

**BACKGROUND RESEARCH TO
THE UNICEF REGIONAL REPORT**
Situation of Children in the Context
of Migration in ASEAN Member States



CASE-STUDY

Migration and Child Protection Risks

Child labour and other protection risks of Migrant children
living on palm oil plantations in Sabah, Malaysia



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Cover photo: Children help off load supplies from a boat for a grocery store in slum settlement on water in the state of Sabah © UNICEF/UN0248129/Shehzad Noorani

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Acronyms

ASEAN	Association of Southeast Asian Nations
BARMM	Bangsamoro Autonomous Region in Muslim Mindanao
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
EAPRO	East Asia and Pacific Regional Office
FGDs	Focus group discussions
IO	International Organisations
MSPO	Malaysian Sustainable Palm Oil
NAPFL	National Action Plan on Forced Labour
NAPTIP	National Action Plan on Anti-Trafficking in Persons
NGOs	Non-governmental Organisation
RSPO	Roundtable on Sustainable Palm Oil
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

1. Executive summary

1.1 Introduction

This case study report presents outcomes of an in-depth exploration of child labour and other protection risks faced by migrant children (including children of undocumented migrant parents) living on palm oil plantations in Sabah, Malaysia. While the palm oil industry has come under intense scrutiny in recent years by policy makers and environmental and human rights activists alike,¹ less is known about the nature and extent of child protection risks on palm oil plantations.

Sabah is a particularly relevant context in which to explore these risks, given that the presence of migrant children on palm oil plantations there is well established. While the exact number of migrant children is unknown, a 2010 report by the Asia Foundation noted *“there are an estimated 50,000 children – the majority of whom are of Indonesian and Filipino origin – living in or around oil palm estates and plantations in Sabah.”*² More recently, the Earthworm Foundation has estimated that there are between 40,000 and 60,000 Indonesian children living in oil palm plantations in Sabah, Malaysia.³ Actual numbers of children are likely to be higher, as these estimates do not include Filipino children. While the problem of child labour within the palm oil industry in Sabah has been acknowledged, more in-depth evidence is needed in order to understand the circumstances and risk factors which drive the practice, as well as the particular vulnerabilities and protection risks faced by migrant children and children of undocumented migrant parents more broadly. This case study draws upon existing evidence as well as in-depth qualitative interviews with a range of stakeholders in an attempt to fill this gap.

The case study is part of a broader research project. In early 2021, Coram International was contracted by UNICEF EAPRO to undertake a Situation Analysis of ‘children affected by migration’ in the countries comprising the Association of Southeast Asian Nations (ASEAN). In addition to Malaysia, case studies have been undertaken in five additional ASEAN states: Thailand, Cambodia, Viet Nam, Lao PDR and the Philippines (Bangsamoro Autonomous Region in Muslim Mindanao (BARM)). The case studies are intended to take a ‘deep-dive’ approach: each explores, in a localised, contextualised manner, a different thematic issue relevant to children’s rights in the context of migration. Case study topics have been selected in close consultation with UNICEF Country Offices, and are considered to be areas which can contribute to a greater understanding of the protection risks faced by children affected by migration.

The case study report which follows will consider the risk factors which make migrant children, and children of undocumented migrant parents more broadly, vulnerable to labour exploitation and involvement in child labour, and the impact on their rights and wellbeing. The case study also aims to understand the broader protection risks faced by children living on palm oil plantations, particularly due to their lack of documentation or legal status. It seeks to establish existing structures and services aimed at preventing and responding to child labour and other protection risks, and to identify effective good practices for replication and scale up. Finally, the Malaysia case study is one of three selected to adopt a particular ‘business lens’: the case study focuses on the impact of private business on the situation of children affected by migration, highlighting both opportunities and risks.

1.2 Findings

In line with previous evidence, the results from the case study suggest a high incidence of children of Filipino and Indonesian migrant workers living with their families in and around plantation sites in Sabah. Children's involvement in work on the plantations was recognised to be widespread and normalised as a practice, usually occurring in the context of providing informal assistance to their parents rather than being hired openly or directly by plantations. Many respondents emphasised that work on the palm oil plantations is highly risky and can be detrimental to children's physical safety, development and education.

Respondents identified a number of underlying factors which, together, contribute to children's involvement in child labour. While limited access to quality education and childcare facilities available on site were recognised to be significant drivers, economic vulnerability of families, low wages provided by plantations and the piece rate system of pay combine to create incentives for engaging children in work to achieve higher yields. Children of migrant workers face numerous barriers to accessing alternative employment opportunities, including lack of documentation, discrimination, and isolation, as well as limited access to education. In this context, as a number of informants explained, taking up work on the plantation may seem like the best option.

Though children cannot access national schools, alternative education opportunities are available in Sabah for migrant children living on plantations. These fall into three broad categories: Community Learning Centres (CLCs) are operated through a partnership between the Indonesian Government and plantation companies in Sabah, and provide services to Indonesian children; Alternative Learning Centres (ALCs) are run through a partnership between the Humana Child Aid Society Sabah and plantation companies, and provide services to all children; and, finally, a number of other Community-based Learning Centres operated by local NGOs and sponsors in rural parts of Sabah provide services to all children. While most of the larger and more established plantations do have schools on site, the quality of education services provided was found to vary considerably between plantations, and secondary education is rarely (if ever) available. Meanwhile, smaller plantations may not provide education services at all.

In addition to child labour, a number of serious protection concerns were identified to be facing children on plantations, including arrest and detention by immigration authorities, violence, trafficking and exploitation. Irregular status was often identified as the root cause of children's heightened vulnerability to risk. Inadequate parental supervision and natural and man-made hazards and risks present in the physical environment of the plantations were amongst other protection concerns highlighted by respondents.

Despite a relatively robust legal, policy and regulatory framework aimed at increasing worker protection and reducing child labour, monitoring and enforcement appears limited in practice. Case study respondents offered varied opinions about the ability for RSPO and MSPO to address child labour in plantations and the impact both have had on sustainability within the sector more generally. Whilst some considered both schemes have led to improvements in workers' rights over the past decade, as well as to the living conditions for children, others were more sceptical about both schemes and the ability of the certification process to accurately assess plantations. In general, respondents considered the bigger plantations and companies to

¹ See for example: Fair Labor Association for the Consumer Goods Forum, 'Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia, November 2018. Available at: https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf.

² Anthea Mulakala, "Sabah's Stateless Children", INASIA, 8 December 2010. Available at: <https://asiafoundation.org/2010/12/08/sabahs-stateless-children/>.

³ Earthworm, 'Training palm oil companies in Malaysia on protecting children in plantations', Aug 23 2021, available at: www.earthworm.org/news-stories/tools-strengthen-child-protection-malaysian-palm-oil.

take the guidelines seriously and attempt to address challenges, for instance through the provision of day-care and schools on site and publicising the standards throughout the plantation. On the other hand, respondents considered mid-size to smaller companies to have lower rates of compliance with RPSO/MSPO.

Case study respondents considered there to be very little, if any, protection systems and services available to migrant children in plantations in Sabah. Similarly, it was noted that children on plantations are not always able or willing to access high quality health and education services, owing to limited availability of clinics and lack of documentation which leads to prohibitive costs for basic healthcare and a reluctance to access services due to fear of being identified as being undocumented.

1.3 Recommendations

In order to address child labour and other protection risks in Sabah's palm industry, active participation, partnership and collaboration is required from a variety of stakeholders. While the government is responsible for protecting the rights of, and providing services to, children, companies themselves are responsible for respecting the human rights of workers, including children, involved in their operations and supply chain.⁴

1.3.1 Legal and policy reform

*"Allow dependent visa for families, it's the reality on the ground. Families are part of the worker. Stop arresting children, they didn't go to Sabah, they were either born there or taken there by parents. They are not at fault and should not be arrested."*⁵

It is recommended that the government of Malaysia strengthen the legal and policy environment to protect children better in plantations in Sabah, including the regulation of employment of children. In particular, it is recommended the government continues to implement the National Action Plan Against Forced Labour (2021-2025) and prioritises the development of the National Action Plan on the Elimination of Child Labour (NAP CL) and National Action Plan on Business and Human Rights (NAP BHR).

Legal and policy reform should focus on increasing avenues to enable children and families to regularise their status, including by: simplifying the process for, promoting access to and awareness raising on birth registration for children born to migrant workers; shortening the timeframe and simplifying the process for documentation of migrants; providing a legal route by which migrant worker parents can bring their children to Sabah with them (i.e. dependent visas available for all families, regardless of income) to prevent arrest and detention of children and enable them to access services. In any case, immigration detention is a child rights violation, is never in the best interests of the child (see below) and should never be an option.

1.3.2 End immigration detention of children

End immigration detention of children. Immigration detention is harmful to children's physical and mental health, has a negative impact on their development and exposes children to the risk of sexual abuse and exploitation.⁶ For these reasons, immigration detention is prohibited under international standards and is recognised as violating children's rights under the CRC. Both the Committee on the Rights of the Child and

⁴ Earthworm Seminar, Children in Palm Oil Plantations, Sabah, 11 May 2022. Considering systemic and structural response to child protection risks in palm oil plantations, *Embode representative*.

⁵ Individual interview, NGO participant, 16 March 2022.

⁶ UN General Assembly, *Global Study on children deprived of liberty*, Note by the Secretary-General, 11 July 2019, A/74/136, para 60; Joint General Comment No. 4, para 9.

Committee on the Rights of Migrant Workers and their Families, as well the UN's Global Study on Children Deprived of Liberty, confirm that detention cannot be justified under the CRC⁷ solely on the basis of the child's migration or residence status, or lack thereof, and that immigration detention conflicts with the child's best interests and right to development.⁸ The Committees also call upon States parties to specifically prohibit immigration detention by law and enforce this provision in practice.⁹

1.3.3 Access to services

*"One of the things that needs to happen is to provide accessibility to national schools – this is one of the key solutions. If these kids do not have proper schooling ... the ALCs are not a proper solution. The companies do not want to be named as companies with child labour, but for them to provide protection they need more support coming from the government and access to national schooling is one key thing."*¹⁰

Government, private sector and NGOs should collaborate to ensure migrant children and families have access to protective services; essential services including health and education; and quality childcare on plantations.

Education

- With regards to education, the government should ultimately work towards guaranteeing access to national schools for all children present in Sabah, regardless of the documents they possess.
 - The policy change introduced in 2019 in order to allow undocumented children with at least one Malaysian parent to enrol in school¹¹ should be extended towards undocumented children with foreign parents;
 - The government should consider introducing a pilot to trial enrolling children living in plantations into national schools in a specific area within in Sabah, with strategies to scale-up based on success of the pilot.
- More resources should be provided to improve the quality of education provided in education facilities in plantations, including through:
 - Establishing and implementing capacity building programmes to improve quality of education in all alternative education facilities in Sabah;
 - Supporting education providers to extend the provision of education to secondary level;
 - Introducing a standardised curriculum based on Ministry of Education guidelines and standards;
 - Amending policy to ensure certificates provided by ALCs and CLCs are recognised by the formal education system;

⁷ Particularly Article 37(b) which provides that a child may only be deprived of his/her liberty as a measure of last resort and for the shortest appropriate period of time.

⁸ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23; hereafter (CRC Committee GC No. 23 (2017)); paras 5 and 10; Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion*, 2012, para 78; UN General Assembly, *Global Study on children deprived of liberty*, Note by the Secretary-General, 11 July 2019, A/74/136, para 20.

⁹ CRC Committee GC No. 23 (2017), para 5.

¹⁰ Individual interview, NGO participant, 25 Feb 2022.

¹¹ UNICEF, *Children out of School. Malaysia: the Sabah context*, 2019, p. 34.

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- Providing training on children’s rights and safeguarding (see recommendation below).
 - In the meantime, the government should consider removing the quota for the number of education facilities in plantations, enabling the establishment of new schools to cater to the needs of all children in Sabah.
 - Whilst day care centres and kindergartens on all plantations would be a positive development, it is crucial that these are staffed by professionals with training on safeguarding and early childhood development.

Child protection

- The government must develop strategies to improve the responsiveness and accessibility of the child protection system to migrant children, whilst simultaneously removing supply and demand side barriers to services experienced by children on plantations.
- In particular, the government should take steps to ensure that:
 - Mechanisms exist to ensure the social welfare department has access to migrant children in plantations;
 - A sufficient quantity of qualified and trained social workers are available in Sabah to meet the protection needs of children in plantations;
 - All social workers are aware that their mandate includes all children in Malaysia, including those who are undocumented and living inside plantations, in accordance with the Child Act;
 - Social workers receive training on the specific needs of migrant children in plantations and how they can be addressed;
 - Children and families in plantations are aware of the child protection services that exist, with clear instructions on how they can access these services.

Health services

- Steps must be taken to ensure all children and families have affordable access to quality healthcare, regardless of their documentation status;
- In particular, the government must work towards ensuring all children have access to basic immunisation after birth.

1.3.4 Accountability and oversight

“The need for better regulation and oversight. The lack of oversight makes it even more difficult to look at the issue of child labour within plantation compounded further by so much corruption.”¹²

Public and private sector must join forces to improve monitoring and oversight of plantations, to increase worker protection and to stamp out child labour.

Specific actions for palm oil companies include ensuring compliance with minimum wage standards to ensure that all workers are paid a decent wage; strengthening due diligence process of recruiters and subsidiaries; introducing child protection and ‘zero tolerance’ child labour policies; monitoring of implementation of policy and MSPO; introduce clear and effective grievance mechanisms; introduce mandatory training for all employees on the child labour policies; develop clear communication materials such as posters on the child

¹² Individual interview, NGO participant, 16 March 2022.

labour policy and display these on visible areas in the plantation;¹³ establish clear systems and procedures to be followed to address and respond to child labour once identified (refer to Earthworm, Child Risk Assessment Framework, 2020, p. 14-18 for detailed suggestions in this regard). The government should focus on increasing compliance with MSPO and labour and minimum wage standards; continue to implement awareness raising programmes on plantations on human rights standards and child labour, and, through development of the NAP BHR (see above), underscore the need to address a range of child rights impacts through responsible business conduct.

1.3.5 Active collaboration and partnerships

Government and non-government stakeholders, including the private sector must continue to work together to address child labour. Joint webinars and consultative events are an excellent way to enhance collaboration between interested parties and ensure an effective and integrated approach.

1.3.6 Strengthen the evidence base on children in plantations

There is a clear need for comprehensive, disaggregated data to inform strategies for improving the protective environment for children on plantations. The Government should commission further research into the scale of irregular migration into Sabah and the number, profile and protection situation of children living in plantations. Research findings should be widely publicised to all relevant government and non-government stakeholders in Sabah, to enable them to develop concrete, evidence-based programmes to address the key challenges facing children.

1.3.7 Implement awareness raising programmes

The government and NGOs should continue to implement awareness raising programmes on the forms of child labour and trafficking and the harm it causes children. It is noted in this regard that the Sabah Department of Labour (JTK) announced at a recent seminar on children in plantations that the department has an upcoming intensive awareness raising programme on forced and child labour in Sabah.

Linked to the above is the need for capacity-building training programmes delivered to practitioners who come into contact with children, including law enforcement, labour inspectors, social workers, plant managers, and teachers in ALC and CLCs. Training programmes should focus on definitions and risks of child labour, harmful effects of detention and safeguarding of children.

1.3.8 Reduce risk of exploitative practices

Plantations must review their policies and processes to reduce the risk of exploitation of workers at all stages of the recruitment process. In particular, plantations should ensure that they comply with minimum wage legislation ensuring all workers are paid an appropriate wage. Further, steps should be taken to minimise the risk that workers accrue large debts. Plantations must ensure workers have immediate access to their personal documents.¹⁴

¹³ See for example recommendations contained in Earthworm, Child Risk Assessment Framework, 2020.

¹⁴ Individual interview, IOM, 29 March 2022.

1.3.9 Improve living conditions in plantations

“Need to improve living conditions... we witness them reporting, and the manager said: ‘why don’t you sleep outside?’”¹⁵

Plantation owners must ensure that plantation sites are safe for children. The Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446) has been amended to cover Sabah,¹⁶ and plantations must ensure compliance with the standards set out in that Act. Proper safety measures must be introduced to protect children and families from all hazards, man-made and natural. Breastfeeding and pregnant mothers should never be exposed to harmful chemicals on site. Companies must ensure sufficient signage is put in place to ensure that children do not enter worksites or areas like ponds, rivers and other areas where hazards exist.

¹⁵ Individual Interview, IOM, 29 March 2022.

¹⁶ Amendments made by way of Emergency Ordinance (Workers’ Minimum Standards Of Housing And Amenities) 2021. See: Official Website of Sabah Ministry Of Science, Technology And Innovation, ‘Warning to provide proper housing for workers’. Available at: <https://ksti.sabah.gov.my/ms/event/warning-provide-proper-housing-workers>.

2. Introduction

2.1 Background and rationale

This case study report presents outcomes of an in-depth exploration of child labour and other protection risks faced by migrant children (including children of undocumented migrant parents) living on palm oil plantations in Sabah, Malaysia. While the palm oil industry has come under intense scrutiny in recent years by policy makers and environmental and human rights activists alike for concerns about sustainability and forced labour,¹⁷ less is known about the nature and extent of child protection risks on palm oil plantations.

Sabah is a particularly relevant context in which to explore these risks, given that the presence of migrant children on palm oil plantations there is well established. While the exact number of migrant children is unknown, a 2010 report by the Asia Foundation noted *“there are an estimated 50,000 children – the majority of whom are of Indonesian and Filipino origin – living in or around oil palm estates and plantations in Sabah.”*¹⁸ More recently, the Earthworm Foundation has estimated that there are between 40,000 and 60,000 Indonesian children living in oil palm plantations in Sabah, Malaysia.¹⁹ Actual numbers of children are likely to be higher, as these estimates do not include Filipino children. While the problem of child labour within the palm oil industry in Sabah has been acknowledged, more in-depth evidence is needed in order to understand the circumstances and risk factors which drive the practice, as well as the particular vulnerabilities and protection risks faced by migrant children and children of undocumented migrant parents more broadly. This case study draws upon existing evidence as well as in-depth qualitative interviews with a range of stakeholders in an attempt to fill this gap.

The case study is part of a broader research project. In early 2021, Coram International was contracted by UNICEF EAPRO to undertake a Situation Analysis of ‘children affected by migration’ in the countries comprising the Association of Southeast Asian Nations (ASEAN). In addition to Malaysia, case studies have been undertaken in five additional ASEAN states: Thailand, Cambodia, Viet Nam, Lao PDR and the Philippines (Bangsamoro Autonomous Region in Muslim Mindanao (BARM)). The case studies are intended to take a ‘deep-dive’ approach: each explores, in a localised, contextualised manner, a different thematic issue relevant to children’s rights in the context of migration. Case study topics have been selected in close consultation with UNICEF Country Offices, and are considered to be areas which can contribute to a greater understanding of the protection risks faced by children affected by migration.

The case study report which follows will consider the risk factors which make migrant children, and children of undocumented migrant parents more broadly, vulnerable to labour exploitation and involvement in child labour, and the impact on their rights and wellbeing. The case study also aims to understand the broader protection risks faced by children living on palm oil plantations, particularly due to their lack of documentation or legal status. It seeks to establish existing structures and services aimed at preventing and responding to child labour and other protection risks, and to identify effective good practices for replication and scale up. Finally, the Malaysia case study is one of three selected to adopt a particular ‘business lens’: the case study focuses on the impact of private business on the situation of children affected by migration, highlighting both opportunities and risks.

2.2 Research aims and questions

The **aim** of the research was to develop an in depth, contextual understanding of child labour and other protection risks faced by migrant children, including children of undocumented migrant parents²⁰, living on palm oil plantations in Sabah. This research considered: the risk factors which make migrant children vulnerable to labour exploitation / involvement in child labour; the nature and extent of migrant children's experiences of child labour; and the impact on their rights and wellbeing. The research further aimed to understand the broader protection risks faced by children living on palm oil plantations, particularly due to their lack of legal status. Finally, the research sought to identify existing structures and services aimed at preventing and responding to child labour, run by Government, NGOs and the business community in Sabah and elsewhere, and, where possible, to identify good practices for replication and scale up.

The Malaysia case study is one of three selected to adopt a particular 'business lens': the case study will focus in on the impact of private business on the situation of children affected by migration, highlighting opportunities and risks.

2.3 Research questions

Four specific **research questions** were developed to guide the case study, as follows:

1. What are the underlying drivers and risk factors that increase migrant children's vulnerability to child labour and labour exploitation in the palm oil industry? How, if at all, have the Covid-19 pandemic and accompanying restrictions influenced these trends?
2. What is the nature of migrant children's involvement in labour in the palm oil industry? What are the working conditions they experience? To what degree are they exposed to exploitation and abuse?
3. What are the other protection risks faced by migrant children living on palm oil plantations? How do these impact their rights and well-being?
4. What are the approaches taken by Government, NGOs and the business community to preventing and responding to child labour in the palm oil industry?
 - a. What are the regulatory and oversight regimes in place, and to what degree are they implemented?
 - b. What are the protective systems, services and interventions available to support migrant children and their families and how effective / accessible are they?
 - c. What are the current gaps and challenges in child labour prevention and response?

2.4 Definitions of key terms

The study uses the following understandings of key terms and concepts:

¹⁷ See for example: Fair Labor Association for the Consumer Goods Forum, 'Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia, November 2018. Available at: https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf.

¹⁸ Anthea Mulakala, "Sabah's Stateless Children", INASIA, 8 December 2010. Available at: <https://asiafoundation.org/2010/12/08/sabahs-stateless-children/>.

¹⁹ Earthworm, 'Training palm oil companies in Malaysia on protecting children in plantations', Aug 23 2021, available at: www.earthworm.org/news-stories/tools-strengthen-child-protection-malaysian-palm-oil.

²⁰ Both categories together will be referred to as 'migrant children' going forward.

‘Children affected by migration’ (CABM) is a broad umbrella term that encompasses children (those aged under 18 years)²¹ who move or have moved within their country of origin, or across the border into another State, temporarily or permanently. This includes children who migrate voluntarily or involuntarily, whether as a result of forced displacement due to national disaster or conflict, or for economic, social, educational or cultural reasons; or individually or to accompany parents who have migrated internally. It also includes children affected by the migration of a parent / parents (‘children remaining behind’).²²

The focus of the study is on **child protection** – the prevention and response to “*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*”²³ against persons under 18 years of age.²⁴ This includes an examination of the types of protection risks to which children affected by migration may be exposed and the response of child protection systems and services to these risks.

“Child Labour”

The study utilises the International Labour Organisation (ILO) definition of child labour utilised by Malaysia’s National Action Plan against Forced Labour 2021-2025: “*Any work done by persons below 18 years old that are mentally, physically, socially or morally dangerous and harmful to children and/or young persons and/or interferes with their schooling by depriving them of their dignity, opportunity to attend school, obliging them to leave school prematurely, or requiring them to attempt to combine school attendance with excessively long and heavy work.*”²⁵

Information Box 1: ‘Children affected by migration’ - Unpacking legal categories

Children affected by migration may fall within a range of different legal and non-legal categories and statuses. While these categories may be difficult to apply in practice as they tend to overlap and the circumstances of children can fluctuate, causing them to move between legal categories, how child migrants are labelled (i.e., their status), can have important ramifications for the way they are treated and the services to which they are entitled in international and domestic laws.

²¹ This is in accordance with international definitions of childhood, in particular, as set out in the Convention on the Rights of the Child, Article 1. It should be noted that in the domestic law of some ASEAN States, such as Thailand, children who have attained majority through marriage are not included within the definition of ‘child’ in the Child Protection Act 2003. In addition, in some domestic laws, such as the Philippine Republic Act 7610 a child over the age of 18 who cannot fully take care of himself because of a physical or mental disability or condition is included within the definition of a child.

²² Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of migration, CRC/C/GC/22 16 November 2017, para. 9. See also UNDESA which defines an international migrant as anyone who changes his or her country of usual residence 1 United Nations, Department of Economic and Social Affairs (1998). Recommendations on Statistics on International Migration, Revision 1. Sales No. E.98.XVII.14; and International Organization for Migration: *Who is a migrant?* www.iom.int/who-is-a-migrant, accessed 6 April 2021.

²³ Convention on the Rights of the Child, Article 19(1); UN Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13 (CRC GC No. 13 (2011)), para 4.

²⁴ This is in accordance with Article 1 of the CRC.

²⁵ Government of Malaysia, Ministry of Human Resources, National Action Plan against Forced Labour, 2021-2025, p. 15 available at: <https://www.mohr.gov.my/ebook/National%20Action%20Plan%20On%20Forced%20Labour/NAPFL%202021-2025.pdf>.

Migrant children outside their country of origin

Migrant children who are outside their country of origin may be regarded as being in a ‘regular’ situation or an ‘irregular’ situation (sometimes referred to as ‘documented’ and ‘undocumented’). Migrants in a regular situation are those who enter and stay in a country in accordance with that country’s immigration laws and regulations or in accordance with international agreements to which the State is a party.

A migrant in an irregular situation is “a person who lacks legal status in a transit or host country due to unauthorized entry, breach of a condition of entry, or the expiry of a visa. The definition includes those persons who have entered a transit or host country lawfully but who have stayed for a longer period than authorized, or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation).”²⁶

Migrant children who are living outside their country are usually referred to as accompanied, unaccompanied or separated. Accompanied child migrants are those who migrate and remain with their parents or legal caregivers and children who are born in destination countries to migrant parents. The CRC defines unaccompanied children as those “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”²⁷ Separated children are “children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”²⁸ Often, these two terms, ‘unaccompanied’ and ‘separated’ are used interchangeably and refer to children who are separated.

It has been noted that the distinction between the definitions of accompanied and unaccompanied / separated children may be difficult to apply in practice. For instance, some children may begin migrating alone, but may meet family members on the way or at their destination. Conversely, they may begin migrating with parents but be separated when their parents are arrested, detained or deported.

Refugees and asylum-seekers

According to the Refugee Convention 1951, a refugee is a person who is: outside their country of origin; has a well-founded fear of persecution due to his/her race, religion, nationality, member of a particular social group or political opinion; and is unable or unwilling to return. An asylum seeker is “an individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which the claim is submitted.”²⁹ Refugees are granted certain protections under international law, such as the prohibition against refoulement, which means they cannot be returned to a country where they would face persecution. Returnee refugees are those “who have returned to their country or community or origin.”³⁰

²⁶ International Organisation on Migration, ‘Key migration terms’, available at: iom.int/key-migration-terms

²⁷ UN Committee on the Rights of the Child, ‘General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin’, 1 September 2005, CRC/GC/2005/6 (CRC Committee GC No. 6 (2005)), para. 7.

²⁸ UN Committee on the Rights of the Child, ‘General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin’, 1 September 2005, CRC/GC/2005/6 (CRC Committee GC No. 6 (2005)), para. 8.

²⁹ United Nations High Commissioner for Refugees, Master glossary of terms, Rev. 1, 2006, UNHCR: Geneva.

³⁰ Ibid.

Children affected by migration of parents / caregivers

Children who remain in their home country or community while one or both parents migrate either within or outside their country of origin / residence are also considered to be a group of children affected by migration. Most left behind children are cared for by family members but in a minority of cases, may be placed in residential care homes or left to fend for themselves.

Stateless children

The study also includes children whose parents originated from another country but who are stateless; this means that they are “not considered citizens or nationals under the operation of the laws of any country.”³¹ It also applies to parents who have nationality but were / are unable or failed to pass on their nationality to their children as well as those with undetermined nationality.

Victim of child trafficking

Child trafficking is a legal term that refers to “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or for other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person for the purposes of exploitation.” However, it should be noted that force or coercion is not required to be established for trafficking in children to occur. Children affected by migration will be considered to be victims of human trafficking where they fall within the legal definition of trafficking; a legal category that results in special protections under international law. Child trafficking is also a child protection risk and a can be considered, in some cases, to be a driver of migration.

³¹ United Nations Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117), art. 1.

3. Methodology

3.1 Methodological approach

The research methodology for the case study was qualitative, designed to gather data which is in-depth, meaningful and explanatory, and can complement existing quantitative evidence. Qualitative data is particularly useful for exploring complex and contextual issues and establishing why trends and patterns are occurring.

The methodology was action-oriented; aimed at gathering data to inform the development of practicable and actionable recommendations for policy and programming. To this end, the methodology employed a **consultative approach**, to ensure that the perspectives and priorities of key stakeholders – including from government, the business community and civil society in addition to UNICEF – were considered.

It was hoped that the methodology would also include **participatory** elements, to generate an understanding of the research questions from the perspectives of children living on palm oil plantations and their families and carers. Unfortunately, owing to challenges accessing this group, it was not possible to include participatory elements.

3.2 Research process and phasing

The research was carried out according to the following phases:

1. **Inception phase:** This included the development of the concept note, methodology, data collection tools, data collection plan and ethical protocol development and review.
2. **Data collection phase:** This included:
 - a. An orientation session for the national researcher;
 - b. The piloting of data collection tools. Data collection tools were tested to ensure they are practical, usable and able to maximize active and responsive participation by those involved in the research (the piloting phase can also provide a useful form of training for researchers);
 - c. Finalisation of data collection tools, based on the pilot; and
 - d. The collection of data.
3. **Data analysis and report drafting:** This included a thematic coding and analysis of data.
4. **Validation and finalisation of report:** This included a range of interactions with key stakeholders to ensure the validity of findings.

3.3 Data collection methods

3.3.1 Desk Review

A desk review of relevant laws and policies, reports (including literature from the UN, NGOs and the business community), academic articles and news articles available in English related to child labour and other protection risks faced by migrant children living on palm oil plantations in Sabah was carried out. Information was gathered through online searches, including in academic databases, the ASEAN website and relevant news sites. Further literature was provided by UNICEF Malaysia and gathered through interviews with key

informants. The findings from the desk review informed the development of the concept note, methodology and tools, and have been included where relevant in this report to support findings from qualitative interviews.

3.3.2 Key informant interviews

Key informant interviews were conducted with stakeholders at national and sub-national levels who hold in depth, expert and practical knowledge relating to migrant children in the palm oil industry and, more specifically, relating to child labour.

These interviews aimed to gather information relevant to the research questions, including on the nature and extent of child labour in the palm oil industry, the underlying drivers, risk factors and vulnerabilities that put (particular) migrant children at-risk, and migrant children's experiences of exploitation and other protection risks. Questions were also asked about the regulatory measures, systems and services in place to prevent and respond to child labour and other protection risks. Finally, interviews were used as an opportunity to gather informants' perspectives on current gaps in child labour prevention and response and their recommendations on measures that can be taken to fill these gaps. Semi-structured topic guides were developed to guide interviews.

Please refer to Annex B for the complete list of key informant interviewees. In total, 21 interviews were carried out with 25 participants. Participants included **government stakeholders** (national and Sabah State level); representatives of **palm oil companies and their business partners and subsidiaries**; international organisations (IO) and NGOs concerned with child labour and the rights of child migrants; and informants with first-hand experience working with migrant children in the palm oil plantations, including those involved in the **direct provision of services**.

3.3.3 In-depth life history interviews

The original intention was to conduct a series of in-depth life history interviews with migrant children and their parents and caretakers living and working on palm oil plantations in Sabah. In particular, the research team had planned to conduct interviews with migrant children who are working or have had experiences of child labour in the past. Due to challenges with access, it was not possible to interview migrant children for this case study. Three parents working on an independent plantation were interviewed as a group.

3.4 Sampling

Sabah was proposed as the **research site** for the case study in light of the high incidence of migrant children on palm oil plantations and the growing body of evidence documenting the risks they experience.³²

Participants for **key informant interviews** were selected through purposive sampling; professionals and stakeholders with specific knowledge of the issue or who have particular positions or mandates relating to child labour were identified and selected to participate. Participants were accessed through UNICEF Malaysia's Government and NGO partners. Researchers endeavored to select participants who represent a broad range of perspectives across relevant sectors (e.g. government, private sector, IO and NGO stakeholders).

³² See for example: Ministry of Plantation Industries and Commodities, "The Employment Survey in oil Palm Plantations, Malaysia 2018", p. 68 – 69; Wahab, A. 'Understanding Children Assisting Parents, Working Children and Child Labour in the Palm Oil Sector in East Malaysia (Sabah)', Institute of Malaysian & International Studies (IKMAS), National University of Malaysia (UKM).

Participants for **life history interviews** were intended to be selected according to maximum variation sampling, in which the aim will be to develop a sample that represents diversity in terms of: gender, age, place of origin, socio-economic situation etc. Unfortunately, due to challenges with accessing participants, the research team were not able to meet the desired sample for the life history interviews.

3.5 Analysis and validation

All interviews were transcribed in English and uploaded into Nvivo software. Data was reviewed and coded to identify key themes, connections and explanations relevant to the research questions. The team used a thematic analysis approach to exploring qualitative data. A validation exercise was undertaken in November 2022 to validate the research findings, gather additional explanations and ideas, and ensure that recommendations are practicable and actionable.

3.6 Limitations

Constraints / limitations	Mitigating strategies
Research findings may have been influenced by reporting bias and recall bias.	There is always the risk that professional stakeholders have selectively revealed or suppressed information, hoping to 'look good' rather than to present the realities of their work. To mitigate against reporting bias, the research team emphasised the anonymity and confidentiality of the research to stakeholders, in order to encourage honest, transparent responses.
Limited data collection methods.	The methodology for the research was developed to accommodate travel restrictions in place in Malaysia at the time of writing in light of the Covid-19 pandemic. Some data was collected remotely. There are some limitations to collecting qualitative data remotely; technical and connectivity issues have the potential to interrupt the interview, and it can be more difficult for the interviewer to build a 'rapport' with the participant, which may discourage the participant from sharing freely and openly, ultimately decreasing the quality of the data collected. There are also privacy issues to consider: both researcher and participant will have to agree to position themselves in a sufficiently private location, out of earshot of others. Where possible, research was conducted in person by our national research counterpart.
No direct child participation.	Due to issues relating to access, the study did not include interviews with children. Although this meant children did not have direct participation in the research study, children's views and experiences were incorporated indirectly through drawing upon

	<p>secondary literature, and asking stakeholders to recount what children have told them. This helped to ensure children's views and perspectives are reflected in the research findings and recommendations.</p>
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4. Context: Migration and the Palm Oil industry in Sabah

Malaysia is one of the main ‘destination’ countries for intraregional migration in the Southeast Asian region, second only to Thailand. Malaysia is also one of three countries (the others being Thailand and Indonesia) which together host 99 per cent of asylum-seekers and refugees in the Southeast Asian region.³³ Malaysia’s economy is highly reliant on migrant labour: it is estimated that the country hosts two million documented and an even greater number of undocumented migrant workers, with foreign workers constituting upwards of 30 per cent of the country’s workforce.³⁴ The majority of migrants originate from Southeast Asian countries with comparatively less robust economies, such as Cambodia, Indonesia, Lao PDR and Myanmar. While it is not possible to determine the exact number of migrants in Malaysia at a particular time, unofficial estimates range from 1.4 to 3 million.³⁵ The variability in numbers is partly due to the fact that a large proportion of migration occurs irregularly, outside of Malaysia’s migration laws and regulations: a study of over 1,800 migrant workers from Cambodia, Lao PDR, Myanmar and Viet Nam in Malaysia and Thailand in 2016 found that 74 per cent of respondents had migrated through irregular means.³⁶ Migrants work across a range of sectors, including the service, hospitality, construction, manufacturing and agriculture sectors, and palm oil plantations. It is estimated that two-thirds of those working in the palm oil industry in Malaysia and Indonesia combined (more than 2.5 million people) are migrants.³⁷

4.1 Migration patterns in Sabah

Sabah is a Malaysian state located in the northeast of the island of Borneo. It borders the Malaysian state of Sarawak to the southwest, Indonesia’s North Kalimantan province to the south, and the Sulu, Celebes and South China seas to the north, northeast and northwest. Sabah shares a maritime border with the Philippines which is located just northeast of the island.

³³ Migration data portal, Migration data in Southeastern Asia (data from 2020), available at: [https://migrationdataportal.org/regional-data-overview/south-eastern-asia#:~:text=Within%20South%2Deastern%20Asia%2C%20the,Nam%20\(UNESCO%2C%202016\)](https://migrationdataportal.org/regional-data-overview/south-eastern-asia#:~:text=Within%20South%2Deastern%20Asia%2C%20the,Nam%20(UNESCO%2C%202016).).

³⁴ United States Department of State, Trafficking in Persons Report 2021, p. 373.

³⁵ IOM, ‘Malaysia Info Sheet’, March 2021, accessed at:

https://www.iom.int/sites/g/files/tmzbdl486/files/country/docs/Malaysia/infosheet_2021_v6.pdf.

³⁶ ILO, IOM and Rapid Asia, *Risks and rewards: Outcomes of labour migration in South-East Asia*, 2017, p. 33.

³⁷ Cramb, R, and McCarthy, J.F. ‘Characterising Oil Palm Production in Indonesia and Malaysia’, in Cramb, R, and McCarthy, J.F., eds., *The Oil Palm Complex* (Singapore, 2016) 27-77 – referenced in ‘European Commission, DG Environment, ‘Study on the environmental impact of palm oil consumption and on existing sustainability standards’, 07.0201/2016/743217/ETU/ENV.F3, available at: https://ec.europa.eu/environment/forests/pdf/palm_oil_study_kh0218208enn_new.pdf.

Figure 1: Map of Malaysia



Source: Geology.com³⁸

Migration flows in Sabah are dominated by migrants from Indonesia, and, to a lesser extent, the Philippines. While there has been a cross border flow of migrants between Sabah and Indonesia for decades, migration rates increased significantly in the 1980s, driven by demand for low-skilled labour, particularly in the plantation, construction, livestock, forestry, and fishery sectors. Migrant flows from Indonesia include both circular and permanent migration, with migrants and their family members moving back and forth between the two countries. While many Indonesian migrants enter the country legally, arriving by ferry or plane with an entry or tourist visa, a significant proportion also come to Sabah through irregular routes, arriving at informal ports by boat.³⁹

Migrants from the Philippines are primarily former refugees and their descendants, who fled civil conflicts in the Southern part of their country in the 1970s. Many have lived in Sabah for multiple generations, and have no intention of returning to the Philippines. As one informant explained; *“many southern Filipinos identify a lot with the Malaysian culture. Historically, southern Filipinos have felt that they are discriminated against in the Philippines, a country that is predominantly Catholic. In my interactions with them, they feel they belong here as compared to the Philippines. When Southern Filipinos migrate here, they tend to stay here.”*⁴⁰ As is discussed further below, a significant proportion of Filipino migrants lack formal legal status or documentation, placing them at risk of various forms of exclusion, exploitation and statelessness.⁴¹ Historically, Filipino migrants have worked primarily within the service and tourism industries, although more recently they have begun working on palm oil plantations, due in part to a reduction in the numbers of migrant workers from Indonesia.⁴²

³⁸ Geology.com, “Malaysia Map and Satellite Image”, <https://geology.com/world/malaysia-satellite-image.shtml>.

³⁹ Mahadi, S. et al. Indonesian Labour Migration to Sabah: Changes, Trends, Impacts, School of Social Sciences Discipline of Geography, Environment and Population The University of Adelaide, available at: <https://digital.library.adelaide.edu.au/dspace/bitstream/2440/84693/8/02whole.pdf>, p 200.

⁴⁰ Individual interview, NGO participant, 9 March 2022.

⁴¹ UNHCR, Ending Statelessness in Malaysia, available at: <https://www.unhcr.org/ending-statelessness-in-malaysia.html>.

⁴² Due to the impact of Covid-19 on migration flows, and to the development of a new administrative capital in Indonesia, which has created domestic employment opportunities.

4.2 Migrant labour and the palm oil sector in Sabah

“Sabah needs migrant workers because not only are Malaysians not that interested in being a plantation worker – we just don’t have a big population here. We depend on migrants.”⁴³

Malaysia is the world’s second largest producer and exporter of palm oil, providing 31.1 per cent of the global share in exports in 2020.⁴⁴ Sabah contains just under a third of Malaysia’s palm oil plantations: in 2020 there were 1.54 million hectares of palm oil plantations in Sabah, comprising 27 per cent of Malaysia’s planted palm oil.⁴⁵ Due to its labour-intensive production processes and demand for cheap labour sources, the palm oil industry relies heavily on migrant labour. As of 2017, about 77 per cent of palm oil plantation workers in Malaysia were foreign nationals,⁴⁶ with the vast majority of these from Indonesia. The dominance of Indonesian workers in the palm oil sector is particularly pronounced in Sabah, where over 80 per cent of palm oil plantation workers are estimated to be from Indonesia. This is largely due to the geographical proximity between palm producing regions of Indonesia such as Kalimantan, which borders Sabah’s southern territories, where palm oil plantations are concentrated. Furthermore, Indonesian workers are particularly sought after because of their familiarity with and experience in the palm oil sector.

4.2.1 Children on palm oil plantations

Migrant workers in Sabah tend to live on site at the plantations in provided accommodation, and many live together with their families. While the exact number of migrant children is unknown, the Earthworm Foundation has estimated that there are between 40,000 and 60,000 Indonesian children living in oil palm plantations in Sabah, Malaysia⁴⁷, while the Government of Indonesia estimates the number to be around 60,000 Indonesian children living in or around plantation areas in Sabah.⁴⁸ Actual numbers of children are likely to be higher, as these estimates do not include Filipino children.

This trend is supported by qualitative data, with respondents emphasising that it is very common for migrant workers to have their families living with them on the plantations, despite the fact that it is often not legal to do so (this is explored further in section 5.2.1 below). Workers either send for their families once they have settled in on the plantation or, in some cases, establish a family after arriving in Malaysia.

“Usually, the father comes first and then the families follow suit or they end up settling down with someone from back home here. There will always be a family unit even though the law does not allow it. They all end up using the back door.”⁴⁹

“Even in the case of the new economic migrants - it will be the father coming over first, followed by the wife and then they will settle down here and have a family or their children will follow from the villages. But they definitely have families here.”⁵⁰

⁴³ Individual interview, Health and Safety Officer, FGV Plantation, Sabah.

⁴⁴ OEC, Palm Oil, webpage, available at: <https://oec.world/en/profile/hs/palm-oil?cumulativeMarketShareSelected=share>.

⁴⁵ Statista, webpage, available at: <https://www.statista.com/aboutus/our-research-commitment/1956/r-hirschmann>.

⁴⁶ Borneo Post, 2017. Available at: <https://www.theborneopost.com/2017/08/06/77-of-plantation-workers-are-foreigners/>.

⁴⁷ Earthworm, ‘Training palm oil companies in Malaysia on protecting children in plantations’, Aug 23 2021, available at: www.earthworm.org/news-stories/tools-strengthen-child-protection-malaysian-palm-oil.

⁴⁸ Earthworm, ‘Children in the plantations of Sabah: Stakeholder Consultation Workshop Report – Challenges for Businesses and Recommendations for Improved Sustainability Practices’, 2017.

⁴⁹ Individual interview, NGO participant, 9 March 2022.

⁵⁰ Individual interview, NGO participant, 9 March 2022.

“The law in Malaysia actually states that the women [wives] cannot come – only the men can come and work here. But it is impossible to imagine a man coming to work here without his wife or family. It’s very rare. If they do come here alone, they will end up marrying here and having a family. The issue then is the children...”⁵¹

Findings suggest that the vast majority of children living on palm oil plantations are accompanied; cases of unaccompanied children on the plantations would appear from the responses from participants to be very rare.⁵²

4.2.2 Legal status of migrant workers in Sabah

“Migrants in Sabah are really fluid. They come and go both legally and illegally.”⁵³

“Most workers here in Sabah are undocumented. They may have come here legally with proper documentation but they ended up being undocumented due to expiration or overstay. To renew a legitimate work pass is expensive and it requires the business owners to be proactive..”⁵⁴

As the quotes above reveal, while some of the migrant workers in Sabah possess valid documents proving their right to live and work there, many are undocumented, having entered the country irregularly or their documentation has expired. When asked about the legal status of migrant workers, respondents distinguished between Indonesians, most of whom are able to access valid passports and temporary work permits, and Filipinos, many of whom have been living in Sabah undocumented for generations.

Work permits granted to Indonesian migrant workers allow the holder to live and work in Sabah for up to five years, at which point they must return to Indonesia and apply for a new permit. According to respondents, workers often overstay in practice, as this requirement is burdensome and inconvenient for employers and employees alike. Several suggested that employers may even deliberately avoid renewing permits in order to ensure their continued access to a cheap source of labour. Migrants who arrive legally may later become irregular if they change employers in breach of permit requirements, causing the permit to be revoked, or if they fail the foreign worker’s medical examination, meaning their permit will not be extended.⁵⁵ In an attempt to address irregular migration, the government began a scheme in 2015, under which family visas could be issued to foreign workers in Sabah who earned at least RM 2,500 Malaysian Ringgit (US\$568) a month.⁵⁶ Despite this, many families continue to enter irregularly.

Before the COVID-19 pandemic an amnesty programme for irregular migrant workers was arranged through bilateral collaboration between the Malaysian and Indonesian governments, facilitated by the Indonesian consulate in Sabah. The Indonesian consulate is also reportedly proactive in registering the children of *documented* Indonesian migrants and providing them with Indonesian passports. Indeed, respondents consistently emphasised that regularising their status and obtaining documentation is easier for Indonesian

⁵¹ Individual interview, education provider, 9 March 2022.

⁵² Individual interviews with multiple participants.

⁵³ Individual interview, NGO participant, 16 March 2022.

⁵⁴ Individual interview, NGO participant, 16 March 2022.

⁵⁵ Asia Monitor Resource Centre (AMRC), ‘Exploited and Illegalised, The lives of Palm Oil Migrant Workers in Sabah, 2019, available at: https://www.amrc.org.hk/sites/default/files/Exploited%20and%20Illegalised_AMRC%20%28160120%29_New.pdf, p 56.

⁵⁶ Earthworm Foundation, ‘Children in the Plantations of Sabah: Stakeholder Consultation Workshop Report’, 2017, accessed at: <https://www.earthworm.org/uploads/files/Children-in-Plantations-of-Sabah-2017-report.pdf>.

migrants, largely due to the presence of the Indonesian consulate in Sabah. However, the children of undocumented Indonesian migrants cannot be registered, placing them at risk of statelessness.⁵⁷

Respondents consistently explained that Filipino migrant workers are more likely to be undocumented than Indonesians. While many former Filipino refugees were granted legal recognition through an IMM13 card in the 1970s and 80s, this legal status cannot be passed on to their children, leaving second, third and fourth generation Filipino migrants without documentation.⁵⁸

More recently another wave of Filipino migrants has entered Sabah through irregular channels, pursuing employment opportunities. As one informant explained: *“We have so many islands and we are also geographically so close to the Philippines – you can see Palawan Island from Kudat, it’s that near. So many migrants from the Philippines here are undocumented.”*⁵⁹ There is no Filipino consulate in Sabah, due to a historical political dispute between Malaysia and the Philippines over territory in Eastern Sabah. This makes it particularly difficult for undocumented Filipinos in Sabah to regularise their immigration status. Finally, several respondents mentioned a growing trend in the use of middlemen or ‘Mandurs’ who recruit Filipino migrant workers directly from villages, facilitate their crossing into Sabah and organise their employment directly with plantations. As will be explored further in section 5.1 below, these arrangements are often highly exploitative, placing migrants at significant risk.

Children born to migrant parents in Sabah are at a heightened risk of statelessness. The main driver is a lack of birth registration which can occur if one or both parents lack domestic legal status. One participant explained that the chances of a child lacking birth registration is highest if the mother is a foreigner and the father is from Sabah.⁶⁰

How was the process of registration of your children here?

When my twins were born, my wife gave birth in a hospital which I had to pay myself. The company did not help. The hospital was in Tawau which is very far. My youngest was born at home by a village midwife. None of our children have documentation and neither does my wife. So it is worrying...

*None of our families are documented and neither are we...*⁶¹

Case study informants identified several political barriers to addressing the situation of undocumented workers in Sabah. Providing legal status to undocumented/irregular migrant workers is politically unpopular and would likely result in political backlash.⁶² Furthermore, several informants emphasised that industries benefit from the supply of cheap labour that undocumented migrants provide: *“Due to the nature of Sabah having such porous borders, it just makes the movement of people even easier. It is an open secret in Sabah that most industries use and exploit cheap labour by using illegal migrants.”*⁶³ Indeed, findings suggest that palm oil plantations take varied approaches to verifying their workers’ legal status, with many turning a blind eye to the legal status of the workers they employ.

⁵⁷ Individual interview, NGO participant, 16 March 2022.

⁵⁸ Individual interview, NGO participant, 11 March 2022.

⁵⁹ Individual interview, NGO participant, 10 March 2022.

⁶⁰ Individual interview, Human Rights Commission, 6 March 2022.

⁶¹ Focus group discussion, three male workers and parents on independent plantation in Tawau, 16 March 2022.

⁶² Individual interview, NGO participant, 25 February 2022.

⁶³ Individual interview, NGO participant, 16 March 2022.

It is clear that the lack of pathways for migrant workers to regularise their legal status is a serious protection concern for workers and their families. As one advocate summarised: *“our concern is the number of undocumented workers and the rise in trafficking. So this is a rights issue now. When you don’t have documents, you are easily oppressed and exploited.”*⁶⁴ The implications for children, who are more vulnerable to exploitation and to experiencing statelessness, are even more severe. The child protection implications of living without legal identity, or identity documents, will be discussed further in the following section.

⁶⁴ Individual interview, NGO participant, 10 March 2022.

5. Findings - Child Protection Risks on Palm Oil Plantations

5.1 Lack of documents and legal identity

As discussed in section 3 of this report, many children of migrant workers present in Malaysia have an irregular status, and an unknown number are at risk of statelessness. Whilst children on plantations are exposed to a range of protection concerns, including child labour, detention, violence and exploitation (outlined below), irregular status tends to be the root cause of children's heightened vulnerability to risk. In addition, children and families who are undocumented are less likely to seek help from authorities when they do experience harm⁶⁵ on account of their lack of status and resultant fear of deportation or detention. This leads to a highly precarious and uncertain existence for migrant children in plantations in Sabah.

5.2 Child labour

5.2.1 Nature and extent of child labour on palm oil plantations in Sabah

While the exact extent to which children who live on palm oil plantations in Sabah are exposed to child labour is unknown, a growing body of evidence indicates that children living on these plantations are often engaged in work, including work that is harmful to their physical and mental development. As a recent article summarised:

“Existing studies indicate tens of thousands of Indonesian, Filipino and stateless children working “informally” and/or assisting their parents undertaking oil palm related activities. Some children are allegedly involved in undertaking hazardous and heavy activities without appropriate protective equipment... While some of these activities have immediate health implications for children, others will harm children’s physical and mental development in the longer term.”⁶⁶

It should be noted that most of these studies are small-scale, exploratory studies with very small samples. In 2017, largely in response to a decision by the United States Department of Labour to add Malaysian palm oil to their List of Goods Produced by Child or Forced Labour, Malaysia's Ministry of Plantation Industries and Commodities (MPIC) commissioned an Employment Survey in Oil Palm Plantations, designed to determine the prevalence of child and forced labour. The survey estimated the prevalence of working children⁶⁷ among the population of children associated with palm oil workers in Malaysia to be 14.5 per cent, with about 42,500 working children on palm oil plantations in Malaysia.⁶⁸ The majority (55.5 per cent) of working children were found to be in Sabah. The survey also attempted to capture the prevalence of child labour, in line with ILO definitions.⁶⁹ Results suggested that 11.5 per cent of children associated with palm oil workers were engaged in work that qualifies as child labour.⁷⁰ Again, of the 33,600 children estimated to be engaged in child labour

⁶⁵ Individual interview, [withheld], 6 April 2022.

⁶⁶ Wahab, A. 'Understanding Children Assisting Parents, Working Children and Child Labour in the Palm Oil Sector in East Malaysia (Sabah)', Institute of Malaysian & International Studies (IKMAS), National University of Malaysia (UKM), p.

⁶⁷ Defined as all children (aged 5-17) who work in households where there is at least one oil palm worker, including children who are engaged in other forms of work, such as domestic labour.

⁶⁸ Ministry of Plantation Industries and Commodities, "The Employment Survey in oil Palm Plantations, Malaysia 2018", p. 68 – 69.

⁶⁹ Children were considered to be involved in child labour if they were: subject to physical, sexual and other abuses; exposed to hazardous conditions; operating hazardous equipment; carrying very heavy or extremely heavy loads; worked 42 or more hours during the reference week (aged 15-17); worked 18 or more hours during the reference week (aged 12-14); worked any number of hours during the reference week (aged 5-11).

⁷⁰ Ministry of Plantation Industries and Commodities, "The Employment Survey in oil Palm Plantations, Malaysia 2018", p. 70 – 71.

in palm oil plantations across Malaysia, the majority (58.8 per cent) were found to be in Sabah, followed by Sarawak (39.5 per cent).⁷¹

Survey results should be interpreted cautiously, as it is possible that they have been affected by underreporting; alternative estimates of the extent of child labour in the palm industry suggest that overall numbers may be much higher.⁷² An important implication of the study is the degree to which children's involvement in work meets the threshold for child labour and therefore constitutes a protection concern: according to survey results nearly 80 percent of the estimated 42,500 children working on palm oil plantations were found to be engaged in work that qualifies as child labour.

The business sector has recognised child labour within the palm industry as a problem and demonstrated an interest in addressing the issue. In September 2015, The Forest Trust (TFT), Nestlé, Archer Daniels Midlands (ADM) and Wilmar organised a consultation workshop with fifty palm oil plantation representatives in Sabah to discuss the prevalence of child labour in the sector and challenges faced by businesses in protecting children. According to the outcome document from the consultation, stakeholders identified that children and young people (the ages of whom are not defined) are involved across all stages of palm oil production, including: filling poly bags and weeding at the nursery, collecting loose fruits, stacking palm fronds, harvesting and manuring, slashing, spraying and loading.⁷³ Efforts to address the issue are ongoing: these are discussed further in section 6 on prevention and response initiatives.

These trends were also recognised by case study informants who consistently recognised child labour as a widespread protection concern across palm oil plantations, including on larger plantations with zero tolerance policies toward child labour:

“Child labour is common practice within plantations regardless of what some people say.”⁷⁴

“I think that working on the plantations has been normalised [for children]. When I ask them about how they feel working they answer: “biasa” (it’s okay / normal).”⁷⁵

“Officially the statement is that no children are working but in reality they do. It is highly likely that the top management does not know but middle management would know. What usually happens is, when a child leaves my school and they are around 15 years old, he or she goes to work in the plantation...”⁷⁶

The extracts above suggest that it is not an aberration or exceptional occurrence for children to be involved in work on palm oil plantations, but that the practice is widespread and even normalised and accepted. However, the nature of children's work and the degree to which it is harmful in practice varies. Many respondents emphasised that work on the palm oil plantations is highly risky and can be detrimental to children's physical safety, development and education. The following exchange with a group of teachers from an Alternative Learning Centre (ALC) for children of plantation workers in Sabah is indicative:

⁷¹ Ministry of Plantation Industries and Commodities, “The Employment Survey in oil Palm Plantations, Malaysia 2018”, p. 71.

⁷² See for example: International Labour Organization (2016), Direct Request (CEACR): Worst Forms of Child Labour Convention: Malaysia. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3251788.

⁷³ Earthworm Foundation, Children in Plantations Information Sheet 2017, available at: www.earthworm.org/uploads/files/Children-in-Plantations-2017-info-sheet.pdf.

⁷⁴ Individual interview, NGO participant, 16 March 2022.

⁷⁵ Group interview, teachers in Lahad Datu, 12 March 2022.

⁷⁶ Group interview, teachers in Lahad Datu, 12 March 2022.

“The work is definitely dangerous especially for children because they can easily injure themselves. The surrounding environment at the work site is dangerous...”

Once they have started work, it definitely affects their schooling because they become too tired to do homework or concentrate. And of course work becomes a distraction...

Once they are injured while helping their parents work, it will affect their schooling. They may miss some schooling days.

The only benefit I see from these kids working is adding to the monthly family income. That is all.”⁷⁷

Indeed, when asked about children’s involvement in work on the palm oil plantations, a representative of the Office of the Children’s Commissioner described the issue as a child protection concern: *“To me the work that they are doing is a form of violence against children in itself. The type of work is not light work... they are prone to injury and exposed to danger and accidents. This is [forbidden] under the Child Act and parents can be taken to court for negligence at least.”⁷⁸*

5.2.2 Drivers of child labour on palm oil plantations in Sabah

Respondents identified a number of underlying factors which, together, contribute to children’s involvement in child labour. These factors are largely consistent with the set of drivers identified by participants in the business sector consultation mentioned above, which included poverty, the piece rate system of pay,⁷⁹ limited enforcement, labour shortages, limited childcare facilities in plantations, and limited awareness amongst parents.⁸⁰ They are explored in greater depth and detail below.

Supporting and helping families

Child labour on palm oil plantations in Sabah tends to occur primarily in the context of family units, with children providing informal assistance to their parents rather than being hired openly or directly by plantations:

“To my knowledge, child labour in plantations is mostly the kids helping their parents.”⁸¹

“Three out of every four child labourers are unpaid family workers”.⁸²

“The situation of child labour within plantations is really more of kids helping parents not really them working...”⁸³

This practice is not unique to the palm oil industry but reflects approaches to division of labour in many migrants’ communities of origin, whereby children are expected to contribute to the household’s livelihood. This may also serve as a way for children to learn a trade. As one informant explained:

⁷⁷ Group interview, teachers in Lahad Datu, 12 March 2022.

⁷⁸ Individual interview, Human Rights Commission, 6 March 2022.

⁷⁹ Meaning workers are paid per work done rather than a set wage.

⁸⁰ Earthworm Foundation, Children in Plantations Information Sheet 2017, available at: www.earthworm.org/uploads/files/Children-in-Plantations-2017-info-sheet.pdf.

⁸¹ Individual interview, NGO participant, 10 March 2022.

⁸² Ministry of Plantation Industries and Commodities, “The Employment Survey in oil Palm Plantations, Malaysia 2018”, p. 71.

⁸³ Individual interview, NGO participant, 9 March 2022.

“[Children end up working on the plantation] because they want to help their parents. They would do whatever needs to be done to assist their parents - from helping around the house to following to the plantation and doing the so-called ‘simpler stuff’. It’s also cultural... it’s common practice to help out the parents. I don’t think the kids are forced but they don’t really have a choice either. Child labour in general is something that can’t be avoided because of the economic situation of their families. Starting young is also a way to learn a skill. For instance, many fishermen will bring their kids along so that they can learn the trade - it will impact the family economically if the child enters his teens and doesn’t know how to fish. The same similar thing is happening within the plantation. So children go to the CLC [Community Learning Centre] until the end of primary school and then start learning the trade... Kids may also see it as a coming of age ritual – you start helping the family.”⁸⁴

Indeed, when asked about children’s perceptions and views on work, several respondents explained that children feel compelled to help their parents and have a personal desire to do so:

“When I started to work on this issue, I asked myself, what are the children thinking? We know that RSPO [Roundtable on Sustainable Palm Oil] says that no children can work. But when you speak to the kids, they really want to help their families. I think it’s really genuine. The culture also encourages this.”⁸⁵

“Based on our experience, the children actually enjoy following and helping their parents work. Because it is their parents.”⁸⁶

“When I ask them how they feel working, they answer: ‘it’s our duty as children to help out our parents’. When I tell them that they should be studying or doing revisions, not working in the field, they would say they feel bad about seeing their parent especially their mother picking up kernels in the heat... They usually have a strong sense of responsibility to help their parents. It’s a way of life...”⁸⁷

Yet other respondents pointed out that while children may feel a duty to help their parents work, this doesn’t mean that it is in their best interests to do so: *“based on my limited interaction with kids on plantations, most work because they have no choice, while many would prefer school and play, but the reality is you need to help out.”⁸⁸* As is noted in the section below, the lack of access to childcare contributes to parents bringing their young children to work.

Lack of access to education and childcare

“The main reason for kids following their parents to work... is the absence of school and childcare on plantations”⁸⁹

When asked to identify underlying drivers of child labour in the palm oil industry, respondents were quick to point out the lack of access to quality education for children living with their parents on plantations. Children

⁸⁴ Individual interview, NGO participant, 16 March 2022.

⁸⁵ Individual interview, NGO participant, 9 March 2022.

⁸⁶ Individual interview, NGO participant, 11 March 2022.

⁸⁷ Group interview, teachers in Lahad Datu, 12 March 2022.

⁸⁸ Individual interview, NGO participant, 10 March 2022.

⁸⁹ Individual interview, NGO participant, 11 March 2022.

of migrant workers and undocumented children are not permitted to attend Malaysian public schools⁹⁰ and, even if they were, the remote locations of the palm oil plantations would make access difficult.

According to a UNICEF report, in 2019, as part of a process intended to simplify admission procedures in government primary schools, the rules were changed to allow undocumented children with at least one Malaysian parent to enrol. These developments did not however address undocumented children with foreign parents.⁹¹

There are, however, alternative education opportunities available in Sabah for migrant children living on plantations. These fall into three broad categories: Community Learning Centres (CLCs) are operated through a partnership between the Indonesian Government and plantation companies in Sabah, and provide services to Indonesian children; Alternative Learning Centres (ALCs) are run through a partnership between the Humana Child Aid Society Sabah and plantation companies, and provide services to all children; and, finally, a number of other Community-based Learning Centres operated by local NGOs and sponsors in rural parts of Sabah provide services to all children.

While most of the larger and more established plantations do have schools on site, the quality of education services provided was found to vary considerably between plantations. In the words of one informant, *“the ALCs are all very different, especially on the plantations. Some ALCs just provide basic education and are in rubbish dump areas and have barely anything!”*⁹² Respondents explained that often the certificates provided by ALCs and CLCs are not recognised by the formal education system in Malaysia or Indonesia, which is demotivating for students. The quality of the education is reported to be inconsistent and, in many cases, only meets a very low standard, and secondary education is rarely (if ever) available. Meanwhile, smaller plantations may not provide education services at all. Indeed, many informants described a direct trade-off between education and work, whereby children decide to work because (quality) education isn’t available:

*“We can’t really blame the kids for working – because some of these smaller plantations have no schools. Schools are provided by the bigger plantations [...] I believe if there were schools they wouldn’t be working because there would be other activities for them – they do want to go to school. The real problem is that there are no schools.”*⁹³

*“The lack of access to schools plays a big role. Rather than stay at home, you might as well help parents earn more income for the family.”*⁹⁴

In addition to limited schools, many plantations lack adequate childcare services. Given this, parents often bring their young children to work with them, which in turn increases the likelihood that children begin working early. The lack of childcare services is not only a risk factor for child labour, but contributes to other protection risks, including neglect if children are left at home, and exposure to a hazardous environment if they are brought to work sites with unsafe conditions.

These findings clearly indicate that inadequate childcare and education services place children at risk of exposure to child labour. And yet findings also indicate that access to quality education is unlikely to fully

⁹⁰ Earthworm Foundation, Children in Plantations Services Directory, 2019.

⁹¹ UNICEF, Children out of School. Malaysia: the Sabah context, 2019, p. 34.

⁹² Individual interview, NGO participant, 9 March 2022.

⁹³ Individual interview, Human Rights Commission, Sabah office, 9 March 2022.

⁹⁴ Individual interview, NGO participant, 11 March 2022.

negate other factors which drive children to work. Consider the experiences described by two respondents involved in running schools on the plantations:

“We used to teach until they reached primary six, but as the children get older... Once they reach 14-15 years old and are still in school, the parents want them to go out and work and supplement the family income. This is the natural thing to do because they are sending money home to Indonesia all the time.”⁹⁵

“There is access to secondary education, but it is limited. However, most children do not finish their secondary education because as teenagers, they are enticed to work by the salary, and the trappings that come with it – such as being able to buy a motorbike. There is also peer pressure from older teenagers making fun of them for still being in the class.”⁹⁶

These quotes reveal the role economic incentives play in children and families’ decisions around children’s work. Economic incentives are discussed further in the following section on economic vulnerability and pay structure, yet it is important to recognise the interplay between access to education and the other relevant drivers and risk factors. As several respondents noted, most children of migrant workers face numerous barriers to accessing alternative employment opportunities, including lack of documentation, discrimination, and isolation, as well as limited access to education. In this context, as a number of informants explained, taking up work on the plantation may seem like the best option:

“It’s not just poverty that makes them vulnerable to child labour, but the lack of access to good proper schools... By the time they become 16 without documentation and no education, what more can you do? Working [on the plantation] is the next logical step.”⁹⁷

“When you put aside issues of rights for a minute, when a child sees no future and wants to start work to help their family, that is real. There is no future for undocumented children here especially with limited education. That’s the reality on the ground. So the problem of child labour in the plantation or even in general, it is intertwined strongly with other issues.”⁹⁸

Economic vulnerability and pay structure

Respondents also explained that children take up work because doing so is necessary for their families’ survival, particularly given the low wages provided by plantations. As a representative of the International Labour Organisation noted, *“what we are seeing is that there is this issue with the working conditions of the adults – their wages. This perpetuates the problem of child labour and encourages parents to bring their children to work.”⁹⁹* There is evidence that some palm oil plantations make deductions to workers’ pay to account for other benefits provided, including food rations, accommodation, and access to electricity and clean water.¹⁰⁰ Yet these benefits may not be adequate to meet workers’ needs, nor do they exempt companies from their obligations to pay at least the minimum wage.

In addition to noting the inadequacy of the amount of pay that workers receive, respondents identified pay structure as creating incentives for engaging children in work:

⁹⁵ Individual interview, education provider, 9 March 2022.

⁹⁶ Individual interview, education provider, 9 March 2022.

⁹⁷ Individual interview, NGO participant, 16 March 2022.

⁹⁸ Individual interview, Sabah Law Society, 12 March 2022.

⁹⁹ Individual interview, International Labour Organisation Malaysia Country Office, 30 November, 2021

¹⁰⁰ Wahab, A. and Razak, M. F. ‘Situation Analysis: labour issues in the Palm Oil Sector, Sabah Malaysia, 2022, p. 33.

“Children would naturally help or else the family would not survive. Relying on a single income earner would not be enough to sustain the family. Yes, I have heard that bigger plantations provide fixed salaries with the option to earn commissions for more harvesting per tonne. I also hear that the smaller plantations’ payments are based on harvest per tonne only and they receive a payment daily via cash...”¹⁰¹

“Child labour is occurring because families are not earning enough: in order to supplement the need of the family, everyone is encouraged to work. Most of the payment schemes are daily pay, not monthly salaries. There are two paying systems within plantations, the fixed monthly income and the daily tonne which is more well known to happen and is called ‘ajak’. So even if the wife is not on the payroll, the family all comes and helps – even the children.”¹⁰²

As the above passages note, where harvesters’ pay is determined based on quotas or the amount of palm harvested there is a direct incentive to recruit support from family members and achieve higher yields. One plantation representative explained that in order to prevent child labour his company pays employees a monthly salary through a digital system: *“A reason why we don’t have child labour issues is because we don’t make cash payments - each worker has a bank account where their monthly salary is paid in... This is much better because it ensures that the workers are not cheated out of their money and that there is no corruption.”¹⁰³*

Yet regardless of the structure and modality of pay, it is important to acknowledge that economically vulnerable families, particularly those sending remittance payments home, are likely to seek opportunities to increase their income through involving children in work.

5.3 Risk from the authorities

Malaysia has a long track record of a heavy handed approach towards immigration and implementing mass arrests and deportations of irregular migrants, including in Sabah.¹⁰⁴ Previous studies have documented instances of children in Sabah being subject to frequent spot-checks for identity documents by immigration authorities, in partnership with ‘RELA’ (the People’s Volunteer Corps).¹⁰⁵ In October 2021, it was reported that 155 migrants were arrested in two raids in Tawau and of the 155 individuals arrested, 39 were children, the youngest being a one-year old.¹⁰⁶

The literature suggests that raids and arrests occur less frequently within plantation compounds than they do in the community.¹⁰⁷ Where authorities do enter compounds, workers tend to have received forewarning of their arrival and manage to escape in sufficient time to avoid arrest.¹⁰⁸ Instances have been reported of irregular workers and families hiding inside the worksite of the plantation, in makeshift tents or structures, upon learning about an impending raid – a practice called *“Betapo”* – enabling them to avoid the attention of

¹⁰¹ Individual interview, NGO participant, 16 March 2022.

¹⁰² Individual interview, NGO participant, 9 March 2022.

¹⁰³ Individual interview, FGV, 12 March 2022.

¹⁰⁴ Catherine Allerton, Impossible children: illegality and excluded belonging among children of migrants in Sabah, East Malaysia, 2018, *Journal of Ethnic and Migration Studies*, 44:7, 1081-1097. Available at: <https://www.tandfonline.com/doi/full/10.1080/1369183X.2017.1357464>.

¹⁰⁵ *Ibid.*

¹⁰⁶ News report, 155 PATI ditahan dalam dua serbuan di Tawau. Available at:

https://www.kosmo.com.my/2021/08/06/155-pati-ditahan-dalam-dua-serbuan-di-tawau/?fbclid=IwAR3wGMpWAVrnOP3u-cRGIE0W-PLUybgKk8ckSxA0X3m_1d3OHVUywtKS8YQ.

¹⁰⁷ Asia Monitor Resource Centre (AMRC), ‘Exploited and Illegalised, The lives of Palm Oil Migrant Workers in Sabah, 2019, p. 92-93.

¹⁰⁸ *Ibid.*

the authorities.¹⁰⁹ Those who are arrested are reported to be detained at the police station where they remain for up to two weeks, before being tried for illegal entry/stay.¹¹⁰ They serve prison sentences ranging from approximately 3-12 months, before being transferred to one of four detention centres (Kota Kinabalu, Sandakan, Papar Kimanis or Tawau) pending deportation.¹¹¹ A fact finding report documenting the detention and deportation of Indonesian migrants in Sabah during the Covid-19 pandemic identified serious violations of the right of migrants to a fair trial, as well as dire conditions within detention facilities for adults and children alike, without any special facilities for children.¹¹² The same report highlighted instances of women giving birth in the detention centres without any medical assistance and continuing to be detained with their babies afterwards.¹¹³

Case study respondents confirmed that Indonesian and Filipino children are detained alongside adults in detention,¹¹⁴ explaining that children under 12 years old are detained with their mothers at female centres whereas boys over 12 are held in the adult male block, even if they do not have any male guardians.¹¹⁵ In many cases, this causes family separation. The excerpt below regarding the protracted detention of two young boys who became unaccompanied through tragic circumstances paints an alarming picture of the situation.

“Last October I met with two kids who were aged 5 and 9 years old when they were detained. They were detained in Tawau for 1.5 years. Their father and uncle died in detention beside them in March 2021, so for 6 months they were without a guardian in a detention centre together with adults.”¹¹⁶

Conditions in detention are reported to be poor, with only two toilets to serve each block of 250 inmates, no access to clean water,¹¹⁷ overcrowding,¹¹⁸ and concerning treatment of detainees reported:

“Food punishment is common practice. [The number of] death[s] in custody is very high.”¹¹⁹

In line with previous evidence outlined above, one participant explained that children and families who are living in the community in the areas surrounding plantations are more vulnerable to being apprehended by the authorities as opposed to those living within the plantation compound.¹²⁰

Even where children are not themselves detained, they can be placed in danger if their parents are arrested and taken to a detention centre, leaving them to fend for themselves (see also section 5.2).¹²¹ As one respondent explained *“the children were left behind alone at home. We don’t know what happened to them. This happens to both Indonesians and Filipinos. It is also more dangerous for young girls because they are vulnerable to sexual assault or hard labour.”¹²²* One participant explained in instances that Filipino parents

¹⁰⁹ *Ibid.*

¹¹⁰ Kondisi migran Indonesia yang dideportasi selama masa Covid-19 dari Sabah, Juni 2019-September 2020.

<https://palmoillabour.network/the-condition-of-deported-indonesian-migrants-during-the-period-of-covid-19/>.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.* p 13.

¹¹⁴ Individual interview, [details withheld], 9 November 2022; Individual interview, NGO participant, 16 March 2022.

¹¹⁵ Individual interview, NGO participant, 16 March 2022; Individual interview, [details withheld], 9 November 2022.

¹¹⁶ Individual interview, NGO participant, 16 March 2022.

¹¹⁷ Individual interview, NGO participant, 16 March 2022.

¹¹⁸ Individual interview, [details withheld], 9 November 2022.

¹¹⁹ Individual interview, NGO participant, 16 March 2022.

¹²⁰ Individual interview, [details withheld], 9 November 2022.

¹²¹ Individual interview, [details withheld], 9 November 2022.

¹²² Individual interview, NGO participant, 11 March 2022.

inform the authorities upon apprehension that they have children left alone at home, the immigration authorities notify the Filipino embassy so that the children can be identified.

Aside from the physical risks of apprehension and detention, there are psychological risks flowing from the fear generated in children by the presence of immigration authorities. The fear discourages children from venturing outside, restricting their mobility and causing boredom and feelings of confinement.¹²³ The fear of deportation or other legal consequences can exacerbate children's reluctance to report protection concerns to the authorities: *"If something happened on the plantation, there is no one the children can complain or report it to. Being undocumented, they will always be in fear of the police."*¹²⁴

It has been previously documented how, despite their constant experiences of exclusion and prejudice, undocumented migrant children in Sabah exhibit remarkable resilience in the face of adversity.¹²⁵ In similar vein, a teacher at Etania School shared the following perspective on children's strength and adaptability in spite of police harassment and abuse in a recent webinar:

*"Some of my kids have gone to local town to play football and have been arrested by authorities. Attitudes of authorities are shocking. Children are called by derogatory terms. Children become very self-conscious, though what amazes me is the grit and resilience of the children. Children have been caught and held in cells like prisoners, they wonder why they can't be like an ordinary child. They are caught in a vicious cycle that solves no problems. Children have enormous sense of character. They are constantly mocked for not having documentation. Patrolling authorities constantly attack families and ask for money."*¹²⁶

The Filipino embassy in Malaysia provides assistance to undocumented Filipino workers in detention by way of the Assistance to Nationals ('ATN') programme, which involves repatriation assistance (issuing travel documents and monetary assistance to return), medical assistance and other welfare services. Social workers from the embassy visit Filipinos detained in immigration depots and provide essentials such as toiletries, diapers and soap to the detainees.

5.1 Risk of exploitation and trafficking

Official data on trafficking cases related to oil palm in Sabah are not routinely published, and even if they were, it is unlikely they would reflect the true extent of the phenomenon owing to its 'hidden' nature. Anecdotally, respondents explained that children of migrant workers in the palm oil industry are at heightened risk of trafficking and exploitative practices akin to trafficking *en route*, and upon arrival into Sabah, owing to both poverty and lack of documentation and their consequent vulnerability to oppression and exploitation. Girls and Filipino children were identified by respondents as being particularly vulnerable to these practices.¹²⁷

Children and families, particularly those from the Philippines, tend to rely on smugglers to facilitate their journey and border crossing into Malaysia. One respondent spoke of instances where bribes had been paid by smugglers to the authorities, including the Eastern Sabah Security Command and police, in order to facilitate the illegal crossing of migrants.¹²⁸ These relationships have the potential to become exploitative, causing

¹²³ Allerton C., (2018) Impossible children: illegality and excluded belonging among children of migrants in Sabah, East Malaysia, *Journal of Ethnic and Migration Studies*, 44:7, 1081-1097, p. 1094.

¹²⁴ Individual interview, Sabah Welfare Dept. Kota Kinabalu, 6 April 2022.

¹²⁵ See, for example, Allerton C., (2018) Impossible children: illegality and excluded belonging among children of migrants in Sabah, East Malaysia, *Journal of Ethnic and Migration Studies*, 44:7, 1081-1097, p. 1094.

¹²⁶ Speech from teacher at Etania School, Earthworm Webinar: Children in plantations: 11 May 2022.

¹²⁷ Individual interview, NGO participant, 10 March 2022.

¹²⁸ Individual interview [details withheld].

children and families to become trafficking victims along the journey. Often, victims are unaware of the risks until it is too late, as one respondent explained: *“I have met a number of workers who were trafficked to Sabah while they were still young, in their teens. In their minds, Sabah is part of their ancestor’s land, they didn’t know they were being trafficked. When they landed here, they didn’t know how to go back and, because it’s dangerous, they ended up staying here and working.”*¹²⁹ Lahad Datu in Tawau Division was identified as being a hotspot destination for migrant smuggling from the Philippines, owing to the large number of plantations in the town.¹³⁰

Children’s vulnerability to trafficking does not end upon arrival in Sabah. Multiple respondents commented on a concerning trend of migrant worker parents being forced to “sell” one of their children in order to pay off mounting debts owed to the *“tauke”* or plantation owner.¹³¹ These debts tend to accumulate due to workers being paid salary advances or being provided with food supplies in advance from the plantation grocery store.¹³² Debts amass over many months to the extent that they become impossible for the family to pay back. According to one respondent, children who are “sold” to address such debts (who may be as young as 9 or 10 years old) may either be transferred to another plantation, where they would be expected to work for free in order to pay off family debts, or exploited in the sex industry.¹³³ Another respondent referred to instances in which so-called “uncles” take children away to work in order to “help” the family,¹³⁴ a practice which places the child in a situation of bonded labour.

*“A few years ago, I talked to a worker who told me that he had to let his daughter go because his debt was just too much and he has not seen his daughter since. The ‘tauke’ took the daughter.”*¹³⁵

*“Trafficking definitely exists. Based on our engagement with Indonesian NGOs working on migrant issues, [it has been] verifie[d] that there is trafficking, not necessarily through a syndicate but through family or relatives.”*¹³⁶

*“In my opinion, the Filipino children are the most vulnerable of all migrant children. I have met parents who want to sell their babies. Oh... and there is also slavery... due to debt and this happens within the plantation. The victims are then the children. The debt is actually simple debt, they take salary advances or take advance food from the only grocery store on the plantation, over months the debt piles up.”*¹³⁷

Trafficking risks associated with the oil palm industry in Sabah have been widely documented, particularly in recent years. In 2021, the U.S. Department of State Trafficking in Persons Report 2021 (TIP report 2021) downgraded Malaysia from Tier 2 to Tier 3 for failing to meet the requisite standards for the elimination of trafficking and failing to make significant efforts to do so. Amongst the multiple reasons given for the downgrade, the report cited the failure of the government to sufficiently investigate credible accusations of

¹²⁹ Individual interview, NGO participant, 10 March 2022.

¹³⁰ Individual interview [details withheld].

¹³¹ Individual interview [details withheld].

¹³² Individual interview, NGO participant, 10 March 2022.

¹³³ Individual interview, Human Rights Commission, Sabah, 9 March 2022.

¹³⁴ Individual interview, NGO participant, 16 March 2022.

¹³⁵ Individual interview, Human Rights Commission, Sabah, 9 March 2022.

¹³⁶ Individual interview, NGO participant, 16 March 2022.

¹³⁷ Individual interview, NGO participant, 10 March 2022.

labour trafficking in the palm oil and rubber manufacturing industries.¹³⁸ The report detailed how employers across various industries, including palm oil, utilise practices indicative of forced labour, such as contract violations, passport retention, restrictions on movement and wage fraud.¹³⁹ The report also made specific reference to stateless children from Sabah being trafficked for work in the begging, service and palm oil sectors.¹⁴⁰ In 2015, the Special Report of the Special Rapporteur on trafficking in persons, especially women and children, highlighted the particular vulnerability of Filipino and Indonesian communities in Sabah (including children) to trafficking, highlighting lack of formal recognition as a contributing factor towards their vulnerability to exploitation as well as impunity for perpetrators.

Though status-related challenges and financial difficulties appear to be the key drivers for trafficking in children, one respondent commented on the dual legal system in enabling trafficking and providing impunity for “agents”. Whilst matters related to national borders come under federal law, the Federal Constitution and Part VIII of the Immigration Act gives Sabah the right to regulate entry into, residence in and migration of non-residents, save for some exceptions.¹⁴¹ The respondent considered “*overlapping jurisdiction, bad communication and unclear chain of command*” to be leading to corruption and trafficking and suggested efforts to address trafficking from the federal government are not always supported by Sabah state government.¹⁴²

5.1 Physical and sexual violence

There is very little evidence on rates of violence for children of migrant workers in Sabah, let alone on palm oil plantations. Though not focussed on the palm oil sector, a study on child labour carried out in 2016, which consulted a total of 454 working children in Malaysia¹⁴³ found that more than half (63 per cent) of the children had been emotionally abused, 27 per cent had been physically abused and around 10 per cent had been sexually abused.¹⁴⁴

Case study respondents considered the incidence of violence towards children on plantations to be high, despite the lack of data to confirm this fact. Many provided anecdotal accounts of instances of violence that they had heard about but not been directly involved in or known the victim or perpetrator personally. One described it as a “known fact” that children on plantations experience sexual violence in particular,¹⁴⁵ and other responses corroborated this fact (below). Girls were identified as being at heightened risk of rape and sexual violence in comparison to boys, demonstrating that a child’s gender influences the form of violence they experience.

“I do fear how girls are exposed to sexual violence being so isolated in the plantation but children being exposed to violence is very much worrying for me.”¹⁴⁶

¹³⁸ Other reasons cited in the report include the government’s conflation of human trafficking and migrant smuggling; insufficient implementation of victim identification standard operating procedures (SOPs) and inadequate victim services; non-prosecution of officials accused of involvement in trafficking. United States Department of State, Trafficking in Persons Report 2021, p. 369.

¹³⁹ United States Department of State, Trafficking in Persons Report 2021, p. 373.

¹⁴⁰ *Ibid.*

¹⁴¹ Individual interview, NGO participant, 16 March 2022. Part VII of the Immigration Act 1959/1963 and Article 161E(4) of the Federal Constitution.

¹⁴² Individual interview, NGO participant, 16 March 2022.

¹⁴³ Nik Ahmad Kamal Nik Mahmud, Marhanum Che Mohd Salleh et al, *A Study on Child Labour as a Form of Child Abuse in Malaysia*, *International Journal of Human Sciences and Humanity*, Vol 6, No 7, 2016, pp. 525-530.

¹⁴⁴ *Ibid.*

¹⁴⁵ Individual interview, Sabah Law Society, 12 March 2022.

¹⁴⁶ Individual interview, Sabah Welfare Dept. Kota Kinabalu, 6 April 2022.

“On the plantation itself, yes, there is violence especially rape and domestic violence.”¹⁴⁷

“Girls are more vulnerable, in terms of exposure to sexual violence, girls are definitely more vulnerable. They are easily married off or even sold off to settle debts. This even happens within the indigenous community.”¹⁴⁸

Children on independent plantations were identified as being particularly vulnerable, as these smaller, more secluded plants are “cut off” from the outside world, including service providers.¹⁴⁹ As with all protection risks discussed in this section, respondents considered children’s vulnerability to violence, as well as the barriers to accessing protective / response services, to be compounded by their lack of formal recognition / domestic legal status (see section **Error! Reference source not found.**, below).¹⁵⁰ Low reporting rates exacerbate the challenge of ascertaining the extent of violence experienced by children.

Perpetrators of violence identified by respondents include neighbours, peers and family members. One respondent recalled an instance involving an 8-year-old child with physical signs of serious abuse (two black eyes) turning up to school. In that instance, the family “packed up and left the plantation” after the parents were called to school to address the situation, meaning the child’s case could not be followed up.¹⁵¹ Another mentioned increasing rates of alcoholism within migrant communities as contributing to rates of violence against children.¹⁵²

5.2 Inadequate parental supervision

As is noted in section 5.2.2, limited childcare facilities on plantations leads to migrant worker parents often being forced to choose between bringing their children to work with them or leaving them at home, both of which options expose children to risk of harm. This is despite the requirement in Malaysian law that all plantations must provide nurseries for children under 4 years old. One informant described the risks children are exposed to if they are left alone at home: *“There have been many cases of fires occurring due to kids attempting to cook, fights between them, acts of sexual violence by paedophiles ... all of this is happening because there is no childcare service.”¹⁵³* These risks are exacerbated by the long working hours of parents on the plantations, meaning children left at home would be unsupervised from dawn until dusk. Respondents explained parents fear being arrested and detained at work whilst the children were unsupervised at home, leading to family separation. There are also real concerns about children being trafficked, abused or otherwise exploited by unscrupulous individuals during their parent’s absence.¹⁵⁴ These factors cause parents to opt to bring children to work in the majority of cases, despite the hazards that exist on the work site.

“Rather than stay at home, they follow their parents. This is preferable to the alternative of staying at home alone, unsupervised.”¹⁵⁵

“Young girls are especially vulnerable to sexual violence when they are left alone at home during working hours. The labour force is very male centric. -We do not have solid data, but we have been

¹⁴⁷ Individual interview, NGO participant, 16 March 2022.

¹⁴⁸ Individual interview, NGO participant, 10 March 2022.

¹⁴⁹ Individual interview, NGO participant, 16 March 2022.

¹⁵⁰ Individual interview, NGO participant, 16 March 2022.

¹⁵¹ Individual interview, education provider, 9 March 2022.

¹⁵² Individual interview, NGO participant, 10 March 2022.

¹⁵³ Individual interview, NGO participant, 16 March 2022.

¹⁵⁴ Individual interview, NGO participant, 16 March 2022.

¹⁵⁵ Individual interview, NGO participant, 16 March 2022.

hearing from not just the community but also authorities, as well as other people working within the plantations, that these types of violence are happening. The system allows for these violations and violence to happen. -Anything can happen in the plantation. It is a high risk area.”¹⁵⁶

“I have only seen one childcare centre in Sime Darby plantation but the rest I visited did not have one. Parents leave for work early and come home late, but it’s dangerous to leave children at home, especially if they are only 5 or 10 years old. They are too young to be left alone. And if they follow their parents, it’s natural that they will help out on the parents’ field [...] in their current environment and condition, the only option is to follow to the fields. It’s the most realistic option.”¹⁵⁷

5.3 Other risks to health, safety and protection

Whilst many respondents spoke of specific protection risks outlined above, some expressed concern about the physical environment in the plantation sites more generally and their unsuitability for children. Children who engage in labour to help their parents are at high risk of injury from the harvest process in general, as one participant explained: *“the work on palm plantations is very dangerous, just cutting the fruits for harvest, if the fruit falls on you it can injure you, the leaves are huge and full of big thorns. Lifting the fruits onto the truck is heavy work.”¹⁵⁸*

“I have heard of accidents happening because there are a lot of hazards. The most basic hazard is from the tree itself, such as the thorns and leaf petals are dangerous and can seriously injure even an adult, what more a child. Wild animals, here in Sabah, our streams and rivers are infested with crocodiles. There have been many cases of people being attacked by crocodiles. So, for me, bringing a child or allowing a child in the work area is a total ‘no-go’, I consider it a serious violation.”¹⁵⁹

One respondent expressed concern over children’s exposure to militant groups from Southern Philippines, who are reported to have started hiding in the plantation sites to avoid being detected by immigration authorities. Whilst the participant considered children in the plantation to be “vulnerable” to these groups, noting they engage in criminal activity including trafficking and smuggling alongside militancy, they were not specific about the nature of harm this exposure would cause (i.e. risk of recruitment or more general exposure to criminality and violence).¹⁶⁰

¹⁵⁶ Individual interview, NGO participant, 16 March 2022.

¹⁵⁷ Individual interview, NGO participant, 16 March 2022.

¹⁵⁸ Individual interview, Earthworm, 25 February 2022.

¹⁵⁹ Group interview, teachers in Lahad Datu, 12 March 2022.

¹⁶⁰ Individual interview, NGO participant, 11 March 2022.

6. Mechanisms for Prevention and Response

6.1 Legal and policy framework

6.1.1 International standards on child labour

Malaysia ratified the Convention concerning Minimum Age for Admission to Employment (Convention No. 138)¹⁶¹ in 1997,¹⁶² and declared upon ratification that the minimum age for full-time employment in Malaysia is 15 years of age.¹⁶³ In accordance with Convention No. 138, children may engage in part-time “*light work*”, between 13-15 years old. Light work is defined as work that is unlikely to be “*harmful to [children’s] health or development*” nor impact their school attendance or participation in vocational training opportunities.¹⁶⁴ For work that is deemed hazardous (defined as “*likely to jeopardise the health, safety or moral of young persons*”), Convention No. 138 sets the minimum age of employment at 18 years old,¹⁶⁵ except where specific criteria are met,¹⁶⁶ in which case 16 is permitted as a minimum age.¹⁶⁷

In accordance with the Worst Forms of Child Labour Convention 1999 (Convention No. 182), Malaysia¹⁶⁸ has committed to eliminating the worst forms of child labour, including but not limited to all forms of slavery (including trafficking of children) and “*work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*”¹⁶⁹ Malaysia also has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Assembly¹⁷⁰ (Palermo Protocol), which places obligations on ratifying States aimed at preventing and combating human trafficking, as well as protecting, assisting and repatriating victims.

The Convention on the Rights of the Child (CRC) bestows further obligations on Malaysia¹⁷¹ in relation to child labour. As per Article 32, children on the territory or under the jurisdiction of the State of Malaysia have the right “*to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or be harmful to the child’s health or physical, mental, spiritual, moral or social development.*” In ensuring the implementation of Article 32, Malaysia is obliged to set a minimum age of employment; regulate hours and conditions of child employment; and develop enforcement mechanisms including penalties and sanctions.¹⁷² Finally, child labour is addressed in the Sustainable Development Goals (SDGs), to which Malaysia has committed. SDG 8.7 aims at ending child labour in all its

¹⁶¹ Convention concerning Minimum Age for Admission to Employment, (58th Conference Session Geneva 1973), 1015 United Nations Treaty Series, p. 297.

¹⁶² Malaysia ratified on 9 September 1997.

¹⁶³ Article 2(1).

¹⁶⁴ Article 7.

¹⁶⁵ Article 3(1).

¹⁶⁶ “*Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.*”

¹⁶⁷ Article 3(3).

¹⁶⁸ Malaysia ratified on 10 November 2000.

¹⁶⁹ Article 3(d).

¹⁷⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Assembly, resolution 55/25 of 15 November 2000 (The Palermo Protocol).

¹⁷¹ Malaysia acceded to the Convention on the Rights of the Child (CRC) in 1995 and introduced the Child Act in 2001.

¹⁷² Article 32(2)(a)-(c).

forms by 2025, and encourages States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour and eradicate forced labour.

6.1.2 International standards on protective services for migrant children

In accordance with regional and international instruments, including the ASEAN Declaration, the CRC and the Global Compact on Migration,¹⁷³ the needs and interests of migrant children and other children affected by migration should be mainstreamed within the national child protection systems. The systems should also be accessible to children affected by / in the context of migration. Child protection systems consist of the formal and informal structures, functions and capacities that have been assembled to prevent and respond to violence, abuse, neglect, and exploitation of children.¹⁷⁴ A rights-compliant child protection system requires effective and proactive violence prevention programmes; identification, referral, reporting and follow up mechanisms to respond to violence against children; as well as treatment for children who have experienced violence and judicial involvement where necessary.¹⁷⁵ States are obliged to provide care and accommodation arrangements for migrant children, in accordance with Article 22 of the CRC. As a general rule, such care and accommodation arrangements should not deprive children of their liberty.¹⁷⁶ States Parties should identify a ‘durable solution’ that addresses the child’s protection needs, takes into account the child’s views and ‘wherever possible, leads to overcoming the situation of a child being unaccompanied or separated.’¹⁷⁷

Beyond protection, migrant children have the same right as any other child in the country to access basic services, including education (Article 28 CRC) and healthcare (Article 24 CRC), to enable them to grow and develop to their highest potential. Further, healthcare and education facilities provide an important pathway to protection services, being professional settings in which children in need of care and protection may be identified.

6.1.3 Industry standards on child labour

Malaysia has also taken steps to attempt to introduce industry wide standards for the production of sustainable palm oil, which includes the prevention of hazardous child labour on plantations. The most well-known standards are set by the Roundtable for Sustainable Palm Oil (RSPO) and Malaysian Sustainable Palm Oil (MSPO) scheme as well as ‘No Deforestation, No Peat, No Exploitation’ (NDPE).¹⁷⁸

Roundtable on Sustainable Palm Oil (RSPO)

RSPO is a global non-profit consortium of stakeholders in the palm oil industry who have agreed on a set of criteria for the production of sustainable palm oil at all stages of the supply chain, one of which is to ensure “*Children are not employed or exploited*” (criteria 6.4).¹⁷⁹ UNICEF has partnered with RSPO in order to

¹⁷³ ASEAN Declaration on the Rights of Children in the Context of Migration, 2 November 2019; Joint General Comment No. 3 of the Committee on the Protection of the Rights of All migrant Workers and Members of Their Families and No 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017), 16 November 2017, CMW/C/GC/3 – CRC/C/GC/22, para. 14. In its Child Protection Strategy 2021-2030, UNICEF has committed to supporting child protection systems that are inclusive of internally displaced, migrant and refugee children.

¹⁷⁴ UNICEF, UNHCR, Save the Children and World Vision, ‘A better way to protect all children: The theory and practice of child protection systems, conference report’, 2013, p. 3.

¹⁷⁵ Committee on the Rights of the Child, General Comment No. 13 (2011), *The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13 (CRC GC No. 13 (2011)), paras. 46 – 54.

¹⁷⁶ CRC GC No. 6 (2005), para 40.

¹⁷⁷ CRC GC No. 6 (2005), para 79.

¹⁷⁸ Ministry of Plantation Industries and Commodities, “The Employment Survey in oil Palm Plantations, Malaysia 2018”. Available at: https://www.mpic.gov.my/mpic/images/01-Bahagian/PSA/MPIC_EmploymentSurvey2018_FINAL.pdf, p. vi.

¹⁷⁹ RSPO Standards. Available at: <https://rspo.org/standards>.

introduce child rights principles into their principles and criteria. In 2020, RSPO released three guidance documents to enhance child protection, one for Palm Oil Producers,¹⁸⁰ one for Smallholders and Group Managers,¹⁸¹ and one for Downstream Supply Chain Actors.¹⁸² The guidance for Auditors and Certification Bodies is upcoming.

In 2018, FGV Holdings Berhad (formerly FELDA Global Ventures), an oil palm organisation part-owned by the Malaysian government, was sanctioned by RSPO on account of forced labour, complicity in trafficking, poor living conditions and over 25 breaches of the organisation's sustainability certification criteria.¹⁸³

Malaysian Sustainable Palm Oil (MSPO)

The MSPO standard is a certification standard for palm oil production based on sustainability, responsible cultivation and minimisation of negative human and environmental impacts.¹⁸⁴ The standards differ according to the size and type of the farm (there are separate sets of general principles for: independent smallholders; organised smallholders; oil palm plantations 40.46-500 hectares; oil palm plantations above 500 hectares; palm oil mills; palm oil processing facilities; and dealers).¹⁸⁵ In order to become certified, organisations must go through an audit process by an accredited certification body that has been vetted by the Department of Standards Malaysia (DSM) to measure entities against MSPO standards.¹⁸⁶

According to the Malaysian Palm Oil Certification Council (MPOCC) website, a systematic review of the MSPO standards was initiated in 2019 and was completed in January 2022, though the full revised draft is not yet available online. Some of the outcomes of the review and resultant amendments of the standards have been released. According to one document, children's rights are now included as one of the aspects to be assessed under the Social Impact Assessment¹⁸⁷ Further proposed changes include *"a shift from referring to national laws on labour regulations to an explicit inclusion of no forced, trafficked, or child labour on farms and to protect migrants and workers, and living conditions are now required to be "decent" instead of "habitable.""*¹⁸⁸ Finally, it has been reported that revised MSPO standards have *"Strengthened the requirement to include the ILO indicators for forced labour under the employment conditions"* and *"In the employee's safety and health criterion, [providing] a specific criterion to protect pregnant ladies and nursing mothers."*¹⁸⁹

The standard has been mandatory since the end of 2019, meaning all plantations, independent and organised smallholdings and palm oil processing facilities should have been audited at the time of writing (May 2022). Casting doubt over this, though, is the statement on the MPOCC website which states that: *"It is true that the*

¹⁸⁰ RSPO, Guidance on Child Rights for Palm Oil Producers, 2020. Available at:

https://rspo.org/library/lib_files/preview/1404.

¹⁸¹ RSPO, Guidance on Child Rights for Palm Oil Producers, 2020. Available at:

https://rspo.org/library/lib_files/preview/1405.

¹⁸² RSPO, Guidance on Child Rights for Downstream Supply Chain Actors, 2020. Available at:

https://rspo.org/library/lib_files/preview/1406.

¹⁸³ Ministry of Plantation Industries and Commodities, "The Employment Survey in oil Palm Plantations, Malaysia 2018", p 13.

¹⁸⁴ Control Union, MSPO. Available at: <https://certifications.controlunion.com/en/certification-programs/certification-programs/mspo-malaysia-sustainable-palm-oil>.

¹⁸⁵ MPOCC / MSPO, Public Comment on Revised Draft Standards. Available at: <https://www.mpoc.org.my/standards-review>.

¹⁸⁶ MPOCC / MSPO, FAQs. Available at: <https://www.mpoc.org.my/faqs>.

¹⁸⁷ MPOCC / MSPO, Labour Rights Enforced with MSPO Standard, 30 June 2022. Available at: <https://mpoc.org.my/wp-content/uploads/2022/07/Labour-Rights-Enforced-with-MSPO-Standard.pdf>.

¹⁸⁸ KAMI, Sustainability certifications, approaches, and tools for oil palm in Indonesia and Malaysia, November 2022, p. 69.

¹⁸⁹ MPOCC, Overview of MS 2530-2022. Available at: <https://www.mpoc.org.my/s/1-Overview-of-MS-2530-2022-Pn-Sabarinah.pdf>.

*uptake of MSPO certification has been rather gradual over the past few years. However, with the mandate to make MSPO certification compulsory, the approach by the industry players is bound to change.*¹⁹⁰

Case study respondents had mixed opinions with regards to the effectiveness of RSPO and MSPO in protecting workers and preventing child labour in practice – please refer to section 6.2 for further information.

No Deforestation, No Peat, No Exploitation (NDPE)

Child Labour is prohibited under ‘No Deforestation, No Peat, No Exploitation’ (NDPE) policies, which also aim at increasing sustainability and reducing exploitation within the palm oil industry.¹⁹¹ An estimated 70 per cent of palm oil produced in Malaysia and Indonesia is made by companies that have an NDPE policy.¹⁹²

6.1.4 Legal framework governing child labour in Malaysia

The **Children and Young Persons (Employment) Act 1996** regulates the employment of children in Malaysia. The law contains prohibitions surrounding the employment of children, including limitations on working hours; and forms of acceptable and hazardous work. The law was amended in 2019 to prohibit light work for children aged under 13, and to revise the definition of light work to: *“any work not likely harmful to his health be it, mentally or physically, or any work which will not prejudice his attendance at school that includes any place which teaches any religion, his participation in vocational orientation or training programmes approved by the competent authority or his capacity to benefit from the instruction received.”* Under Section 6, children in hazardous work are defined as those involved in any activity or occupation *“that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister.”*

Owing to the dual legal system, the **Children and Young Persons (Employment) Act 1996** applies exclusively to peninsular Malaysia.¹⁹³ In Sabah, the employment of children is regulated by the **Sabah Labour Ordinance 1950**.¹⁹⁴

In a webinar on children in plantations hosted on 11 May 2022, a representative from the Sabah Department of Labour (JTK) announced the department is working on an enhanced definition of hazardous labour, implying the Labour Ordinance Act is due to be amended in the near future.¹⁹⁵ According to a participant consulted for a validation meeting about this report in November 2022, the Sabah Labour Ordinance has now been amended, although there is no information online to verify this and nor is there a publicly available version of the revised law. What follows is an analysis of the version of the Sabah Labour Ordinance available online, though it should be noted that this analysis may potentially no longer be valid if amendments have been made to the provisions discussed.

The ordinance defines *“child”* as a person under 15 years old and a *“young person”* as a person aged 15-17 years old. Using these age categorisations, the ordinance permits children to be employed exclusively in *“light work suitable to his capacity in any undertaking carried on by his family”*;¹⁹⁶ public entertainment (subject to

¹⁹⁰ MPOCC / MSPO, FAQs. Available at: <https://www.mpocc.org.my/faqs>.

¹⁹¹ Earthworm, Child Risk Assessment Framework. Available at: <https://www.earthworm.org/uploads/files/Child-Risk-Assessment-Framework-2020.pdf>, p. 3.

¹⁹² *Ibid.*

¹⁹³ Section 1(2) Children and Young Persons (Employment) Act 1966.

¹⁹⁴ State of Sabah, Labour Ordinance (Sabah Cap. 67). Version: <https://toolsfortransformation.net/wp-content/uploads/2017/03/Malaysian-Law-Sabah-Labour-Ordinance-CAP-67.pdf>.

¹⁹⁵ Assistant Director Sabah Labour Department (JTK), Ministry of Human Resources (MoHR) Sabah.

¹⁹⁶ 72(2)(A).

conditions); work that is approved or sponsored by the federal government; and apprenticeships.¹⁹⁷ Children are not permitted to work between 8 pm and 7 am; to work more than 3 consecutive hours in a day without 30 minute rest breaks; to work more than 6 hours per day or to commence work without having at least 14 work-free hours.¹⁹⁸

Young people (15-17 years) may be engaged in any '*light work suitable to his capacity*' (i.e. it doesn't have to be in an undertaking carried on by his family), and, in addition to all of the industries children are permitted to work in, they may be employed: as a domestic servant in "*office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association*"; in "*an industrial undertaking suitable to his capacity*" and on "*any vessel under the personal charge of his parent or guardian*."¹⁹⁹ Article 73C contains rules for employment of young people, which slightly differ from the rules for children: for instance, the prohibition of work for more than four rather than three consecutive hours without a 30 minute break.²⁰⁰

It has previously been noted that the **Sabah Labour Ordinance 1950** does not reflect amendments to the **Children and Young Persons (Employment) Act 1996**, causing inconsistency between the regulation of child labour between Sabah (and Sarawak) and Peninsular Malaysia. In Sabah, light work is permitted for any child under 15 so long as the work is "*suitable to his capacity in any undertaking carried on by his family*", whereas in Peninsular Malaysia, children under 13 years old may not engage in light work under any circumstances. As one respondent commented: "*In Sabah and Sarawak light work is allowed for everyone below 15. So children as young as 7 years old are picking fruit and carrying loads.*"

However, as highlighted above, these provisions may have been amended with the recent changes to the law.

Malaysia's Child Act 2001 (in its preamble) refers to protection of all children "*without regard to distinction of any kind*" and, after listing a number of grounds, includes the wording "*or any other status*", demonstrating inclusivity of children without domestic legal status.

The **Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446)** has been extended to cover Sabah,²⁰¹ and plantations must ensure compliance with the standards set out in that Act.

6.1.5 National Action Plans

In March 2021 the third iteration of the National Action Plan on Anti-Trafficking in Persons (NAPTIP) was launched, for the years 2021-2025. The NAPTIP comprises nine strategic goals; Goal 5 intends to combat "*labour trafficking and child trafficking including relevant provisions of forced labour and child labour*" through strengthening legislation and regulatory frameworks for child labour and exploitation; and "*continuously improv[ing] anti-TIP responses targeted at combating labour trafficking in all sectors, particularly in the supply*

¹⁹⁷ 72(2)(a)-(d).

¹⁹⁸ 73b (1) (a)-(d).

¹⁹⁹ 72(3) (a)-(d).

²⁰⁰ 73C(1)(b).

²⁰¹ Amendments made by way of Emergency Ordinance (Workers' Minimum Standards Of Housing And Amenities) 2021. See: Official Website of Sabah Ministry Of Science, Technology And Innovation, 'Warning to provide proper housing for workers'. Available at: <https://ksti.sabah.gov.my/ms/event/warning-provide-proper-housing-workers>.

chains of goods and services.” The government has also introduced the National Action Plan on Forced Labour (2021-2025)²⁰² with the support of International Labour Organisation (ILO), with plans to develop a National Action Plan on the Elimination of Child Labour (NAP CL) and National Action Plan on Business and Human Rights (NAP BHR) in the near future; these plans are currently under development.

6.2 Monitoring and oversight in practice

Despite a relatively robust legal, policy and regulatory framework aimed at increasing worker protection and reducing child labour, monitoring and enforcement appears limited in practice. Case study respondents offered varied opinions about the ability for RSPo and MSPo to address child labour in plantations and the impact both have had on sustainability within the sector more generally. There was a general view that both schemes have led to improvements in workers’ rights over the past decade, as well as to the living conditions for children. In general, respondents considered the bigger plantations and companies to take the guidelines seriously and attempt to address challenges, for instance through the provision of day-care and schools on site and publicising the standards throughout the plantation. The motivation is commercial: they are aware of the consequences to their consumer base in the event of negative media attention related to human / child rights abuses in their product’s supply chain. On the other hand, respondents considered mid-size to smaller companies to have lower rates of compliance with RSPo/MSPo.

“Do children help in the harvest in any way so that the father can earn a higher commission? In the old days perhaps but not anymore nowadays. The system is so strict, and managers can be fired for violating a [RSPo] guideline. We have on record that around 4-5 managers had been fired because of accidents on site.”²⁰³

“Companies ... know they cannot afford to side-line this issue. Focussed on human rights, labour rights, children’s rights – big brands like Nestle know that if produce is being sanctioned by the US, no-one will buy it! They will lose their money. They know the importance and are keen on technical support and resources.”²⁰⁴

“All over the plantation you can see the MSPo and RSPo rules sign boards. Explaining do’s and don’ts. It’s a really big deal within the plantations. The teachers in my schools even make the students memorise the 18 or 19 rules of RSPo/MSPo. When parents come for teacher and parents night, everyone is made to recite the rules. Each time I come onto the plantations, the managers would tell me to make sure everything is in order, the RSPo people are coming.”²⁰⁵

Others were more sceptical about both schemes and the ability of the certification process to accurately assess plantations. Rather than turn up unannounced, auditors reportedly pre-announce their visit,²⁰⁶ reducing the integrity of the process. One parent and plantation worker explained *“When RSPo comes, they don’t interview us, they only talk with the employers. They should be able to see how bad things are but still the employer gets away with it.”²⁰⁷* Another stakeholder expressed concern about the methodology that is used by RSPo to

²⁰² Government of Malaysia, National Action Plan on Forced Labour 2021-2025. Available at:

<https://www.mohr.gov.my/ebook/National%20Action%20Plan%20On%20Forced%20Labour/NAPFL%202021-2025.pdf>.

²⁰³ Individual interview, FGV, Lahad Datu. Sabah, 12 March 2022.

²⁰⁴ Individual interview, NGO participant, 25 Feb 2022.

²⁰⁵ Individual interview, education provider, 9 March 2022.

²⁰⁶ Individual interview, NGO participant, 9 March 2022.

²⁰⁷ Focus group discussion, three male workers and parents on independent plantation in Tawau, 16 March 2022.

investigate whether a plantation is following the rules and the ability of the market-based certification process in general to achieve its stated aims, noting in particular the need for increased monitoring.²⁰⁸

Another recently published study on labour issues in the Palm Oil industry found that *“Though all growers who are MSPO-certified are required to have appropriate labour-related policies in place, it is not common that such policies are established, documented, and socialised or communicated to all workers. There is lack of awareness and knowledge among med-sized growers on numerous labour standards (e.g., definition of child labour, forced labour, issuance of contract of employment, and passport management).”*²⁰⁹ In relation to small growers, the study found an *“even greater misunderstanding and lack of knowledge of the social and labour aspects of the MSPO standards.”*²¹⁰

It was suggested during interviews that corruption may be hindering monitoring and enforcement of child labour, with anecdotal evidence that police have accepted bribes from plantations in response for turning a blind eye to reports of child labour violations²¹¹ and that tip-offs reach plantations before police raids.²¹²

6.1 Access to child protection services

As noted in section 6.1, Malaysia’s Child Act 2001 refers to protection of all children *“without regard to distinction of any kind”* demonstrating inclusivity of children without domestic legal status. This reflects the internationally recognised position that children affected by migration should be mainstreamed within the national child protection system.²¹³ The Department of Social Welfare in Sabah confirmed that, in accordance with the Child Act, their department’s mandate indeed includes all children without differentiating between Malaysians or non-Malaysians or documented or undocumented children.²¹⁴ The Department is currently engaged with a project to address the situation of ‘street children’, many of whom are undocumented. At the national level, the Department of Social Welfare similarly acknowledges the applicability of the Child Act to all children, including migrant children. One participant commended the ability of the child protection system to respond and handle child protection cases, *“even for undocumented children.”*²¹⁵

However, when asked specifically about children living in plantations, the vast majority of case study respondents considered there to be very little, if any, protection systems and services available to and accessible by migrant children in plantations in practice. As the below exchange demonstrates, barriers to protective services exist both on the supply and the demand side. There appears to be no mechanisms in place to enable the Department of Social Welfare to access migrant children in plantations; while Children’s Protection Units are reported to have been established in every district, these have not accessed plantations as of yet. As a result, the Department is unaware of the profile and protection situation of children living inside.²¹⁶ Neither the Sabah office nor the national Department of Social Welfare has to date received any official request or report about any violation against children living on the plantations. On the demand side, it appears that low reporting levels amongst communities living in plantations may be fuelled by a lack of trust and confidence in the relevant authorities to deliver the required support. Across the Southeast Asian region

²⁰⁸ Individual interview, [details withheld].

²⁰⁹ ²⁰⁹ Wahab, A. and Razak, M. F. ‘Situation Analysis: labour issues in the Palm Oil Sector, Sabah Malaysia, 2022, p 16.

²¹⁰ Ibid.

²¹¹ Individual interview, [details withheld].

²¹² Individual interview, [details withheld].

²¹³ Including the ASEAN Declaration, the CRC and the Global Compact on Migration, as set out in section 6.1.2.

²¹⁴ Individual interview, Sabah Welfare Dept. Kota Kinabalu, 6 April 2022.

²¹⁵ Individual interview, [details withheld].

²¹⁶ Individual interview, Sabah Welfare Dept. Kota Kinabalu, 6 April 2022.

it has been observed that individuals who lack legal status are dissuaded from accessing protective services owing to fears of arrest, detention and deportation;²¹⁷ it is possible these factors contribute to low reporting levels in Sabah, too.

“I am not aware of any services that specifically caters to the plantations community.”²¹⁸

“The government does not seem to be concerned about the welfare of migrant community within plantations. It’s like they do not serve the migrant community. I have a few social worker friends and they informed me that they do not take migrant cases. So migrants will have to report to the embassy, but with the Filipinos, there is no consulate in Kota Kinabalu. The Indonesians have shelters run by Indonesians and they have the consulates in Sabah. But even then they prefer not to report to the consulate. There is still a lack of trust and the beliefs that the consulate will still side with the big companies.

Any other form of protection for migrant children in general and in plantations in specific?

It’s really lacking, even cases involving the local community, it is so hard to get the police or authorities to do something, [let alone] the migrant community and migrant children. [There are already] complaints of too many cases ... no-one wants to take up migrants cases, no-one. [...] In my opinion, there is no protection for children on plantations [...] as far as I can see even the welfare department is not there.”²¹⁹

6.2 Access to basic services

Interviews carried out for the case study suggested that children on plantations are not always able or willing to access high quality health and education services, despite access to such services being an entitlement under the CRC. The main challenges are the limited availability of clinics and lack of documentation which leads to prohibitive costs for basic healthcare and a reluctance to access services due to fear of being identified as being undocumented. During the pandemic, it was widely reported that migrant workers in the palm oil industry in Sabah were delaying seeking treatment for Covid-19 until they were seriously unwell, to avoid coming to the attention of immigration authorities.²²⁰

“Sabah in general has a challenge in providing good healthcare services. So migrant children living on these secluded plantations are prone to becoming ill and may not be vaccinated for many parents don’t even know that they can access our public health clinics for immunisation. To add to the problem, they are also undocumented and their parents live in fear of being arrested and detained.”²²¹

“These two rights [education and health] are denied because of lack of documentation.”²²²

Respondents explained that whilst larger plantations ordinarily have on-site clinics that provide basic check-ups, generic medicine and treatment for work-related accidents (i.e. removing thorns), they are unable to

²¹⁷ UNICEF and Coram International, Situation Analysis of Children Affected by Migration in the ASEAN States, 2023, section 5.4.4.

²¹⁸ Individual interview, NGO participant, 10 March 2022.

²¹⁹ Individual interview, NGO participant, 9 March 2022.

²²⁰ See for example, Reuters, ‘In Malaysia’s Sabah, pandemic rages as migrants flee testing’, November 23 2020, available at: <https://www.reuters.com/article/health-coronavirus-malaysia-sabah/in-malaysias-sabah-pandemic-rages-as-migrants-leave-testing-ijdUSL4N2HY17A?edition-redirect=uk>.

²²¹ Individual interview, NGO participant, 16 March 2022.

²²² Individual interview, Human Rights Commission, Sabah, 9 March 2022.

cater to the needs of patients with more complicated conditions or illnesses.²²³ Migrants who are able to access government health services are charged a far higher rate than Malaysian citizens, which is prohibitive for most families. One respondent estimated that 90 per cent of pregnant women opt to give birth outside of healthcare settings due to inability to afford the hospital fees (MYR 15,000).²²⁴

As is highlighted in section 5.2.2, children in plantations are excluded from Malaysian schools, attending alternative education facilities (ALCs and CLCs) instead. Whilst most of the larger plantations have such education facilities on site, their availability is not guaranteed on smaller and less established sites. In the case of CLCs, one respondent explained this is due to a quota imposed by the government which places a limit of 110 centres in operation at any one time.²²⁵ As a result of the quota, no new schools can be established unless one closes down. Further, the quality of education services provided in the centres was reported to vary considerably between plantations, as below:

“You see, even the ALCs are all very different in general and especially in plantations. Some ALCs are up to high schools, well-funded and even have debating clubs etc. but some ALCs just provide basic education.”²²⁶

“What is the school like, is it a good school?”

Participant: Not really, sometimes they only open four days a week. The teacher is not that proactive. There is only one teacher for about 50 kids and they are all different ages. I just registered my eldest who will be starting soon so I don’t really know.

Participant: I sent back my twins for better education. Also, Covid shifted to online education and that’s not really working out well. More games than studying.”²²⁷

6.3 Understanding limited prevention and response

In order to address child labour and other protection risks in Sabah’s palm industry, active participation, partnership and collaboration is required from a variety of stakeholders, including the Ministry of Human Resources, Social Welfare Department, Immigration Department, Ministry of Education, palm oil companies, NGOs, and communities as a whole.²²⁸ This was recognised by the Sabah Labour Department (JTK) in a recent webinar (May 2022) on the situation of children in plantations in Sabah, hosted by Earthworm:

“Government play a critical leadership role by putting strong framework in place to eliminate child labour. We need to build the capacity of small and medium enterprises to eliminate child labour in palm oil. NGOs, communities must also work together – we have a shared responsibility to ensure the next generation has success. We need to look at this issue in a more integrated way and enhance our

²²³ Individual interview, Individual interview, NGO participant, 16 March 2022

²²⁴ Individual interview, NGO participant, 16 March 2022.

²²⁵ Individual interview, NGO participant, 16 March 2022.

²²⁶ Individual interview, NGO participant, 9 March 2022.

²²⁷ Focus group discussion, three male workers and parents on independent plantation in Tawau, 16 March 2022.

²²⁸ Earthworm Seminar, Children in Palm Oil Plantations, Sabah, 11 May 2022. Key note address, Assistant Director Sabah Labour Department (JTK), Ministry of Human Resources (MoHR) Sabah.

collaboration. With the launching of National Action Plan on forced labour last year – we must continue to strengthen our ecosystem and address needs of vulnerable children living on plantations.”²²⁹

The government is responsible for public labour governance (implementing strong and effective legal, regulatory and institutional frameworks, enforced by labour inspectors)²³⁰ and is the main duty bearer (in accordance with international standards) in protecting the rights of, and providing services to, children. On the other hand, companies themselves are responsible for respecting the human rights of workers, including children, involved in their operations and supply chain.²³¹ Private labour governance is enforced by companies by way of codes of conduct, child protection policies and other regulations and standards, reinforced by training and capacity building activities. The private sector in the palm oil industry and beyond has become increasingly concerned with the elimination of bad labour practices and abiding by international standards in recent years as they view “*non-compliance as a barrier to new markets.*”²³²

The following sections explore the dynamics of public and private sector responses to children in plantation and the barriers faced by both.

6.3.1 The public sector

There is an inevitable tension between the Government of Malaysia’s interests in protecting the palm oil industry and supporting its growth and expansion; addressing illegal immigration (a highly controversial political topic in Malaysia) but ensuring an adequate workforce; preventing human rights abuses and protecting the rights of children. Government support for the latter can be evidenced through commendable legal and policy developments, particularly the ambitious National Action Plan on Forced Labour 2021-2025, the (not yet published) National Action Plan on Child Labour; and amendments to child employment legislation at the federal and (upcoming) Sabah State level (see section 6.1.4). Sabah Department of Labour (JTK) announced at a recent seminar on children in plantations that the department has an upcoming intensive awareness raising programme on forced and child labour in Sabah, starting at the end of May 2022. This will focus on strengthening the capacity of government stakeholders across various departments (immigration department; education department) to understand, identify and address child labour.²³³

There was scepticism amongst stakeholders consulted for the case study with regards to the ability of the Federal and State government to address child labour and the motivation of both to do so. Whilst some considered government support for education facilities and day-care within plantations to indicate a level of concern, these were described as “*band-aid*” solutions²³⁴ implying they overlook the core issues. Generally, respondents considered the government to show very little concern with children of migrants in Sabah, and even less so in relation to children on plantations.²³⁵

Immigration is a highly politicised topic in Malaysia generally and in Sabah in particular. Political will for increased protection for children on plantations is inevitably influenced by public opinion of migrant workers.

²²⁹Earthworm Seminar, Children in Palm Oil Plantations, Sabah, 11 May 2022. Key note address, *Assistant Director Sabah Labour Department (JTK), Ministry of Human Resources (MoHR) Sabah.*

²³⁰ Key informant interview with International Labour Organisation to inform the wider situation analysis report, 30 November 2021.

²³¹ Earthworm Seminar, Children in Palm Oil Plantations, Sabah, 11 May 2022. Considering systemic and structural response to CP risks in palm out plantations *Aarti Kapoor Embode, Executive Director.*

²³² KII with ILO.

²³³ Key note address, Earthworm Seminar, Children in plantations in Sabah: partnerships for collective action, *Assistant Director Sabah Labour Department (JTK), Ministry of Human Resources (MoHR) Sabah, Zoom, 11 May 2022.*

²³⁴ Individual interview, NGO participant, 16 March 2022.

²³⁵ Individual interview, NGO participant, 11 March 2022.

In recognition of this, one respondent expressed concern with regards to the impact of the upcoming election on protection efforts in Sabah.²³⁶

6.3.2 The private sector

It is difficult to overstate the importance of the role of the private sector in contributing to the protection and wellbeing of children living on plantations. As demonstrated in section 6.2, there is significant variation in the level of compliance with RSPO and enthusiasm in promoting the rights of children more generally between plantations. Between 2013 and 2015, out of 86 small/medium-sized mills, plantations and small growers surveyed, three had child labour policies, and roughly 16 per cent had the '*potential for child labour*.'²³⁷

The complexity of palm oil supply chains exacerbates challenges for companies performing due diligence to ensure child labour and other violations are not occurring in different tiers of the chain. Refineries are not able to monitor mills and ascertain their compliance with RSPO standards easily.²³⁸ Whilst many independent plantations have strict entry requirements for non-workers, this contributes to a lack of accountability.

Palm companies who have supported the establishment of ALCs and CLCs on their plantations are actively helping to reduce child labour risks given evidence that access to education is a protective factor. Other good practices include the provision of other basic services, including healthcare, and childcare services.

In such a complex political space where public sector reforms cannot be relied upon exclusively to regulate employment and protection of children, private businesses play a fundamental role to address these issues within their own plantations.

*"On the issue of plantation, the concern by authorities is not there. It's really up to individual plantations and especially the plantation manager. If you get a good manager then you can work with him to improve things and address concerns. If not then that's it. I have been very fortunate to work with really good plantation managers."*²³⁹

²³⁶ Individual interview, NGO participant, 25 Feb 2022.

²³⁷ Children in oil palm plantations - Earthworm. Available at: <https://www.earthworm.org/id/news-stories/children-in-oil-palm-plantations>.

²³⁸ Individual interview, NGO participant, 25 Feb 2022.

²³⁹ Individual interview, education provider, 9 March 2022.

7. Recommendations

7.1.1 Legal and policy reform

“Allow dependent visa for families, it’s the reality on the ground. Families are part of the worker. Stop arresting children, they didn’t go to Sabah, they were either born there or taken there by parents. They are not at fault and should not be arrested.”²⁴⁰

It is recommended that the government of Malaysia strengthen the legal and policy environment to protect children better in plantations in Sabah, including the regulation of employment of children. In particular, it is recommended the government continues to implement the National Action Plan Against Forced Labor (2021-2025) and prioritises the development of the National Action Plan on the Elimination of Child Labour (NAP CL) and National Action Plan on Business and Human Rights (NAP BHR).

Legal and policy reform should focus on increasing avenues to enable children and families to regularise their status, including by: simplifying the process for, promoting access to and awareness raising on birth registration for children born to migrant workers; shortening the timeframe and simplifying the process for documentation of migrants; providing a legal route by which migrant worker parents can bring their children to Sabah with them (i.e. dependent visas available for all families, regardless of income) to prevent arrest and detention of children and enable them to access services. In any case, immigration detention is a child rights violation, is never in the best interests of the child (see below) and should never be an option.

7.1.2 End immigration detention of children

End immigration detention of children. Immigration detention is harmful to children’s physical and mental health, has a negative impact on their development and exposes children to the risk of sexual abuse and exploitation.²⁴¹ For these reasons, immigration detention is prohibited under international standards and is recognised as violating children’s rights under the CRC. Both the Committee on the Rights of the Child and Committee on the Rights of Migrant Workers and their Families, as well the UN’s Global Study on Children Deprived of Liberty, confirm that detention cannot be justified under the CRC²⁴² solely on the basis of the child’s migration or residence status, or lack thereof, and that immigration detention conflicts with the child’s best interests and right to development.²⁴³ The Committees also call upon States parties to specifically prohibit immigration detention by law and enforce this provision in practice.²⁴⁴

7.1.3 Access to services

“One of the things that needs to happen is to provide accessibility to national schools – this is one of the key solutions. If these kids do not have proper schooling ... the ALCs are not a proper solution. The companies do

²⁴⁰ Individual interview, NGO participant, 16 March 2022.

²⁴¹ UN General Assembly, *Global Study on children deprived of liberty*, Note by the Secretary-General, 11 July 2019, A/74/136, para 60; Joint General Comment No. 4, para 9.

²⁴² Particularly Article 37(b) which provides that a child may only be deprived of his/her liberty as a measure of last resort and for the shortest appropriate period of time.

²⁴³ CRC Committee GC No. 23 (2017), paras 5 and 10; CRC Committee, GC No. 6, para 60. Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion*, 2012, para 78; UN General Assembly, *Global Study on children deprived of liberty*, Note by the Secretary-General, 11 July 2019, A/74/136, para 20.

²⁴⁴ CRC Committee GC No. 23 (2017), para 5.

*not want to be named as companies with child labour, but for them to provide protection they need more support coming from the government and access to national schooling is one key thing.*²⁴⁵

Government, private sector and NGOs should collaborate to ensure migrant children and families have access to protective services; essential services including health and education; and quality childcare on plantations.

Education

- With regards to education, the government should ultimately work towards guaranteeing access to national schools for all children present in Sabah, regardless of the documents they possess.
 - The policy change introduced in 2019 in order to allow undocumented children with at least one Malaysian parent to enrol in school²⁴⁶ should be extended towards undocumented children with foreign parents;
 - The government should consider introducing a pilot to trial enrolling children living in plantations into national schools in a specific area within Sabah, with strategies to scale-up based on success of the pilot.
- More resources should be provided to improve the quality of education provided in education facilities in plantations, including through:
 - Establishing and implementing capacity building programmes to improve quality of education in all alternative education facilities in Sabah;
 - Supporting education providers to extend the provision of education to secondary level;
 - Introducing a standardised curriculum based on Ministry of Education guidelines and standards;
 - Amending policy to ensure certificates provided by ALCs and CLCs are recognised by the formal education system;
 - Providing training on children’s rights and safeguarding (see recommendation below).
- In the meantime, the government should consider removing the quota for the number of education facilities in plantations, enabling the establishment of new schools to cater to the needs of all children in Sabah.
- Whilst day care centres and kindergartens on all plantations would be a positive development, it is crucial that these are staffed by professionals with training on safeguarding and early childhood development.

Child protection

- The government must develop strategies to improve the responsiveness and accessibility of the child protection system to migrant children, whilst simultaneously removing supply and demand side barriers to services experienced by children on plantations.
- In particular, the government should take steps to ensure that:
 - Mechanisms exist to ensure the Department of Social Welfare has access to migrant children in plantations;
 - A sufficient quantity of qualified and trained social workers are available in Sabah to meet the protection needs of children in plantations;

²⁴⁵ Individual interview, NGO participant, 25 Feb 2022.

²⁴⁶ UNICEF, Children out of School. Malaysia: the Sabah context, 2019, p. 34.

- All social workers are aware that their mandate includes all children in Malaysia, including those who are undocumented and living inside plantations, in accordance with the Child Act;
- Social workers receive training on the specific needs of migrant children in plantations and how they can be addressed;
- Children and families in plantations are aware of the child protection services that exist, with clear instructions on how they can access these services.

Health services

- Steps must be taken to ensure all children and families have affordable access to quality healthcare, regardless of their documentation status;
- In particular, the government must work towards ensuring all children have access to basic immunisation after birth.

7.1.4 Accountability and oversight

“The need for better regulation and oversight. The lack of oversight makes it even more difficult to look at the issue of child labour within plantation compounded further by so much corruption.”²⁴⁷

Public and private sector must join forces to improve monitoring and oversight of plantations, to increase worker protection and to stamp out child labour.

Specific actions for palm oil companies include ensuring compliance with minimum wage standards to ensure that all workers are paid a decent wage; strengthening due diligence process of recruiters and subsidiaries; introducing child protection and ‘zero tolerance’ child labour policies; monitoring of implementation of policy and MSPO; introduce clear and effective grievance mechanisms; introduce mandatory training for all employees on the child labour policies; develop clear communication materials such as posters on the child labour policy and display these on visible areas in the plantation;²⁴⁸ establish clear systems and procedures to be followed to address and respond to child labour once identified (refer to Earthworm, Child Risk Assessment Framework, 2020, p. 14-18 for detailed suggestions in this regard). The government should focus on increasing compliance with MSPO and labour and minimum wage standards; continue to implement awareness raising programmes on plantations of human rights standards and child labour, and, through development of the NAP BHR (see above), underscore the need to address a range of child rights impacts through responsible business conduct.

7.1.5 Active collaboration and partnerships

Government and non-government stakeholders, including the private sector must continue to work together to address child labour. Joint webinars and consultative events are an excellent way to enhance collaboration between interested parties and ensure an effective and integrated approach.

7.1.6 Strengthen the evidence base on children in plantations

There is a clear need for comprehensive, disaggregated data to inform strategies for improving the protective environment for children on plantations. The Government should commission further research

²⁴⁷ Individual interview, NGO participant, 16 March 2022.

²⁴⁸ See for example recommendations contained in Earthworm, Child Risk Assessment Framework, 2020.

into the scale of irregular migration into Sabah and the number, profile and protection situation of children living in plantations. Research findings should be widely publicised to all relevant government and non-government stakeholders in Sabah, to enable them to develop concrete, evidence-based programmes to address the key challenges facing children.

7.1.7 Implement awareness raising programmes

The government and NGOs should continue to implement awareness raising programmes on the forms of child labour and trafficking and the harm it causes children. It is noted in this regard that the Sabah Department of Labour (JTK) announced at a recent seminar on children in plantations that the department has an upcoming intensive awareness raising programme on forced and child labour in Sabah.

Linked to the above is the need for capacity-building training programmes delivered to practitioners who come into contact with children, including law enforcement, labour inspectors, social workers, plant managers, and teachers in ALC and CLCs. Training programmes should focus on definitions and risks of child labour, harmful effects of detention and safeguarding of children.

7.1.8 Reduce risk of exploitative practices

Plantations must review their policies and processes to reduce the risk of exploitation of workers at all stages of the recruitment process. In particular, plantations should ensure that they comply with minimum wage legislation ensuring all workers are paid an appropriate wage. Further, steps should be taken to minimise the risk that workers accrue large debts. Plantations must ensure workers have immediate access to their personal documents.²⁴⁹

7.1.9 Improve living conditions in plantations

“Need to improve living conditions... we witness them reporting, and the manager said: ‘why don’t you sleep outside?’”²⁵⁰

Plantation owners must ensure that plantation sites are safe for children. The Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446) has been amended to cover Sabah,²⁵¹ and plantations must ensure compliance with the standards set out in that Act. Proper safety measures must be introduced to protect children and families from all hazards, man-made and natural. Breastfeeding and pregnant mothers should never be exposed to harmful chemicals on site. Companies must ensure sufficient signage is put in place to ensure that children do not enter worksites or areas like ponds, rivers and other areas where hazards exist.

²⁴⁹ Individual interview, IOM, 29 March 2022.

²⁵⁰ Individual interview, IOM, 29 March 2022.

²⁵¹ Amendments made by way of Emergency Ordinance (Workers' Minimum Standards Of Housing And Amenities) 2021. See: Official Website of Sabah Ministry Of Science, Technology And Innovation, 'Warning to provide proper housing for workers'. Available at: <https://ksti.sabah.gov.my/ms/event/warning-provide-proper-housing-workers>.

8. Appendix

a. Ethical protocol

The ethical protocol for this case study has been guided by UNICEF's Procedure for Ethical Standards, Evaluation and Data Collection and Analysis.²⁵² A full ethical review will be carried out for the research by Coram's external ethical review board before the commencement of data collection. Key ethical principles which will guide the research process are set out below. Appropriate measures have also been developed to mitigate Covid-19 related risks.

8.1 Informed consent and voluntary participation

At the start of each interview, research participants will be informed of the purpose and nature of the study, their contribution, and how the data collected from them will be used. The research will explain, in clear, appropriate language, the nature of the study, the participant's expected contribution and the fact that participation is entirely voluntary. If unsure, researchers will request the participant to relay the key information back to them to ensure that they have understood it. Participants will also be advised that the information they provide will be held in strict confidence (see below).

Researchers will ensure that all participation in the research is done on a voluntary basis. They will clearly explain that participants are not *required* to participate in the study, that they may stop participating in the research at any time, and that declining to participate or choosing to terminate the interview at any point will not result in any negative consequences for the participant. Participants will be advised that their participation or lack of participation in the study will not lead to any direct benefits or sanctions / removal of benefits. Incentives will not be provided to participants in order to ensure that participation in the research has not been induced. However, where transport costs are incurred, they will be reimbursed. Participants will be given the opportunity to ask questions about any of the above.

All research participants will be required to give positive informed consent in order to participate in the study. Consent forms will not be used, as these can be intimidating for some participants and may create concerns about the anonymity of the exchange; rather consent will be verbally requested and interviewers will make a note of whether consent has or has not been given. Where participants are under 16 years of age, consent will also be obtained from a parent, caregiver or other adult representative who is close to the child.

In addition to seeking consent from individual participants, it is important to seek the support of the relevant Government Ministries / Departments. In order to achieve this, letters will be sent to the key Government Departments along with key NGOs (where necessary). The letters will explain the purpose and nature of the study and the purpose of the data collection, and request assistance from these institutions to access research participants where relevant. This will be coordinated by the UNICEF Malaysia Country Office.

²⁵² UNICEF, *Procedure for Ethical Standards, Evaluation and Data Collection and Analysis*, 1 April 2015. Available at: <https://www.unicef.org/media/54796/file>

8.2 Anonymity and data protection

The identity of all research participants will be kept confidential throughout the process of data collection as well as in the analysis and write up of study findings. The following measures will be used to ensure anonymity:

- Interviews will take place remotely in a secure, private location (where possible, in a room within a service provider's office / government office etc.) which ensures that the participant's answers are not overheard;
- Researchers will not record the name of participants and will ensure that names are not recorded on any documents containing collected data, including on transcripts of interviews;
- Researchers will delete electronic records of data from laptops immediately after they are sent to Coram International (in a password-protected and secure SharePoint account);
- Coram International will store all data on a secure, locked server, to which persons who are not employed by the Centre cannot gain access. All employees of Coram International, including volunteers and interns, receive a criminal record check before employment commences;
- Transcripts will be saved on the secure server for a period of three years and will then be deleted; and
- Research findings will be presented in such a way so as to ensure that individuals are not able to be identified.

All participants will be informed of their rights to anonymity and confidentiality throughout the research process before the beginning of the interview. All efforts will be made to avoid gathering information that may result in a compromise to participant confidentiality; in any cases where this is not possible, participants will be informed. This may occur where, in a particular, named setting, the background information relating to a participant may make it possible for them to be identified even where they are not named. Researchers will then ask participants whether they wish to have this information removed from any published report of findings (e.g., location, specific job title etc.) and presented in a more generalised format.

It is noted that interview transcripts will be typed or hand written in real time (where possible, interviews will be carried out with two researchers – one conducting the interview and another recording notes from the interview). Audio recording will not be used as this could be intimidating and may lead to participants feeling unable to communicate freely and provide authentic information.

8.3 Do no harm

A fundamental principle of ethical research with human participants is 'do no harm'. This means that the welfare and best interests of participants are the primary considerations guiding the design of the methodology and data collection methods.

UNICEF's and Coram International's ethical guidelines require a consideration of whether the research should be prioritised, whether it is necessary or important to involve children, and, if so, in what capacity. An analysis of potential harms the research may cause to participants is required, along with an assessment of the potential benefits of the research. Finally, strategies must be developed to ensure that distress to participants is minimised. As is set out below, in any case where an interview appears to be (re)traumatising, or causing harm to a participant, the interview will be stopped.

This research will contribute to strengthening the protection of migrant children living on palm oil plantations in Sabah from child labour and other protection risks. It will also contribute learning which can be applied in other settings. Given the importance of this aim and the lack of sufficient existing evidence and evidence-

based solutions, and in light of the low risk of causing harm to research participants, it is determined that the research is justified from a harm reduction perspective. Nonetheless, it is important to ensure that all necessary measures are taken to minimise physical and emotional harm to participants and to researchers. The following strategies will be used to minimise harm and ensure the meaningful participation of children, parents / carers, professionals and experts in the research.

- All researchers have necessary qualifications, knowledge and considerable experience carrying out data collection with professionals, government representatives, youth, children, families and community members, including on sensitive topics. The national research consultant has been recruited on the basis of their knowledge or experience of child welfare issues in Malaysia and has extensive experience in conducting research relating to these topics.
- International researchers have all undergone criminal history checks and all researchers, including the national researcher, are required to sign a code of conduct as part of the contracting process.
- Researchers will all be involved in an orientation session prior to the pre-testing of tools and data collection. This will be led by the Team Leader / International Experts and will cover the purpose and aims of the research, ensuring familiarity with the data collection tools and training on the ethical protocol and tools.
- Front-line professionals will be selected on the basis of having an existing role in relation to the protection and support of victims of child trafficking and labour exploitation in the context of migration, and will therefore already be known to the community in this capacity.
- Throughout interviews, researchers will be led by the 'do no harm' principle, which requires that the data collection be considered secondary to the need to avoid harm to research participants. Where it is clear that the interview is having a negative effect on a participant (e.g., the participant breaks down, becomes very quiet and withdrawn, becomes shaky etc.), the researcher will be advised to suggest stopping the interview. Researchers will consult with UNICEF Malaysia to identify an appropriate referral service should key informants report distress and the need of support.
- Data collection tools have been designed in a manner that avoids direct, confronting questions, judgement and blame. They have also been developed to ensure that they are relevant to the cultural context. Pre-testing these tools will ensure that they are relevant and appropriate and that they avoid confronting or culturally insensitive questions.
- Interviews will finish on a 'positive or empowering note' through asking questions about what would improve the situation of victims of child trafficking and what could be done to prevent trafficking and labour exploitation for migrant children. This will help to ensure that participants do not leave the interview focusing on any traumatic topics discussed.

It is currently expected that some interviews with key informants will be conducted remotely. Researchers will communicate with participants to ensure that they are in a private but central location during the virtual interview, including NGO offices. However, where preferable for participants, interviews may be carried out where participants are located in their households. All data collection will take place in daylight hours. Interview with children will be scheduled so as not to disturb their schooling.

Coram International will take measures to support the mental wellbeing of researchers. Coram has a Mental Health First Aid focal point within its staff and researchers will be provided with the opportunity to de-brief

with the manager of the research project or member of staff responsible for supervising data collection. Researchers will be sign-posted to counselling services if required.

8.4 Child protection and safeguarding

During the data collection process, participants may disclose information that raises safeguarding or child protection concerns (i.e. information indicating that they are currently at risk of or are experiencing violence, exploitation or abuse). This will require preparation and consultation and an immediate and sensitive response from researchers and follow up to appropriate support and referral services.

Prior to the data collection taking place, researchers will be provided with copies of the child protection policies and procedures of each institution from which participants are recruited (i.e. schools, community services, business partners) and should familiarise themselves with child protection referral mechanisms and child protection focal points. This should be discussed with a manager or designated safeguarding lead and a decision made whether to raise an alert. At this point, the safeguarding policy and procedures must be followed.

In the event that the child interviewee reveals that they are at high risk of ongoing or immediate harm, or discloses that other children are at high risk of ongoing or immediate harm, the researcher will prioritise obtaining the child's informed consent to report this information to the appropriate professional as set out in the child protection policy, or, in the absence of such a policy, the person with authority and professional capacity to respond. If the child declines, the researcher should consult with an appropriate designated focal point, as well as the lead researcher and other key persons in the research team (on a need to know basis), concerning the appropriate course of action in line with the child's best interests. If a decision is made to report this information to the designated professional, the child interviewee should be carefully informed of this decision and kept informed of any other key stages in the reporting and response process.

8.5 Protection from Covid-19-related risks

Depending on the Covid-19 restrictions in place when the research takes place, it is possible that all interviews will be need to be conducted virtually. If in person interviewing is able to go ahead, the following measures will be put in place in order to protect researchers and participants from Covid-19 infection.

Vaccination

It is noted that the national researcher is fully (double) vaccinated.

Participant Recruitment: screening

When researchers have determined participants are suitable and willing to participate in face-to-face data collection, they will undertake screening questions to establish whether participants:

- are experiencing any flu-like and/or COVID-19 symptoms;
- have been diagnosed with COVID-19;
- have been in close contact with any individuals experiencing any flu-like and/or COVID-19 symptoms;
- have been in close contact with any individuals diagnosed with COVID-19;
- are shielding or caring for individuals vulnerable to COVID-19;
- are defined as either Clinically Extremely Vulnerable or Clinically Vulnerable;

- are content and confident to participate in face-to-face data collection, specifically any activities in which they may be asked to engage e.g., group activities with other participants in a central location; and
- have any specific concerns regarding participating in face-to-face data collection.

Participants who respond to screening questions which indicate they have Covid-19, have a high risk of infection and/or are shielding or caring for individuals vulnerable to Covid-19 and/or are Clinically Extremely Vulnerable will not be recruited for face-to-face data collection.

Researchers will ensure that, when recording responses to screener questions, no inferences are made to the actual health of participants. Researchers are not health professionals. The screening questions are to be used to reduce potential risk to others involved in research (including research participants and researchers).

Researchers will be informed that they must inform participants that if their health situation changes between the time of recruitment and face to face data collection they can no longer participate.

Participants will be provided with a telephone number, website, email, and contact address which participants can contact if they become infected with Covid-19 between recruitment and participating in any face-to-face data collection exercises. This information will be included in the information sheet.

Researchers will inform participants of the implications of participating in any face-to-face data collection, specifically any contact tracing applications and actions required which apply to the country where face to face data collection is being undertaken.

Preparations for Face-to-Face Data Collection

During face-to-face data collection, the researcher will:

- Position themselves in a location where they are able to adhere to social distancing requirements (i.e., position themselves 1.5 metres away from persons);
- Ensure participants adhere to social distancing requirements (i.e., position chairs 1.5 metres apart);
- Carry tissues and sanitary wipes and throw away in a bin any which are used – ask participants to use hand sanitiser on entering and leaving the interview room when applicable;
- Avoid touching their nose, mouth or eyes;
- Avoid any physical contact such as shaking a participant's hand;
- Be aware that asking individuals to participate in research may cause unnecessary stress and concern and to take steps to offer assurances to mitigate such concerns; and
- Wear a face mask, face shield and provide the same to participants.

The researcher will be required to sign an undertaking that they will comply with these requirements, along with other ethical requirements as part of the contracting process.

The researcher will ensure that if there has been a time delay between recruitment and data collection, the screening questions to establish Covid-19 risk are repeated before face-to-face data collection commences. The researcher must ensure that any participants whose screener responses raise concerns are asked to withdraw from the data collection activity and/or re-directed to completing the activity via an alternative data collection method e.g., online, telephone.

As noted above, the researcher will provide participants a telephone number, website, email, and contact address which participants can contact if they become infected with Covid-19 following a face-to-face data collection exercise.

b. List of interviewees

No.	Organisation	Location	Individual or group
1.	Human Rights Commission, Kuala Lumpur	Kuala Lumpur - Zoom	Individual
2.	Human Right's Commission, Sabah Office	Kota Kinabalu	Individual
3.	Matakana Childhood Education Society Sabah and Coalition Learning Centres Sabah	Kota Kinabalu	Individual
4.	ANAK (Child Rights and statelessness) and ex-Good Shephard Services manager	Kota Kinabalu	Individual
5.	PACOS Trust	Penampang, Kota Kinabalu	Individual
6.	Sabah Law Society	Kota Kinabalu	Individual
7.	Asia Foundation	Kota Kinabalu	Individual
8.	Asasi	Kota Kinabalu	Individual
9.	Cahaya Society	Sandakan	Individual
10.	Security and Safety Felda Global Ventures	Lahad Datu	Individual
11.	Humana schools, Zone Lahad Datu	Lahad Datu	Interview conducted as a group
12.	Teacher, Humana schools	Lahad Datu	
13.	Teacher, Humana Schools	Lahad Datu	Interview conducted as a group
14.	Teacher, Humana School	Lahad Datu	
15.	Teacher, Humana school	Lahad Datu	
16.	Teacher, Humana school	Lahad Datu	
17.	Parent and worker in independent plantation	Tawau	Interview conducted as a group
18.	Parent and worker in independent plantation	Tawau	
19.	Parent and worker in independent plantation	Tawau	
20.	Sabah Family Planning Association	Tawau	Individual
21.	Koalisi Imigran Indonesia (Indonesian Migrant Coalition)	Bogor, Indonesia (Zoom)	Individual
22.	Social Welfare Dept, Sabah	Zoom	Individual
23.	Department of Social Welfare. HQ	Putrajaya	Interview conducted as a group
24.	Policy & International Relations, Division Department of Social Welfare.	Putrajaya	
25.	HUMANA schools	Petaling Jaya	Individual
26.	Earthworm foundation	zoom	Individual
27.	Interview with social worker attache, Philippines embassy	Zoom	individual

