

Situation Analysis

Labour Issues in the Palm Oil Sector, Sabah, Malaysia

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(2022)



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Abbreviations

ATIPSOM	Anti-Trafficking in Persons and Anti-Smuggling of Migrant (Act)
CBP	Customs and Border Protection
CLC	Community Learning Centre
FWCS	Foreign Workers Compensation Scheme
Ha	Hectarage
ILO	International Labour organization
IOM	International Organization for Migration
JTK	<i>Jabatan Tenaga Kerja</i> (Labour Department)
MOHA	Ministry of home Affairs
MOHR	Ministry of Human Resources
MPIC	Ministry of Plantation Industries and Commodities
MSPO	Malaysian Sustainable Palm Oil
MTUC	Malaysian Trades Union Congress
RM	<i>Ringgit Malaysia</i>
RSPO	Roundtable on Sustainable Palm Oil
SDG	Sustainable Development Goal
SOCISO	Social Security Organization
SPIEU	Sabah Plantation Industry Employees Union
SUHAKAM	<i>Suruhanjaya Hak Asasi Manusia</i> (Human Rights Commission)
UNGP-BHR	United Nations Guiding Principles on Business and Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
WRO	Withhold Release Order



Glossary

Business partner	A person or a company providing specific services to growers, including recruitment of workers (e.g., private recruitment agencies and contractors)
Child labour	Work that is mentally or morally dangerous and harmful to children and/or interferes with their schooling (International Labour Organization)
Contractor	A person or a company providing specific services on a contract basis to growers such as harvesting, manuring, loading, transportation and other related services
Contract worker	A worker, be it local or migrant, hired by a person or a company appointed by a “grower” to perform selected type(s) of occupation on site
Decent work	In its broadest sense, it refers to opportunities for work that is productive and delivers a fair income; security in the workplace and social protection for families; better prospects for personal development and social integration; freedom for people to express their concerns, organize and participate in the decisions that affect their lives; and equality of opportunity and treatment for all women and men (ILO)
Forced labour	A situation in which a person is coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities
Grower	A person or a company that owns and/or manages a palm oil development, irrespective of the size of the palm oil operations
Irregular migrant worker	A migrant worker or economic migrant, who does not possess either a valid passport and/or legal working pass.
Large grower	A company that owns and/or manages a palm oil development of more than 10,000 ha
Mandor	A worker who is entrusted to supervise and/or oversee the work of other workers
Med-sized grower	A person or a company that owns and/or manages a palm oil development less than 10,000 ha, but more than 50ha – without owned mills
Small grower	A person or an entity that owns and/or manages a palm oil development of less than 50ha
Regular migrant worker	A migrant worker or economic migrant, who possesses both valid passport and/or legal working pass.
Regularization	A formal administration process to legalize the immigration status of irregular migrant workers for the purpose of legal employment
Supplier	A person or a company which is supplying fresh fruit bunches to oil palm mills

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Sincerely,

Dr Andika Wahab (Lead Researcher)

Dr Muhammad Faliq Abd Razak (Co-Researcher)

10 September 2022

Executive Summary

Malaysia is the world's second largest palm oil producing country, after Indonesia. The country contributes around a quarter of the world's oil palm production, which in 2020/2021 was around 73 million metric tons. In Malaysia, Sabah (East Malaysia) is the second largest palm oil producing state (after Sarawak), contributing about a quarter of the country's palm oil.

Existing studies have already highlighted the complex intersection between the expansion of palm oil (i.e., planted areas and production) and a range of social phenomena such as irregular migration and migrant smuggling linked to irregular employment of migrant workers in the sector. The long and complex migration history and lack of documentation among different groups of Indonesian and Filipino descendants further complicate the hiring practices, eventually exacerbating risks of forced labour and child labour.

While the existing literature is able to showcase the risks and issues affecting the sector, they tend to generalise it by disregarding the challenges and barriers facing different segments of oil palm growers, primarily among medium-sized growers and smallholder farmers and their respective workers. Additionally, this study notes that while the existing social compliance schemes continue to evolve, there have been persistent gaps between internationally-expected labour standards and local regulations. These gaps continue to hinder progress in promoting and implementing decent working and living conditions in the sector.

This study aims to fill these gaps by achieving the following objectives:

- (i) undertake gaps analysis intersecting the global decent work agenda, existing sustainability standards and local regulations, applicable in the context of the palm oil sector in Sabah;
- (ii) identify gaps in knowledge, awareness and practices on decent work, as well as business risks and challenges facing oil palm growers in the implementation of decent work in the sector; and
- (iii) formulate practical recommendations for specific policy responses and business actions to promote and implement decent work in Sabah's palm oil sector.

Framework and Methodology

This study is guided by the ILO's decent work framework – a global agenda that shapes and influences labour standards and development policies and programmes across the globe. The decent work framework is further divided into four pillars, namely: (i) standards and fundamental principles and rights at work; (ii) employment relationship; (iii) social protection; and (iv) social dialogue.

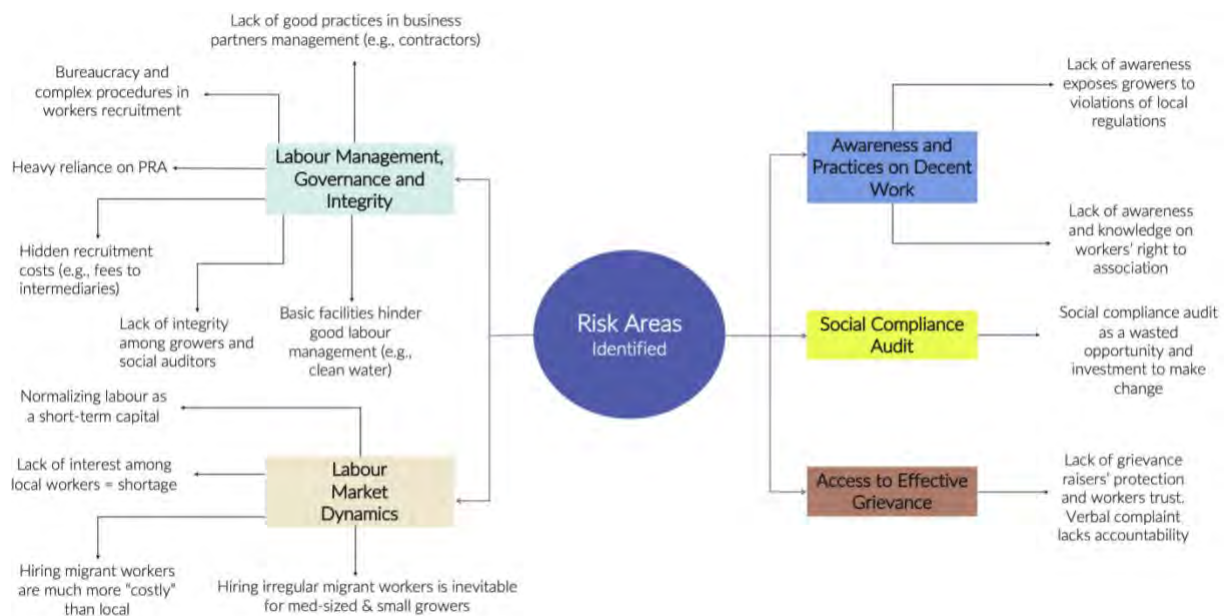
The fieldwork was conducted between January and late April 2022 in three East Coast districts of Sabah – Tawau, Kinabatangan and Lahad Datu. A total of 3 large growers, 14 medium-sized growers and 22 small growers were interviewed. Concurrently, a total of 103 oil palm workers were interviewed, 3 community mappings conducted (in Tawau, Kinabatangan and Lahad Datu), and 15 other stakeholders were engaged throughout the period of the study.

Findings: Awareness and Practices on Decent Work

Pillar 1 Standards and Fundamental Principles and Rights at Work	Pillar 2 Employment Relationship	Pillar 3 Social Protection	Pillar 4 Social Dialogue
<ul style="list-style-type: none"> ✓ 1 in every 3 respondents received lower than the mandated monthly minimum wage (<u>high prevalence among med-sized growers</u>) ✓ Working between 6 and 7 days per week is common: It is critical during peak season (<u>for all</u>) ✓ Nearly 1 in every 10 respondents was a child below 18 (mostly between 13 and 17), performing common activities such as manuring, harvesting and fruit loading (<u>high prevalence among med-sized & small growers</u>) ✓ 2 in every 3 respondents have school-aged children living on site: mostly among Indonesian and Filipino workers. It is common for children to assist their parents on site (<u>for all</u>) ✓ Retention of workers' passports for safe-keeping – was still a common practice (<u>med-sized growers</u>) ✓ Other indicators of forced labour found:- rigid outing procedures; money guarantee for long holidays; non-payment of wages as a means to retain workers (<u>for all, except small growers</u>) 	<ul style="list-style-type: none"> ✓ Nearly 1 in every 2 workers is an irregular migrant (<u>high prevalence among med-sized and small growers</u>) ✓ More than half of the respondents did not have a contract of employment, relying instead on verbal agreement (<u>high prevalence among med-sized and small growers</u>) ✓ Common recruitment practices include: (i) direct recruitment; (ii) recruitment through referral; and (iii) recruitment through regularization (<u>Most large & med-sized growers preferred methods (ii) and (iii)</u>) ✓ Med-sized & small growers relied heavily on private recruitment agencies. Growers commonly deduct workers' salaries to cover recruitment costs (e.g., regularization fee, work pass and medical test). ✓ Workers' dependents (e.g., their wives) work to supplement household income, with and without the government's authorization (<u>high prevalence med-sized growers</u>) 	<ul style="list-style-type: none"> ✓ 1 in every 4 respondents wasn't provided with safety & health related training (<u>high prevalence in small growers setting</u>) ✓ 1 in every 3 respondents wasn't provided with PPEs: workers purchased their own PPEs (either from the growers on a monthly salary deduction basis or from outsiders) (<u>prevalence among med-sized and small growers</u>) ✓ Safety and health monitoring were conducted in ways that were unstructured, unscheduled and occasional (<u>prevalence among med and small growers</u>) ✓ Workers raised concerns related to poor housing conditions, frequent disruptions of clean water, inadequate supply of electricity and lack of communication connectivity in most parts of rural estates (<u>prevalence among med-sized and small growers</u>) ✓ Growers perceived social security (SOCSO) as a requirement for hiring, not as protection per se. ✓ 1 in every 2 irregular workers is not covered under the SOCSO scheme (<u>prevalence among med-sized and small growers</u>) 	<ul style="list-style-type: none"> ✓ 1 in every 10 workers was aware of their right to association. (<u>prevalence for all</u>). None of the respondents, including locals, was a member of a union (internal & external). ✓ Workers lacked the vision and adequate understanding of how a union can help them achieve social justice, including resolving their problems (<u>prevalence for all</u>) ✓ Workers perceived paying union's membership fee a burden (<u>prevalence for all</u>) ✓ Workers raised concern that their participation in a union may result in employers' discontentment and an uncondusive employer-employee relationship (<u>prevalence for large and med-sized growers</u>) ✓ No clear assurance of workers' protection in existing operational grievance mechanism: this contributes to lack of workers' trust (<u>prevalence for all</u>) ✓ Language barriers, illiteracy and inappropriate placement of operational grievance platforms hinder workers from using them (<u>prevalence for all</u>)

Analysis: Business Risks and Challenges

The analysis covers five main risk areas (and their respective attributes), as follows:



Conclusions and Recommendations

This study concludes that labour standard issues and business risks facing growers can be divided into three dimensions:

- ⇒ Dimension 1 (System-Level) – issues and risks that go beyond the businesses’ (alone) ability to address them and require collective action to address.
- ⇒ Dimension 2 (Procedural) – issues and risks derived from gaps in guidance, arrangement, institutional support which require immediate government action.
- ⇒ Dimension 3 (Business Case) – issues and risks that are operational in nature, due to lack of good management and practices, which can be addressed by the businesses without intervention from other parties.

Designing recommendations is a complex but an important process. This study adopts the theory of change framework to serve as the building block to enable government agencies, growers and other relevant stakeholders to identify and act on the most strategic points of intervention in addressing issues and risks in the implementation of a decent work agenda.

This framework features five major aspects, namely: (i) strategies; (ii) interventions; (iii) associated dimensions and responsible actors; (iv) expected outcome; and (v) impact.

The ultimate goal (i.e., impact) of this framework is to achieve the realization of a decent work agenda, i.e., achieving the 4 Pillars of the decent work agenda. To this end, this study proposes a total of 29 interventions (or recommendations). Nine (9) of them come under Dimension 1 (for collective actions); eight (8) recommendations under Dimension 2 (for government actions); and 12 other recommendations under Dimension 3 (for business actions).



Section 1

Introduction and Methodology

1. Introduction and Methodology

1.1 Background

During the past several years, there have been growing numbers of allegations and exposures on the negative impact of the palm oil sector across governance, environmental and social spheres in Malaysia. On social and labour aspects specifically, between 2020 and 2021, two Malaysian oil palm conglomerates were issued with withhold release orders (WRO) by the U.S. Customs and Border Protection ([U.S. CBP, 2022](#)) for alleged incidences of forced labour, resulting in their palm oil-related products being sanctioned from entering the U.S. market.



Photo Source: [Reuters, 2021](#)

The issuance of the WROs against these two companies had far-reaching negative consequences, not only to the sector's reputation and access to the global market, but also to Malaysia's image as a moderate nation and active member of the United Nations (UN) that promotes peace, harmony and respect for human rights. Beyond the palm oil sector, the CBP also issued similar WROs to another six companies in Malaysia for similar forced labour allegations, predominantly in the disposable gloves and rubber industry.

The allegations against palm oil sector's non-compliance with labour standards are indeed not a new phenomenon. In 2009, the US's Bureau of International Labor Affairs (ILAB) included Malaysian palm oil in the list of products / goods produced by forced labour. Such inclusion was made in accordance with the US's Trafficking Victims Protection Reauthorization Act (TVPRA). Subsequently, in 2014, 2018 and 2020, the Malaysian palm oil sector was again included in the US's sanctioned list – during these reporting years, the sector was accused of committing not only forced labour but also contributing to incidences of child labour.

Malaysia's Ministry of Plantation Industries and Commodities ([MPIC, 2018](#)), with technical support from the International Labour Organization (ILO), conducted a nation-wide survey to estimate the prevalence of forced labour and child labour incidence in the palm oil sector. In brief, the [MPIC's survey \(2018\)](#) found that 8 in every 1,000 oil palm workers (nation-wide) were in situations of forced labour and about 33,600 children (nation-wide) were found to be in child labour conditions.

1.2 Significance of this Study

Malaysia is the world's second largest palm oil producing country, after Indonesia. Malaysia produces around a quarter of the world's palm oil, which was around 73 million metric tons in 2020/2021). In Malaysia, Sabah (East Malaysia) is the second largest palm oil producing state (after Sarawak), contributing about 25% of the country's palm oil ([Reuters, 2020](#)).

Given the expansion of oil palm planted areas and operations in the state,¹ existing studies highlight the complex intersection between oil palm production and a range of social phenomena such as irregular migration and migrant smuggling, rural poverty, lack of identity and legal employment status and alleged incidence of forced labour, predominantly among Indonesian and Filipino workers and their dependents ([World Vision, 2012](#)).

Migrant children are allegedly involved in either assisting their parents or working long hours for small and medium-sized growers but for less pay, while some children are unable to obtain basic formal education (further see [Fair Labor Association & Consumer Goods Forum, 2018](#); [Wahab, 2020](#)). Other studies and public reports also indicate a range of other labour rights violations, including unlawful withholding of passports; non-payment of wages and other practices that restrict the workers' freedom of movement and their right to association and collective bargaining ([Fair Labor Association & Consumer Goods Forum, 2018](#)).

While the existing literature offers useful information on current labour and social issues affecting the sector, they tend to generalise it, disregarding challenges and barriers facing different segments of palm oil workers and industry players. The voices of the unique segments of society and industry players such as smallholder farmers, medium-sized growers, as well as temporary and irregular migrant workers are often neglected. Equally important, there have been persistent gaps between internationally-expected labour standards and local regulations governing labour practices in the sector. These gaps continue to hinder progress in promoting and implementing decent working and living conditions in the sector.

1.3 Objective of the Study

Drawing from the narrative explained in the Background section, this study aims to achieve the following objectives:

- Undertake gaps analysis intersecting the global decent work agenda, existing sustainability standards and local regulations, applicable in the context of the palm oil sector in Sabah;
- Identify gaps in awareness and practices on decent work, as well as business risks and challenges facing oil palm growers in the implementation of decent work in the sector; and
- Formulate practical recommendations for specific policy response and business action in promoting and implementing decent work in Sabah's palm oil sector.

1.4 Research Framework

This study is guided by the International Labour Organisation (ILO's) decent work framework, which shapes and influences labour standards and development policies and programmes across the globe. Conceptually, decent work is referred to as a "... *universal aspiration of people to enjoy productive employment, receive fair income, safe workplaces and conditions, freely express their concerns and organise and participate in the decisions that affect their lives*" ([ILO, n.d.](#))

¹ For example, in 2011, the total oil palm planted areas in Sabah was 1.43 million hectares. This figure increased to 1.54 million hectares in 2020, for additional information, see [here](#).

The ILO developed the decent work agenda to strengthen job creation, rights at work, social protection and social dialogue, with gender equality as the cross-cutting objective. This broad aspiration has been included in major UN resolutions, the Universal Declaration of Human Rights (UDHR), and more recently in the UN Guiding Principles on Business and Human Rights (UNGPs BHR 2011) and in the UN's 2030 Agenda for Sustainable Development (2015). Under the SDGs, for instance, Goal 8 specifically promotes sustained, inclusive and sustainable economic growth, and decent work for all.

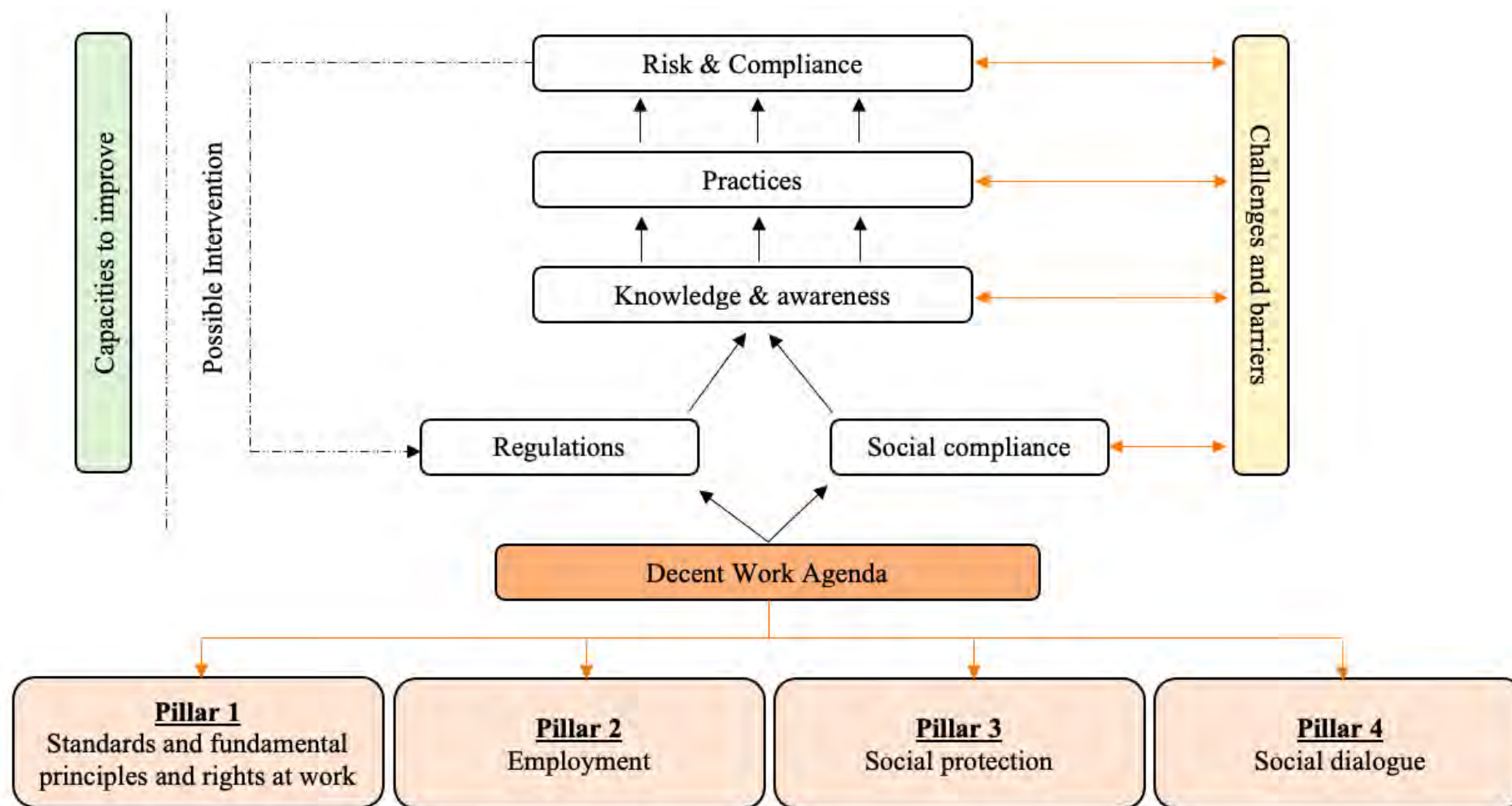
Just as important, “decent work” pulls together various international labour Conventions and Recommendations in promoting social justice, improving living standards and ensuring full enjoyment of human rights – making it significantly pivotal in such high-risk business sectors as agriculture and complex workforce demography.

The decent work agenda applied in this study is divided into four pillars (also see Figure 1.1), as summarised below:

- ⇒ Pillar 1 (Standards and Fundamental Principles and Rights at Work) – this includes assessment of a range of issues including implementation of fair wages, prohibition of forced labour and child labour.
- ⇒ Pillar 2 (Employment) – this covers assessment of the workers' status of employment, contract employment, recruitment practices and vulnerable workers.
- ⇒ Pillar 3 (Social Protection) – this pillar assesses aspects related to safety at the workplace, safety and health monitoring, safe accommodations and communications, and social security.
- ⇒ Pillar 4 (Social Dialogue) – this pillar looks specifically into two critical aspects of social dialogue, namely, the workers' right to association and collective bargaining, and grievance mechanisms.

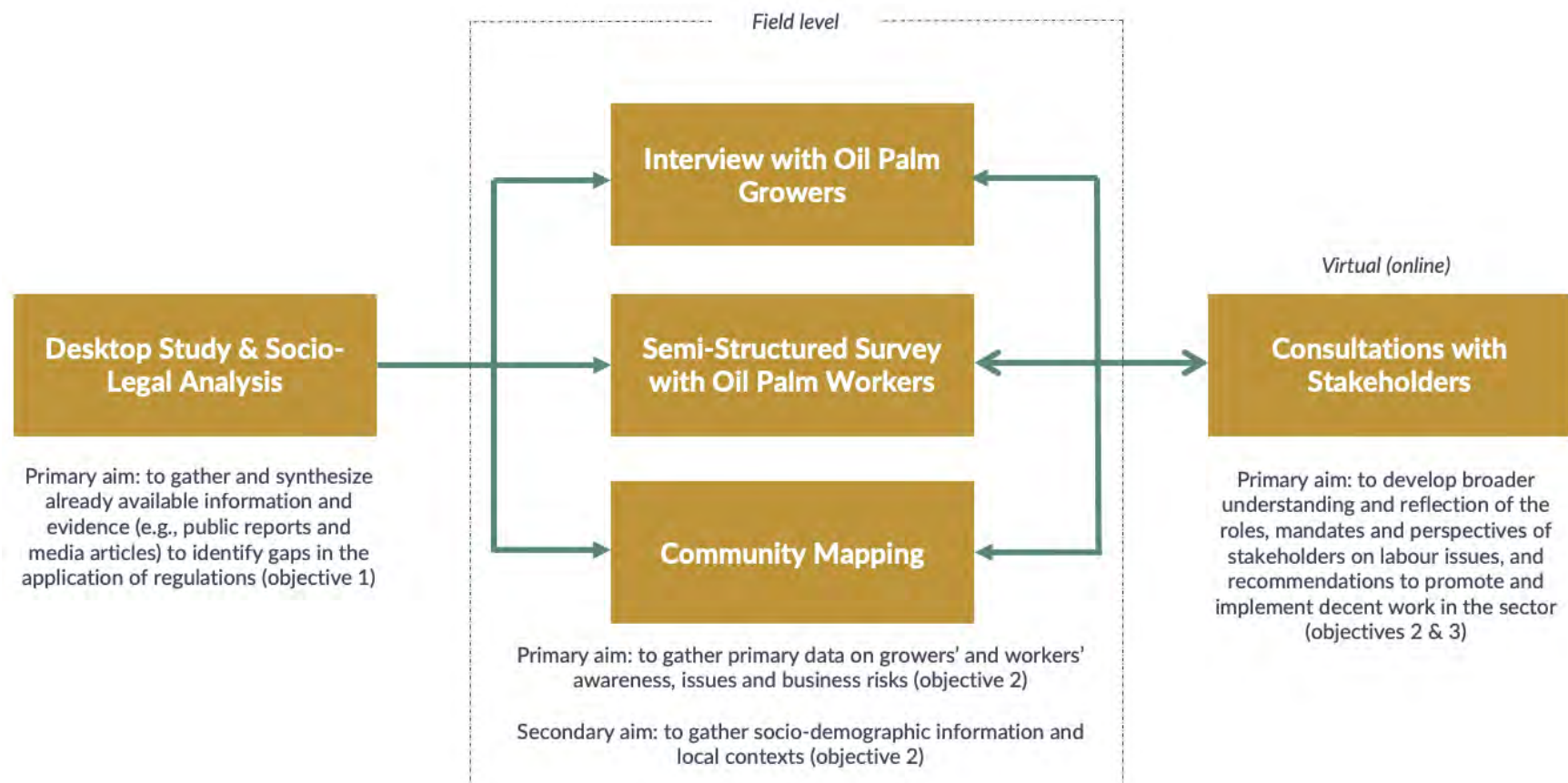
To perform the overall labour situation analysis, this study first examines the gaps between existing regulations and social compliance standards with respect to decent work. It is then followed by a careful assessment of the state of awareness and practices in the implementation of decent work on the ground. Here, the study identifies business risks and challenges growers face in implementing a decent work agenda. The study ends with the identification of possible interventions, in the forms of policy recommendations and business actions – taking into consideration the capacities of growers and workers to realise them.

Figure 1.1 Research Framework



1.5 Method of Data collection

Figure 1.2 Overview of Data Collection Methods



1.5.1 Desktop Study and Legal Analysis

This method aimed at gathering and synthesising already available information and evidence, including existing public reports, media coverage and academic literature. The synthesised information was then used to develop preliminary understanding on a broad range of issues and challenges affecting oil palm workers in Sabah. Information from the desktop study was also used to develop appropriate research framework and field work instruments (e.g., sets of semi-structured interview questions).

This study has performed a legal analysis to identify the gaps in local regulations and standards applicable to the palm oil sector.

This includes a review of the pertinent Malaysian legislation (e.g., Sabah Labour Ordinance and Anti-Trafficking in Persons and Smuggling of Migrants Act). It also explored legal issues, that is, general concepts, problems and principles of law, such as the manner in which the field of law is organised or how terms and concepts such as law, justice and rights are applied. Reliable and recent qualitative data were first gathered from multiple sources, including the Current Law Journal (CLJ) database. The sources included cases, articles, practice notes, legislative forms, precedents, sample agreements and legislation. Data were then snowballed and triangulated for greater level of accuracy and consistency. It is important to highlight that as the facts and court verdicts of a particular case may differ from another case, interpretation of legal provisions and local contextualization were applied. For standards analysis, this study focused on two important standards in the sector, namely, the Malaysian Sustainable Palm Oil (MSPO) and the Roundtable for Sustainable Palm Oil (RSPO) schemes.

1.5.2 Interviews with Oil Palm Growers

This method aimed at gathering information related to the growers' profiles, labour standard awareness, practices and their perspectives on challenges in implementing labour standards. In order to ensure openness and transparency, each session was approached in a dialogue format, with minimal reference to the set questionnaire. The set questionnaire only served as a guide.

Oil palm growers were first identified and selected using chain referral methods, beginning at multiple access points for greater sample heterogeneity. This non-probability sampling method is commonly used when there are difficulties accessing "willing informants", accentuated by the sensitive nature of the subject matter (see [Bloch, 2007](#); and [Penrod et al., 2003](#)). Our initial points of access included cold calling with growers whose particulars had already been provided to researchers by existing

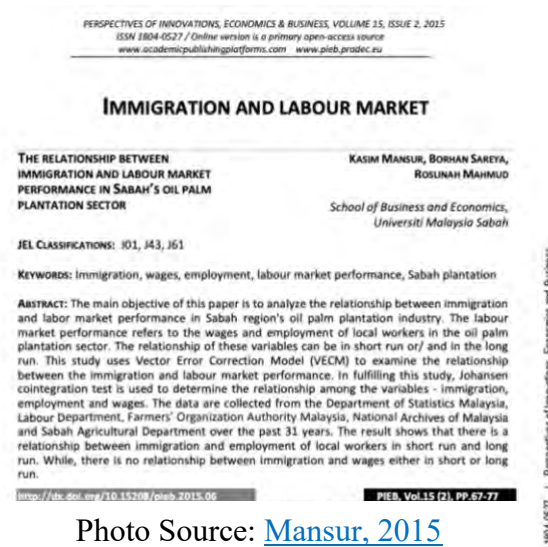


Photo Source: [Mansur, 2015](#)



Photo Source: Field work, Sabah



industries and civil society networks in Sabah. The study did not pre-determine the sample size. Instead, a saturation approach was used to determine adequate qualitative data.

Each interview session with growers (conducted separately), lasted between one and three hours (in average) and was audio-recorded with the consent of the growers. Growers were also briefed on the applicable key principles and ethics prior to proceeding with the interview sessions and they were informed that they could withdraw from the interview sessions at any time.



Photo Source: Field work, Sabah

As part of the research ethics, no name(s) and identification information are referred to in this report, as well as in any future public engagement to ensure confidentiality of information and to prevent any unintended consequences.

1.5.3 Semi-Structured Surveys with Oil Palm Workers

This method aimed to gather information related to the workers' profiles, their awareness and knowledge of labour rights and workplace conditions. The survey questions were used consistently in all interview sessions to ensure data compatibility across the worker respondents.

Similarly, the study used chain referral methods to identify and select the sample worker informants. Other than growers who served as the initial points of access, researchers consulted several civil society organisations and migrant workers' informal networks in Sabah to reach the sample informants. There



Photo Source: Field work, Sabah

was no particular pre-determined sample size. Instead, a saturation approach was used to ensure adequate understanding and reflection of the issues.

There were two categories of worker respondents:

- First, worker respondents who were employed, directly or indirectly, by the grower respondents; and
- Second, worker respondents who were independent of the grower respondents. Their voices are important to ensure diversity in workers' responses.

Each semi-structured survey session conducted with workers was between 45 and 60 minutes. Workers provided their consent, either verbally or in written form, before their interviews began. Workers' participation was voluntary and they were able to withdraw from the session at any time.

In consideration of the power dynamics and workers' vulnerability in the sector, each session was conducted at a safe and private place (e.g., workers' accommodation or at a work site far from the growers). To ensuring confidentiality and prevent potential retaliation, no names and other identification information are reported in this report and in other future public engagements.



Photo Source: Field work, Sabah

1.5.4 Community Mapping

This method aimed at gathering a broad range of information, including socio-demographic characteristics, local institutions and public facilities, common economic activities and livelihoods. The local information served as additional information to further develop robust understanding of the local context in a geographical area.

The community mapping exercise covered the above-mentioned information within a 50 kilometres radius, covering three specific areas, namely, Tawau (Apas-Balung), Kinabatangan and Lahad Datu (Tungku).

Additional informal interviews were conducted with local community members, including oil palm settlers, local traders in open and weekend markets, and workers' dependents. Participant observations were conducted at community learning centres (CLC) – an alternative learning programme established in partnership with large growers and the Indonesian Consulate (Government of Indonesia) in Sabah.

1.5.5 Stakeholders Consultation

This method aimed at developing broader understanding and reflection of the stakeholders' roles, mandates, and perspectives on labour issues and recommendations to promote and implement decent work in the sector. It also aimed to obtain further clarity and perspectives from relevant stakeholders with respect to critical fieldwork findings, e.g., issuance of labour permits for growers and workers' dependents on site.

Each stakeholder was identified based on their current mandates and work priorities on labour issues in the palm oil sector in Malaysia generally, and in Sabah specifically. The stakeholders consist of four main groups, namely:

- Regulators and authorities;
- Independent and civil society organisations;
- International organisations; and
- Industry players and/or associations.

Each stakeholder consultation lasted between one and two hours. The consultations were all conducted virtually and recorded for reference.

1.6 Scope of the Study

As of the end of 2021, there were a total of 1,316,168 oil palm estates and organised smallholders (combined) and another 207,456 independent smallholders registered throughout Sabah ([MPIC, 2021](#)). Collectively, these estates and smallholdings cover a total of 1,523,624 oil palm planted areas throughout the state. They also cover nearly one-third of the total planted areas throughout Malaysia (i.e., 5.7 million ha). Tawau (230,777 ha), Kinabatangan (366,756 ha) and Lahad Datu (289,453 ha) were selected as the sampling locations in this study, given their significant contributions with respect to oil palm planted areas in the state ([Gov. of Malaysia, 2018](#)).

The two main samples of this study are oil palm growers and oil palm workers.

First, oil palm growers are grouped into three categories, according to the size of their oil palm planted areas, as follows:

- Large grower: more than 10,000 ha;
- Med-sized grower: less than 10,000 but more than 50 ha, without mill(s); and
- Small grower (independent smallholder): less than 50 ha of oil palm planted areas.

Second, oil palm workers broadly refer to:

- Any worker, regardless of nationality (local or migrant) and immigration status (i.e., a worker with valid passport and/or working pass or a worker without such documents);
- Any worker directly hired by the growers mentioned above; and
- Any worker with no direct employment relationship (include no written and verbal commitment) with the growers mentioned above, but who work on the growers' oil palm lands, either on a seasonal, rotational, contractual or temporary basis.

Figure 1.3 Overall Sample of the Study



* Large grower samples include 1 RSPO-certified company, 1 company is in the midst of RSPO application, and 1 non-RSPO certified company.

** Of the total 14 med-sized growers: 1 Grower (less than 100 ha); 5 Growers (between 101 ha & 1,000 ha); 4 Growers (between 1,001 & 5,000 ha); and 4 Growers (between 5,001 ha & 10,000 ha)

*** Community mappings conducted in Tawau (Apas-Balung), Kinabatangan and Lahad Datu, aimed at gathering a broad range of information, including societal aspects, socio-demographic characteristics, local institutions, economic activities and livelihoods.

**** Other stakeholders comprise of regulators, international organizations, civil society actors and industry representatives in Sabah.

Figure 1.4 Snapshot of Stakeholders Consultation

Regulator

- ☐ Sabah's Labour Department
- ☐ Ministry of Plantation Industries and Commodities (MPIC)
- ☐ Malaysian Palm Oil Board (MPOB)

Independent Organization and Civil Society

- ☐ Malaysia's Human Rights Commission (SUHAKAM)
- ☐ Fair Labor Association (FLA)
- ☐ Earthworm Foundation (EF)
- ☐ Proforest
- ☐ Migrant Care
- ☐ Sabah's BC Initiative
- ☐ Transnational Palm Oil Labour Solidarity (TPOLS Network)

International Organization

- ☐ International Labour Organization (ILO)
- ☐ International Organization for Migration (IOM)
- ☐ Roundtable Sustainable Palm Oil (RSPO)

Industry

- ☐ Bunge Asia Pte. Ltd
- ☐ The East Malaysia Planters' Association (EMPA)



** All engagement sessions with stakeholders were organized virtually between 21 March and 30 April 2022.*

1.6 Study Ethics and Principles

This study is guided by the following research ethics and protocols. The researchers and enumerators involved, directly or indirectly, in the research, have observed and/or complied with these principles.

Ensuring **“No Harm”** (Principle) to participants, including injury, both through acts of commission (e.g., posing questions sensitive to participants) or omission.

Consent – participants’ consent is obtained prior to starting data collection. Enumerators must explain clearly the purpose of the research and the intended use of their information.

Confidentiality – conducting fieldwork in a manner appropriate to the culture, situation and perceived sensitivity of the participants. Ensure participants’ information are protected.

Privacy - conducting fieldwork (i.e., face-to-face) at a safe and private place such as a community learning centre or participants’ accommodations.


Safety – conducting fieldwork in a way that does not compromise the safety or security of the participants, including precautions to prevent COVID-19 infection.

Awareness of Power Dynamics and Empathy – Avoid asking or proceeding with data collection which will result in retaliation due to perceived power dynamics between the participant and prospective perpetrator(s).

Neutrality and (Un)biasness – maintaining neutral position and objectivity and avoiding the imposition of personal opinions and natural biases throughout data collection sessions.

Voluntary Withdrawal – participants’ decision to withdraw for any reason at any point during data collection will be respected and facilitated.

Sensitivity to gender-based violence (GBV) – all involved are provided with adequate knowledge to understand and respond to any potential incidence of GBV. GBV refers to any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females.



Section 2

Brief Profiles of Growers and Workers, and Community Profiling



2. Brief Profiles of Growers and Workers, and Community Profiling

2.1 Brief Profiles of Large Growers

In this study, there are 3 growers (2 in Tawau and 1 in Kinabatangan) who are categorised as large growers. This section presents their brief profiles.

It was determined that all large growers have a management system in place, centralised at headquarters, that oversees labour management, including the appointment of recruitment agencies, renewal of working passes and rehiring applications. The headquarters are often located hundreds of kilometres away from the respective estates. This is a common organisational set-up for many large growers.

The three growers are MSPO-certified. One is a RSPO-certified grower, while another is in the process of getting RSPO certification. The third large grower is neither RSPO-certified nor in the process of getting RSPO certification. They have established relevant employment policies and internal procedures, anchoring their respective commitments under the MSPO, RSPO and existing national regulations. Note that this study did not assess the compliance of their policies and procedures with such standards as the MSPO and RSPO.

At the estate level, there are staff tasked to execute headquarters' policies, directives and decisions governing labour practices. For example, once a recruitment agency has been appointed by headquarters, staff at the estate level are expected to take the necessary steps to ensure the smooth recruitment of workers. Once a policy has been established, staff at the estate level are also expected to implement, monitor and report developments to headquarters on a regular basis.

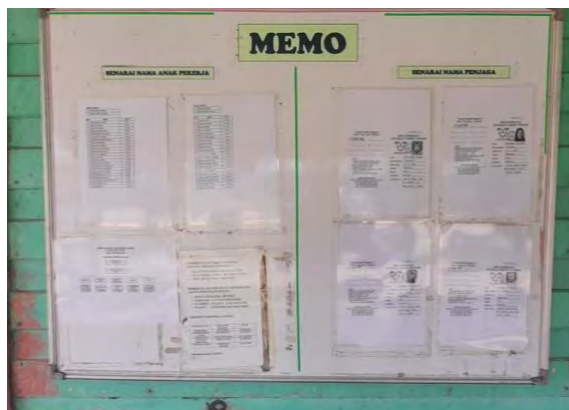


Photo Source: Field work, Sabah

While many local workers are represented by unions, migrant workers are not represented either by in-house or outside unions. However, it is common practice among large growers that an internal joint committee (between management and employees) is established, providing an avenue for social dialogue for workers, including migrant workers, and management. Workers then raise their complaints and suggestions, spanning welfare, accommodation and workplace issues, to the joint committee. All growers have set up complaint mechanisms on site (e.g., complaint log books and boxes), providing yet another venue for workers to raise their issues and complaints. However, the inappropriate placement of complaint mechanisms raises concerns whether workers can raise their complaints confidentially. There is no guarantee that workers who raise complaints are not retaliated against and protected from repercussions resulting from their complaints.

All growers have set up community learning centres (CLC), in collaboration with the Indonesian Consulate in Sabah, to provide access to alternative education for the children of migrant workers on oil palm estates. The children of local workers enrol in nearby government schools. The growers have also established creche or development centres on sites, enabling

workers to send their children aged below 5 and/or 6 years old, during work hours, to be taken care of by trained caregivers.

2.2 Brief Profiles of Med-Sized Growers

There are 14 growers (3 in Tawau, 6 in Kinabatangan and 5 in Lahad Datu), who are categorised as med-sized growers.

All the med-sized growers in this study are MSPO-certified (without a mill). The smallest oil palm planted area owned by a med-sized grower is about 100ha, while the largest oil palm planted area is around 9,000 ha (see the table below). This leads to significant differences in estate management structure and the number of workers required to support daily activities on the oil palm estate.

Range of Size of Oil Palm Planted Areas	No. of Growers	Per cent
51 ha to 100 ha	1	7.1
101 ha to 500 ha	3	21.4
501 ha to 1,000 ha	2	14.3
1,001 ha to 5,000 ha	4	28.6
5,001 to 10,000 ha	4	28.6
Total	14 Med-sized Growers	100 per cent

Similarly, there are significant differences with respect to the labour management system across growers. Growers with sizable workforce (e.g., more than 10 workers) have a management body established to manage labour-related matters on site, e.g., monitor workplaces, document daily workers' productivity and pay the workers' wages. It is common practice that these growers appoint one (or more) senior worker(s) to act as *mandor* to manage and monitor other workers on a daily basis.



Photo Source: Field work, Sabah

Growers who employ fewer than 10 workers do not usually have a management body and/or system. Instead all labour-related matters are managed by one or more individuals who are also responsible for managing other tasks, e.g., facilitating MSPO audit, managing supplies management, transportation, finance, etc.

Regardless of the presence of a management body, growers still relied heavily on recruitment agencies for the recruitment of new workers, rehiring programmes, and renewal of annual working passes. Recruitment agencies commonly provided 'A-to-Z' services to growers, including workers' quota and labour permit applications, drafting of employment contract, transportation and medical check-ups.

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).

Establishing a formal complaint mechanism is not a common practice among med-sized growers who prefer that workers raise their complaints verbally and directly to the *mandor(s)*, i.e., the superiors or managers in charge. There is no proper record of complaints and resolutions, indicating a lack of transparency and accountability in resolving workers' complaints.

Both local and migrant workers employed by med-sized growers are not represented by unions. In the meantime, the med-sized growers have not established workers' committee or joint committee (i.e., between workers and management). Given the small number of migrant workers' children, it is also not a common practice among med-sized growers to establish a community learning centre (CLC) and child development centres. However, some migrant workers' children have access to nearby CLCs run by other large growers.

2.3 Brief Profiles of Small Growers

There are 22 growers (7 in Tawau, 7 in Kinabatangan and 8 in Lahad Datu), who have been categorised as small growers. About 70% of them are MSPO-certified, while the others have not been fully audited and certified. Some growers stated they are required to resolve land title issues prior to proceeding with a MSPO-audit.

Small growers regard MSPO certification as a way to increase their income and productivity, rather than strengthening the sustainable and responsible production of oil palm. Other growers consider MSPO certification as a common licensing process, enabling growers to sell their crops in the market.

There is even greater misunderstanding and lack of knowledge of the social and labour aspects of the MSPO standards. When asked about the prohibition of child labour, for example, small growers consider it is a responsibility of children to assist their parents on site. Growers also tend to ignore the legal requirement of hiring only migrant workers with legal documents, stating that it is expensive, tedious and complex to hire migrants with legal documents. At the same time, the growers also mentioned the difficulty of finding local workers (except family members) who are willing to work in the sector.



Photo Source: Field work, Sabah

Some small growers are heavily dependent on their oil palm planted land as their main source of income, and they are directly involved in managing oil palm production. Other growers who have other full-time employment (e.g., as teachers, government officers or private staff), consider oil palm activities as their additional source of income. The small growers who depend heavily on oil palm activities as their main source of income sometimes act as workers themselves, performing certain oil palm activities especially during the harvesting period. They are also supported by other family members, neighbours or part-time workers. Some activities such as slashing and general cleaning are often outsourced to part-time workers.



Photo Source: Field work, Sabah

Small growers who consider oil palm activities as their additional source of income often depend on migrant workers, either as full-time or part-time workers, to manage their lands. Some migrant workers are full-time workers employed by other med-sized and large growers, but offer part-time services to small growers, especially during the harvesting period.

Small growers do not usually have a formal employer-employee relationship with workers (whether full or part-time workers). It is not a common practice for workers to sign an employment contract with growers. Growers and workers rely on verbal agreements to calculate wages based on productivity.

Small growers who hire full-time migrant workers usually provide accommodation for the workers at nearby worksites. The children of these migrant workers are unable to access any form of formal education, including the CLCs run by large growers.

2.4 Brief Socio-Demographic Profiles of Worker Respondents

As shown in *Figure 1.3* above, a total of 103 workers were interviewed.

The majority of these workers, 55.3%, were hired by med-sized growers, followed by 24.3% hired by large growers and 20.4% hired by small growers.

About 39.8% of the worker respondents worked in Tawau (Apas-Balung), 38.8% in Kinabatangan and 21.4% in Lahad Datu (mostly in Tungku).

Slightly more than one-third of worker respondents were female, the majority of whom were Indonesian citizens, including the dependents of Indonesian migrants working for med-sized growers. The remaining 62% were male workers.



Photo Source: Field work, Sabah

Less than 10% of the worker respondents were local workers. The vast majority of respondents were migrant workers from Indonesia (83.5%), followed by the Philippines (9.7%).

Nearly half of the respondents (46.6%) were irregular migrant workers who did not possess either a valid working pass or passport, or both. About 5.8% claimed to be under the regularisation programme and another 38.8% were migrant workers with valid legal documents. Two other worker respondents claimed to be local citizens, but without identity documents.

The largest segment of worker respondents (39.8%) was aged 31 to 40 years old, followed by workers aged 18 to 30 years old (27.2%), workers aged 41 to 50 years old (21.4%) and workers aged 51-60 years old (2.9%). Nine workers, Indonesian and Filipino citizens, were below 18 years old (8.7%).

The majority of worker respondents (63.6%) have worked with their current employers for less than 10 years. About 30.2% have worked for their current employers for between 11 and 20 years. About 6.3% of other workers have been employed by the same employer for more than 20 years.

Six (6) migrant worker respondents claimed to be second generation migrant workers, who were born in Sabah. Four of them were Indonesian citizens and another two were Filipinos.

More than half (54.4%) of the respondents have primary school education, while about 17.5% have secondary school education. Less than one-third of the respondents did not have any formal education. About 23.3% of them were literate, while 4.9% were illiterate.

2.5 Summary of Community Mapping in Tawau (Apas-Balung)

Oil palm is the main source of income for many smallholder farmers and workers in the local community. Other common economic activities include small-scale vegetable and fruit farming, as well as harvesting edible birds' nests.

The major ethnic groups populating the local area are the Tidung and Murut, both of which are natives. Other groups living in the area include Indonesian migrant workers and their descendants, who mostly work in the oil palm estates. In the past 10 years, there has been no reported health epidemic in the local community.

There are two pre-school facilities available, namely, Tadika Sinar Adeen and Tadika Islam Hafiz. There are six government primary schools: namely, Sekolah Kebangsaan (SK) Blok 31; SK Batu 22 Balung; SK Andrassy Tawau; SK Bukit Quoin; SK Inderasabah; and SK Batu 4 Jalan Apas. There are two government secondary schools, namely, Sekolah Menengah Kebangsaan (SMK) Kinabutan Tawau, Sekolah Menengah Visi and Maktab Rendah Sains Mara (MRSM) Tun Mustapha, Tawau. There are three vocational institutes, namely, Kolej Komuniti Bandar Sri Indah, Fin Skill Academy, and Tawau Vocational College.



Photo Source: Field work, Sabah

Many migrant workers' children have access to several community learning centres (CLC), managed by several large growers in partnership with the Indonesian Consulate in Sabah. These include Sabah Land and Development Berhad (SLDB) Apas Balung's CLC, CLC Al-Alaq, CLC Tunas Perwira, CLC Sungai Balung, and CLC Bambu Kuning.

There are seven religious gathering places in the area, four of which are mosques and three are churches. Two popular transportation services used by local and migrant communities to travel to nearby towns include public bus and private taxi. Other public and private institutions available include:

- Government administrative offices (e.g., National Registration Department and Department of Forestry);
- Three public security offices (Balai Polis Bandar Sri Indah, Pondok Polis Kg. Tass and Pondok Polis Quin Hill);
- Two bank branches (Public Bank and RHB Bank); and
- One public health facility (Klinik Kesihatan Tawau) and three private clinics (Klinik Ruslan Amin, Klinik BSI and Nur Mediklinik).

There is a stable and adequate supply of clean water and electricity to the majority of the local communities but disruptions of clean water supply are common in the remote areas.

2.6 Summary of Community Mapping in Kinabatangan

Oil palm is also the main source of income in the local community. Other common economic activities include small-scale fruit farming, fisheries and harvesting edible birds' nests. Some community members work in the public and private sectors in nearby towns.

Among the major ethnic groups are Orang Sungai, Ida'an, Bajau, Suluk, Bugis, Tidung, Dumpas and Kagayan. The two dominant migrant communities include Indonesian and the Filipino migrants who mostly work in the oil palm estates.

There are four pre-school facilities available: Tadika Kemas Kg. Lot M; Tadika Kemas Kg. Warisan; Tadika Kemas Tg. Bulat; and Edukidz Kindergarten. There are four primary schools -- SK Ladang Bode Kretam; SK Kota Kinabatangan; SK Buang Sayang; and SK Sinar Jaya. There are two secondary schools, namely, SMK Segaliud and SMK Bukit Garam 1 & 2. There is one vocational school, Pusat Giat Mara Kinabatangan. There are, at least, seven CLC available in the nearby areas, including CLC Ladang Bode Kretam; CLC Ladang Masang; CLC Prolific; CLC Segaliud; CLC Sekong; CLC Genting Mewah; and CLC Ladang Sutera.

There are eight religious gathering places, including five mosques (Masjid Baitul Mukmin, Masjid Al-Falah, Masjid Al-Hikmah, Masjid Al-Ghaffar, and Masjid Al-Taqwa) and three churches (St Anthony Church Bukit Garam, True Jesus Church Bukit Garam and Sabah Revival Fire Ministry). Other public and private institutions available include:

- Government administrative offices (e.g., National Registration Department and Education Department)
- Two main public security offices (IPD Police Kinabatangan and Fire Brigade).
- Several public health and private clinics (e.g., Klinik Kesihatan Ulu Dusun, Klinik Layong, and Klinik Mabelo)



Photo Source: Field work, Sabah

2.7 Summary of Community Mapping in Lahad Datu (Tungku)

Other than oil palm, fisheries and harvesting birds' nests are among the more common economic activities in the local area. Members of the community also work in large oil palm mills and plantation companies.

The main ethnic groups residing in the area include Ida'an, Bajau, Iranun and Suluk. The Filipino migrants constitute the main migrant community. Tungku is about 70 kilometres away from the main town, Bandar Lahad Datu.

There are four pre-school facilities available: Tabika Kemas Bandar Sahabat; Tabika Baiduri Ayu; Kindergarten Update HH Rudiah; and PLK Aryam. There are seven primary schools -- SK Bakapit, SK Bangingod, SK Sri Darun, SK Sri Pantai, SK Telisai, SK Tungku and SK Ulu Tungku. The two secondary schools in the area are SMK Tungku and SMK Desa Kencana. There is no vocational school available.

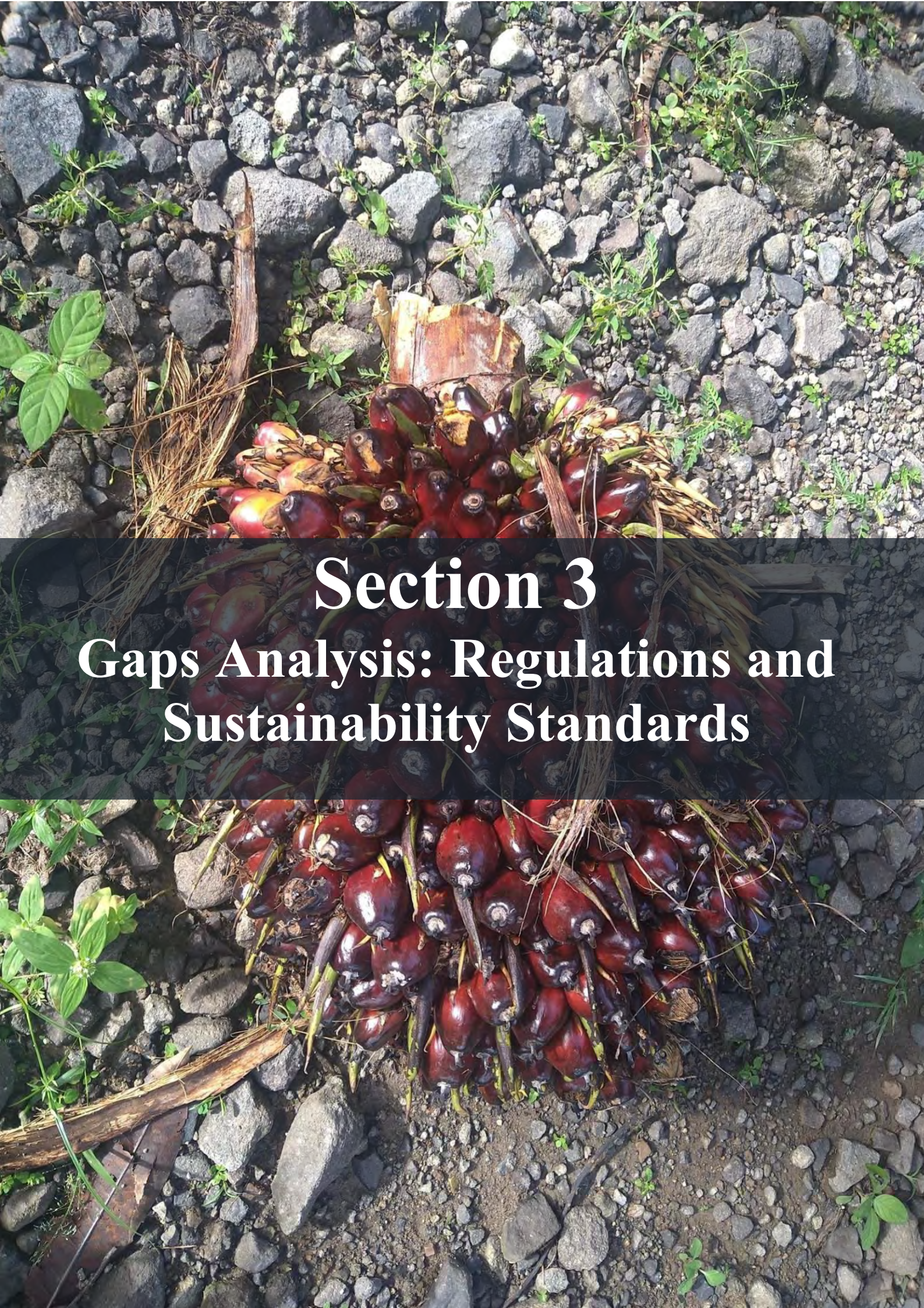


Photo Source: Field work, Sabah

There are several CLCs established within the Tungku area. However, there is only one CLC available within a five to ten kilometres radius of the locations where the majority of the worker respondents were interviewed.

There are four religious gathering places available: three mosques (Masjid Nur Hidayah Kg. Makuau, Masjid Nurul Talbiah Kg. Sibural and Masjid Felda Sahabat) and a church (Felda Sahabat Church). There is one financial institution (Bank Rakyat), equipped with an ATM. Two public health clinics are available - Klinik Ung Cendrawasih and Klinik Mabelo Tungku. There is a National Registration Department and two Police Offices (Balai Polis Tungku and Balai Polis Cenderawasih) operating within the area.

Disruption of clean water supply is a common problem facing local community members and workers. So, households usually prepare a water tank to keep clean water for use during shortage or water supply disruptions.



Section 3

Gaps Analysis: Regulations and Sustainability Standards

3. Gaps Analysis: Regulations and Sustainability Standards

This section is divided into three parts, namely, (i) review of Malaysia's legal framework; (ii) analysis of Malaysia's legal framework; and (iii) analysis of gaps in existing sustainability standards, specifically labour standards.

3.1 Review of Legal Framework in Malaysia

Malaysia practices a system of government known as Federalism, where there is a strong central government at the federal level and 13 state governments with limited autonomy. The legal system begins with the Federal Constitution as the supreme law of the land and its supremacy is affirmed by an article which states that 'any law which is inconsistent with the Federal Constitution is void'.

The Federal Constitution demarcates the power between the federal and the state governments. It must be noted that "labour" is a federal matter and that the enforcement and adoption of existing labour laws in Malaysia are governed by the Ministry of Human Resources (MOHR) and are applicable to all workers working in Malaysian territory, regardless of their nationality. This means that when it comes to the application of the law, any labour law is applicable to workers as long as there are no legal restrictions.²

3.1.1 Articles of the Federal Constitution of Malaysia pertaining to Labour

Articles 5 to 13³ in Part 2⁴ of the Federal Constitution focus on the fundamental rights of citizens and non-citizens. According to the Federal Constitution, any kind of forced labour practices and slavery are prohibited under Article 6(1)⁵ of the Federal Constitution, which states that "... no person shall be held in slavery". This right is protected and embedded in this article with its explicit use of the term 'no person' to reflect that neither local nor migrant workers shall be held in slavery or in any form of servitude. Article 6(2) provides that all forms of forced labour are prohibited.

Article 8(1) provides that all persons are equal before the law and are entitled to equal protection of the law. The phrase 'equal before the law' means that everyone must be treated equally and shall not be discriminated against under any circumstances. It must be noted here that Article 8(1) does not define equal protection, which means that there should be no discrimination between different groups, backgrounds or origins in the rights and duties set out in the law⁶. Article 8(2) does not define what is meant by the term 'discrimination'.

² If there are no specific provisions restricting the application of labour laws to the migrant workers, then they are applicable.

³ Articles 5 to 13 protect and guarantee the fundamental liberties of citizens and every person residing in Malaysia.

⁴ Part 2 of the Constitution consists of protection of Liberty of the person, while Article 6 prohibits slavery and forced labour.

⁵ See Article 6 of the Federal Constitution of Malaysia.

⁶ See Legal Brief from The Equal Rights Trust Legal Brief for Kanalesingam. Available at https://www.equalrightstrust.org/sites/default/files/ertdocs/120322_Transgender_Legal_Brief.pdf (accessed date 13th April 2020)

Box Article 3.1: Case Law – “Equality” under the Federal Constitution

In regard to the extension of equality, as stated under Article 8(1) of the Federal Constitution, migrant workers are entitled to be treated equally without any element of discrimination. The case of *Tan Tek Seng @ Tan Chee Meng V. Suruhanjaya Perkhidmatan Pendidikan & Anor, [1996] 2 CLJ* gave rise to a significant legal precedent and defined the words used in Article 5(1) and Article 8(1). In this case, the judge extracted the essential meaning of the word ‘life’ in Article 5(1), and interpreted it to include the right to livelihood. Therefore, employment is a fundamental right under the expression of Article 5(1). Thus, the interpretation of Article 5, in a generic way, encompasses many other rights in the realisation of equal treatment, as promised by Article 8, and both articles must be read together. Employment conditions are a matter of livelihood under the word ‘life’ in Article 5, and it has a combined effect that is significant in extending the applicability of equal treatment to migrant workers residing and working in Malaysia.

3.1.2 Employment Act 1955 and Sabah Labour Ordinance 1967

The Employment Act 1955 is one of the most important pieces of legislation when it comes to a discussion of the rights, protection and entitlements⁷ of an employee, subject to the employment terms, regardless of whether that employee is a migrant worker or local worker. In general, the Employment Act 1955 applies only to Peninsular Malaysia, while Sabah is regulated by the Sabah Labour Ordinance 1967. Both pieces of legislation provide protection in relation to the rights of employees with regard to their working conditions and benefits. It is worth noting that the relationship between employers⁸ and employees⁹ or foreign employees¹⁰ is defined based on a “contractual obligation”, “contract of service” or “contract for service”, which determine the terms of the employment¹¹. When it comes to specific groups such as migrant workers, both pieces of legislation apply only to those who have valid passport and working pass (i.e., regular migrant workers) – who are residing in Malaysia for work purpose, but an exception is made for domestic workers¹².

3.1.3 Minimum Wages Order 2022

The Minimum Wages Order 2022 was announced by the MOHR pursuant to the powers conferred by the National Wages Consultative Council Act 2011, Section 23(1). This order came into operation on 1st May 2022 and revoked the Minimum Wages Order 2020 [P.U. (A) 5/2020]. This Order shall not apply to a domestic servant as defined under subsection 2(1) of the Employment Act 1955 [Act 265], subsection 2(1) of the Sabah Labour Ordinance [Cap. 67] and subsection 2(1) of the Sarawak Labour Ordinance [Cap. 76]

Under Paragraph 4 of the Order, it is mandatory for employers to pay a minimum monthly wage of RM1500 per month to employees commencing on 1st January 2023. From 1st May

⁷ Benefits such as annual leave, maternity leave, salary, working hours and dismissal.

⁸ Defined by section 2 of the Employment Act 1955.

⁹ Defined by section 2 of the Employment Act 1955 means any person or class of persons

(a) included in any category in the First Schedule to the extent specified therein; or (b) in respect of whom the Minister makes an order under subsection (3) or section 2A

¹⁰ Defined by section 2 of the Employment Act 1955 means an employee who is not a citizen

¹¹ 1st Schedule of the Employment Act 1955

¹² Defined by the section 2 of the Employment Act 1955

2022 until 31st December 2022, RM1200 is the minimum monthly wage payable in areas within the jurisdiction of a City Council and Municipal Council, whilst RM1100 is the minimum monthly wage payable in areas outside the jurisdiction of a City Council or Municipal Council. Employers were unhappy with this order as it came into effect immediately, and not with slow increases or gradually over two consecutive years.

3.1.4 Immigration Act 1959/63

The Immigration Act 1959/63 provides rules and regulations for the admission and stay of migrants, including migrant workers in Malaysia, and the enforcement of the Act is mandated to the Immigration Department under the Ministry of Home Affairs (MOHA). The rules under the Immigration Act provide the details of its application to migrant workers, for example, the economic sectors where migrant workers are allowed to work such as manufacturing, construction, plantation, agriculture, and the services sectors.

The Act also criminalises any act by migrants that fails to comply with immigration policies, rules and regulations relating to entry, stay and work, making them subject to arrest if caught by the authorities. The Act provides for strict punishment of irregular migrants (i.e., without valid documents) and employers who are caught hiring irregular migrant workers. Section 6(3) of the Immigration Act 1959/63 states that the punishment for irregular migrant workers includes a fine of up to MYR 10,000, imprisonment of up to five years, whipping of not more than six strokes, and the fast-track deportation of illegal and undocumented migrants.

3.1.5 Passports Act 1966

In accordance with the Passports Act 1966, all persons who enter and exit Malaysia must hold a valid passport and non-citizens must hold a valid visa. Section 12 (1f) of the Act states that it is an offence for any person “without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself.” Any violation is subject to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both. Pursuant to Section 10 of the Act, Customs, Police and Immigration Department are responsible for enforcement of the provisions of the Act.

Often migrant workers are told that the passports are retained to ease administrative processes such as obtaining or renewing the work permit or pass. Employers assert that they retain passports so that they cannot be lost or damaged and/or to prevent the worker from running away. In cases where passports are taken away for safekeeping, access to such documents often requires permission and/or bureaucracy from their employers and/or agents.

3.1.6 Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

Enacted in 2007, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM) criminalises offences of “forced labour” as a form of exploitation under trafficking in persons. The Act is used extensively to address human trafficking for labour and sex, specifically, to prosecute pimps, syndicates, employers and agents who exploit migrants and refugees throughout the country. The law establishes stringent penalties of up to twenty years imprisonment and fines for those convicted.

The powers to address trafficking in persons cases vest with five enforcement bodies. In particular, Section 2 of ATIPSOM 2007 defines an “enforcement officer” as any officer,

specified under Section 27 – which refers to any (i) police officer; (ii) immigration officer; (iii) customs officer; (iv) maritime enforcement officer; and/or (v) labour officer. By virtue of Section 6(2)(i) of the Act, they are officially recognised as the bodies governing the potential and actual cases of trafficking in persons. A council known as the *Majlis Antipemerdagangan Orang* (MAPO) was established to coordinate the implementation of ATIPSOM 2007, and formulate policies to prevent and address issues related to trafficking in persons and smuggling of migrants. It is important to highlight that the Act recognizes forced labour as a subset of or a related form of exploitation under trafficking in persons. However, the existing legal framework in Malaysia, including the ATIPSOM – does not provide for cases of forced labour that occur independently of trafficking in persons.

Box Article 3.2 Recent Amendment on Forced Labour Provisions under Existing Malaysian Legislations

A. Private Employment Agencies (Amendment) Act 2017

1. The principal Act was amended by inserting after section 11 the following section:

“11A”. Suspension or revocation of licence

(1) The Director General may, by written notice to a private employment agency and without any compensation, suspend or revoke a licence granted under this Act if he is satisfied that the private employment agency—

(c) has been convicted of an offence under this Act or the director of the private employment agency has been detained under any written law in relation to anti-trafficking in persons and forced labour

2. The principal Act was amended by substituting for section 9 the following section:

“9”. Compliance with conditions imposed on licence application

(1) The Director General may approve an application for a licence made pursuant to section 8 if the

(iii) has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour

B. Employment (Amendment) Act 2022

1. The principal Act was amended by substituting for section 60K the following section:

“60K”. Employment of foreign employee

(4) The Director General may, subject to any written law, approve an application under this section if the employer complies with the following conditions:

(b) the employer has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour.

2. The principal Act was amended in Part XVII by inserting before section 91 the following section:

"90B". Forced labour

Any employer who threatens, deceives or forces an employee to do any activity, service or work and prevents that employee from proceeding beyond the place or area where such activity, service or work is done, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both."

C. Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022.

1. The principal Act was amended in section 2, as follows:

- (a) in the English language text, in the definition of "exploitation", by substituting for the word "means" the word "includes";
- (b) by deleting the definition of "coercion";
- (c) in the definition of "enforcement officer", by substituting for the words "section 27" the words "subsection 27(1) or any public officer appointed under subsection 27(1A)"; and
- (d) by substituting for the definition of "trafficking in persons" the following definition: "trafficking in persons" means all actions of recruiting, conveying, transferring, acquiring, maintaining, harbouring, providing or receiving, a person, for the purpose of exploitation, by the following means:
 - (a) threat or use of force or other forms of coercion;
 - (b) abduction;
 - (c) fraud;
 - (d) deception;
 - (e) abuse of power;
 - (f) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
 - (g) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person;"

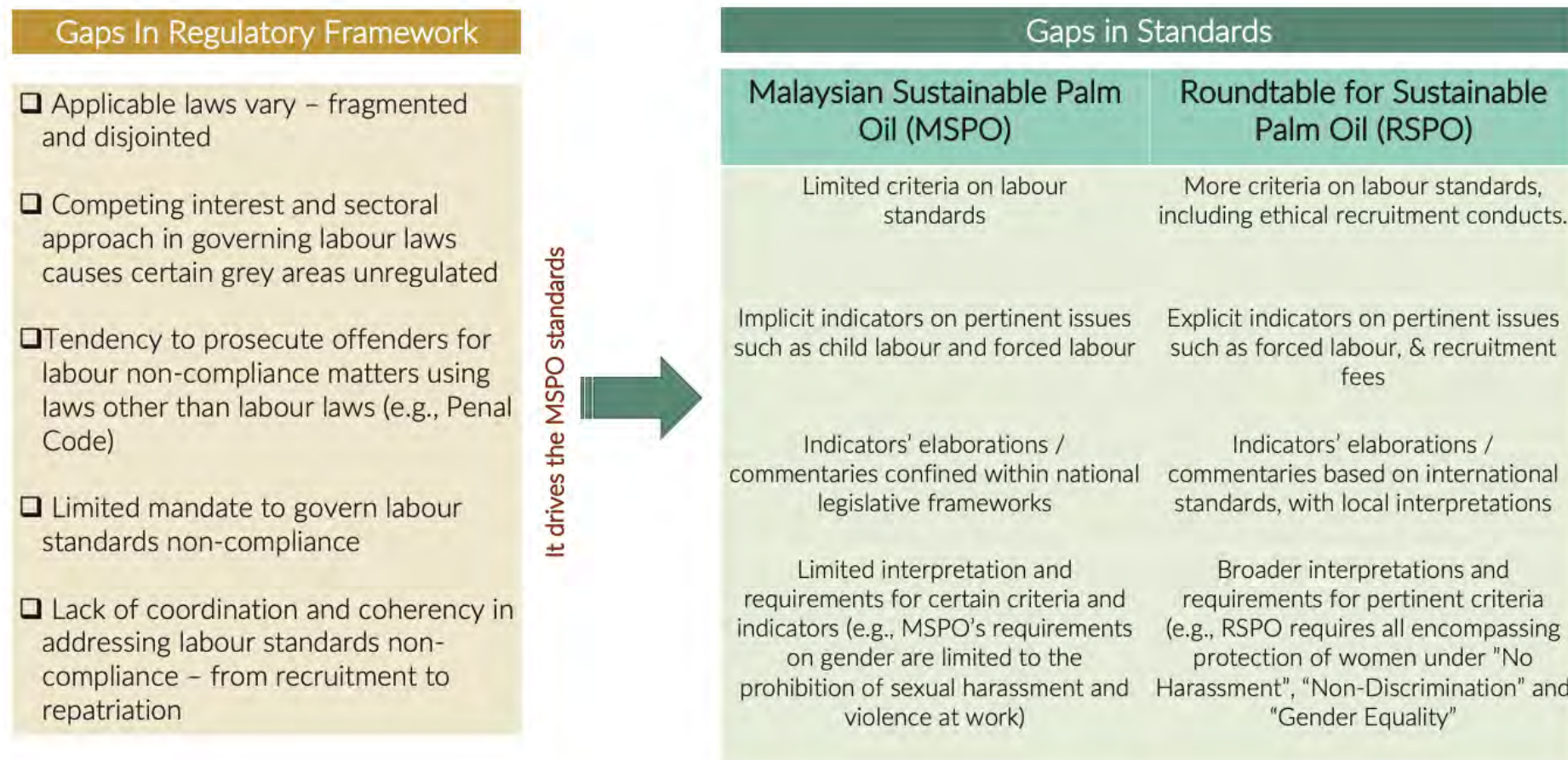
3.1.7 Private Employment Agencies Act 1981

Private recruitment agencies are regulated under the Private Employment Agencies Act 1981. The Act is administered by the MOHR – which provides and manages the licensing of any person or company that “acts as an intermediary” between employers and workers. The Act was amended in August 2017, to increase the government’s ability to regulate the recruitment activities of private employment agencies. The amendment of this Act was also meant to better regulate workers’ recruitment, especially for persons or companies who are holding Licence C category (i.e., for the recruitment of migrant workers in Malaysia). Key features of the amendment include the consideration of past convictions on trafficking in persons or forced labour for granting of licences, as well as revocation and suspension of licence if they have a history of detention in relation to trafficking in persons or forced labour. The placement fees payable by migrant workers are capped at no more than one month of basic wages.

3.2 Analysis of the Legal Framework in Malaysia

- ⇒ The numerous parts of the legal system in Malaysia pertaining to labour issues – the laws, regulations and administrative guidelines – makes enforcement complex. The factors influencing enforcement can never be comprehensive and specific as each individual case has circumstances which determine how an enforcement agency exercises its discretion.
- ⇒ As the legal framework pertaining to labour issues is disjointed and fragmented, labour issues are addressed by the Malaysian authorities on an ad-hoc basis rather than on a sound policy framework.
- ⇒ The authorities and other government agencies prosecute offenders for labour non-compliance, in particular labour exploitation and forced labour cases – using laws other than the labour laws. The legal framework and infrastructure available to criminalise labour offenses come under the purview of the Ministry of Home Affairs (MOHA), rather than the Ministry of Human Resources (MOHR).
- ⇒ The sectoral approach in managing labour cases appears to have created peculiar challenges such as leaving certain grey areas unregulated due to the overlap among existing government agencies. The sectoral approach has resulted in the passing of a big number of labour related legislation each with its own provisions relating to enforcement. This framework is void of any provision for coordination between various organisations and individuals involved in various aspects of labour protection and enforcement.
- ⇒ Despite the significant number of breaches of labour laws, the proportion of prosecutions or other enforcement action is extremely complicated due to the nature of criminal cases. As of to date, most reported cases involving labour-related exploitation offences such as forced labour are prosecuted under Penal Code, ATIPSOM Act & the Immigration Act.
- ⇒ While the MOHR is the principal agency implementing and enforcing labour protection legislation, it has limited powers to deal with labour offences. The MOHR seems to have the mandate only to deal with issues related to employment and industrial relations.
- ⇒ Finally, the overlapping functions of the various agencies arise in relation to the competency of the national agencies responsible for the employment sectors, which leads to lack of coordination and coherency when addressing non-compliance to labour standards, inclusive of forced labour cases.

3.3 Brief Gaps Analysis on Regulatory Framework and Standards





Section 4

Awareness and Practices on Decent Work



4. Awareness and Practices of Decent Work

4.1 Standards & Fundamental Principles, and Rights at Work

4.1.1 Awareness of Fair Wages

- i. The workers' survey determined that the vast majority of respondents (77.7% of a total of 103 respondents) were not aware of their pay rate. When viewed through a gender lens, nine out of 10 female workers were not aware of their pay rate. When workers were aware of their pay rate, they got this information from other workers, not directly from their employers or estate management. Here, there is a risk of getting inaccurate information, potentially leading to misunderstandings about pay rates and payment.
- ii. When asked about minimum wage, less than 20% of the worker respondents were aware of the minimum wage applicable in the palm oil sector. They were mostly workers hired by large growers. Nearly half the respondents (45.6%) were unaware and more than one-third provided the wrong answer when asked about the current minimum wage rate. This indicates lack of awareness of the minimum wage predominantly among workers hired by med-sized and small growers.
- iii. It was also determined that most workers misunderstood the concept of minimum wage, the way the minimum wage is applied and/or calculated, especially for piece-rate workers. This has led to misunderstandings and dissatisfaction among workers regarding their monthly income; in other cases, it has led to workers rioting and complaints being made to external parties, including the migrant workers' consulate.

4.1.2 Implementation of Minimum Wage

- i. During low season (including *melawas*), nearly one-third of the respondents (32%) received lower than the monthly minimum wage. The lowest salary received by several respondents in a given month was RM400. It is three times lower than the set minimum wage. However, during peak season, the number of respondents who received lower than the minimum wage was reduced by more than half – that is 13.6%. The lowest salary received by respondents during peak season was RM850.
- ii. The survey determined that one in every five respondents (20%) who received lower than the minimum wage was among workers hired by med-sized growers, followed by workers hired by small growers (6.8%) and large growers (4.9%).
- iii. From the gender lens, about one-third of female workers (33.3%) received lower than the monthly minimum wage (on average in both seasons).
- iv. Nearly half of the respondents (15 out of 33 respondents) who received less than the minimum wage were irregular workers, while another 13 respondents were regular workers. Four other respondents were workers under the regularisation programme and another respondent is a local worker.

4.1.3 Pay Gaps

- i. During both low and peak seasons, the workers hired by small growers received higher monthly income than their peers hired by large and med-sized growers. For example:
 - ⇒ During the low season, workers hired by small growers received, on average, RM1,124 per month compared to workers hired by large growers (RM1,078) and med-sized growers (RM1,062).
 - ⇒ During peak season, workers hired by small growers received, on average, RM1,567 per month, compared to workers hired by med-sized growers (RM1,436) and large growers (RM1,350).
- ii. It was also determined that during both low and peak seasons, irregular migrant workers received slightly higher monthly salaries than regular workers. For example:
 - ⇒ During the low season, irregular worker respondents received, on average, RM1,129 per month compared to regular workers (RM1,070).
 - ⇒ Similarly, during peak season, irregular workers received a slightly higher average salary of RM1,469 compared to regular workers (RM1,438).
- iii. From the gender lens, during low season, male workers received (on average) slightly higher monthly salary (RM1,150) than female workers (RM1,072). The gender pay gap is greater during peak season when male workers receive nearly RM1,600 per month (on average) compared to the RM1,282 received by female workers.

4.1.4 Decent Hours

- i. It is common practice for worker respondents to work between six and seven days a week. However, during peak season, the respondents claimed it was necessary, especially for harvesters, to work seven days a week (i.e., no rest day in a week). Besides, the respondents emphasised peak season is the only period they can generate more income and make up for lost or reduced income during low season. The workers' survey found that during peak season, two-thirds of workers respondents worked almost every day (between 28 and 30 days) in a month.
- ii. The growers claimed that the workers consented prior to working overtime and during public holidays. But for many med-sized and small growers, the workers' consent was not documented in written form. There was only verbal consent.
- iii. The growers stressed that the workers regularly requested to work during their rest days to increase their monthly income. The growers supported their claim by noting that most workers requested to work even during public holidays to increase their income. Some workers hired by large and med-sized growers even admitted that during public holidays, they offered their services to small growers.
- iv. Interviews with growers found that documentation practices, especially to record and track the number of hours worked, were lacking. This is partly because workers mostly worked on a piece and/or productivity-basis. Hence, the growers did not find it necessary to record their workers' hours.

Box Article 4.1: Workers' Issues related to Wages

Case 1

A group of workers claimed that in 2018/2019, they were not paid for a period of more than a year by a contractor for a large grower. When asked why, the workers stated that at the end of every month, the contractor deducted recruitment costs, passport and working pass fees, as well as the costs of daily food supplies and accommodation from their salaries. Thus, the workers had a deficit monthly account for over a year. For the record, these worker complainants absconded and are currently working with a new employer, a med-sized grower.

Case 2

Monthly deductions from the workers' salaries were excessive, according to some workers. For example, some workers hired by med-sized growers claimed that more than half their monthly salaries were deducted to cover costs for access to electricity and clean water (which should be supplied by the employers), accommodation and regularization fees.

Case 3

Another group of workers hired by med-sized growers claimed that between RM30 and RM100 were deducted from their salaries every month, without a reason or explanation. When asked if they attempted to get clarification from the growers, the workers stated that they were afraid of asking such questions for fear of intimidation from the growers.

Case 4

Several other workers hired by med-sized growers claimed that although they were issued with physical pay slips at the end of every month, salary deductions for the purpose of repayment of *levi* and regularization fees did not appear on their pay slips. The workers were unsure how long the salary deductions would continue.

Case 5

Other migrant workers hired by large growers expressed their dissatisfaction with estate management withholding part of their wages as a form of guarantee, when they took a long break or visited their families in their countries of origin.

Source: Field work, Sabah

4.1.5 Child Employment and Perception of Risks and Hazards

- i. The workers' survey found that nearly one in every 10 respondents is a child below the age of 18. Specifically, nine out of 103 worker respondents were found to be children below the age of 18. Despite their young age (i.e., between 13 and 17 years old), the children worked full time and performed activities similar to what the adult workers did, for example, manuring, harvesting and fruit loading. For the record, six of the children were hired by med-sized growers, while the other three were hired by small growers.
- ii. When asked about the minimum age for legal employment in Malaysia, the workers' survey found that only two out of five respondents could provide a correct response. The other three of every five worker respondents provided either incorrect responses or were unaware of this legal requirement.

- iii. Generally, worker respondents were aware of the potential risks and hazards facing children when they assist their parents on site. They associated such risks and hazards with poisonous animals such as snakes, use of sharp tools by adults especially during harvesting and slashing, hot temperatures, and exposure to chemicals and plants with thorns.
- iv. Worker respondents also cited several activities on site which were unsuitable for children, such as harvesting, loading, manuring, spraying and slashing. Respondents considered these activities as dangerous, hazardous and unsuitable for children.

4.1.6 Children on Plantations

- i. The workers' survey found that two of three respondents reported having school-age children living with them on an estate or plantation. These children are predominantly the children of Indonesian and Filipino migrant workers.
- ii. About 60% of the respondents who had school-age children living with them stated that their children were enrolled in formal and alternative education. The vast majority of these children were the children of workers for large growers. About 20% of the other respondents stated their children were not attending any school, including the community learning centre (CLC). Finally, another 20% of the respondents said their children were not only not in schools, they were also economically active, either assisting parents on site or working outside the estate (e.g., children working in workshops, grocery stores, telecommunication shops and morning markets).
- iii. One of every two worker respondents informed that it is common practice for children to assist their parents on site. These children usually assisted their parents at the oil palm nursery and by collecting loose fruits on the estates. The children who attended community learning centres usually helped their parents after school hours and sometimes during school breaks. The children not enrolled in formal education assisted their parents more often or for considerable periods.

Box Article 4.2: Children's Access to Education

Interviews with worker respondents (who had children living with them on site) found that they placed a high value on education for their children. The parents expressed high hope for their children to get a better job in the future. The parents were also willing to invest in the time and finances required for their children's education.

While education is a high priority for the parents, not all the parents (workers) have the opportunity to enrol their children in formal education. From field work, it was noted that only parents who worked for large growers could send their children to community learning centres (CLCs) – learning centres set up by large companies in collaboration with the Indonesian Consulate in Sabah. In contrast, the parents hired by many med-sized and small growers did not have the same opportunity. This meant their school-aged children were more likely to assist them on site regularly.

Access to formal education, such as the CLCs, significantly reduces the likelihood for children to be involved in oil palm activities, including assisting their parents on site. However, access to education does not guarantee that children will not present themselves on site and help their parents with such activities as collecting loose fruits. Field observations found that short schooling hours (e.g., between four (4) and five (5) hours a day) led children to spend their extra time assisting parents at the oil palm nursery or collecting loose fruits after school hours. The children still assisted their parents during public holidays and semester break.

Source: Field work, Sabah

4.1.7 Risks of Forced Labour

- i. The survey found a range of risks for forced labour practices, including:
 - ⇒ Of the 40 migrant worker respondents (38% of the total respondents) who possess valid employment passes and passports, more than two-thirds have had their passports held by their employers. Some of the worker respondents said they willingly surrendered their passports for safe-keeping, while other workers informed that it was compulsory for workers to surrender their passports to employers during the course of their employment. The latter workers did not think they had the choice to keep their passports themselves.
 - ⇒ Some companies, in particular the large and med-sized growers, imposed strict procedures for workers to leave the estates. The growers claimed that workers can go outside the estates but they have to fill-up a form, which usually requires a superior's signature and approval. If workers intend to leave the estate, they are expected to plan their travel upfront. Some worker respondents raised the issue that it was difficult for them to leave the estate, especially if there was an emergency during weekends or public holidays.
 - ⇒ Some worker respondents claimed that some growers required workers to place an amount of money as a guarantee if they wish to leave the estate for an extended period, especially when they were returning to their countries of origin for their

holidays. Workers claimed the growers required the guarantee to ensure that the workers returned to the estate and were not running away.

- ⇒ Some workers hired by large and med-sized growers said they had been forced to work overtime and during public holidays without their consent. While some workers preferred or were willing to work overtime including during public holidays, others were reluctant to do so for various reasons. The growers did not have a process in place to consult with and obtain the workers' consent, prior to instructing them to work overtime and during public holidays. Some workers claimed it was not worthwhile to work overtime and during public holidays since there was no overtime rate for the overtime work.
- ⇒ Workers hired by large growers shared their previous experiences being cheated and manipulated by *mandors*, supervisors and/or assistant managers on matters related to their daily productivity and income. They specifically highlighted that there were *mandors*, supervisors and/or assistant managers who conspired to downgrade workers' productivity, which subsequently reduced the workers' monthly income. *Mandors*, superiors and/or assistant managers have benefited financially from falsifying workers' productivity records.

Box Article 4.3: Workers' Awareness of Forced Labour

Generally, the worker respondents have a fair understanding of the indicators of forced labour. More than half the respondents surveyed were able to identify one or more of the following indicators linked with forced labour.

- ⇒ Workers do not have a written contract of employment (68% respondents);
- ⇒ Workers are forced to work without appropriate compensation (77.7% respondents);
- ⇒ Workers are prohibited from resigning (72.8% respondents);
- ⇒ Workers are penalized if they wish to resign (76.7% respondents);
- ⇒ Workers are not allowed to leave their accommodations after working hours (63.1% respondents);
- ⇒ Workers are bonded with excessive debt (63.1% respondents) and
- ⇒ Workers' salaries are withheld by employers without reason (74.8% respondents).

Despite their understanding of the indicators of forced labour (above), a significant number of worker respondents expressed their understanding that passport retention by employer is not an indicator of forced labour (59% respondents), and that workers were supposed to pay for their own recruitment cost (41.8% respondents).

Source: Field work, Sabah

Box Article 4.4: Workers' Perceptions of their Freedom and Liberty

There is great disparity of perceptions of freedom and liberty at work among the workers hired by large, med-sized and small growers. Worker respondents hired by large growers stated their companies have very strict rules, rigid hierarchical structures, and that the workplace and accommodations are often isolated from the outside community. The applicable procedures for workers to access outside communities and services are very rigid too. For example, if the workers wish to go to nearby towns, they must complete an outing form, which can only be done during office hours. Some worker respondents said that changing employment is highly discouraged by employers, and, in worst case scenarios, workers are threatened and penalized when they change employment.

In contrast, worker respondents hired by med-sized and small growers had different perceptions of freedom and liberty, despite the majority of them being irregular migrant workers. The workers claimed they lived in a more open and unfenced environment, with less rules and procedures to leave the estate and workers' accommodation. Given their lack of legal employment status and written contract of employment, the workers also claimed that they could easily change their employment when they wanted. Some of the worker respondents even claimed they worked for more than one employer at a time, indicating they enjoyed freedom at work and could choose their preferred employment.

An interview with a group of workers hired by contractors shared an extreme narrative of the (lack) of freedom and liberty. For them, the lack of freedom and liberty was closely associated with long periods of working in debt-bondage situations, forced overtime without proper compensation, being forced to purchase food supplies at unreasonably high prices and non-payment of wages. They further claimed that contractors used threats, including physical violence and gangsterism to intimidate the workers to get them to obey the contractors' and *mandors*' unreasonable instructions and rules at the workplace.

Source: Field work, Sabah

4.2 Employment Relationship

4.2.1 Status of Employment

- i. The workers' survey found that nearly one in every two workers (48.5%) surveyed were irregular workers, i.e., workers without valid passports and/or legal working passes. They consist 48 migrant workers and two local workers (i.e., who did not possess Malaysian identity cards). The remaining 51.5% of the respondents consisted of local workers (7 respondents), migrant workers with valid passports and working passes (40 respondents) and migrant workers who were under the government-initiated regularisation programme (6 respondents) – all of whom are categorised as regular workers. In this study, irregular workers refer to those workers who do not possess a valid passport and/or a legal working pass.
- ii. For the workers categorised as irregular workers, more than half (60%) were workers hired by med-sized growers and the other 40% were hired by small growers. None of the irregular workers were hired by large growers. The findings in this study mirror the overall estimate of irregular workers in the palm oil sector in Sabah, as raised by stakeholders during the conduct of this study. For the record, the stakeholders estimated

that between 40% and 60% of the workers in Sabah's palm oil sector are irregular workers.

4.2.2 Provision of Contract of Employment

- i. The workers' survey found that more than half the respondents (52.4%) did not possess an employment contract, leaving them relying solely on verbal agreements with their respective employers.
- ii. Interviews with growers, particularly the med-sized and small growers, found that they lacked the awareness and knowledge of the minimum standards required in the employment contract (e.g., medical and accident insurance, repatriation, termination, passport safekeeping, etc.). They rely heavily on their appointed recruitment agencies to draft and prepare the employment contract, without understanding and familiarising it with their respective workers (upon arrival/hiring).

Box Article 4.5: Workers' Perceptions of the Contract of Employment

Although more than half the respondents did not possess a contract of employment, the vast majority of worker respondents (79.6% of 103 respondents) valued the importance of having an employment contract, at the very least, to help them know their basic salary and benefits. Some workers said that the employment contract provides a guarantee of employment, without which they felt insecure. Other workers mentioned the importance of the employment contract as a future reference, in case of misunderstanding and/or conflict occurs between the workers and their employers.

In contrast, about 20.4% (21 out of 103 respondents) of the respondents said that having an employment contract was not so important and relevant, especially for migrant workers hired by small growers on a task-specific and short-period basis. From field observations, it is common practice for small growers to hire workers on a task-specific and short-period basis. For example, small growers may only hire a worker to work two weeks in a month to do specific tasks such as harvesting and loading. The small growers may hire the same workers in the following month, provided the workers are available since there is no long-term agreement between the workers and the growers. Given the short period of work, both parties, including the workers, do not see the importance and relevance of signing an employment contract.

Source: Field work, Sabah

4.2.3 Recruitment Practices

- i. The workers' survey found that there are three main recruitment practices: (i) direct recruitment; (ii) recruitment through referral; (iii) recruitment through government-initiated regularisation programmes.
- ii. Nearly half the respondents (44.7%) were recruited through referral. Recruitment through referral means that prospective workers were proposed by a third party for the employers' consideration. The study also found that most workers hired through referral were irregular workers. Here "third parties" refer to workers who are already hired by the employers, such as *mandors* and senior workers. "Third parties" may also

include relatives and friends of the employers, as well as members of the local community, who may have contact with active job seekers within the community.

- iii. About 33% of the workers surveyed were recruited through direct recruitment. For migrant workers, they were directly sourced and recruited by recruitment agencies in their countries of origin (e.g., Indonesia). About 22.3% of the surveyed workers were recruited through the regularisation programme.

4.2.5 Ethical Recruitment

- i. This study found significant gaps in the growers' understanding and practices of ethical recruitment. Of the different types of growers interviewed, the large growers showed adequate understanding of the expected ethical recruitment conduct. However, the actual recruitment practices varied. For example, while the growers were fully aware of the importance of engaging private recruitment agencies which practice direct recruitment in the source country (i.e., without the involvement of intermediaries), there is nothing to ensure that the appointed recruitment agencies really do not engage individual intermediaries. When asked about how the private recruitment agencies were selected, it was found there is no appropriate risk assessment process or due diligence that prioritises aspects of ethical recruitment conducts. Instead, growers rely heavily on such criteria as recruitment cost per worker, track record in recruiting workers and long-standing business relationship for the appointment of recruitment agencies.
- ii. This study found that, unlike large growers, the med-sized and small growers interviewed in this study were not fully aware of, and familiar with the expected ethical recruitment conducts. They rely heavily on the appointed recruitment agencies to perform recruitment both in the source country and Malaysia. There is no pre-sourcing or risk assessment exercise that was performed prior to the appointment of the recruitment agencies and there was no system to monitor the actual recruitment conduct.
- iii. The large growers who were interviewed were aware of the different costs to be borne by employers (e.g., *levi*, medical check-up, and recruitment fees) but the med-sized and small growers lacked similar awareness and knowledge. Several med-sized and small growers admitted that their workers paid the *levi* or regularisation fees through monthly wage deductions.
- iv. The workers' survey could not obtain complete data on the actual recruitment costs paid by workers. When asked during the survey, some workers were unable to recall the total cost they paid in order to secure their current employment. The most common estimate (i.e., overall recruitment costs) paid by Indonesian workers was between RM1,800 and RM3,500 for such items as identity card, passport, fees to intermediaries and recruitment agents, medical check-up and transportation. For Filipino workers, a common estimate was between RM3,500 and RM4,500 to cover similar items.
- v. This study found discrepancies in the information and commitment of both growers and workers with respect to recruitment costs. For example, if employers (i.e., the growers) have already paid for certain recruitment items (e.g., the medical check-up fee), why are some workers still paying for the same item? Interviews with growers indicate there is a risk of manipulation by recruitment agencies or intermediaries in the source country

who charge workers for such recruitment expenses as medical check-up fee, although employers in Malaysia have already paid for these expenses. To avoid such issues as double-charging, the actual conduct of the recruitment agencies must be monitored.

4.2.6 Vulnerable Workers

- i. The workers' survey found that about one in every three worker respondents (37.9% or 39 respondents) is female. They include 15 female workers hired by large growers, 12 female workers hired by med-sized growers, and another 12 female workers hired by small growers – all of whom are migrants from Indonesia and the Philippines.
- ii. Upon further analysis, it was determined that 30 out of 39 female respondents were irregular workers, all of whom were dependents of male migrant workers. This indicates that while it was possible for the migrant workers' dependents (i.e., the female respondents) to be hired legally, most female worker respondents were irregular workers. Some female worker respondents claimed that as they were only assisting their spouses, they should not be required to obtain permission to work.
- iii. The workers' survey found that female workers typically performed such activities as manuring, slashing, collecting loose fruits and spraying. Some respondents who worked in a nursery performed such tasks as applying fertilizer, watering and pest control. During peak season, female workers claimed they were also asked to harvest.
- iv. Other than the female workers, the workers' survey also found nine workers who, at the time of the field work, were below 18 years old. All nine workers were hired by small growers. Six of them were female and three were male workers. By nationality, six were Indonesians and three were Filipinos.
- v. All nine child workers were the dependents of migrant workers hired by small growers. Three of them claimed to be second generation Indonesian migrant workers, whose parents have lived and worked in Sabah for more than 20 years.
- vi. The workers' survey found that these child workers performed oil palm activities similar to adult workers, including manuring, harvesting and fruit loading. The female child workers tended to perform manuring. This finding indicates a risk of these child workers performing hazardous activities.

4.3 Social Protection

4.3.1 Safe Workplace

- i. The workers' survey found that more than two-third of the respondents (75.7% or 78 respondents) said they were provided with training by their employers, including specific safety and health-related training (e.g., proper spraying technique and harvesting), proper use of PPEs, fire safety and first aid response. About 24.3% of the respondents said they had not been provided with any safety and health-related training. All these respondents were workers hired by med-sized and small growers.

- ii. However, interviews with growers found greater lack of awareness especially among med-sized and small growers on the importance of safe workplace and practices. For these growers, work safety is to be gained spontaneously through work experience and day-to-day practices. They further claimed that as the workers' experience enables them to know the safety risks and prevent mishaps from occurring, no formal training is required. These growers also claimed that safety training is irrelevant since they hired only workers with experience. Inexperienced workers would be trained informally by senior workers on site.
- iii. The workers' survey also found that while 70% of the worker respondents claimed that they were provided with PPEs (e.g., helmets, hand gloves, safety shoes and masks), nearly one-third (30%) of the worker respondents were not given any PPEs. These workers claimed it is common practice they purchased their own PPEs from their employers (with monthly payments through wage deductions) or from outside sellers or traders.

4.3.2 Safety and Health Monitoring

- i. Regarding safety and health monitoring, workers hired by large growers stated that monitoring is conducted structurally and regularly based on a checklist of various risks and hazards at the work place. Besides, there are safety officers responsible for monitoring work safety on site regularly and keeping records of their monitoring. Findings from the monitoring are usually used to plan and implement future training.
- ii. On the contrary, workers hired by med-sized and small growers described the safety and health monitoring at their work places as unstructured, unscheduled and occasional. In other words, there is no regular and systematic monitoring. Besides, these growers rely heavily on the *mandors* and senior workers to oversee and advise other workers on work safety, without keeping proper records for use in future intervention.

4.3.3 Safe Accommodation and Communication

- i. The workers' survey found that the vast majority of the worker respondents (78.6% or 81 respondents) were provided with free accommodation by their employers. The other 21.4% workers (22 respondents) stated that they lived in their own or rented houses. These respondents included all seven local workers and 15 migrant workers hired by small growers.
- ii. The worker respondents hired by large growers were more satisfied with the basic facilities and services provided to them, such as public safety, cleanliness and sanitation and living space. Several workers (hired by large growers), however, were concerned about the frequent disruptions in the supply of clean water and electricity. Field observations found that most rural plantation areas in Tawau, Kinabatangan and Lahad Datu do not have access to the government's piped-water supply and electricity, which affect all categories of growers (i.e., large, med-sized and small growers). To resolve this difficulty, the large growers operate their own clean water system and generate their own electricity. Considering the lack of capacity, rationing and disruptions of the supply of water and electricity are inevitable.

- iii. However, workers hired by med-sized and small growers expressed dissatisfaction with the basic facilities and services provided, including lack of public safety and hazards to their children, lack of basic sanitation, poor housing conditions, including crowded living spaces. Some workers also claimed that, near their accommodations, there is no safe space and recreational facilities for their children to play.
- iv. Additionally, from site observations and interviews with workers and growers, it was determined there were issues with a lack of access to communications. In many rural oil palm plantations and estates, mobile phone and internet connections are limited or totally unavailable. Consequently, workers and growers find it difficult to communicate with each other and it is rare that workers are able to stay in touch with relatives and friends outside the oil palm plantations or estates. Most important, the lack of access to communication is a critical barrier for workers requiring immediate support and intervention and who need to reach third parties such as their consulate, the labour department or NGOs.

4.3.4 Social Security

- i. From January 2019, all workers, including migrants are eligible to participate in the Social Security Organisation (SOCSO) scheme, which provides protection against accidents at work or while commuting to work. Health issues arising from and in the course of the workers' employment are also covered. Previously, migrant workers had only limited coverage under the Foreign Workers Compensation Scheme (FWCS). In contrast, SOCSO benefits are much more comprehensive as they include medical bills, temporary and permanent disablement benefits, dependents' benefits, funeral expenses, attendance allowances and rehabilitation facilities. Employers are responsible for registering the migrant workers (with valid documents) they hire with SOCSO. For the record, however, migrant workers are not entitled to enjoy the invalidity pension scheme.
- ii. Despite the comprehensive protections (excluding the invalidity pension scheme) now available to workers, including migrant workers, in Sabah's palm oil sector, this study found that growers (particularly med-sized and small growers) and workers lacked knowledge of the protections available and the administrative process required in the event of injuries, accidents and illnesses. To the numerous med-sized and small growers interviewed for this study, the SOCSO scheme is viewed primarily as an administrative prerequisite for hiring migrant workers, not a protection plan for them. Some growers said it was difficult to obtain easy-to-understand information about the SOCSO scheme. The remote locations of the oil palm estates also hindered the growers seeking to communicate with SOCSO officers to process their workers' claims.
- iii. Many worker respondents viewed social security narrowly "as an access to healthcare treatment, and that employers will cover (in part or in full) the cost of such treatment, in case of injuries and accidents". When asked specifically about the SOCSO scheme, only a minority of the worker respondents were aware that such a scheme existed. Some workers shared their previous experiences of delayed payments for occupational injuries under the previous FWCS, while others claimed they were denied compensation payments by their employers. Workers also expressed dissatisfaction with the low compensation provided under FWCS. The workers' previous bad

experiences with the FWCS led to their low expectations, hopes and interest in the current social security scheme, SOCSO.

- iv. As already mentioned, the workers' survey found that nearly one in every two workers in the palm oil sector in Sabah are irregular workers, the vast majority of whom are migrant workers. To be eligible for and registered under SOCSO, migrant workers must have valid documents, including passports and working passes. This means a large group of workers in the sector (i.e., irregular workers) are ineligible and not covered under SOCSO, leaving them vulnerable in case of occupational injuries or accidents.

4.4 Social Dialogues

- i. The availability and effective implementation of social dialogue avenues promote social justice and improve the wages and working conditions of migrant workers. Conventional social dialogue avenues include negotiation, consultation and information sharing between workers, employers and other parties such as government agencies and NGOs. The avenues also involve collective bargaining between workers and employers and recognition of the workers' right to association. Ensuring effective social dialogue requires the presence of strong, independent and representative employers' and workers' organisations, with adequate capacity to participate in social dialogue processes and access to relevant information.
- ii. In Malaysia, workers' organisations and/or unions play an important role in promoting workers' welfare and rights. While there are several workers' unions actively promoting and protecting workers' welfare and rights throughout Malaysia, they are critical in Sabah's palm oil sector. One active workers' union in Sabah's palm oil sector is the Sabah Plantation Industry Employee Union (SPIEU), which represents workers in oil palm mills and estates in several districts, including the three districts covered in this study (i.e., Tawau, Kinabatangan and Lahad Datu).
- iii. Interviews with stakeholders indicated there are Indonesian migrant workers who are active members of SPIEU. The total number of migrant workers who are SPIEU members have not been determined. In addition to SPIEU, there are other independent organisations which provide social dialogue avenues for migrant workers to raise their issues and concerns, including the Transnational Palm Oil Labour Solidarity (TPOLS) and Malaysian Trade Union Congress' (MTUC) Sabah office. During the COVID-19 pandemic, independent organisations such as the Borneo Komrad, Sabah Family Planning Organization and Asia Monitor Resource Centre reached out to migrant workers in the palm oil sector to distribute basic necessities and provide avenues for them to raise their grievances (see [TIPOLS, 2020](#)).

4.4.1 Right to Association and Collective Bargaining

- i. Despite the presence of SPIEU and other independent organisations, the workers' survey found lack of awareness among workers of these independent organisations and the value of participating in their activities. Of the total 103 workers (including migrants) interviewed in this study, none is a member of a union.
- ii. The following observations were arrived at after additional interviews with the migrant workers:

- ⇒ Migrant workers employed by large growers are represented by existing workers' committees. The workers preferred raising their complaints and grievances through these committees, rather than raising them to external parties. However, because of the small number of workers to be represented, such workers' committees are rarely established on med-sized and small growers.
- ⇒ Migrant workers unwilling to paying membership fees to workers' unions. To many interviewed workers, every single dollar (or ringgit) earned is highly valued. The deprivations experienced during the COVID-19 pandemic further cautioned workers on the need to manage their money.
- ⇒ Migrant workers lack the vision and adequate understanding of what a union can do and how a union can help them achieve social justice, including resolving their problems.
- ⇒ Some migrant workers were also concerned that their participation in a worker's union may incur their employers' dissatisfaction, leading to unconducive employer-employee relationships and potential termination.

Box Article 4.6: Growers' Perceptions of Unions

The following observations were reached at after interviews with growers:

- ✓ Growers are still sceptical about the role of workers' unions. They associate workers' unions with "chaos" and consider them "detrimental to the employer-employee relationship".
- ✓ Growers believe that workers' unions are unable to strike a balance between the interests of workers and employers, resulting in tensions between workers and management.
- ✓ Growers prefer that internal issues between workers and employers should be resolved internally, without the involvement of third parties such as outside unions and organizations. Some growers believe that third parties may not understand the problem and their direct intervention would only make matters (i.e., issues) worse.
- ✓ Growers assume that unions and their members lack mediation and negotiation skills. Hence, when unions negotiate with employers or employers' organizations, they (both employers and workers) often find it difficult to achieve consensus.

Source: Field work, Sabah

4.4.2 Grievance Mechanism

- i. A grievance mechanism is an avenue enabling workers, communities and other stakeholders to raise their grievances formally, whether as part of a judicial or non-judicial process. Grievance mechanisms deal with three kinds of grievances: (i) individual grievance; (ii) group grievance; and (iii) union grievance.

- ii. In Sabah's palm oil sector, operationally, a grievance mechanism is a formal procedure that provides a transparent mechanism for addressing employment-related grievances.
- iii. This study found it is common practice among large growers to provide multiple channels to enable workers to raise their complaints and grievances, including a complaint box, complaints logbook and direct hotline number. However, several gaps remain, as summarised below:
 - ⇒ Growers or management do not have a separate process for "complaints" and "grievances", which leads to a one-size-fits-all approach in addressing different types of workers' complaints and grievances.
 - ⇒ There is no assurance there will be no retaliation against workers who raise grievances or complaints, which hinders workers from coming forward and making their voices heard.
 - ⇒ The complaint box and logbook are often placed near the management office and security guard post and in some cases, even inside the management office, which not only reveal the complainants' identities but also hinder them from making their complaints after working hours.
 - ⇒ Even when there is a formal complaint and grievance mechanism, the growers still prefer that workers raise their complaints and grievances directly and verbally to their *mandors* or superiors. The growers claim it is the norm for workers to directly communicate their issues or problems to the *mandors* for prompt resolution. However, the growers admit that the verbal complaints or grievances are not documented, subsequently raising issues of whether management is accountable and transparent in addressing the complaints or grievances raised.
 - ⇒ Many med-sized and small growers interviewed for this study assume that a formal complaint and grievance procedure is unnecessary. They claim that, considering the small number of workers they hire, any complaint and grievance can be raised by the workers directly and readily with the growers or the workers' leaders, instead of using a formal process which can be an administrative burden.
- iv. Interviews with workers raised several issues with respect to the existing grievance resolution practices on site, which include:
 - ⇒ Lack of trust in the existing complaint and/or grievance mechanism provided by employers. The workers cited bad experiences in dealing with management and the lack of mutually acceptable resolutions to their problems, which further contribute to the lack of trust in employers to resolve workers' issues.
 - ⇒ The workers prefer to raise their complaints or grievances verbally and directly with their superiors.
 - ⇒ Language barriers also hinder workers from raising their complaints, including verbal complaints, or grievances to their employers.

- ⇒ The high level of illiteracy also hinders workers from making use of the existing complaint or grievance mechanism (e.g., complaint logbook).



Section 5

Analysis of Business Risks



5. Analysis of Business Risks

Having discussed the workers' and growers' awareness, perceptions and practices on a range of labour issues, in accordance with the decent work framework, the inquiries which follow are: (i) what cause these issues to arise and (ii) what would be the risks facing growers? This section addresses these two questions by discussing such themes as labour management, governance and integrity; awareness and practices on decent work; labour market dynamics; social compliance audit; and effective grievance mechanisms.

5.1 Labour Management, Governance and Integrity

A. Lack of good practices in managing business partners

For the purposes of this study, the management of business partners refers to the “selection, appointment and monitoring” of growers' business partners. Business partners include, but are not limited to: (i) contractors (who are tasked with performing selected oil palm tasks on site) and (ii) private recruitment agencies (who are entrusted with sourcing for and processing the recruitment of migrant workers).

- ⇒ Selection process: Some large growers have an internal process to select contractors and private recruitment agencies, with criteria focussing on licensing (e.g., MPOB licence), costs, track record and the length of the business relationship. While these criteria are crucial, other critical criteria related to ethical recruitment practices and hiring, e.g., prohibiting recruitment agencies against using unauthorised individual intermediaries or prohibiting contractors against hiring workers without legal documents, are often absent.
- ⇒ Appointment: the contract signed by growers and their contractors and private recruitment agencies lacks a clear commitment to ethical recruitment and hiring of migrant workers. Hence, the growers' business partners are not legally bound to commit to ethical recruitment and hiring practices.
- ⇒ Monitoring: none of the growers interviewed have a systematic procedure in place to monitor the conduct of their business partners, particularly on matters related to labour management.

Risks Identified: Lack of business partners' accountability and transparency; increased risk of unethical recruitment and hiring practices; exposure to non-compliance with labour standards at the workplace.

B. Complex bureaucracy and procedures pertaining to workers' recruitment and rehiring

There is consensus among growers and stakeholders that the labour shortage and the hiring of irregular migrant workers are two mutually-reinforcing challenges facing growers, regardless of the size of their operations. Growers associate these two challenges with the complexity of the bureaucracy and procedures in recruiting new migrant workers on the one hand, and the regularisation of irregular migrant workers already in Sabah on the other hand.

The numerous dimensions to this situation are as follows:

- ⇒ Compliance with a multi-level administration process is required before growers can hire new migrant workers and/or regularise irregular workers (e.g., applying for a labour licence under Section 118 of the Sabah Labour Ordinance; obtaining Pass Immigration Security Clearance and a Visa with Reference, etc.). Further details of the requirement and procedures can be found at [Malaysia's Immigration Department](#) (n.d.)
- ⇒ Extensive documentation, of land titles and lease agreements, etc. must be prepared and submitted.
- ⇒ A private recruitment agency, based in the country of origin, must be engaged to recruit new migrant workers.
- ⇒ Growers, particularly the med-sized and small growers, will have difficulty understanding the legalistic requirements and implications of administrative documentation and processes.
- ⇒ Unlike Indonesia, the Philippines does not have official representative or physical office in Sabah. This absence makes the renewal of Filipino workers' passports complicated and expensive.
- ⇒ Lengthy processing times of applications, which increase the likelihood that irregular migrant workers will be hired to meet the demand for labour during the application period.

Risks Identified: Growers often have no choice but hire irregular migrant workers; prolonged status of irregular migrant workers due to slow process of regularisation; increased reliance on private recruitment agencies.

C. Reliance on private recruitment agencies

For many growers, especially the med-sized and small ones, the bureaucracy and complex procedures discussed above increase their reliance on private recruitment agencies to obtain an adequate number of migrant workers. This heavy reliance poses risks and has implications for the growers' businesses, which include:

- ⇒ Lack of visibility of the private recruitment agencies' recruitment conduct.
- ⇒ Increased risk of non-compliance with labour standards. For instance, the growers' reliance on private recruitment agencies to draft employment contracts on their behalf (i.e., without checking the contents) may result in contracts that differ from the model contract recommended by the authorities.
- ⇒ Heavy reliance on private recruitment agencies means that the growers may have less leverage to negotiate the terms of the agreement, including costs.
- ⇒ Increased risk of mismanagement and bribery, involving unscrupulous employers, agencies and government officials with the aim to expedite the complex process and secure quota approval.
- ⇒ From interviews with growers and stakeholders, there are concerns that some private recruitment agencies have imposed dubious recruitment fees for such reasons as securing the timely approval of workers' applications or to bring foreign consular services onto the estates.

Risks Identified: Increased costs of recruitment; risk of non-compliance with labour standards (e.g., employment contract substitution); risk of mismanagement, misconduct and acts of pecuniary and non-pecuniary gratification

D. Hidden Costs

Interviews with growers and stakeholders have highlighted several hidden costs associated with the recruitment of new workers and/or rehiring of existing irregular migrant workers, including dubious recruitment fees imposed by private recruitment agencies.

Another type of hidden costs involves payment of so-called “cash incentives” and “tokens (in cash)” to: (i) existing workers, mainly senior workers and *mandors*; (ii) individual intermediaries (i.e., those not affiliated with private recruitment agencies); (iii) members of the local community. To be paid these incentives and tokens, these individuals must introduce prospective workers to growers for recruitment purposes.

Growers of all sizes often normalise providing incentives and tokens to the individuals who have helped them by recommending prospective workers. Given the continuous labour shortage in the sector, the growers argue that this practice is becoming the norm in the sector, though there are still hidden costs they need to pay.

The growers provide the following justifications for this process:

- ⇒ The prospective workers recommended by individuals mentioned above are trustable or can be trusted;
- ⇒ Based on their prior experiences, the prospective workers may work for lengthy periods, eventually reduce risk of workers’ abscondment;
- ⇒ Reduced risk of workers’ abscondment also means reduced cost to recruit new workers
- ⇒ The prospective workers’ prior experiences in oil palm or similar activities reduce time and financial investment for workers’ training;
- ⇒ Although there is a hidden cost, recruitment cost is relatively cheaper because the growers can skip some processes in the country of origin (e.g., cost to identify and recruit new workers in Indonesia or the Philippines).

Risks Identified: Increased costs of recruitment, inclusive of hidden costs; risk of manipulation by unscrupulous intermediaries; payment of dubious fees; risk of unethical recruitment conduct.

E. Lack of integrity

Lack of integrity is a cross-cutting issue that either hinders or discourages good labour management and practices in the sector. Interviews with growers and stakeholders found “allegations” of lack of integrity, involving such parties as private recruitment agencies, unauthorised intermediaries and officials of the pertinent authorities, as well as auditors of social compliance schemes.

Examples of lack of integrity issues raised by growers and stakeholders include the need to pay dubious fees to individuals with decision-making leverage – to secure their quota applications (i.e., for recruitment of new migrant workers) and regularisation applications (i.e., for rehiring programmes). Failure to pay would have resulted in the applications being delayed, or worse, rejected. Another example of lack of integrity involves auditors who are alleged to have altered audit findings or omit important aspects of the audit methodology (e.g., not conducting proper site observations or interviewing workers).

Interviews with stakeholders highlighted the lack of political will to address existing policy gaps, especially in the recruitment and regularisation programmes. The stakeholders also highlighted the lack of business transparency and accountability when addressing such long-standing issues as gaps in social compliance audit methodology.

There is no single force that leads to lack of integrity issues in the palm oil sector. Interviews with growers and stakeholders, however, indicate that the following factors do contribute to the lack of integrity.

- ⇒ bureaucratic and complex procedures in recruitment and rehiring programmes;
- ⇒ the absence of a central government agency that deals with the recruitment and hiring of migrant workers;
- ⇒ temporary halt of the recruitment of new migrant workers due to COVID-19 compelled growers to find an easy way out
- ⇒ constant labour shortage, coupled with high abscondment rate
- ⇒ heavy reliance on private recruitment agencies; and
- ⇒ high or increased costs of recruitment and regularisation programmes.

Risks Identified: Increased risk of misconduct and acts of pecuniary gratification; prolonged labour shortage destabilises production; hiring of irregular migrant workers violates laws and regulations; inappropriate conduct of social audits jeopardizes progress and continuous improvement.

F. Lack of basic facilities hinders good labour management and practice

There is mutual concern that the lack of basic facilities (e.g., lack of access to electricity supply and clean water, as well as mobile and internet connectivity) – hinders growers from not only complying fully with sustainability audit criteria but also making substantial improvement in labour management and practice. The lack of these facilities cause growers unable to address some long-standing issues, for instance - the lack of internet connection discourages application of an online payment system (or e-wallet system) to facilitate payment of the workers' salaries and overseas remittances.

Risks identified: Growers continue to face audits for non-compliance on such issues as living conditions; lack of transparency in the payment of workers' salaries and indicators of forced labour practices (e.g., withholding or non-payment of wages).

5.2 Awareness and Practice of Decent Work

A. Lack of awareness exposes growers to violations of local regulations

Large growers understand and know much more about decent work than med-sized and small growers. From interviews with large growers, especially those who are RSPO-certified, it was clear they had adequate knowledge and understanding of critical labour standards and the decent work agenda. For example, when queried about the 11 indicators of forced labour, the growers were able to provide actual examples and relate them to potential legal action under the local regulations.

However, the level of awareness and understanding of many med sized and small growers on a range of critical labour standards and decent work issues (e.g., prohibition forced labour and child labour) is weak and worrying. For example, when asked about the 11 indicators of forced labour, these growers were mostly clueless and unable to relate the 11 indicators to their day-to-day labour practices. In addition, most of the med-sized growers interviewed in this study admitted they kept the passports of the migrant workers they hire to prevent the workers from absconding. The growers kept the passports, despite knowing that the workers may still abscond without their passports.

Risks identified: violations of numerous local and national regulations; hiring of irregular workers and children below the minimum age for legal employment; exposure to negative campaigns.

B. Lack of awareness and knowledge on workers' right to association

As already discussed, the growers were sceptical about workers' unions and their roles in collective bargaining, mediating conflicts between employer and employees, and arriving at mutually acceptable solutions. The growers alleged that the workers' unions were not sympathetic to their challenges (e.g., labour shortages and unstable commodity prices).

In the meantime, interviews with other stakeholders surfaced allegations that there are growers (no particular grower was mentioned) who prohibit their workers from joining unions. When it comes to migrant workers, not only is their participation limited, but they have also not been adequately socialised about their right to join a union of their preference. The prospective contributions a workers' union can make, particularly in building trust and eventually improving employer-employee relationships, are not appreciated. Once trust is built, workers are more open in raising their complaints and grievances, while employers are committed to finding solutions to their workers' complaints and grievances.

A long-term education strategy is required to raise awareness among growers of the benefits of working with unions (e.g., making better business decisions). Growers should encourage their workers to participate actively in unions, including engage in collective bargaining. Growers should also raise awareness among their workers of their right to join a union and build the capacity of union members, including mediation and negotiation

Risks identified: lack of trust between workers and employers leads to a hostile working environment; negative campaigns and legal actions; workers' strikes, leading to disruption of production and financial loss; exposure to external intervention.

5.3 Labour Market Dynamics

A. Normalising labour as short-term capital

In mainstream economic discourse, laborers (or workers) are often viewed as long-term capital. Employers invest in building the capacity of their workers. Some even provide scholarships or sponsor their workers to further their studies and enhance their skills, while others provide better benefits to attract and retain workers. In return, employers benefit from their workers' enhanced capabilities and skills and also retain talent. Eventually, the employers' enterprises operate at higher efficiency and generate more profit.

The reality in the palm oil sector, however, is different. The growers who were interviewed for this study did not view labour as an asset worthy of investment but as short-term capital to help them maximise production immediately. Our analysis found several factors that contribute to this reality:

- ⇒ Growers claimed that the hiring policy (for migrant workers) implemented by the government is too short (i.e., capped at a maximum of ten (10) years). Although there is a possibility of extension, the process is much more complex and costly.
- ⇒ Some groups of migrant workers are highly mobile, as they return to their home countries after working for three or five years. The growers also mentioned the current trend of young Indonesian workers to work for a short period, e.g., between three and five years, after which they return to Indonesia.
- ⇒ Considering the high number of workers who abscond, providing better welfare and benefits, including investing in career development, is viewed as a waste by the growers interviewed for this study.
- ⇒ Industry stakeholders claimed that most migrant workers in the palm oil sector do not intend to stay longer, even if they are legally permitted to stay. During their short working duration in Sabah, migrant workers prefer to work for employers who offer the most competitive salary, even at the expense of other benefits and labour standards (e.g., lack of employment contract or lack of appropriate accommodations).

It is important to note that, the growers continue to face high levels of abscondment and turnover, especially among the migrant workers.

Risks identified: temporary hiring exposes growers to an unstable workforce and production; growers make substantial investments (and re-investment) to recruit new workers; less (or no) investment in workers' training increases likelihood of occupational injuries, and increased payments of compensation and health care expenditures.

B. Lack of interest among local workers

One of the most common complaints raised by growers and industry stakeholders is the lack of interest among local workers to work in the palm oil sector, particularly on estates and plantations. This is an issue faced by growers of all categories (i.e., large, med-sized and small growers) – as they are often unable to attract the local workforce to work in such critical occupations as harvesters, fruit loaders, sprayers and manurers (i.e., workers who perform manuring).

The growers who were interviewed for this study explained there are local workers who worked on the estates and plantations but their roles are limited. They work as *mandors*, transporters, oil palm graders, and general workers (e.g., cleaners and gardeners). To ensure smooth production on the estates and plantations, the growers rely heavily on migrants to work in the occupations not commonly performed by local workers.

Growers and stakeholders explained that local workers are not interested in working in plantations and estates because of the following reasons:

- ⇒ Low salary that does not match expectations;
- ⇒ As wages are dependent on the productivity of the worker, there is no fixed income;
- ⇒ There is no prospect for long-term employment;

- ⇒ The work is demanding and heavy (e.g., harvesting and loading);
- ⇒ The estates and plantations are remote, that is, far away from urban centres;
- ⇒ Lack of basic facilities such as public roads, piped water and supply of electricity, and poor mobile and internet connectivity; and
- ⇒ Limited access to public schools, healthcare facilities, and other administrative offices (e.g., Department of Registration).

Risks identified: heavy reliance on migrant workforce exposes labour shortage in the long run; increased competition to attract and retain migrant workforce.

C. Hiring migrant workers is much more expensive than hiring local workers

Most growers who were interviewed for this study mentioned that hiring migrant workers is much more expensive than hiring local workers. For example, growers do not incur fees for recruiting and sourcing workers from their country of origin (e.g., Indonesia), annual levy, medical check-up in country of origin and transportation costs (e.g., air tickets or other forms of cross-border transportation to bring workers to Sabah) when they hire local workers. Some growers are also concerned they must compete with other growers for migrant workers, which compels them to raise their wages. While most growers agree that hiring local workers is much more cost-efficient than hiring migrants, the lack of interest among local workers has forced growers to turn to migrant workers.

From another perspective, the growers strongly prefer to hire migrant workers, despite the high costs, because migrant workers tend to work for relatively longer periods (compared to local workers) and they are able to do heavy and demanding work, which stabilises the workforce as there is assurance of continuous production in the shorter-term period.

Identified risks: higher cost of recruitment (of migrant workers); increased risk of labour shortages; in other circumstances – increased risk in the hiring of irregular migrant workers.

D. Workers tend to work on a short-term, task-specific and flexible basis

Both local and migrant workers hired by med-sized and small growers tend to work on a short-term, task-specific and flexible basis. “Short-term” refers to a situation where workers prefer to work for a shorter period, e.g., a week or a month. “Task-specific” refers to work that is specific to oil palm activities such as harvesting and loading. “Flexible” refers to a situation where workers are not committed or contracted to work for a fixed period (e.g., one year or more). From the growers’ perspective, especially the small growers, hiring workers on a short-term, task-specific and flexible basis is much more cost-efficient and productive.

From interviews with growers, workers and stakeholders, the numerous factors that explain why most workers prefer short-term, task-specific and flexible work are as follows:

- ⇒ Workers, in particular a migrant workforce, tend to move from one employer to another, or from one district to another (i.e., they are highly mobile). Hence, they prefer to work on a short-term and flexible basis.
- ⇒ Migrant workers in the palm oil sector are active job seekers who keep themselves open for competitive wages offered by growers and move to new employers when the opportunity arises, which partly explains the high abscondment rate.

- ⇒ Working on a short-term and flexible basis enables workers to earn relatively more as opposed to working on a fixed term contract. For example, the absence of a fixed employment contract allows workers to work for more than one employer at the same time and earn more monthly income.

Risks Identified: Unstable workforce, potentially affect oil palm production in the longer term period; highly mobile workers are more likely to abscond and end up being irregular migrants.

E. Hiring irregular migrant workers is inevitable

The difficulties in attracting local workers, coupled with the highly bureaucratic and complex procedures in recruiting a migrant workforce, make the hiring of irregular workers almost inevitable. This is particularly the case for many med-sized and small growers who were interviewed for this study.

Most med-sized and small grower respondents were aware that hiring irregular migrants violates local regulations. However, to ensure smooth production, the growers need laborers to perform such critical occupations as manuring, harvesting and loading. Small grower respondents stated that, while they themselves were able to perform light oil palm activities (e.g., grass cutting and collecting of loose fruits), the main activities such as harvesting and loading were always outsourced to migrant workers. For many small growers, finding migrant workers with valid documents to work on a short-term and task-specific basis is practically impossible.

Risks Identified: Violations of local regulations, particularly the hiring of irregular migrant workers

5.4 Social Compliance Audit

A. The social compliance audit as a wasted opportunity to make changes

There have been allegations that the auditors of social compliance schemes altered audit findings to cover up major non-compliance. Stakeholders stressed that altering findings, without strong justification, cannot be tolerated and the situation must be corrected immediately. Other allegations involving audit practices are as follows:

- ⇒ No proper site observations, leaving potential red-flags undiscovered;
- ⇒ Auditors rushed the audit process, including shortening the period of the audit process due to the high number of various stakeholders to be interviewed and other audit appointments;
- ⇒ Where interviews with workers were conducted, the auditees selected the workers, not the auditors. In addition, the workers were briefed and coached upfront by their employers to respond to audit questions;
- ⇒ Some growers allegedly hid irregular migrant workers and their dependents in deep jungle during social compliance audits, putting workers at risk of injuries;
- ⇒ In some cases, no interviews were conducted with workers and workers' representatives; and
- ⇒ The manipulation of documents, including creating and/or altering internal documents (e.g., workers' payslips, time records, minutes of meetings and grievance logbook).

The growers and stakeholders agreed that social compliance audit enables growers to identify possible areas of non-compliance and to make continuous improvement. However, if the negative allegations mentioned above persist, the growers then not only lose the opportunity but also waste their investment (e.g., paying the audit fees).

Risks identified: criminal acts, leading to legal action; lost opportunities to improve; wasted investment in social compliance audit; workers at risk of injuries and dangers.

5.5 Access to Effective Grievance

A. Lack of grievance raisers' protection and trust

Access to grievance mechanisms and remedies for said grievances are core components of international labour standards and also essential principles of many social compliance schemes (e.g., RSPO and MSPO). Generally, raising a grievance is a formal process, legal or non-legal, used by individuals or groups negatively impacted by business operations. At the operational level, large growers have provided and managed such grievance mechanisms as grievance logbook, complaint box, and hotline.

However, this study has determined that such mechanisms have not been fully utilised by workers. For example, site visits to the large growers' operations found that grievance logbooks and complaint boxes are mostly empty (i.e., no grievance or complaint has been made). When there were entries in the grievance logbooks, the issues raised were limited to workers' requests for maintenance at their accommodations and disrupted supplies of such utilities as water and electricity.

The growers claimed they have established and publicized grievance procedures and they assumed that if no complaints or grievances were raised, the workers were satisfied. Worker respondents, however, raised such serious issues such as late payment of wages, incorrect calculation of wages, use of gangsters and physical threats involving senior workers in supervision roles, and unjustified salary deductions. When asked why they did not raise these matters with management, the workers expressed concern about potential repercussions. Workers also expressed lack of trust in the existing grievance mechanisms put in place by employers. Previous experiences involving migrant workers who raised serious grievances and were subsequently fired and returned home serve as a warning to workers. Hence, the worker respondents were cautious and deliberate in raising their grievances and prefer not to raise them to management if possible.

Risks identified: workers strive to find alternative mechanisms to raise their grievances, including to raising them to their consulate and other external parties; exposure to external intervention; risk of escalated conflicts; loss of opportunity to discuss and resolve employment issues



Section 6
Conclusion and
Recommendations



6. Conclusions and Recommendations

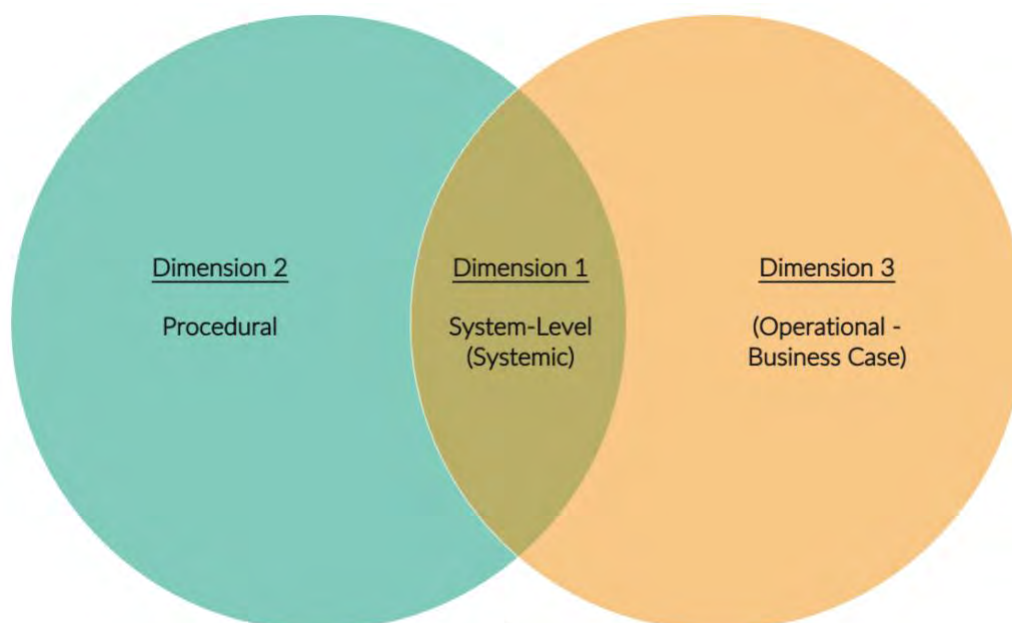
6.1 Conclusions

This study builds on existing literature on the complex intersection between social and labour standard issues and governmental policies that impact positive progress in Sabah's palm oil sector. The hiring of irregular migrant workers, labour shortages, lack of effective grievance mechanisms, and a range of labour practices inconsistent with the decent work agenda continue to prevail and involves growers of all categories, notably the med-sized and small growers.

This study enriches the mainstream discourse and literature by providing an in-depth analysis on the business risks facing growers with their current labour management and practices. Here we take into account the voices of med-sized and small growers which have been neglected in the mainstream discourse and literature. We note that while some of these risks can be mitigated by the growers, including the med-sized and small ones, others require long-term policy changes and political will to address them.

This study concludes that standard labour issues and business risks facing growers can be divided into three dimensions (see Figure 6.1 below):

Figure 6.1 Three Dimensions of Issues and Risks



- (i) Dimension 1: Systemic issues and risks that are mostly driven by persistent gaps in governmental policies and legislation (e.g., absence of legislation that explicitly addresses forced labour). Besides, deeply-rooted local norms and practices (e.g., small growers having children assist parents on site) can also be viewed as systemic, necessitating long-term education and change. The issues and risks in this dimension require collective actions involving the government, businesses and the community at large to resolve them.
- (ii) Dimension 2: Procedural issues and risks that are driven by lack of institutional support and capacity to enforce laws and policies. This also involves matters related

to weak implementation of policies (e.g., insufficient number of labour inspectors to perform site inspections or lack of technical knowledge on such critical labour issues as forced and child labour). In this dimension, governmental actions are required.

- (iii) **Dimension 3:** Business (operational) issues and risks that can be addressed by growers and other industry players without the need for substantial policy changes or governmental intervention (e.g., ineffective grievance mechanism).

Based on our broad-based conclusions above, the recommendations presented in this final section are divided into three categories to suit the specific mandates and functions of the targeted stakeholders, as follows:

6.2 Recommendations for Policy Intervention and Business Action using a Theory of Change Framework

This section adopts a theory of change framework as the building block to enable government agencies, growers and other relevant stakeholders to identify and act on the most strategic points of intervention when addressing issues and risks to implement a decent work agenda.

This framework builds on the previous sections, in particular, the goal of achieving a decent work agenda in the palm oil sector, as well as the analysis of business risks, which are the underpinning causal factors that either drive or ignore exploitative labour practices and precarious working and living conditions on the ground.

This framework features five main components, namely:



The ultimate goal (i.e., impact) of this framework is the realization of a decent work agenda (i.e., achieving the 4 Pillars of the decent work agenda, see *Chapter 1*)

Apart from clarifying the accountability required to steer leadership to take the necessary actions, this framework enables government agencies whose mandate is to ensure that a sustainable palm oil sector, industry players, workers and workers' organizations, social compliance actors and other stakeholders monitor and measure the impact in a clear and transparent manner. The table below presents our recommendations for consideration.

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (Beneficiaries)	*Envisioned Impact
A. Strengthen labour management, governance and integrity	A1. Expedite the processing and approval of rehiring and recalibration applications. When applications are still pending because of unforeseen circumstances, administrative documents or letters should be issued to legalize the present employment of applicants.	<u>Dimension 2</u> (Procedural) - Gov. agencies (with related mandates)	- Reduced risk of irregularities and labour shortages (<i>growers</i>)	Achieving Pillars 1 and 2
	A2. Establish a mandatory labour rights and human rights due diligence, particularly among large growers, and a requirement for public reporting of due diligence findings for greater transparency and accountability.	<u>Dimension 1</u> (Collective Action) - Gov. agencies with related mandates - Growers (and international brands) - NGOs, NHRI and academia - International organizations (e.g., ILO)	- Increased accountability and transparency (<i>growers</i>)	Achieving Pillar 1
	A3. Improve basic facilities, especially at remote estates and plantations, to ensure adequate supplies of clean water and electricity and improved communication connectivity (i.e., mobile and internet connections).	<u>Dimension 1</u> (Collective Action) - Gov. agencies with related mandates - Growers (all types of growers)	- Improved working and living conditions (<i>growers & workers</i>)	Achieving Pillars 1 and 2
	A4. Increase the number of labour inspectors to perform labour inspections, commensurate with the number of business entities in the state. Provide adequate and appropriate training and skills development so that the labour inspectors can perform effective inspections and report pertinent labour standards issues.	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Increased compliance with labour regulations (<i>growers</i>)	Achieving Pillars 1, 2 and 3
	A5. Review and ensure adequate observance of international standards in the labour inspection methodology, including inspection checklists and worker interviews' protocols, in particular, the standards regarding forced labour and child labour.	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Enhanced labour inspection (<i>gov. agencies</i>)	Achieving Pillars 1, 2 and 3

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (beneficiaries)	*Envisioned Impact
A. Strengthen labour management, governance and integrity	A6. Make the licensing requirements and application process for private recruitment agencies more stringent (i.e., under Licence C in accordance to the Private Recruitment Agencies Act [246]), including the need to submit a list of company affiliates and intermediaries in source countries, ethical recruitment's codes of conduct and disclosure commitment.	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Enhanced labour inspection (<i>gov. agencies</i>)	Achieving Pillars 1 & 2
	A7. Establish ethical recruitment guidelines and regular monitoring procedures to ensure private recruitment agencies comply fully with international standards	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Enhanced ethical recruitment conduct (<i>recruitment agencies</i>)	Achieving Pillar 1
	A8. Growers should ensure that their business partners (e.g., contractors and private recruitment agencies) are committed to and making efforts to address labour standards issues.	<u>Dimension 3</u> (Business Action) - Growers (particularly large and med-sized growers)	- Increased commitment to and compliance with labour regulations & standards (<i>growers & business partners</i>)	Achieving All Pillars
	A9. Invest in social intervention programmes to address risk of child labour. Encourage active participation of growers and local community members in these programmes. This may include, for instance, establishing a child labour monitoring framework (CLMF) where suppliers and local community members actively and collectively monitor and identify children at risk of child labour.	<u>Dimension 3</u> (Business Action) - Growers (all types of growers)	- Increased collaboration with local community to address child labour (<i>growers & local community</i>)	Achieving Pillars 1 and 2

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (beneficiaries)	*Envisioned Impact
B. Enhance awareness and practices on decent work	B1. Work in collaboration in developing and implementing awareness and education programmes on critical labour standard issues (e.g., forced labour and child labour). Such programmes should prioritise med-sized and small growers, including those located in remote estates and plantations. Education programmes should be appropriate to the local context, translated and delivered in the native languages of the migrant workers.	<u>Dimension 1</u> (Collective Action) - Gov. agencies with related mandates - Growers (all types of growers) - NGOs, NHRI and academia	- Increased awareness and knowledge of critical labour issues (<i>growers & workers</i>)	Achieving All Pillars
	B2. Invest in evidence generation programmes to address critical labour standards issues, including allocating grants to conduct independent research, field assessments and impact evaluation. Findings of such initiatives should aim to drive policy reforms and scale up positive transformations among growers.	<u>Dimension 1</u> (Collective Action) - Gov. agencies with related mandates - Growers (and international brands) - NGOs, NHRI and academia - International organizations (e.g., ILO)	- Policy changes supporting decent work agenda (<i>gov. agencies</i>) - Increased number of growers implementing decent work (<i>growers</i>)	Achieving All Pillars
	B3. Invest in open-source technologies to address pertinent labour issues (e.g., mobile application to facilitate payment of wages and remittances or to support growers monitoring safety and health). Such technologies should aim to remove barriers and resource limitations, particularly among med-sized and small growers.	<u>Dimension 1</u> (Collective Action) - Growers (and international brands) - NGOs, NHRI and academia	- Increased efficiency in labour management (<i>growers</i>) - Reduced safety risk & exploitation (<i>growers & workers</i>)	Achieving Pillars 2 & 3
	B4. Establish minimum standards and policies, consistent with the internationally-recognized standards, that protect and empower women workers, dependents and children on site.	<u>Dimension 3</u> (Business Action) - Growers (particularly large and med-sized growers)	- Increased compliance with national regulations & international standards (<i>growers</i>) - Enhanced protection & empowerment of vulnerable workers & dependents	Achieving All Pillars

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (beneficiaries)	*Envisioned Impact
B. Enhance awareness and practices on decent work	B5. Review and amend existing employment contracts to ensure full compliance with model contracts.	<u>Dimension 3</u> (Business Action) - Growers (particularly large and med-sized growers)	- Increased compliance with national regulations and international standards (<i>growers</i>)	Achieving Pillar 2
	B6. Implement a systematic labour monitoring system that is transparent and easily-tracked and shared. Growers should request and keep track of workers information and labour compliance by their respective contractors	<u>Dimension 3</u> (Business Action) - Growers (particularly large and med-sized growers)	- Enhanced labour management (<i>growers & business partners</i>)	Achieving Pillars 1 & 2
	B7. Eliminate unnecessary practices that hinder or restrict workers' freedom of movement and other indicators of forced labour. Workers should be free to keep their own identity documents and personal belongings.	<u>Dimension 3</u> (Business Action) - Growers (all types of growers)	- Reduced risk of forced labour (<i>growers</i>) - Increased freedom of movement (<i>workers</i>)	Achieving Pillar 1
	B8. Invest (or expand investment) in educational and childcare programmes and facilities to eliminate children's vulnerability to child labour and other forms of exploitation, including the upgrading of infrastructure at existing community learning centres (CLCs), improving quality of teaching and increasing number of qualified teachers and number of child care facilities (e.g., creche).	<u>Dimension 3</u> (Business Action) - Growers (particularly large growers)	- Reduced risk of child labour (<i>growers</i>) - Improved access to education and childcare (<i>workers & dependents</i>)	Achieving Pillar 1

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (beneficiaries)	*Envisioned Impact
C. Address labour market dynamics	C1. Review and amend (where necessary) the current employer-tied permit system and other regulations to facilitate small growers who are often unable to source documented migrant workers to work on temporary, short-term and task-specific oil palm activities.	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Increased compliance with national regulations (<i>growers</i>) - Reduced risk of irregularities (<i>workers</i>)	Achieving Pillars 1 & 2
	C2. Establish a state-level mechanism to regularly collect, monitor and identify labour market data to address labour shortages and prevent irregularities.	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Increased labour market management (<i>gov. agencies</i>) - Reduced labour shortages (<i>growers</i>)	Achieving Pillar 2
	C3. Establish specific and practical guidelines governing the presence of children on plantations, with the aim to eliminate risks and vulnerabilities for child labour.	<u>Dimension 2</u> (Procedural) - Gov. agencies with related mandates	- Reduced risks for child labour (<i>growers</i>)	Achieving Pillars 1 & 2
	C4. Ensure all workers are paid minimum wage or more and eliminate the barriers that hinder workers from being paid minimum wage, including gender pay gaps and/or unfair payment of wages, especially for female workers and/or working dependents.	<u>Dimension 3</u> (Business Action) - Growers (all types of growers)	- Enhanced compliance with minimum wage (<i>growers</i>) - Improved gender equality (<i>workers & dependents</i>)	Achieving Pillars 1 & 2
	C5. Growers and industry associations should collaborate to monitor and report on labour market data, including the hiring of irregular migrant workers and their dependents.	<u>Dimension 3</u> (Business Action) - Growers (all types of growers)	- Reduced risk of irregularities and labour shortages (<i>growers</i>)	Achieving Pillars 1 and 2

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (beneficiaries)	*Envisioned Impact
D. Strengthen social compliance mechanism	D1. Strengthen the transparency and accountability of the existing sustainability compliance mechanisms, including efforts to eliminate actual and potential conflict of interest between auditors and auditees and making audit findings fully transparent and publicly available.	<u>Dimension 1</u> (Collective Action) <ul style="list-style-type: none"> - Gov. agencies with related mandates - Growers (all types of growers) - Social compliance actors 	- Increased transparency and accountability in social compliance mechanisms (<i>social compliance actors</i>)	Achieving All Pillars
	D2. Extend participation of workers' representatives, subject matter experts and members of civil society in the existing social audit processes which further strengthens transparency.	<u>Dimension 1</u> (Collective Action) <ul style="list-style-type: none"> - Gov. agencies with related mandates - Growers (all types of growers) - Social compliance actors, NGOs and academia 	- Inclusive and transparent social compliance mechanisms (<i>social compliance actors</i>)	Achieving All Pillars
	D3. Provide adequate training and capacity building for internal staff responsible for monitoring workplace standards and performing internal audits, as well as liaising with external auditors.	<u>Dimension 3</u> (Business Action) <ul style="list-style-type: none"> - Growers (particularly large and med-sized growers) 	- Increased capability to perform and facilitate internal & external labour audits	Achieving All Pillars

Strategies	Interventions (Recommendations)	Dimension (Responsible Actors)	Expected Outcome (beneficiaries)	*Envisioned Impact
E. Strengthen access to effective grievance, remediation and social dialogue mechanisms	E1. Establish an independent and representative complaint panel and/or conflict prevention mechanism to receive and act on labour issues and grievances.	<u>Dimension 1</u> (Collective Action) - Gov. agencies with related mandates - Growers (particularly large growers) - NGOs, NHRI and academia	- Strengthened commitment & collaborative efforts to address labour issues & grievances (<i>gov. agencies, growers & other stakeholders</i>)	Achieving Pillar 4
	E2. Strengthen awareness raising efforts among workers on the most remote and rural oil palm estates / plantation on the existing state-initiated and other independent grievance mechanisms (e.g., Working for Workers' application).	<u>Dimension 1</u> (Collective Action) - Gov. agencies with related mandates - Growers (all types of growers) - NGOs, NHRI and academia	- Increased awareness and ability to raise independent grievances / complaints (<i>workers</i>)	Achieving Pillar 4
	E3. Improve existing operational complaint and grievance mechanisms, including ensuring adequate socialisation for all workers; guaranteed protection for complainants and grievance raisers; and transparent resolution-making processes.	<u>Dimension 3</u> (Business Action) - Growers (particularly large and med-sized growers)	- Strengthened workers' protection and trust (<i>growers & workers</i>)	Achieving Pillar 4
	E4. Encourage active participation of workers in unions, formal or informal groupings, and collective bargaining processes. Growers should initiate regular dialogues with unions and/or workers' representatives to address workers' issues.	<u>Dimension 3</u> (Business Action) - Growers (particularly large and med-sized growers)	- Increased access to social dialogue platforms (<i>workers</i>) - Increased workers' voice (<i>workers</i>)	Achieving Pillar 4

* Corresponds with ILO's decent work agenda: Pillar 1 (refers to standards and fundamental principles and rights at work); Pillar 2 (employment relationship); Pillar 3 (social protection); Pillar 4 (social dialogue).



Section 7

Technical Annexes



7. Technical Annexes

Annex 1: Workers' Survey - Number of Worker Respondents by Growers, Nationality & Gender

By District	Worker of Large Grower						Worker of Med-sized Grower						Worker of Small Grower						Total Worker	
	Local		Indonesian		Filipino		Local		Indonesian		Filipino		Local		Indonesian		Filipino			
Tawau	5		13		0		1		9		2		1		10		0		41 (39.8%)	
[Gender]	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
	5	0	7	6	0	0	1	0	2	7	0	2	1	0	10	0	0	0	26	15
Kinabatangan	0		7		0		0		31		2		0		0		0		40 (38.8%)	
[Gender]	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
	0	0	3	4	0	0	0	0	23	8	2	0	0	0	0	0	0	0	28	12
Lahad Datu	0		0		0		0		6		6		0		10		0		22 (21.4%)	
[Gender]	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
	0	0	0	0	0	0	0	0	0	6	0	6	0	0	10	0	0	0	10	12
Sub-Total	5		20		0		1		46		10		1		20		0		103	
Total Worker	25 (24.3%)						57 (55.3%)						21 (20.4%)						(100%)	

Source: Field Work in Tawau, Kinabatangan and Lahad Datu, Sabah, 2022.

Annex 2: Workers' Survey - Number of Worker Respondents by Age Group

By District and Grower	Worker by Age Group						
	Below 18	18-30	31-40	41-50	51-60	61 & above	Total
<u>Tawau</u>	<u>0</u>	<u>6</u>	<u>19</u>	<u>14</u>	<u>2</u>	<u>0</u>	<u>41 (39.8%)</u>
Large grower	0	0	9	8	1	0	18
Med-sized grower	0	2	6	3	1	0	12
Small grower	0	4	4	3	0	0	11
<u>Kinabatangan</u>	<u>0</u>	<u>16</u>	<u>19</u>	<u>4</u>	<u>1</u>	<u>0</u>	<u>40 (38.8%)</u>
Large grower	0	3	1	2	1	0	7
Med-sized grower	0	13	18	2	0	0	33
Small grower	0	0	0	0	0	0	0
<u>Lahad Datu</u>	<u>9</u>	<u>6</u>	<u>3</u>	<u>4</u>	<u>0</u>	<u>0</u>	<u>22 (21.4%)</u>
Large grower	0	0	0	0	0	0	0
Med-sized grower	*6	3	3	0	0	0	6
Small grower	**3	3	0	4	0	0	7
Total Worker	9 (8.7%)	28 (27.2%)	41 (39.8%)	22 (21.4%)	3 (2.9%)	0 (0%)	103 (100%)

* 6 child workers (below 18-year-old) are female, comprising 3 Indonesian and 3 Filipino workers

** 3 child workers (below 18-year-old) are male (all of which are Indonesian child workers).

Source: Field Work in Tawau, Kinabatangan and Lahad Datu, Sabah, 2022.

Annex 3: Workers' Survey - Number of Migrant Worker Respondents by Year of Employment & Length of Stay in Sabah

By District and Grower	Migrant worker by average year of current employment						Migrant worker by average year of staying in Sabah						
	Less than a year	1-5 years	6-10 years	11-20 years	More than 20 years	Total	Less than a year	1-5 years	6-10 years	11-20 years	More than 20 years	*Borne in Sabah	Total
<u>Tawau</u>	0	2	8	18	6	34 (35.4%)	0	0	3	13	18	0	34 (35.4%)
Large grower	0	0	1	10	2	13	0	0	0	9	4	0	13
Med-sized grower	0	0	5	2	4	11	0	0	3	4	4	0	11
Small grower	0	2	2	6	0	10	0	0	0	0	10	0	10
<u>Kinabatangan</u>	4	14	12	10	0	40 (41.7%)	1	6	12	16	4	1	40 (41.7%)
Large grower	0	0	1	6	0	7	0	0	0	4	3	0	7
Med-sized grower	4	14	11	4	0	33	1	6	12	12	1	1	33
Small grower	0	0	0	0	0	0	0	0	0	0	0	0	0
<u>Lahad Datu</u>	0	12	9	1	0	22 (22.9%)	0	6	2	5	4	5	22 (22.9%)
Large grower	0	0	0	0	0	0	0	0	0	0	0	0	0
Med-sized grower	0	6	5	1	0	12	0	6	2	2	0	2	12
Small grower	0	6	4	0	0	10	0	0	0	3	4	3	10
Total Worker	4 (4.2%)	28 (29.2%)	29 (30.2%)	29 (30.2%)	6 (6.3%)	96 (100%)	1 (1.1%)	12 (12.5%)	17 (17.7%)	34 (35.4%)	26 (27.1%)	6 (6.3%)	96 (100%)

Note: Data above excludes a total of 7 local workers.

* 'Borne in Sabah' refers to a migrant respondent who is the second generation of migrant workers in Sabah.

Source: Field Work in Tawau, Kinabatangan and Lahad Datu, Sabah, 2022.

Annex 4: Workers' Survey - Number of Worker Respondents by Immigration & Employment Status

By District and Grower	Migrant worker by average year of current employment					
	Local workers*	Undocumented Local**	Regular Migrant workers***	Workers under Regularization****	Irregular migrant worker*****	Total
<u>Tawau</u>	7	1	22	0	11	41 (39.8%)
Large grower	5	0	13	0	0	18
Med-sized grower	1	0	9	0	2	12
Small grower	1	1	0	0	9	11
<u>Kinabatangan</u>	0	0	18	6	16	40 (38.8%)
Large grower	0	0	7	0	0	7
Med-sized grower	0	0	11	6	16	33
Small grower	0	0	0	0	0	0
<u>Lahad Datu</u>	0	1	0	0	21	22 (21.4%)
Large grower	0	0	0	0	0	0
Med-sized grower	0	0	0	0	12	12
Small grower	0	1	0	0	9	10
Total Worker	7 (6.8%)	2 (1.9%)	40 (38.8%)	6 (5.8%)	48 (46.6%)	103 (100%)

Note: Data excludes a total of 7 local workers.

*Local worker is referred to Malaysian worker who does not need to acquire foreign employment pass.

**Undocumented local is referred to a person who claims being a local or citizen worker but does not possess any identity documents (e.g., IC)

***Regular migrant is referred to a migrant worker who does possess both valid passport and working pass

****Migrant worker who is currently waiting for their regularisation application to be granted by the authorities.

*****Irregular migrant is referred to a migrant worker who does not possess any valid passport or working pass, or both.

Source: Field Work in Tawau, Kinabatangan and Lahad Datu, Sabah, 2022.

Annex 5: Workers' Survey - Number of Worker Respondents by Level of Education

By District	Worker by Level of Education							Total
	Never went to school and illiterate	Never went to school but literate	Primary school	Secondary school	Vocational school	Diploma	Degree	
Tawau	0	10	21	10	0	0	0	41 (39.8%)
Kinabatangan	0	4	31	5	0	0	0	40 (38.8%)
Lahad Datu	5	10	4	3	0	0	0	22 (21.4%)
Total Worker	5 (4.9%)	24 (23.3%)	56 (54.4%)	18 (17.5%)	0	0	0	103 (100%)

Source: Field Work in Tawau, Kinabatangan and Lahad Datu, Sabah, 2022

Annex 6: Workers' Survey - Type of Occupation (Generalised) by Type of Worker and Gender

Type of Worker	Gender (Male)	Gender (Female)
Local workers*	<i>Mandor</i> (with supervisory role), driver (including palm truck and bus), fruit checker, security officials and maintenance staff	<i>Not available</i>
Migrant workers**	Common types of occupation include harvesting, fruit loading, manuring, slashing, collecting loose fruit and spraying. Some migrant workers hired by large growers are hired as <i>mandors</i> (with supervisory role) and drivers (palm truck).	Manuring, slashing, loose fruit collecting, spraying. Some female workers worked in nursery (e.g., applying fertilizer, watering and pests' control). One female Indonesian worker claimed that she also worked as harvester.
Child workers***	Manuring, harvesting and fruit loading	Manuring

*Local workers include two "undocumented local workers".

** Migrant workers include both Indonesian and Filipino workers

*** There are nine child workers aged below 18 years old, consisting of six female and three male children.

Source: Field Work in Tawau, Kinabatangan and Lahad Datu, Sabah, 2022.

Annex 7: Workers' Survey - Consent Process and Form

BAHAGIAN I - PENGENALAN KEPADA INFORMAN

1. Tujuan

Tujuan kajian ini adalah untuk mengenal pasti dan memahami tahap kesedaran dan pengetahuan, praktis, cabaran dan saranan bagi meningkatkan kepatuhan terhadap piawaian buruh di sektor kelapa sawit.

2. Pengumpulan Data yang Berkaitan

Kajian ini menggunakan set temu bual separa struktur, fokus kepada pemain industri sederhana (*mid-sized growers*), pekerja dan pemegang taruh yang berkaitan.

3. Penyertaan Sukarela

Kajian ini menekankan penyertaan sukarela secara aktif. Anda boleh memilih sama ada untuk mengambil bahagian atau tidak.

4. Prosedur

Setiap langkah atau prosedur yang terlibat dijelaskan di bawah.

- i. Temu bual akan dijalankan secara tertutup dan sulit
- ii. Peserta yang bersetuju akan ditemu bual oleh enumerator
- iii. Sesi temubual akan dirakam, berdasarkan keperluan, untuk rujukan.
- iv. Maklumat dan rakaman akan disimpan secara sulit. Rakaman individu akan dimusnahkan selepas jangka masa tertentu (i.e., 1 tahun selepas penerbitan)
- v. Temu bual hanya akan diteruskan apabila semuanya jelas bagi setiap informan dan informan tidak memerlukan penjelasan lebih lanjut.

5. Jangka masa

Setiap sesi temu bual dijangka mengambil masa 45 hingga 60 minit (bagi pekerja) dan di antara 1 jam hingga 3 jam (bagi majikan dan pemegang taruh lain), yang mana berkaitan.

6. Aduan dan rungutan

Sekiranya informan ingin mengajukan aduan atau rungutan yang melibatkan penganiayaan, eksploitasi dan pencabulan hak asasi manusia kepada mana-mana individu, informan boleh mengajukan perkara tersebut kepada Ketua Penyelidik iaitu **Andika Wahab** (0163723699) atau emel andikawahab@ukm.edu.my

BAHAGIAN II: PERAKUAN PERSETUJUAN

Saya memahami objektif dan penyebaran hasil temu bual ini.

Saya faham bahawa saya boleh menarik diri pada bila-bila masa atau enggan menjawab sebarang soalan tanpa sebarang kesan.

Saya faham bahawa saya boleh menarik balik kebenaran untuk menggunakan data dari temu bual saya, sama ada keseluruhan temu bual saya atau sebahagian daripadanya, dalam masa dua minggu selepas temu bual, di mana dalam hal ini penyelidik wajib menghapus data saya mengikut permintaan saya.

Saya telah membaca maklumat di atas, atau telah dibaca kepada saya, dan memahami sepenuhnya bahawa saya bebas untuk menghubungi mana-mana individu yang terlibat dalam kajian ini.

Saya faham bahawa semua maklumat yang diberikan oleh saya untuk tujuan kajian ini akan dirahsiakan.

Saya faham bahawa petikan daripada temu bual saya mungkin dipetik (dengan nama samaran) dalam laporan penyelidikan dan bahan jangkauan.

Saya bersetuju secara sukarela untuk mengambil bahagian sebagai responden dalam kajian ini.

Nama Informan

Tandatangan Informan

Tarikh

Hari/bulan/tahun



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