith based organizations, youth groups, etc. This may take expanding the consultations processes that have been employed for policy development in the past, for example through holding national and regional consultation workshops to define the key priorities, objectives and strategies of the NAP. It may also take holding special children’s fora or encouraging schools to submit inputs from their students or other mechanisms to solicit inputs from children and young people, whose lives will be impacted by the NAP

Given the regional variation in Malaysia, one of the first steps for the NAP leadership is to decide on how to ensure that this variation is reflected in the NAP development process in the first instance and eventually, in the NAP itself. Regional consultations could be a way forward as could development of an overall national roadmap with state-level implementation plans.

At a very early stage, the NAP leadership must also decide on whether the NAP should be a stand-alone NAP or can be integrated within an existing framework, such as the NAP-TIP frame. Given the low levels of awareness and recognition around child labour, a stand-alone NAP will have the advantage of shining a spotlight on the issue, but it is quite clear from the consultations, that a stand-alone NAP should still pursue mainstreaming and integration strategies.

Moreover, stakeholders identified the need to develop both a robust monitoring and evaluation framework and identify resources needed, available and gaps. A robust M&E framework could be linked with international reporting mechanisms, e.g. SDG reporting, to ease the workload associated with of data collection and storage and to contribute to measurement against national targets.

Figure 5. Tentative (potential) NAP formulation process for Malaysia.



*Initial training for MOHR, MOHA and possibly other key stakeholders would include substance/strategy issues such as:

- Good practices in preventing child labour through mainstreaming and integration with existing frameworks.
- Good practices in direct support to children, building strong monitoring and referral systems.
- Good practices in protecting young workers.
- Gender dimensions of child labour.

As well as issues related to the NAP formulation process itself, for example:

- Organizing effective consultations using participatory methods.
- Including the views of children and young people.
- Ensuring oversight of the process and mobilising policy makers.

7 Summary of key issues and implications for the NAP

This chapter summarises some of the key issues and recommendations across this background study. Please also refer to the sections titled “Implications for the NAP” throughout the report for more details. The chapter is based on the overall conclusion that a NAP on child labour in Malaysia is a useful strategy towards addressing child labour and for Malaysia to live up to its obligations under the relevant ILO conventions to take urgent, time-bound action on child labour. Hence, this report recommends that stakeholders in Malaysia work together to develop and implement a NAP on child labour.

Stand-alone NAP or being part of the NAP-TIP?

On the question whether the NAP on Child Labour should be a stand-alone document, or be part of the existing NAP on Trafficking in Persons – stakeholders raised divergent views. Some stakeholders suggested that the NAP on Child Labour be a stand-alone document for several reasons. A stand-alone NAP will make it easier to identify, prioritise and develop action to eliminate forms of child labour that are not associated with human trafficking, as responses to child labour that are not child trafficking might be different.

Other stakeholders argued that the NAP on Child Labour should be part of the existing NAP-TIP in order to build coherence in its implementation. Participants also highlighted that the current NAP-TIP which is currently under the purview of the MAPO Secretariat already has multi-stakeholder implementing partners including representatives of NGOs and academic institutions. Given the existing institutional arrangement under MAPO, the NAP on Child Labour can easily be implemented without much introduction of administrative tasks and members of civil society (NGOs and academic institutions). However, stakeholders cautioned the potential implications of integrating child labour into the existing NAP-TIP. First, the child labour aspect of the NAP-TIP might be overshadowed by other important aspects such as forced labour.

Regardless of whether stakeholders choose a stand-alone NAP or a child labour NAP embedded under the NAP-TIP, it is essential that roles and responsibilities, communication and oversight are clear and that the NAP on Child Labour links clearly and explicitly with the NAP-TIP and the NAP on forced labour to be developed under NAP-TIP. It is also essential that the NAP on Child Labour recognises that not all child labour is forced labour and that objectives and strategies reflect this and reflect the accelerated deadline for achieving the SDG target 8.7 goal on the elimination of child labour in 2025.

Who leads the NAP on Child Labour?

On the question of which government agency should lead the formulation process and its actual implementation, there is a strong consensus among stakeholders that the **Ministry of Human Resources (MOHR) should be the lead agency** for the development process of the NAP, as well as its actual implementation and monitoring. The government should also consider establishing a steering committee which will be led by MOHR and represented by other government agencies such as the Immigration Department, Welfare Department, Ministry of Education, Ministry of Health, as

well as NGOs and academic institutions. Each of these stakeholders should have their role and functions clearly defined.

Should MOHR collaborate/partner with international organizations?

Stakeholders raised that child labour is a very complex issue, and there is no readily available solution. The government would require continuous support from international organizations mandated and technically capable to support the government. Stakeholders suggested that the government, and in particular the MOHR, to collaborate with the International Labour Organization (ILO) in the development of the NAP on Child Labour, its implementation and monitoring. The mode of this collaboration/partnership can be further determined by the government. Despite this suggestion, stakeholders strongly suggested that the government should take the lead and own the entire process of the national policy and strategy to eliminate child labour. The role of international organizations, such as the ILO, should be limited to provide guidance and technical expertise.

NAP on Child Labour should have a clear monitoring and reporting mechanism

Should the government decide to develop a national policy and strategy to eliminate child labour, stakeholders recommended that such a policy and strategy must have a clear vision aligned with international standards to prohibit child labour and must be time-bound. Such a policy and strategy should also include a transparent monitoring, evaluation and reporting mechanism. This is to ensure that the implementation of the national policy and strategy is continuously reported, measured and improved over the time. The MOHR should take charge of this role and will be accountable for this mandate.

Engagement with trade unions, CSOs, academia and others

Stakeholders highlighted that in the past, the government often engaged trade unions and other relevant stakeholders such as CSOs and academic institutions in the middle or at the final stage of their consultation (in any case of national policy development). Thus, stakeholders strongly suggested that the government should engage with these stakeholders from the early phase of the development process of the national policy and strategy. Furthermore, such engagement should not just be limited to the planning of the NAP, but also throughout the implementation and monitoring phases of the national policy. Stakeholders noted that these organizations have much to contribute in this process as long they are given the opportunity to contribute.

Who are the stakeholders to engage?

The government should determine the relevant government agencies to be part of the development process of the national policy to eliminate child labour, as well as its implementation and monitoring strategy. Other than government agencies and the Chief Minister's Offices (Sabah and Sarawak), the following important stakeholders to engage have been identified, as follows:

- Human Rights Commission Malaysia (SUHAKAM) and other human rights bodies;
- United Nations agencies (e.g. ILO, UNICEF, UNHCR, etc.);
- Embassies and Consulates (e.g. Indonesian Embassy; the Philippines Embassy);

- District office / city council;
- Legal association / Bar Council / State's representative;
- Religious authority / body;
- Youth groups or associations;
- Trade unions / workers' unions (e.g. MTUC or NUPW);
- Employers' association (e.g. MEF);
- Sectors' representatives (e.g. East Malaysia Plantation Association – EMPA);
- Government linked company (GLC) or state-linked company;
- Consumer association (e.g. FOMCA);
- Victims / migrant workers representatives.

Inclusive geographical coverage

Stakeholders highlighted that the development process of the national policy on child labour should be geographically inclusive. The process should include local, regional and national levels of consultation, with relevant stakeholders invited for the consultation. For example, in Sabah participants highlighted that the consultation can be done at least in six localities / district areas namely Kota Kinabalu, Sandakan, Keningau, Tawau, Kudat and Beaufort. Similarly, in Sarawak, the government should identify several key districts where consultations (or any form of engagement) should be held. All stakeholders from different localities must be given an equal platform to raise their issues, challenges and recommendations, to be considered in national policy and strategy on child labour.

Mainstreaming into other key policy areas

Stakeholders highlighted that to effectively eliminate child labour, the government needs to mainstream its commitment to eliminate child labour in other key governmental policies. These include aligning its commitment to eliminate child labour in the 12th Malaysian Plan, educational policy, social protection policy, wage policy, child protection policy, child health policy, human resource-related policy, trade and supply chains, recruitment policy as well as in government bilateral and multilateral trade agreements.

NAP to consider the business case and case studies

Stakeholders noted the unavailability of official statistics to demonstrate the level of prevalence of child labour in the country. They also noted that even without official and comprehensive data, it does not mean that child labour does not exist in Malaysia. As such, the NAP should leverage the business case and case studies as alternatives to official statistics to support the implementation of the national policy on child labour. Besides, development of national statistics and compilation of cases should be one of the key outcomes of the national policy on child labour.

Agree on guiding principles of the NAP right from the start

Stakeholders stressed the need to set the principles of the national action plan on child labour right from the beginning. The NAP should be preventive in nature, comprehensive and inclusive. The NAP should not discriminate any segments of children such as asylum-seeking, refugee, stateless and undocumented children.

Target other vulnerable children

Stakeholders highlighted that there are two other groups of children who are also important to be mainstreamed throughout the development and implementation of national action plan to eliminate child labour which are **gifted children and children with disabilities**. Stakeholders suggested that the development of the national plan to eliminate child labour should include issues and challenges facing gifted children and children with disabilities – both in rural and urban areas. Stakeholders acknowledged that the link between issues facing gifted and children with disabilities is not straight forward.

However, they cautioned that the lack of appropriate facilities and support system for gifted children and children with disabilities would likely cause exclusion, including forcing them to drop out from schools, and ultimately challenge participation in employment in their early ages. Second, the development of a national action plan to eliminate child labour should be able to draw a clear distinction between male and female children (gender dimension) – with regards to their involvement, as well as the root causes and consequences due to their involvement as child labour.

Annex 1. Vocabulary and definitions

Term	Definition/explanation
<i>Alternative education</i>	Alternative education is specifically designed to provide education for children who are not enrolled in the formal education system (e.g. community learning centre).
<i>Alternative/community learning centres</i>	Alternative and/or community learning centre is a form of alternative education that is often run by the local community and NGO.
<i>Asylum seeker</i>	A person whose refugee status has not yet been determined by the authorities but whose claim to international protection entitles him or her to a certain protection on the basis that he or she could be a refugee (UNHCR 2017).
<i>Child marriage</i>	Marriage of a boy or a girl below the legal age of marriage. The legal age for marriage under civil law in Malaysia is 18 years old, but with allowances for girls to marry from 16 with the permission of her parents and with the approval of the Chief Minister of the state of residence. Under Syariah law, the legal marriage is 16 years for females, and 18 years for males.
<i>Children</i>	Children who are 14 years old and below, according to Children and Young Persons (Employment) Act, Sabah Labour ordinance and Sarawak Labour Ordinance.
<i>Children assisting parents</i>	Children who are assisting their parents during their free time (i.e. during semester break, or after school hours), undertaking light work that does not interfere in their schooling.
<i>Dependent of migrant workers</i>	The wife of a migrant worker, and his children under the age of 18 years old, or entirely depending upon him.
<i>Domestic worker</i>	In this paper, we use the term “domestic worker” to refer to a worker who works in a domestic household setting. Under the existing Malaysian labour law, these domestic helpers are currently referred to as domestic servants. However, these laws are under review and it is anticipated that this language will be revised.
<i>Employment Pass</i>	The Employment Pass is issued to expatriates working in Malaysia. In many cases, they are highly skilled, well-paid, professionals earning RM5,000 per month (Categories I and II), although there are also allowances for workers with specific knowledge and skills (Category III) where the minimum wage is set at RM2,500 per month.
<i>Forced begging</i>	An activity where children are forced to beg, and often handover all, or most of their earnings to a person/group who is forcing them to

	beg. Children may be forced to beg either by their own parents, guardians, or by a third party including, distant relatives, community leaders or other individuals.
<i>Migrant worker</i>	Defined by the International Labour Organization (ILO) instruments as a person who migrates from one country to another (or who has migrated from one country to another) with a view to being employed other than on his own account, and includes any person regularly admitted as a migrant for employment. Malaysian legislation refers to migrant workers as “foreign workers.”
<i>Gap analysis</i>	ILO Situation and Gap Analysis on Malaysian Legislation, Policies, and Programmes and the ILO Forced Labour Convention and Protocol 2018.
<i>IMM13 card holders</i>	IMM13 visas are generally a type of temporary residence permit that can be issued under any circumstances set by the Minister, with different conditions attached. They have been used to provide temporary status to refugees, including Filipino refugees in Sabah, as well as Achenese and Rohingya refugees. In this document, IMM13 (or also known as yellow card) cardholders are the citizens of the Philippines who sought political refuge in Sabah during the Moro rebellion in 1970. The card allows the cardholders among the Philippines refugees to stay legally in Sabah, get employed and cannot be repatriated back to his/her country of origin. The card needs to be annually renewed with renewal cost of RM90 a year.
<i>Income generating activities</i>	Any form of economic activity that is not formal employment.
<i>Orang Asal</i>	<i>Orang Asal</i> is an umbrella term referring to the indigenous persons of Malaysia, including Sabah, Sarawak, and Peninsula Malaysia.
<i>Orang Asli</i>	<i>Orang Asli</i> refers to indigenous persons in Peninsula Malaysia only. Officially they consist of 18 sub-groups under the three main groups of Negrito, Proto-Malay and Senoi.
<i>Refugee</i>	A person who is outside his or her country of origin because of a well-founded fear of persecution because of race, nationality, membership of a particular social group, or political opinion (UNHCR Convention relating to the Status of Refugees 1951). Also referred to as ‘UNHCR card bearers’ in Malaysia.
<i>Seasonal work</i>	A temporary and short-term work / employment that is only offered by an employer in certain seasons or months in a particular year.
<i>Stakeholders</i>	Any individual and/or organizational representative that participates in individual and group interviews, and workshop sessions throughout stakeholders’ engagement.
<i>Stateless person</i>	A stateless person is referred to as an individual who is not considered as a Malaysian citizen, under the operation of Malaysian

	and State's laws. It is also aligned with the Convention relating to the Status of Stateless Persons (1954).
<i>Street begging</i>	An activity where children are voluntarily, and/or with the consent of their parents, and/or accompanied by their parents / guardian to undertake begging activities at public areas.
<i>Supply chain</i>	A network between a company and its suppliers to produce and /or distribute product(s) to buyer(s). This network may include different individuals, business entities, activities and geographical locations.
<i>Undocumented persons</i>	Undocumented persons include both Malaysians (indigenous persons, Indians in plantations, and children born out of wedlock whose births were not registered) and non-citizens who do not have proper identity documents, including birth certificates (undocumented migrant workers and their children, etc.).
<i>VP(TE)</i>	<i>Pas Lawatan Kerja Sementara</i> , or Visitor Pass (Temporary Employment), abbreviated VP(TE), are employment passes issued to primarily low-skilled workers earning a base wage of below RM2,500, and in six specific sectors: agriculture, construction, manufacturing, plantations, services, and domestic work. They are interchangeably referred to in this document as foreign workers or migrant workers.
<i>Wage based on productivity</i>	A wage system where workers will be paid based on measurement of the quantity of work and output that he/she delivered in a particular period (e.g. hour, day or week).
<i>Young person – 15 years to 18 years old</i>	Individuals aged between 15 and 17 years old, according to the Children and Young Persons (Employment) Act, Sabah Labour Ordinance and Sarawak Labour Ordinance.

Annex 2. Hazardous work prohibited below the age of 18 years

Enhanced definitions of “hazardous work” under the Children and Young Persons Act (Amendment 2018) – 4th Schedule.

Aspect	Enhanced definitions - “Hazardous work”
Work related to machines, installations and other equipment.	<p>1. Machinery, which includes:</p> <ul style="list-style-type: none"> (a) Any machine tools or production machines which can pose high risk such as drilling machines, grinding machines, cutting machines, lathes machines, scraping machines, power press machines, knitting machines, weaving machines, packaging machines and bottling machines; (b) Steam boilers or internal combustion engines such as diesel engines, turbines and engines for generating electricity; (c) Hoisting and loading machines such as lifts, hoists, cranes, escalators, conveyor belts, gondolas and forklifts; or (d) High pressure vessels. <p>2. Heavy-duty machines such as tractors, rock breakers, graders, asphalt mixers, piling machine and agriculture machinery.</p> <p>3. Installations such as pressure pipes, electricity, firefighting systems and electricity transmission lines.</p>
Work conducted in a hazardous environment.	<p>Work that is exposed to physical hazards, such as:</p> <ul style="list-style-type: none"> (a) Underground work, underwater or in a confined space such as a well or a tunnel; (b) Working at height which can lead to serious bodily injury; (c) Working environment which involves electricity with high voltage power lines; (d) Working in a caisson with limited ventilation; (e) Work that uses electric welding machines or gas welding machines; (f) Work in an environment with extreme temperature and moisture or high-speed wind; (g) Work in an environment with noise or vibration where intensity exceeds the permissible exposure limits; (h) Work to handle, store, use and transport radioactive substances; (i) Work that produces ionizing radiation or work in an environment with ionizing radiation; (j) Work in a dusty environment that is detrimental to health; (k) Work which may lead to electrocution, fire or explosion; or (l) Manual handling work that may pose high risk such as lifting, lowering, pushing, pulling, carrying or moving a load.

<p>Work conducted in hazardous environment.</p>	<p>1. Work that is exposed to chemical hazards, such as:</p> <ul style="list-style-type: none"> (a) Work in relation to production, processing, handling, storage, transport, removal, disposal or treatment of hazardous chemicals as defined in OSH (Classification, Labelling and Safety Data Sheet of Hazardous Chemicals Regulations 2013). (b) Work in relation to production, processing, handling, storage, transport, removal, disposal or treatment of pesticides and schedule waste as defined in the Pesticides Act 1974 [Act 149] and the Environmental Quality (Scheduled Wastes) Regulations 2005. <p>2. Work that is exposed to biological hazards - work in an environment that relates to germs, bacteria, viruses, fungi, parasites and other biological agents.</p>
<p>Work of a certain hazardous nature and condition.</p>	<p>These include:</p> <ul style="list-style-type: none"> (a) Construction work including construction of buildings, bridges, roads, or irrigation projects; (b) Work in the timber industry such as cutting, transporting and unloading trees; (c) Work offshore such as working on a petroleum platform; and (d) Work above or near water where the risk of drowning exists such as lifeguard, fishing activities and work in a water treatment plant.

Source: Children and Young Persons (Employment) Act - (Amendment 2018) (4th Schedule).