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## Position Paper 2: Health Hazards, Child Labour and Data Protection Breaches on Palm Oil Plantations

## Introduction

This is the second in a series of five position papers highlighting financial and legal risks arising from the current governance, management, supervision and administration of labour to the palm oil industry.

In this paper we focus on potential liabilities and claims arising from: health hazards associated with the use of toxic pesticides/herbicides; refusal to provide plantation workers access to their medical records; and illegal child labour on plantations.

The paper is based on desk research, data and information sources including interviews with NGO workers and plantation workers across plantations located in different states in Malaysia and carried out between February 2018 and July 2018.

## Summary

Workers in palm oil plantations undertake laborious work in difficult conditions for sometimes little or no pay. Due to the nature of the work they risk causing damage to their health in numerous ways during the course of their work. Management and supervisory practices aimed at increasing productivity or maintaining levels of profitability often put those providing the labour at greater risk. Lack of effective risk analysis, worker safeguarding and protection, supervision and management oversight result in foreseeable financial liabilities for those responsible.

Employment structures are established and organised in such a way as to suggest an almost deliberate attempt by employers to evade responsibility to employees. Whilst some plantation workers are directly employed by plantation owners, others, it is claimed, are employed by labour brokers who recruit and place workers in plantations and manage the workforce. It is normal for casual workers to have no employment contract and 'kernet' workers (harvester helpers normally paid by the harvester from his own wages) and family members enlisted to help harvesters also have no direct employment relationship with the plantation owner. These 'informal' workers do not have access to employee benefits such as medical care. The varied nature of employment relationships and lack of uniformity between them creates an inherent risk of governance gaps increasing the vulnerabilities of workers.

Setting of worker targets is carried out by individual companies and is therefore largely profit driven instead of being based on what is realistically achievable, and in some cases work targets are said to be deliberately raised to unachievable levels to avoid wage payments. The high targets set by the companies and other employer practices have several direct and foreseeable consequences in terms of worker behavior/outcomes which could lead to potential liabilities for employers. These include:

- use on plantations of pesticides/herbicides such as Paraquat which are known to be toxic and extremely harmful to health. Many countries worldwide have either completely banned the use of Paraquat<sup>1</sup> or heavily regulate/restrict its use;
- discomfort and inadequacy of protection equipment in extreme temperatures. This slows workers down resulting in failure to meet daily targets. Workers discard their equipment so increasing exposure to toxic chemicals. It is worth noting that whilst sprayers may be provided with protection equipment, anyone in the vicinity whilst the spraying is taking place, including unprotected child workers and harvesters or those whose homes are near the fields, will also be exposed;

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<sup>1</sup> It is estimated that between 48 countries worldwide have banned Paraquat including all the countries of the European Union and the majority of south-east Asian countries although notably not Malaysia or Indonesia.

- workers enlisting family members or paying for kernet workers to help them meet targets and so avoid deductions from pay. In this way children find themselves working on plantations notwithstanding that, depending on age, this is likely to be illegal. This indirect employment relationship with children benefits employers who have no liability to pay wages and/or provide benefits yet are advantaged by a higher yield; and
- refusing workers access to their medical records and blood test results which is a breach of both Indonesian and Malaysian law.<sup>2</sup> It is also morally and ethically indefensible to refuse access particularly where such information, if available sooner, could lead to early detection and treatment of health problems.

## Health Hazards Associated with Use of Toxic Pesticides/Herbicides

The potential health issues associated with use of toxic pesticides/ herbicides such as Paraquat have been well documented.<sup>3</sup> It is highly toxic. Links have been established between exposure to Paraquat and conditions such as Parkinson's Disease; lung damage and respiratory problems; leukemia; lymphoma; skin and brain cancer; kidney and liver damage; skin irritation, burns and depression.<sup>4</sup> Lack of proper governance means the risks to plantation workers coming into contact with Paraquat are increased due to:

1. *Absence of a full and proper explanation of the dangers of Paraquat* - sprayers are not educated about the dangers of Paraquat, health and safety procedures or how to properly protect themselves against exposure. Many have no knowledge of the serious risks to health associated with the chemicals they are using. As most sprayers are women, it is this group that is disproportionately affected by exposure to Paraquat. It has been reported that even pregnant women are asked to undertake spraying work.<sup>5</sup> In fact, many workers on plantations refer to Paraquat as 'ubat' (Malaysia) and 'obat' (Indonesia), both meaning medicine, so illustrating that they think of it as generally curative, not potentially toxic. It has been reported that in some cases workers are told that Paraquat is medicine instead of a pesticide containing toxic chemicals which has serious health implications.<sup>6</sup>

2 In **Indonesia**, Art.8 of Law 36/2009 on Health provides that every person has the right to receive information on his/her health including action/medication about to be given by any health workers to him/her. Ministry of Health Regulation 269/2008 provides that every patient has the right to access his/her own medical records which may consist of any notes or documents with respect to identity, examination, medication, action, result, and any other health services with regard to the patient. Specifically, Art.12 of Regulation 269/2008 states that the content of a medical record (which may be in the form of a summary) belongs to the patient who has a right to receive a copy. In **Malaysia** a patient's right to receive information about his/her medical condition and any proposed treatment and to receive a medical report are established under the Private Health Care Facilities and Services Act 1998, s.107 and the Act's implementing regulations, the Private Health Care Facilities and Services (Private Medical Clinics or Private Dental Clinics) Regulations 2006, Reg.18(1)(a)-(c).

3 As early as 1966 connections were made between Paraquat and its effects on the lungs, central nervous system and other organs as well as its ability to be absorbed through the skin. See 'The Toxicity of Paraquat' by D. G. Clark, T.F. McElligott and E. Weston Hurst, Brit. J. industr. Med., 1966, 23, 126 concerning toxicity of Paraquat in small laboratory animals, available at: <https://oem.bmj.com/content/oemed/23/2/126.full.pdf> (accessed 30 October 2018).

4 'Adverse Health Effects Caused by Paraquat: A bibliography of Documented Evidence', Public Eye, Pesticide Action Network UK and PAN Asia Pacific, February 2017, available at: [http://issuu.com/pan-uk/docs/adverse\\_health\\_effects\\_caused\\_by\\_pa?e=28041656/44629977](http://issuu.com/pan-uk/docs/adverse_health_effects_caused_by_pa?e=28041656/44629977) (accessed 21 September 2018).

5 'Poisoned and Silenced: A study of Pesticide Poisoning in the Plantations', Tenaganita and PAN Asia and the Pacific, 2002, p.21, available at: <https://www.publiceye.ch/fileadmin/files/documents/Syngenta/Poisoned-and-Silenced.pdf> (accessed 11 October 2018).

6 Interview with Malaysian NGO worker.

2. *Lack of up-to-date personal protection equipment (“PPE”)* - both Indonesian and Malaysian law contain provisions relating to the provision of workers with PPE.<sup>7</sup> In reality, many workers are not issued with PPE or, where they are given equipment it is incomplete, ill-fitting or worn out. Some workers have to buy basic equipment out of their own money though without an understanding of the dangers/risk most of what they purchase (rubber boots) is inadequate.<sup>8</sup> In any case, extreme temperatures mean that many workers either do not use the equipment given to them or use it only at certain times. Workers give various reasons for not wearing PPE predominantly the heat and the fact that it slows them down ultimately hindering their ability to meet their daily quota.<sup>9</sup>

## Refusing Access to Medical Records

Workers on plantations have regular blood test but they are given no information on the reasons for the screening or the type of tests that are being carried out. Workers aren't given copies of the results of tests notwithstanding that they ask for and are legally entitled to them. Under both Indonesian and Malaysian law, patients have a right to access their medical records.

In Indonesia relevant rights/obligations are as follows: an obligation on the employer to hold periodic (at least once yearly) medical examinations of employees<sup>10</sup>; the right of a person to receive information about health including action or medication about to be given to him/her by health workers<sup>11</sup>; and the right of a person to receive a copy of his/her medical record in the form of a summary.<sup>12</sup>

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*“The withholding of information of the care, diagnosis, treatment and advice given to a patient and relevant copies of the medical records is unethical.”*

*Guidelines of the Malaysian Medical Council 02/2006: Medical Records and Medical Reports, adopted 14 November 2006, p.15*

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In Malaysia, there are obligations on the holder of a certificate of registration or person in charge of a private medical clinic to take reasonable steps to ensure that a patient is: (i) provided with information about the nature of his medical condition and proposed treatment, investigation or procedure and the likely costs involved<sup>13</sup>; (ii) treated with strict regard to decency<sup>14</sup>; and (iii) provided with a medical report within a reasonable time upon request by the patient and upon payment of a reasonable fee.<sup>15</sup>

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7 In **Indonesia** this is dealt with in Law No.1 of 1970 (Art.14(c)) regarding Work Safety, in the Regulation of the Minister of Manpower and Transmigration No. 08/MEN/VII/2010 (Arts. 2&3) and in the Manpower Act No.13 of 2003 (Art. 86(1)(a)). In **Malaysia** the relevant statutes are the Occupational Safety and Health Act 1994 (s.15(1)) and the Occupational Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000 (Regs. 15, 16 and 22).

8 “The Human Cost of Conflict Palm-Oil”, OPPUK, Rainforest Action Network, ILRF, June 2016, p.5 available at: [https://laborrights.org/sites/default/files/publications/The\\_Human\\_Cost\\_of\\_Conflict\\_Palm\\_Oil.pdf](https://laborrights.org/sites/default/files/publications/The_Human_Cost_of_Conflict_Palm_Oil.pdf) (accessed 21 September 2018).

9 *Ibid.* p.28.

10 Regulation of Ministry of Manpower and Transmigration No.PER-02/MEN/1980, Art.3, para.1.

11 Law No.36/2009, Art.8.

12 Ministry of Health Regulation No.269 of 2008, Art.12.

13 Private Health Care Facilities and Services (Private Medical Clinics or Dental Clinics) Regulations 2006, Reg. 18(1)(a).

14 *Ibid.* Reg.18(1)(b).

15 *Ibid.* Reg.18(1)(c).

Workers whose blood tests reveal problems are told that there is an anomaly but the test results are still withheld.<sup>16</sup> Often they are quietly moved without treatment to do jobs elsewhere in the plantation that do not involve the use of toxic chemicals. Understandably, this causes anxiety and stress for workers who are now aware of the existence of a problem without any idea of the nature of the issue or its seriousness.

## Child Labour on Plantations

It is estimated that 1.5 million children aged between 10-17 years old are working in the agricultural sector in Indonesia.<sup>17</sup> Little information is available on the scope and extent of child labour in Malaysia. There are several drivers of child labour on palm oil plantations. These are:

1. unattainable quotas forcing workers to either seek “free” help from spouses and children or to employ kernet workers out of their own wages in order to meet targets and avoid deductions;
2. low wages for adults who are therefore unable to support their family without earning premiums for work in addition to their basic quota;
3. child workers hired because they cost less than an adult worker;
4. parents not having enough money to keep children in school resulting in the children being kept on the plantations so increasing the risk of them working; and
5. lack of childcare facilities on plantations or limited hours of service if childcare facilities are provided resulting in children shadowing parents during the remaining working hours.

Both Malaysia and Indonesia have legislation relating to minimum ages of child employees.<sup>18</sup> Children as young as 10 work on plantations. They weed, collect loose fruit, transport the fruit to the collection point and sometimes assist in harvesting the fruit. Whilst this may be regarded as less strenuous work it nonetheless comprises labour and adds to productivity. As many plantations make heavy use of pesticides even though the children are not handling toxic chemicals, the environment they work in means they are exposed to them.

Notwithstanding that child labour is illegal and, in many cases, contrary to the employment policies of employers, there are instances, for example during harvest, where foremen urge the workers to bring their wives and children to work (unpaid) in an effort to boost production.<sup>19</sup> Interviewees also reported that when visiting guests are expected at plantations, the foremen ask the workers not to bring their children to work in an effort to hide the rampant child labour abuses.<sup>20</sup>

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16 ‘The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names’, Amnesty International, November 2016, p.36, available at: <https://www.amnesty.org/download/Documents/ASA2151842016ENGLISH.PDF> (accessed 21 September 2018).

17 International Labour Organization, ‘Child Labour in Plantation’, available at: [https://www.ilo.org/jakarta/areasofwork/WCMS\\_126206/lang--en/index.htm](https://www.ilo.org/jakarta/areasofwork/WCMS_126206/lang--en/index.htm) (accessed 24 September 2018).

18 Both countries stipulate a minimum employment age of 15 and a minimum age of 18 for undertaking hazardous work. Younger children, minimum age 13, can undertake light work. Indonesia also has a prohibition against employing children under 18 in the ‘worst form of labour’ including ‘all kinds of jobs harmful to the health, safety and moral of the child.’

19 ‘Palming off Responsibility – Labour Rights Violations in the Indonesian Palm-Oil Sector: case studies of Murini Sam and Aneka Inti Persada’, April 2017, p.25, available at: [https://www.cnvinternationaal.nl/\\_Resources/Persistent/494a6d41ea4525468b46072a02e31f21e85a59c6/CNVI-0118%20Palmolie%20Indonesie-rapport-Low%20Res.pdf](https://www.cnvinternationaal.nl/_Resources/Persistent/494a6d41ea4525468b46072a02e31f21e85a59c6/CNVI-0118%20Palmolie%20Indonesie-rapport-Low%20Res.pdf) (accessed 24 September 2018).

20 *Ibid.*

Whilst plantation owners run private primary and secondary schools on plantations<sup>21</sup> more are needed in order to reduce the number of child labourers. However, notwithstanding welcome investment in additional schools, action is necessary to tackle the underlying causes of child labour on plantations particularly low wages and high daily quotas which force workers to use child labour.

## Quantum of Liability

Establishing the quantum of liability in respect of the matters dealt with in this paper is complicated by several factors. Firstly, the lack of reliable and up-to-date statistical information relating to the number of workers in the palm oil sector in Malaysia and Indonesia, and the number of child labourers on plantations in those countries. Estimates differ and often vary significantly. Secondly, the lack of recorded information on compensation/damages paid formally or informally to workers who have been subject to health and safety and/or welfare breaches. Finally, in the case of refusal of access to medical records for workers dealing with toxic chemicals, some of the very serious health problems associated with continued exposure to these substances may not become apparent for some years so leaving open the possibility of future class actions by affected workers.<sup>22</sup>

Due to incomplete statistical information relating to Indonesia, the quantification of liabilities set out below relates to Malaysia. As the Indonesian palm oil workforce is estimated to be approximately ten times larger than that in Malaysia,<sup>23</sup> the liabilities are likely to be correspondingly greater however it is difficult to provide an estimate as the size of the potential liability as comprehensive data sets are very limited.

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21 As an example, in Malaysia and Indonesia Wilmar International Ltd runs a total of 32 schools, some in collaboration with external partners. This year the company has allocated MYR 1 million for education in Malaysia including building 2 new schools. See: <https://www.borneotoday.net/wilmar-committed-to-education-for-children-of-its-foreign-workers/> (accessed 30 October 2018).

22 The limitation period in Malaysia for claims founded in either tort or contract is 6 years from the date the cause of action accrued (s.6 Limitation Act 1953). In Indonesia the Civil Code sets a limitation period of 30 years (Art. 1967, Indonesia Civil Code). Although the Civil Code does not specify a date from which the limitation period runs, in practice it is accepted that it runs from the date on which the right to make the claim first arises.

23 In Indonesia the palm oil sector engages an estimated 4 million people, half of whom are believed to be women. See: Unicef, 'Palm Oil and Children in Indonesia: Exploring the Sector's Impact on Children's Rights', 2016, p.2, available at: [https://www.unicef.org/Palm\\_Oil\\_and\\_Children\\_in\\_Indonesia.pdf](https://www.unicef.org/Palm_Oil_and_Children_in_Indonesia.pdf)

## VERSION A

### *Potential liabilities relating to health and safety violations*

Legislation	Penalties	Average Fine
S.15(1) of the Occupational Safety & Health Act 1994 (“OSHA”) which provides that it is the ‘duty of every employer to ensure (so far as practicable) the safety, health and welfare at work of all his employees.’	(i) imprisonment for a term not exceeding 2 years; (ii) a fine not exceeding MYR 50,000.00 (USD 12,025.37); or (iii) both.	MYR 15,936 (USD 3,838.27) <sup>24</sup>

Legislation	Penalties
Regs: 15(1), 16(2), 16(3) and 22(1) Occupational Safety & Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000. <sup>25</sup>	There is a general liability clause in OSHA dealing with liabilities for breach of Regulations made under the Act. The penalty is: (i) imprisonment for a term not exceeding 1 year; (ii) a fine not exceeding MYR 10,000.00 (USD 2,404.01); or (iii) both.

### *Potential liabilities relating to restricting access to medical records/blood test results*

Legislation	Penalties
Reg. 18(1) Private Health Care Facilities and Services (Private Medical Clinics or Dental Clinics) Regulations 2006. <sup>26</sup>	The penalty for breach of Reg.18(1) is: (i) imprisonment for a term not exceeding 3 months; (ii) a fine not exceeding MYR 10,000.00 (USD 2,404.01); or (iii) both.

### *Potential liabilities relating to illegal child labour on plantations*

Legislation	Penalties
S.2(1) Children and Young Persons (Employment) Act 1966 (as amended). <sup>27</sup>	The penalty is: (i) imprisonment for a term not exceeding 1 year (rising to 3 years for a second or subsequent offence); (ii) a fine not exceeding MYR 5,000.00 (USD 1,202.16) (rising to MYR 10,000.00 (USD 2,404.01) for a second or subsequent offence); or (iii) both.

24 This is calculated based on information published by the Malaysian Department of Occupational Safety and Health (“DOSH”) relating to prosecutions in all sectors in respect of breaches of s.15(1) Occupational Safety & Health Act 1994 and fines levied in respect of those breaches in respect of the period 01.01.18 to 12.10.18. See: [www.dosh.gov.my/index.php/en/prosecution-case](http://www.dosh.gov.my/index.php/en/prosecution-case) (accessed 9 November 2018). The average fine is calculated by dividing the total fines for the period (MYR 1,498,000.00) by the total prosecutions during the period (94).

25 These deal with control of chemicals hazardous to health, issuance, maintenance and training in use of PPE, suitability of PPE to work undertaken and instruction and training in relation to use and health risks associated with hazardous chemicals.

26 See footnotes 13, 14 and 15 and accompanying text for an explanation of the provisions of Reg.18(1).

27 Subject to certain exceptions, this provides that no child (defined as someone who has not completed his/her fifteenth year) or young person (someone who is not a child but has not completed his/her eighteenth year) shall be required or permitted to engage in hazardous work or any employment except as permitted by the Act (for example, a child may carry out ‘light work’ in a family business). Hazardous work is likely to include work carried out by children on plantations such as cutting or carrying heavy loads or harvesting.

## Conclusion

This report has identified numerous potential liabilities for palm oil buyers and investors investing in this sector arising from current working practices on plantations. These include:

- there is existing legislation in Malaysia and Indonesia that provide rights to documented and undocumented workers in relation to retained medical information, damages for illness and suffering and illegal use and benefit of child labour BUT this legislation is yet to be applied;
- refusing access to medical information by workers possibly leading to diseases which, if treated earlier, could be prevented or effectively managed. By making it increasingly difficult for workers to access their medical records, in contravention of their rights to do so, it is arguable that oil palm growers and their health care providers (potentially acting as their agent) are seeking to shield themselves from future claims and legal action by employees/workers;
- failure to properly explain the risks associated with toxic chemicals used on plantations and to educate workers on health and safety measures to be adopted when handling toxic chemicals;
- failure to provide workers handling toxic chemicals or coming into contact with them with a complete set of correctly fitting PPE, free of charge;
- lack of action to address the fact that due to extreme temperatures, workers are unable to comfortably work during certain parts of the day or for long periods wearing PPE;
- knowingly permitting and indirectly encouraging child labour on plantations. Many plantations benefit from child labour. On the ground, supervisors and foremen look the other way because the work of children increases yield. In many cases it is a lack of financial stability on the part of workers and the unrealistic targets set by the companies that encourage child labour on the plantations. The fact that no formal employment relationship exists between the plantation owners and the children and the fact that the employment policies of plantation owners forbid child labour is no excuse for turning a blind eye.

It should not be the case that it is the sole responsibility of governments to protect vulnerable workers against labour and human rights abuses. Whilst primary responsibility rests with those directly involved, some responsibility for this should be accepted by the many large, profit making organisations involved at various points in the supply chains relating to the production of palm oil and palm oil containing products.

Businesses that facilitate and profit from a system in which abuse, in its many forms, is endemic and well documented, yet nonetheless fail to take action to address the problems, are complicit and risk exposing themselves to severe legal and reputational liability.

We would encourage all those directly or indirectly involved from purchasers of palm oil to investors in companies involved in palm oil production and consumers of palm oil containing products to use their influence to initiate change and encourage the implementation of effective governance, monitoring and supervision systems in an effort to eliminate the worst abuses.