

SUHAKAM Earthworm Foundation Consultation

On the Situation of Children in the
Plantations of Sabah

9 July 2018
Kota Kinabalu, Sabah

 **earthworm**

www.earthworm.org

ABOUT US

Earthworm

Earthworm Foundation (EF) is an impact-driven non-profit that works on the ground to create conditions for nature and people to thrive. Partnering with businesses, civil society and governments, EF focusses on implementing responsible sourcing commitments in value chains, innovating practical solutions to the social and environmental challenges of production practices, and catalysing industry-wide chain reactions to help achieve transformation at scale.

Respect is Earthworm's worker welfare programme to protect the rights of workers and their families in global supply chains. In Malaysia, EF works mainly with companies in the palm oil industry to ensure that supply chains are free from deforestation and exploitation of workers and communities.

For more about Earthworm Foundation, visit our webpage at: www.earthworm.org

For queries on the Children in Plantations initiative:
Nadiah Rosli, Project Leader, Communications
Tel.: +6 03 2201 2393
Email: n.rosli@earthworm.org

Natasha Mahendran, Social and Human Rights Manager
Tel.: +6 03 2201 2393
Email: n.mahendran@earthworm.org



Contents

About Us

1. Introduction

1.1	Objective, Session & Participation	6
1.2	About the Organisers	7

2. Summary of Opening Session

2.1	Welcome Address by YBhg. Datuk Godfrey Gregory Joitol, Commissioner, SUHAKAM	9
2.2	Introductory Remarks by Mr. Karl Yen Quek, Regional Lead,Earthworm Foundation	10

3. Summary of Presentations

3.1	Corporate Responsibility and the Impact of Business on Children's Rights by Prof Aishah Bidin, SUHAKAM	12
3.2	Children in the Plantations of Sabah: Issues, Business Challenges & Ways Forward by Dr. Andika Ab. Wahab and Ms. Natasha Mahendran, Earthworm Foundation	14

4. Summary of Participants' Questions and Answers, and Discussion

4.1	Session with Government Agencies, Government-Linked Companies and Academic Institutions	18
4.2	Session with Non-Governmental Organizations	20
4.3	Summary of Participants' Inputs	22

5. Local Media Coverage of the Consultation

6. Post-Consultation Developments

7. Conclusion

8. Next Steps

Annex 1

Programmee Agenda (Consultation with
Government Agencies, GLCs & Academic Institutions)

Annex 2

Programmee Agenda (Consultation with NGOs & Experts)

Annex 3

List of Participants

Annex 4

Press Release – Media Factsheet



1. Introduction

Earthworm Foundation (EF) began a series of multi-stakeholder consultations on Children in the Plantations of Sabah in September 2017. These consultations are part of an ongoing project to strengthen collaboration between stakeholders on the situation of children in the oil palm plantations in Sabah, which include businesses, government agencies, academic institutions and civil society.

The first consultation held on 5th September 2017 was convened by Earthworm Foundation in partnership with Earthworm members Nestlé, Archer Daniels Midland (ADM) and Wilmar.

With over 50 participants from palm oil companies, it was designed to achieve three main objectives:

- (i) To raise awareness and build capacity among suppliers to address and prevent child labour on site;
- (ii) To re-socialise company policy commitments and national sustainability requirements concerning child labour; and
- (iii) To seek inputs from participants to better understand the actual participation of children in plantation work.

The second Earthworm Foundation consultation co-hosted with the Human Rights Commission of Malaysia (SUHAKAM) on 9th July 2018 was targeted at regulators and civil society. It aimed at promoting greater understanding of the stakeholders' roles and responsibilities in relation to the protection of children's rights and well-being as a vulnerable group, in and around the plantations of Sabah. The second consultation was attended by nearly 100 participants from key government agencies, government-linked companies, a foreign consulate, academic institutions and civil society in Sabah.

This report summarises the presentations and discussions that took place at the second consultation.

1.1 Objective, Session and Participation

The objectives of the consultation were:

- I. To present common issues and challenges facing industry players in Sabah concerning children in plantations;
- II. To attain regulatory and policy updates concerning children in plantations from government agencies, to be later shared with industry players at scale; and
- III. To obtain the views of civil society and explore potential collaboration in the future.

The consultation took the form of two separate sessions:

- First Session – from 8:30 a.m. to 12:00 p.m. with government agencies and experts from academic institutions in Sabah.

The First Session was attended by a total of 28 persons – 19 officials from key government agencies, government-linked companies and consulate representatives, and nine from academic institutions in Sabah.

- Second Session – from 1:15 p.m. to 4:30 p.m. with members of civil society organisations.

The Second Session had 34 participants from 17 civil society organisations providing services and advocacy concerning vulnerable children in Sabah.

1.2 About the Organisers



Earthworm Foundation (EF)

Earthworm Foundation is an impact-driven non-profit that works on the ground to create conditions for nature and people to thrive. Partnering with businesses, civil society and governments, it focusses on implementing responsible sourcing commitments in supply chains, innovating practical solutions to the social and environmental challenges of production practices, and catalysing industry-wide chain reactions to help achieve transformation at scale. Earthworm Foundation's Respect programme focusses on protecting the rights of workers and their families in global supply chains.



Human Rights Commission of Malaysia (SUHAKAM)

SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999, Act 597 with the aims of promoting awareness of and providing education relating to human rights, advising and assisting the Government in formulating legislation and procedures and recommending the necessary measures to be taken, recommending to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights, and inquiring into complaints regarding infringements of human rights. Seven core values guide SUHAKAM's operations, and they are Respect, Independence, Integrity, Engagement, Efficiency, Openness, and Capacity Development.



Summary of Opening Session

2.1 Welcome Address by YBhg. Datuk Godfrey Gregory Joitol, Commissioner, Human Rights Commission of Malaysia (SUHAKAM)

Datuk Godfrey noted that Malaysia is a host country to about two million and close to four million documented and undocumented migrant workers respectively. This situation poses strong challenges to the government with regards to labour rights of migrants, but the adoption of the United Nations Guiding Principles on Business & Human Rights (hereinafter referred to as "UNGP") on a domestic level will help mitigate, if not resolve, these related issues.

While the UNGP is yet to be incorporated by many businesses in Malaysia, some have already begun undertaking preliminary efforts. However, these efforts tend to lean towards philanthropy and charitable activities, not fully capturing the intention behind the UNGP. Business understanding of respecting and protecting human rights still remains inadequate.

Globally, many governments have begun to operationalise the three pillars of UNGP, namely; (i) duty of the state to protect human rights; (ii) duty of businesses to respect human rights; and (iii) duty of both state and businesses

to provide access to effective remedy. In 2015, SUHAKAM developed the Strategic Framework for a National Action Plan (NAP) on Business and Human Rights for Malaysia to ease Malaysia's adoption of these duties.

Datuk Godfrey applauded Earthworm Foundation for its significant effort to raise awareness and convene different stakeholders to address issues concerning children in the plantation sector in Sabah. The recent Earthworm Foundation publication on Children in the Plantations of Sabah suggests that the situation of children in plantations raises concerns, and if unattended, risks serious child's rights violations. He emphasised that child labour is a clear infringement of human rights. Thus, it is crucial to understand the actual situation and participation of children in plantations. Any evidence of child labour must be taken seriously, and a multi-stakeholder approach involving government agencies, NGOs and experts such as this goes a long way in reducing the gaps in policies and reaching out to other different stakeholders in seeking potential solutions.



"...child labour is a clear infringement of human rights. Thus, it is crucial to understand the actual situation and participation of children in plantations."

2.2 Introductory Remarks by Karl Yen Quek, Regional Lead, Earthworm Foundation (EF)

In his introductory remarks, Mr. Karl highlighted Earthworm Foundation's unique position and approach in supporting businesses to commit on ethical and responsible business conduct. As a non-campaigning and member-based not-for-profit organisation, Earthworm Foundation is committed to work in collaboration with different stakeholders, including its Members such as Nestle, Wilmar and Cargill – especially in the palm oil sector. Since 2012, Earthworm Foundation has visited, assessed and supported businesses, ranging from millers, estate operators and smallholders in Sabah, Malaysia.

He stressed that Earthworm Foundation's overall vision is to seek practical solutions to environment and social issues. Of course, there are no ready-made solutions for complex issues such as children in plantations. This is why greater efforts by various stakeholders is required.

He noted that the journey Earthworm Foundation is embarking on today is because the market wants more responsible and sustainable business practices, especially in the palm oil sector. The palm oil that Sabah produces goes to markets in Europe and America, as well as markets within Asia, namely China and India.

These markets demand greater transparency from all stakeholders – wanting to know the environmental and social risks, as well as ways to prevent and remedy them when they occur.

The pressure is on the rise. Today there is overwhelming negative media that paints the palm oil industry in a bad light. Markets are reactive to this. Much of these issues are true; but they also exist in many countries, across different supply chains and not just palm oil.

However, there are many companies now implementing No Deforestation, No Peat and No Exploitation (NDPE) policies in their supply chain. In addition to that, there are good stories of transformative change emerging from companies across Malaysia.

In his concluding remarks, Mr. Karl pointed out that the consultation today was the beginning of another good story. One that the audience can be proud of for safeguarding the interest of children in plantations, and to provide a good signal for the markets to continue supporting palm oil from Sabah.



“There are no ready-made solutions for complex issues such as children in plantations. This is why greater efforts by various stakeholders is required.”



Community Engagement

3.1 “Corporate Responsibility and the Impact of Business on Children’s Rights” by YBhg. Prof. Dato’ Dr. Aishah Bidin, Commissioner, Human Rights Commission of Malaysia (SUHAKAM)

As children make up one-third of the world’s population, Dr. Aishah noted that they play a very significant and growing role in the global economy. Children interact with businesses every day; whether as workers in their factories and fields, consumers of their goods and services, members of communities in which they operate, or family members of their employees. Childhood is marked by progressive stages of development that leave children far more susceptible to negative business impact than adults. Despite this vulnerability, businesses rarely involve or seek the input from children. At the same time, children face legal, practical and cultural barriers to have their voices heard.

UNGP and Child’s Rights

Dr. Aishah quoted the former Special Representative of the United Nations Secretary-General on Business and Human Rights, Professor John Ruggie who said that, “... children are among the most marginalised and vulnerable members of society and can be disproportionately, severely, and permanently impacted by business activities, operations and relationships”.

The UNGP explicitly calls for implementation of non-discrimination – with particular attention needed to address the rights and needs of, as well as the challenges faced by, individuals from groups that may be at heightened risk of becoming vulnerable or marginalised (such as children).

In addition, the Convention on the Rights of the Child (CRC) enshrines a comprehensive set of civil, political, economic, and social rights for all children, including in the business sector. The Committee on the Rights of the Child in its General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children’s Rights emphasised that it is necessary for States to have adequate legal and institutional frameworks to respect, protect and fulfil children’s rights, and to provide remedies in case of violations in the

context of business activities and operations. As such, CRC provides a broad policy base for the incorporation of children’s rights into the National Action Plan on Business and Human Rights, and other processes to implement the UNGP.

Priorities for Companies in Implementing UNGP

Dr. Aishah stressed that there must be a corporate responsibility to respect human rights. This includes primary responsibility of employers to realise labour rights for their workers, and ensure compliance in their supply chains. In addition to that, due diligence on suppliers including recruitment agencies, subcontractors and labour supply companies must be conducted.

Companies can engage in social and policy dialogue with the Government. At the same time, the Government should ensure that the laws, policies and bilateral agreements should respond to current needs of migrant workers in different sectors, and ensure workers’ rights protection and effective remedy.

Role of Companies in Implementing Sustainable Development Goals (SDGs)

The “2030 Agenda for SDGs” recognises the role of the business sector to ensure inclusive economic growth, job creation and responsible business conduct. For example, under Target 8.7 of the SDGs, the need to eradicate forced labour, modern slavery, human trafficking and the worst forms of child labour would definitely require active involvement of the business sector. Under SDG Target 8.8, the business community need to have adequate measures to protect labour rights, and promote safe and secure working environments for all workers, including migrant workers. In relation to safe migration, Targets 10.7 of the SDGs stress that businesses also have an important role to ensure safe migration of workers especially by reducing the cost of recruitment and remittances.

Children in Sabah: Statelessness and Remedy

Since its inception, SUHAKAM has been consistently monitoring the issue of statelessness in Malaysia. In Sabah, the issue of statelessness, especially among vulnerable children, is on the rise. The SUHAKAM office in Sabah has been receiving complaints and issues related to birth registration and issuance of identity cards. The issue of statelessness not only affects children of immigrants but also children of orang asal (indigenous people) in Sabah. It is thus crucial for the State to treat matters of statelessness as a human rights issue that commands the State’s intervention.

Children often find it difficult to access the justice system to seek effective remedy for abuse or violations of their rights when business enterprises are involved. Children may lack legal standing, which prevents them from pursuing a claim. Children and their families often lack knowledge about their rights and the mechanisms and procedures available to them to seek redress. Essentially, there are power imbalances between children

and businesses and, often, prohibitive costs involved in litigation against companies and difficulty in securing legal representation. Cases involving businesses are frequently settled out of court.

In concluding, Dr. Aishah stressed that the State is responsible to facilitate, promote and provide for the enjoyment of children’s rights. The state needs to implement legislative, administrative, budgetary, judicial, promotional and other measures to promote and protect the rights and well-being of children. To support businesses to actualise their respective responsibility, the State must provide a comprehensive legal and regulatory environment. This environment should require businesses to undertake due diligence of their business operations and develop effective monitoring systems. Business enterprises should also be encouraged to be transparent, including publishing their actions and commitments to promote and commit on ethical business practices, including the prohibition of child labour.

Summary of Key Points

- 1** The State is duty-bound to protect the rights and well-being of children, and provide remedy when these rights are violated.
- 2** Businesses have a role in the achievement of the Sustainable Development Goals, have corporate responsibility to respect human rights and conduct due diligence to ensure compliance in their supply chains.
- 3** The State must intervene on the issue of statelessness urgently.

3.2 “Children in the Plantations of Sabah: Issues, Business Challenges & Ways Forward” by Dr. Andika Ab. Wahab, Project Leader, Earthworm Foundation and Ms. Natasha Mahendran, Social and Human Rights Manager, Earthworm Foundation

No Deforestation, No Peat and No Exploitation Commitments (NDPE) and Child Labour

The use of child labour is clearly prohibited in Responsible Sourcing or NDPE policies, under the No Exploitation component, of many palm oil companies in Malaysia. In terms of policy coverage, Earthworm Foundation mentioned that about 70% of the refining capacity in Malaysia and Indonesia is currently covered by NDPE policies. This suggests that the majority of business players are committed to prohibit the use of child labour in their own business operations and in their supply chains.

Earthworm Foundation referenced the ILO Minimum Age Convention (C138) where child labour is defined as “... work that deprives children of their childhood, potential and dignity, and that is harmful to physical and mental development; work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling”. At the time of the Consultation, in Peninsular Malaysia, the laws governing the age of children's employment are found in the Children and Young Persons (Employment) Act 1966 (Amended in 2010, Act A1386), wherein a child is defined as any person who has not completed their fifteenth year of age, and a young person as any person who has ceased being a child but has not completed their eighteenth year of age. In Sabah, Section 2 of the Sabah Labour Ordinance defines a child as one who is under the age of fifteen, whereas a young person is a one who has ceased being a child but has not yet attained the age of eighteen (from 15 to 17 years old). The definition of what constitutes being a child and a young person is identical in Sarawak, governed by Section 1 of the Sarawak Labour Ordinance.

Keeping the legal definitions in mind, Earthworm Foundation believes businesses should also take appropriate measures to prevent, and remedy, any incidence of child labour.

Children in the Plantations of Sabah

Sabah has been identified as the focus of this initiative due to the known presence of children in the plantation sector in the State. There are an estimated 50,000 children¹ – the majority of whom are of Indonesian and Filipino origin – living in or around oil palm estates and plantations in Sabah.

Based on findings from the previous Earthworm Foundation consultation with companies in Sandakan, Sabah on 5th September 2017, it was found that children and young persons were involved in a number of plantation activities such as filling poly bags and weeding at nurseries, stacking palm fruits, harvesting and manuring, slashing, collecting loose fruits and spraying. These activities were reported to have taken place in both commercial plantations and small growers estates. For those children and young people who were involved in these activities on commercial plantations, they were not on any official employment record. It is not clear whether they were paid individually or if their contributions were calculated into their parents' or other family members' wages.

The profiles of these children and young people differs – some may be assisting their parents on their family owned smallholder plots; whereas others may be children of documented or undocumented migrant workers or local communities who do not have access to education or lack other employment opportunities.

Business perceptions about child labour

There are many perceptions about the role of businesses in relation to child labour which apply to both the sector's role in its perpetuation, as well as the role businesses should play in its eradication. Though situations where companies deliberately profit from child labour exist, each situation needs to be examined within its socio-economic context and business perceptions that still prevail. Nonetheless, there is increasing pressure placed on businesses to design and implement credible disclosure and reporting strategies. Hence, in the course of addressing any form of child labour, businesses will need to make difficult decisions and take up positions that are consistent with international standards.

Some common challenges raised by business representatives on the root causes of child labour are:

- The lack of awareness of the definition of child labour and negative impacts of child labour;
- Absence and/or lack of company policy commitments and procedures in relation to preventing child labour;
- Piece rate systems in plantations that entice some parents or family members to include children at work to earn more income;
- Labour shortage, coupled with high turnover rate or worker abscondment, encourages companies to utilise anyone willing to work;
- The absence of educational facilities and child care facilities (i.e. crèche) in or around plantations; and
- The geographical remoteness and locality of plantations encourages children into work earlier than in urban settings.

Government has a unique role in eradicating child labour. It must establish regulatory structures and promote the necessary environment to ensure that children are not exploited. While it should support and not circumvent the application of relevant laws and policies, the business sector cannot assume the role and responsibility of government to develop and enforce such laws. The ultimate responsibility for setting standards for social policies does not rest with business – it rests first and foremost with government.

Earthworm Foundation raised some of the obstacles highlighted by industry players that exist within the current regulatory and policy framework related to child labour. These include:

- The lack of clarity in the law (e.g. guidelines on the difference between children “assisting parents” or “working”);
- The lack of policy guidance for businesses on child labour and hazardous activities;
- The lack of labour inspection;
- The lack of enforcement of unscrupulous labour agents;
- The lack of communication and proactive engagements with businesses; and
- The lack of educational and child care facilities in rural areas.

Furthermore, Earthworm Foundation raised the more intrinsic parental, family and social perceptions that could promote child labour. This could include:

- Poverty, which leads to the mentality of ‘more hands, more income’. The money earned by children may be indispensable income for themselves and their families.
- The perceived benefit of income from child labour for poor families appears to far outweigh the high cost of education, and thus, schooling is not seen as an attractive option.
- When families do have decent incomes, and the work of children is not essential, the lack of educational opportunities or the seemingly poor quality of rural schools and poor prospects of future employment may still lead to child labour.
- The lack of knowledge about the negative impacts of child labour. Parents who are sensitive to the negative impacts of child labour and the need for education would be more committed to their children's welfare.
- Parents who consider work, even at a very early age, to be part of their children's learning process and socialisation, and thus beneficial for their children.
- The large size of households and lack of childcare facilities on site (i.e. crèche for babies or day care for older children during school holidays)
- The lack of legal documentation for children with parents of foreign origin.

¹ Anthea Mulakala, “Sabah's Stateless Children, INASIA, 8 December 2010”. Available at: <https://asiafoundation.org/2010/12/08/sabahs-stateless-children/>

Good Practices for Replication

Earthworm Foundation mentioned that there are some good initiatives from companies that can be replicated by other businesses. In addressing child labour, some companies have strengthened their field monitoring mechanisms and reporting systems, and enforced strict prohibition of children's presence on work sites. Training and awareness-raising programmes for workers have also been conducted. Acknowledging the value of education, some companies have partnered with NGOs to provide alternative education for their workers' children where these children cannot access government schools. Such efforts should be supported by government for further scale up.

Ways Forward

In moving forward, Earthworm Foundation emphasised three aspects to be considered.

(i) Regulatory standard setting

Earthworm Foundation pointed out that the government

needs to create a standard that aligns to international standards for businesses to adhere to. In addition to that, the government should also provide comprehensive guidance and business-friendly solutions for the critical challenges raised.

(ii) Collaboration

Earthworm Foundation stressed the importance of collaboration between different stakeholders (government, civil society and businesses) to find sustainable solutions to improve the situation of children in plantations.

(iii) Going beyond certification

Finally, Earthworm Foundation stressed that actual transformation begins with value transfer through awareness-raising, learning and pragmatic engagement. Businesses need to increase transparency beyond certification, and also report on on-going progress, acknowledge gaps, share challenges and commit to remedy.

Summary of Key Points

- 1** Some businesses have proactively designed and implemented programmes to support children and their parents. Such individual company achievements should be scaled up along supply chains, and supported by government.
- 2** Government must establish high standards and provide clear legal and policy frameworks in relation to child labour, hazardous work and child protection.
- 3** Given the complexity of eliminating child labour, collaborative efforts amongst government, civil society and business stakeholders should be prioritized for sustainable change.



Summary of Participant Question, Answer and Discussion Session

4.1 Session with Government Agencies, Government-Linked Companies and Academic Institutions

The first discussion session focused on experiences and perspectives from government officials, government-linked companies, consulates and experts from academic institutions concerning the situation of children in Sabah in general, and in the plantation sector in particular.



Image: Earthworm Foundation, SUHAKAM and representatives of government agencies, government-linked companies and academic institutions.

The Need to Create Standards

Some participants stated that the government has a critical role to set the standards for industry players, including smallholders, to address the issue of children or young people working in agriculture or plantations. They felt it is unclear whether there is a specific guideline – such as list of hazardous activities (specific for children and young persons) – established by any government agency that can be referred to as a guidance in relation to the involvement of children and young persons in plantation activities.

Limitations facing Labour Inspection in Sabah

The limited number of labour inspectors, coupled with the remoteness of many plantations and oil palm companies, has been the key challenge for enforcement agencies such as the Labour Department to undertake comprehensive monitoring of compliance to national laws and regulations concerning children and young workers.

Confusion between “Assisting Parents” and “Working Children”

It was also noted that there is a need to clearly distinguish between children assisting their parents and children working for, or hired directly, by companies. Participants argued that many children in Sabah were seen to assist their parents undertaking oil palm related activities so long as these activities were not deemed harmful to their health. It was noted that many local businesses and smallholder farmers believed that it was part of their culture to allow children to assist their parents in agricultural work. However, parents’ lack understanding of the health implications and work restrictions that must be applied for children and young workers. Without adequate awareness, children face various risks and their involvement in oil palm activities without proper monitoring and guidance may lead to the incidence of child labour.

Presence of Unscrupulous Labour Agents

Participants raised the issue of unscrupulous labour agents in Sabah. These agents cheat migrant workers and their families with false promises, resulting in them becoming undocumented. In such cases, the victims would be advised to apply for new passports from their

respective consulate offices, which then enable their children to receive some form of documentation. Other participants highlighted that some migrant workers (often from Indonesia) deliberately get rid of their passports, because they believe that they can pay to illegally obtain birth registrations or Malaysian identity documents. As such, government participants highlighted the need for more awareness-raising activities to inform migrant workers that no Malaysian identity card would be issued to them and that actions of disposing their own passports will only bring negative implications on themselves and their children.

The Need to Strengthen Access to Education

The efforts of large plantation companies to initiate many alternative educational facilities in Sabah were recognised and applauded by participants. Large companies were also encouraged to play a leadership role by encouraging their suppliers to provide access to education for their workers’ children. There are many opportunities where large companies can collaborate with their suppliers (small, medium sized companies and smallholder farmers) to strengthen access to education for their workers’ children. It was pointed out that companies would benefit by providing education for workers’ children, such as by potentially having higher employee retention rates and increased productivity.

Participants also urged the relevant authorities to facilitate the establishment of more alternative learning centres in Sabah. This includes simplifying accreditation and certification of alternative learning centres in the plantations, after which, the information on the availability of these centres can be conveyed to plantation companies. However, it was noted that the quality of such learning centres must not be compromised.

The Link between Statelessness and Child Labour

It was made clear during the discussion session that participants felt statelessness and the undocumented status of children were the root problems that translated into the larger issue of child labour, and the incidental deprivation of education and healthcare services for vulnerable children.

4.2 Summary of Q&A Session with Civil Society Organisations

The second open discussion focused on an exchange of views with representatives of civil society organisations.



Image: Earthworm Foundation, SUHAKAM and representatives of civil society organizations.

The Need for Accurate Statistics of Vulnerable Children in Sabah

It was acknowledged that there is no comprehensive data set on undocumented children in Sabah, and in plantations in particular. At the same time, participants also submitted that they cannot find any sound methodology that can best identify the number of these undocumented children. Hence there is a strong need to establish a database that would provide accurate numbers which reflect the scale and gravity of the situation. Academicians and government agencies were encouraged to contribute to develop a robust and practical methodology to establish reliable data on vulnerable children in Sabah to enable better support services to this population.

Issuance of Identity Card and a Right to Nationality for Vulnerable Children

It was noted that even some local children lack birth registration, access to citizenship or other identity documents due to the lack of awareness of their parents. Participants pointed out that there are children who have been given a birth certificate (at birth in Malaysia), but later denied an identity card when they reach 12 years old. It was also highlighted that while a court order is needed to certify that a child is born to a Malaysian mother or father for the issuance of nationality status, in many cases, securing dates for court proceedings – as well as the proceedings themselves – drag on for many years. This results in severe hardship for the child as well as the parents concerned.

Participants stated the non-registration of birth by migrant workers resulted in children being stateless. While birth registration does not guarantee Malaysian citizenship nor residency rights, it is nonetheless an important record of proof of a child's birth and can affect the child's access to services and other support in life. CSO participants highlighted that some parents of foreign origin were cheated by brokers or agents, resulting in the undocumented status of the entire family.

Participants urged both government and CSOs to work towards ensuring all children become registered, and

strongly recommended that SUHAKAM play a leadership role in ensuring all vulnerable children in Sabah are issued with birth certificates.

Access to Primary Education

Participants also argued that since Malaysia is a state party to the Convention on the Rights of the Child, all children should have equal access to primary education, regardless of their status.

Access to Health Services

These children should also be provided adequate access to healthcare services. Participants highlighted that at present, undocumented people could not access government hospitals, leading to death and serious illness. Participants also highlighted moral hazards for children and young people, and the need for awareness-raising around child marriage, sexual harassment and abuse.

Lack of Understanding of the Term “Light Work”

Participants highlighted the term used in Malaysian legislation wherein the term “light work” is ambiguous, and thus, clear explanation of this term, including detailing what constitutes acceptable conditions of such “light work” is required. Participants felt that the term “light work” is exploited to the disadvantage of children working in plantations. Observations shared by participants include children working in plantations or elsewhere who end up working in conditions that are hazardous and harmful to their physical, mental, spiritual, moral as well as social development. Such conditions, they claimed, would jeopardise the children's right to education.

Suggestions for Subsequent Consultation

The organisers (SUHAKAM and Earthworm Foundation) were encouraged to reach out to and collaborate more with NGOs in Sabah. It was suggested that solutions for companies to consider embarking on must be practical and aligned with internationally-recognised values and standards.

4.3 Summary of Participant Inputs

Overall, participants felt that children living in or around plantations in Sabah become vulnerable as a result of the issue of statelessness and the undocumented status of families. Participants at the consultation also raised other issues of concern for these children, as outlined in the table below.

Corresponding to Regulators’ Responsibility	Corresponding to Companies’/Employers’ Responsibility
Provide a clear definition and list of hazardous activities and roles for children and young persons to support business understanding and practices.	Ensure that no children below the legal age are working and that no children or young people are in hazardous work.
To establish accurate data of the number of children in the plantations of Sabah.	To collaborate with their peers and civil society to provide education and other services for vulnerable children.
The need to recognise alternative/community learning centres and facilitate the establishment of more alternative learning centres in Sabah.	The need to strengthen access to education of stateless or undocumented children living in or around plantations, and enhance the quality of such education.
Enhance capacity of the Labour Department of Sabah to conduct labour inspections in plantations and provide guidance to enforcement officers on child-related issues.	Large plantation companies are encouraged to play a leadership role to support awareness-raising for small companies and smallholder farmers to prevent incidences of child labour in their respective operations.
Support for companies to tackle the root causes of child labour in the plantation sector in Sabah such as labour shortage, high rate of abscondment, and absence of educational and childcare facilities on site.	To develop clear recruitment policies and to avoid informal working arrangements involving children or young persons.
Provision of access to healthcare for undocumented children and their families.	Ensuring all workers and their families have access to healthcare and health-related awareness services.



5



Media Coverage

The Sabah *Consultation on Children in Plantations* held in July 2018 generated media interest. In advance of the event, Earthworm Foundation Communications team made pitches to key target media, issued notification to several news-desks and announced the Consultation on social media.

As a result of this strategy, the Consultation earned good coverage in the local media² and an online report³. In the future, more of the Malay and Chinese media will also be targeted to raise the profile of the issues surrounding business challenges relating to Children in Plantations in local languages.

To coincide with the Consultation, Earthworm Foundation issued:

- a Press Release and Media Factsheet in English and in Bahasa Malaysia distributed to media outlets on event day with photos from the event,⁴
- a video entitled Earthworm Foundation-SUHAKAM Children in Plantations Consultation,⁵
- as well as a media story in the Earthworm Foundation Blog⁶ summarising key points and statistics from the 'Children in the Plantations of Sabah' 2017 report.

These communications pieces were shared on social media such as Facebook, Twitter and LinkedIn to raise more awareness on the Children in Plantations topic.

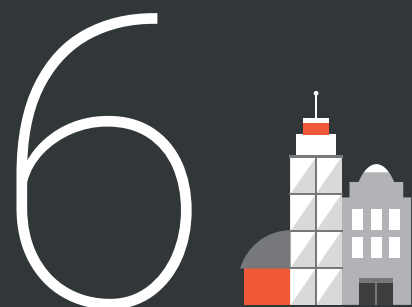
² Nadiah Rosli, "Need for multi-stakeholder approach to address child labour", 11 July 2018. Available at <https://www.nst.com.my/opinion/letters/2018/07/389536/need-multi-stakeholder-approach-address-child-labour>

³ "Multi-stakeholder approach needed to address children in plantations issue", 10 July 2018. Available at <http://www.theborneopost.com/2018/07/10/multi-stakeholder-approach-needed-to-address-children-in-plantations-issue/>

⁴ See Annex 4: Media Factsheet

⁵ "TFT-SUHAKAM Children in Plantations consultation", 20 August 2018. Accessible at <https://www.youtube.com/watch?v=0-9UZyzAnM8&feature=youtu.be>

⁶ Nadiah Rosli, "The issue of children in palm oil plantations", 12 July 2018. Available at <https://www.earthworm.org/news-stories/the-issue-of-children-in-palm-oil-plantations>



Post-Consultation Developments

Malaysia formally launched its very first “World Day Against Child Labour” on 13th September 2018 with an event held in Putrajaya in collaboration with the International Labour Organisation (ILO). In his keynote address, the Minister of Human Resources M. Kulasegaran stated that this first launching was intended to help spread the message that child labour remains a serious issue and Malaysia will exert its best efforts to combat it.

The Minister disclosed that his ministry had begun gathering feedback on stakeholders on proposed amendments to the Children and Young Persons (Employment) Act which would be tabled to the Parliament by year end. He also announced that his Ministry would review and amend other laws related to child labour, including the Occupational Safety and Health Act, Sabah Labour Ordinance and Sarawak Labour Ordinance.⁷

Under the Children and Young Persons (Employment) Act 1966 (Amended in 2010, Act A1386), children may be employed in light work done within the family, specified public entertainment, apprenticeships, and work sponsored by the government. Under Section 6 of the same Act, children in hazardous work are those involved in any activity or occupation “that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister”. However, the details of what constituted light or hazardous work was a challenge for employers and advocates alike to define and understand.

On 17th October 2018, the Parliament passed the proposed amendments to the Children and Young Persons (Employment) Act. According to the Minister, the amendments to the Act will see better protection to children and young people against exploitation and work hazards.⁸

⁷ The Star Online, “Kula: Child labour laws will be updated”. Available at <https://www.thestar.com.my/news/nation/2018/09/14/child-labour-laws-will-be-updated-minister-govt-is-looking-at-amending-at-least-nine-pieces-of-outda/>

⁸ Minderjeet Kaur, “Dewan Rakyat gives nod to increased penalties for hiring children”, Free Malaysia Today, 17 Oct 2018. Available at <https://www.freemalaysiatoday.com/category/nation/2018/10/17/dewan-rakyat-gives-nod-to-increased-penalties-for-hiring-children/>

Children and Young Persons (Employment) Amendment Act 2019

The [Children and Young Persons \(Employment\) \(Amendment\) Act 2019](#) came into force at the Federal level on 1st February 2019.

The amendments to the Children and Young Persons Act (CYPA) addresses three important segments:

(1) The scope of hazardous work.

The amendments to the Children and Young Persons (Employment) Act include a new *Fourth Schedule (Subsection 2(1)) 'List of hazardous work'* that classifies hazardous work into three (3) group definitions: Group A is 'Work Related to Machines, Installations and Other Equipment'; Group B is 'Work Conducted in Hazardous Environment'; and Group C is 'Work Containing Certain Hazardous Nature and Condition'.

In general, hazardous work covers against exposing children to hazardous chemicals, dusty conditions, extreme temperatures, noise and vibration. In general, hazardous work may include night work or long hours of work, exposure to physical, psychological or sexual abuse; work in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; and work in an unhealthy environment which may expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging their health.

With this amendment, Section 2 of the principal Act now makes reference to the definition of hazardous work as "work specified in the Fourth Schedule" and the previous definition as "work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister" is deleted.

(2) The basic minimum age for a child to work.

Also under this new Act, the basic minimum age for a child to work now is fifteen years and any person who employs children aged below 15 is committing a criminal act.

(3) The definition of light work.

A new definition of "light work" has also been included under the Amendment, which is any work performed by a child or young person which is not likely to be harmful to his health, mental or physical capacity or which prejudices his pursuit of education, vocational orientation, training programmes or religious education.

The [Children and Young Persons \(Employment\) \(Amendment\) Act 2019](#) increases penalties for offenders who employ children aged below 15 or who employ children or young persons in hazardous work. The penalties or fines are now increased from what was previously only a minimum of RM 5,000 to currently a minimum of RM 50,000. Maximum fines are now RM 100,000, while jail terms raised to a maximum of five years behind bars for offenders.

The Labour Ordinance (Sabah Chapter 67) and Labour Ordinance (Sarawak Chapter 76) have yet to adopt the Children and Young Persons Act (Amendment) 2019 as part of their laws relating to labour. The tabling of the proposed amendments to the respective state legislative assemblies began on 3rd May 2019. This is done to ensure the uniformity of the implementation of labour laws in Malaysia. At this point of writing, the proposed amendment and consolidation into the Sabah and Sarawak Ordinances are still being debated.

With the inclusion of the list of hazardous work, increase in the minimum age of a working child, and definition of light work, the legal framework governing working children is now in line with Malaysia's ratification of ILO's Minimum Age Convention 1973 and the Worst Form of Child Labour Convention 1999. The Minimum Age Convention 1973 sets the minimum working age for a child at 15 years and admission to dangerous work at 18 years, while the Worst Form of Child Labour Convention 1999 includes hazardous work as one of the worst forms of child labour.

This law reform is particularly significant in light of Earthworm Foundation's prior consultations with government entities, businesses and civil society organisations where the need for legal and policy reform was a recurrent theme.





7



Conclusion

The SUHAKAM-Earthworm Foundation Consultation on the Situation of Children in the Plantations of Sabah provided a platform for stakeholder engagement.

Earthworm Foundation shared the key findings of their work relating to children in plantations and the perspective of palm oil company representatives, particularly in relation to the challenges they face in the context of labour shortage and lack of opportunities for children of their foreign workers.

SUHAKAM utilised the Consultation to raise awareness on the duty and obligation of the State not only to facilitate and provide for the enjoyment of children's rights, but to also implement legislative, administrative, budgetary, judicial, promotional and other measures relating to business activities that affect children's rights.

This Consultation took place in pursuant to a wider stakeholder dialogue process organised by SUHAKAM on statelessness. The first forum held by SUHAKAM on this issue took place in February 2018, entitled 'Birth Certificate vs Nationality: The Right to Have a Legal Identity'. Moreover, many of the civil society participants' work focused on the issue of statelessness in Sabah, and as such, the consultation leaned heavily on this issue.

The consultation provided a space for understanding of child-related challenges from various perspectives, and to explore opportunities for collaboration to address the complex challenges facing businesses, smallholders, government agencies and children at large. Both civil society and government participants were able to share their concerns about the practices of companies, the

challenges for child protection and child welfare in Sabah.

While businesses need to respect the authority of the government, the government should play its role to provide clear regulatory frameworks to help businesses fully adhere to all applicable laws and regulations.

Gaps in governance were also a prominent theme throughout the consultation. These gaps include the lack of clear regulatory and policy frameworks, weaknesses in law enforcement and the provision of institutional support to address issues concerning children in plantations. Nonetheless, the lack of clear regulatory frameworks does not alter business obligations in this respect. Instead, businesses should seek opportunities to reach higher standards in their internal policies and practices that align with international expectations.

While some companies have shown modest progress in addressing the lack of children's documents and child labour in the palm oil sector, such progress is often confined within their own business operations. The critical challenge remains – too few of the industry players that have progressed and reached a scale commensurate with the challenges at hand.

As such, leadership and collaboration between industry players, government and civil society organisations are essential to address the gaps in governance and could lead to more open, transparent and effective strategies against child labour. Future regulatory standard-setting should aim not only to govern business conduct, but to equip companies to address issues affecting children's rights and well-being.

8 Next Steps



Following the Consultation, Earthworm Foundation will develop a directory of services provided by civil society and government agencies for vulnerable children in plantations in Sabah; to encourage businesses to reach out to these service providers for collaboration to strengthen child protection and promote child education. The Directory will also be shared with civil society and made available to the public on Earthworm Foundation's Tools for Transformation website.⁹

Earthworm Foundation is also developing resources for businesses such as a Child Risk Assessment for buyers and suppliers of palm oil to better understand and identify child protection issues on site, to mitigate risks such as

child labour and to assist planning of remedial actions in cases where such issues are found in their operations.

Further engagement with stakeholders such as government agencies, experts and civil society will be sought to enrich the resources. The final resources will be socialised and disseminated to palm oil companies in Sabah and palm oil buyers.

While business initiatives are important, it is essential that regulatory reforms and clear guidance is provided to companies and other stakeholders to ensure child protection in plantations and beyond. Further stakeholder engagement is therefore required to see viable transformation in the industry and beyond.

⁹ Tools for Transformation is a website of open source resources to assist companies address gaps in relation to labour, social and environmental sustainability requirements. More information can be found at: <https://toolsfortransformation.net/>

Annex 1

Program Agenda
Consultation with Government Agencies, GLCs & Academic Institutions

Time	Agenda	Objective
8:00 - 8:30 a.m.	Arrival & Registration of Participant	
8:45 - 9:00 a.m.	Welcoming address by YBhg. Datuk Godfrey Gregory Joitol, SUHAKAM Commissioner	To welcome participants and introduce Earthworm Foundation
	Introduction by Regional Leader Earthworm Foundation, Mr. Karl Yen Quek	
9:00 - 9:30 a.m.	Corporate Responsibility to Respect Human Rights in the Plantation Sector: Situation of Children in the Plantations of Sabah, by SUHAKAM Commissioner YBhg. Prof. Dato' Dr. Aishah Bidin	To address supply chain issues in the context of business and human rights focusing on the situation of children in the plantations of Sabah
9:30 - 10:15 a.m.	Presentation of key findings from Earthworm Foundation's Children in Plantations Report, by Dr. Andika Ab. Wahab, Earthworm Foundation	To present key findings from Children in Plantations Report & seek response from stakeholders
10:15 - 10:30 a.m.	Tea Break	
10:30 - 12:00 p.m.	Q&A Session and Discussion Facilitator: Ms. Nishantini Terumalai, Earthworm Foundation	To attain policy/administrative updates from regulators on issues requiring further clarity
12:00 - 1:00 p.m.	End of Programme and Lunch	

Annex 2

Program Agenda
Consultation with NGOs & Experts

Time	Agenda	Objective
1:00 - 1:15 p.m.	Arrival & Registration of Participant	
1:15 - 1:30 p.m.	Welcoming address by Commissioner of SUHAKAM, YBhg. Datuk Godfrey Gregory Joitol	To welcome participants and introduce Earthworm Foundation
	Introduction by Regional Leader Earthworm Foundation, Mr. Karl Yen Quek	
1:30 - 2:00 p.m.	Corporate Responsibility to Respect Human Rights in the Plantation Sector: Situation of Children in the Plantations of Sabah, by SUHAKAM Commissioner YBhg. Prof. Dato' Dr. Aishah Bidin	To address supply chain issues in the context of business and human rights focusing on the situation of children in the plantations of Sabah
2:00 - 2:45 p.m.	Presentation of key findings from Earthworm Foundation's Children in Plantations Report, by Ms. Natasha Mahendran, Earthworm Foundation	To present key findings from Children in Plantations Report & seek responses from stakeholders
2:45 - 3:00 p.m.	Tea Break	
3:00 - 4:30 p.m.	Q&A Session and Discussion Facilitator: Dr. Andika Ab. Wahab, Earthworm Foundation	To explore potential collaboration with stakeholders to strengthen child protection in plantations
4:30 p.m.	End of Programme	

Annex 3

List of Participating Organisations

- Bsunos
- Dewan Perniagaan Suluk Sabah
- Etaniz/Matakana
- Felcra Berhad
- Gabungan NGO Menuntut Hak Rakyat Sabah (GEGAR)
- Gabungan NGOs Negeri Sabah (GANNOS)
- Global Shepherd
- Good Shepherd Services
- Harvest Centre Borneo
- Jabatan Hal Ehwal Anak Negeri Sabah
- Jabatan Peguam Besar Negeri Sabah
- Jabatan Pendaftaran Negara Sabah
- Jabatan Perkhidmatan Kebajikan Am Sabah
- Jabatan Tenaga Kerja Sabah
- Konsulat Jenderal Republik Indonesia, Kota Kinabalu
- Migrant Care
- Persatuan Peranakan Suluk Sabah (PPSS)
- Pertubuhan Pakatan Perubahan Sabah (PPPS)
- POIC Sabah
- Sabah Environmental Protection Association (SEPA)
- Sabah Law Society
- Sabah People’s Rights Association
- Sabah Women Action-Resource Organizations (SAWO)
- Sawit Kinabalu
- SUHAKAM
- Timbalan Setiausaha Kerajaan Negeri Sabah (Pembangunan)
- UNICEF
- Universiti Malaysia Sabah (UMS)
- University College Sabah Foundation (UCSF)
- Warisan

Annex 4

Media Factsheet

9 July 2018

Migrant workers’ children in Sabahan oil palm plantations

- At least 60,000 Indonesian children live in or around plantation areas in Sabah, according to estimates by the Indonesian consulate in Sabah. This does not include undocumented children. The size and remoteness of plantations make official statistics scarce, and actual numbers may be more.
- In 2016, there were 5.74 million hectares of planted oil palm in Malaysia, per statistics from MPOB (Malaysian Palm Oil Board). Of this, Sabah represented 27 percent with 1.55 million hectares of oil palm.
- As of 2017, foreign nationals made up about 77 percent of oil palm plantation workers in Malaysia, according to Malaysian Palm Oil Board (MPOB) statistics quoted in the news. A majority of them are from Indonesia.
- According to a news article quoting Sabah Chief Minister Datuk Seri Mohd. Shafie Apdal, the plantation sector in Sabah employs about 76,603 migrant workers as of 2017.
- The International Labour Organisation (ILO) considers the agricultural, mining and construction industry as the top three hazardous economic sectors.

Engaging the industry and civil society

- Between 2013 and 2015, Earthworm Foundation (EF) visited about 86 small/medium-sized mills, plantations and small growers in Malaysia. Of these, it was found that about three had child labour policies, while the potential for child labour was found in about 16 percent.
- On September 5, 2017, The Forest Trust and its member companies, Archer Daniels Midlands (ADM), Nestlé and Wilmar International organised a workshop on the business and social issues impacting children in oil palm plantations.
- The workshop, held in Sandakan, Sabah, was attended by about 50 participants from small, medium and large companies – mostly oil palm plantations and mills operating on the east coast of Sabah.
- Also in attendance were representatives from Nestlé, Wilmar International, East Malaysia Planters’ Association (EMPA), Malaysian Palm Oil Certification Council (MPOCC), Humana Child Aid Society, International Labour Organization (ILO), UNICEF and the Indonesian Consulate in Sabah.
- The result was a report (<https://www.earthworm.org/uploads/files/Children-in-Plantations-of-Sabah-2017-report.pdf>) highlighting the business challenges of having children in or around plantations, the potential risk of child labour and possible ways forward.
- A key take-away was the need for businesses to have clarity and support on legal and policy requirements regarding children in plantations.

Engaging government and civil society

- In order to seek clarity on policies and best practices for businesses, a second consultation is being hosted by the Human Rights Commission of Malaysia (SUHAKAM) and Earthworm Foundation on July 9, 2018 at the Promenade Hotel, Kota Kinabalu, Sabah.
- The consultation represents efforts to bridge the gap between businesses, government agencies and NGOs, thus paving the way for more collaboration in addressing child-related issues in the plantation sector.
- The consultation comprises of two sessions: a morning session with government agencies and an afternoon session with NGOs and experts on the issue of vulnerable children in Sabah.
- The end goal is to create momentum on the issue of children in plantations and assist businesses in dealing with the issue.



www.earthworm.org