

**LIBERTY** GLOBAL  
ASIA

CREATING AN ENVIRONMENT SAFE FROM MODERN SLAVERY



## **The Environment of Criminality Surrounding the Palm Oil Industry**



## Overview

The operating environment of the palm oil industry is too often associated with a range of ongoing criminal activities that have potential implications for producers, buyers, and traders under existing criminal and civil regulations. The direct and indirect benefit from the criminal activities appears embedded in the industry structure, leading to risk and liability that may affect all stakeholders, including investors and buyers.

Governments has set up numerous regulatory schemes deemed to prevent and root out these activities. However, the activities and the abuse resulting from these activities are often openly on display within the realm of public information. This misconnection between regulations and abuse as evidenced in the palm oil industry is indicative of a larger failing of the financial and commercial sector role in preventing deceit, theft, corruption, organized crime and money laundering from permeating their business.

Like any industry, without appropriate governance approaches and requirements for greater transparency, unchecked abuse will take place. While abuse is impossible to ever completely remove, unchecked abuse can quickly turn from a sacrifice of ethical obligations to unintentionally implicit support of violent criminality. This briefing paper aims to bring together two areas of concern about the palm oil industry and set out information from two active elements of civil society, modern slavery and environmental damage such as deforestation and land grabbing.

## An Environment of Criminality

The relationship between the palm oil industry (“the industry”) in SE Asia and a range of criminality has been the focus of investigation, research and discussion for over two decades. This is perhaps unsurprising as many of the practices were already widespread within industries it supplanted in the region, such as that of rubber production. The rubber industry has its own history<sup>1</sup> replete with violence, land grabs, forced labor and deforestation.

Reports substantiating use of unethical practices in the industry are published with regularity, but often ignored. This lack of attention paid to what is an often-uninterrupted link between unethical practices and multi-jurisdictional criminality should be of grave concern to those wishing to prevent loss of asset value and seizure by investigative authorities and to regulators wanting to prevent legal industries from supporting activities threatening national security.

Unlawful deforestation and land grabs, violent interactions with indigenous peoples within mutually agreed “buffer zones”, directly correlated bribery of, and fraud by, law enforcement, coordination with organized crime factions, as well as criminal and civil violations of market regulations through wage theft, money laundering and exploitation of workers are regularly documented through publicly available resources about the industry. Worker harvest quotas set by management, which can be as high as two tons of palm fruit bunches per day, lead many workers to bring their wives and/or children to work. In this manner, harvest systems incentivize child labor and have made it a commonly recorded occurrence.<sup>2, 3</sup> The opportunities for workers to raise grievances and access justice are minimal and often come at a hefty price. These abuses proliferate in jurisdictions where there is no freedom of association available to migrant workers and where the systemic asymmetries are such that workers have very little to no agency in processes that impact them such as work permit renewal, creating greater opportunity for exploitation.

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1 The Devil's Milk: A Social History of Rubber, John Tully 2011

2 Tania Murray Li, Social Impacts of the Oil Palm in Indonesia: A Gendered Perspective from West Kalimantan (Bogor, Indonesia: Center for International Forestry Research [CIFOR], 2015).

3 The Indonesian palm oil sector has been on the USDOL List of Goods Made with Forced Labor and Child Labor for elevated risks of child labor since 2010. See “List of Goods Produced by Child Labor or Forced Labor,” U.S. Department of Labor, [https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/find-ings/TVPRA\\_Report2016.pdf](https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/find-ings/TVPRA_Report2016.pdf)

## ***How Organized Crime, Corruption, Abuse of Social Networks Relate to Production***

Many workers on plantations are also migrant laborers, who accommodate the seasonal labor demand of the industry. Victims of labor abuses from Bangladesh and Myanmar (identified by civil society organizations) have explained that they were originally approached not necessarily by plantations or formal recruitment agents, but also by their village chiefs and other elders who used (abused) their position of trust to 'sell' them employment opportunities in SE Asia. Local recruitment agents then offer what are understood to be formalized transport and contracting services, but which the victims report are in fact operated by transnational organized crime factions<sup>4</sup>. Civil society accounts corroborate that organized crime facilitates the recruitment and transport of laborers into palm producing countries as undocumented migrants. Beyond these systems - which benefit and support the activities of the participating organized crime factions in their other activities - laborers are exposed to abuse through nontransparent schemes, and atrocities have been committed against the workers themselves as demonstrated by the mass graves of undocumented laborers found in 2015<sup>5</sup>.

Once workers are located on the plantations, they live at considerable distance from local road networks preventing them from reaching aid organizations or groups that proactively monitor worker well-being. Even if distances are overcome, workers are kept under close monitoring and control so as to prevent external contact, under the guise of security and prevention of workers from absconding their duties. Workers have also reported arrangements with law enforcement and organized crime who visit their shanty communities demanding bribes.<sup>6,7</sup> In one example, workers recounted that upon being paid, they found local police waiting outside payroll office gates to demand bribes from them.

Prior to commencing operations, oil palm trees must be seeded. It is at this stage that the worst examples of the corrupt arrangements between the industry, local

law enforcement, and organized crime are laid bare. In its report, "*Uncovering the Risks of Corruption in the Forestry Sector*"<sup>8</sup>, Interpol documents in detail the rife corruption and violations of production regulation which arise in this sector. These findings are corroborated in parallel reports of crime in the industry by other organizations.<sup>9,10</sup>

## ***Why Issues Remain Linked to Criminality, Unlawfulness and Risk of Liability***

While criminal connections are well-documented, regulators are often under resourced and over mandated. Divided attentions and refocused resources prevent those with the government-mandated authority to investigate these connections. On the other hand, civil society has seen its mandate to report human rights-related criminal abuses. Yet, those trained in the expertise to substantiate criminal activity often are not sought out by civil society. During the last decade, many civil society organizations have issued reports<sup>11</sup> and civil society has also provided audit services for supply chains. However, few have successfully linked these two topics so as to demonstrate material financial risk and quantifiable liabilities arising in the industry, leaving plausible deniability an acceptable position for many and various parties. And investors are yet to find or be provided a compelling investment risk reason to push the industry hard to change its governance to eliminate these practices.

Civil society itself has not coordinated across issues and has failed to agree whether these hurtful actions, incidental or intentional, are an ethical or criminal concern. Civil society has generally pursued a consultative and advisory approach with industry to encourage change while often avoiding the needed long-term commitment and work, partly due to the inherent risk, to establish potential civil or criminal liability. Industry itself, while uncoordinated, recognizes these limitations and the fog of indiscernibility.

4 <https://www.cnn.com/2016/06/02/asia/malaysia-immigration-terrorism/index.html>

5 <https://www.cbsnews.com/news/malaysia-graves-burma-rohingya-migrant-camps-abandoned-by-traffickers/>

6 <https://www.nst.com.my/news/crime-courts/2018/06/375840/macc-nabs-gombak-cop-over-bribery-involving-illegal-foreign-workers>

7 <http://www.freemalaysiatoday.com/category/nation/2017/02/28/police-again-viewed-as-most-corrupt-in-transparency-survey/>

8 <https://www.interpol.int/Media/Files/Crime-areas/Environmental-crime/Uncovering-the-Risks-of-Corruption-in-the-Forestry-Sector/>

9 <https://eia-international.org/palm-oil-plantation-crime-drives-illegal-logging-in-indonesia>

10 <https://www.theguardian.com/environment/2017/mar/24/in-malaysia-how-protecting-native-forests-cost-an-activist-his-life>

11 <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>

Examining the financial accounts of palm oil companies provides little clear indication of capital allocated to payment of plantation labor and payments to labor outsourcing companies. Considering the ongoing controversy, a clear disclosure of such contracts and relevant payments would be welcomed particularly in the absence of digitized payments to workers.

## ***Disassociation of Responsibility***

The principal position of industry actors, from time to time, when confronted about the abuses suffered by workers is that they are not legally or ethically culpable due to the multi-level recruitment schemes common across the industry and global migrant labor systems. Oil palm plantations commonly impose a “kernet” wage systems that incentivize workers who receive no mandated benefits and are not eligible for work-related injury compensation. These workers are found, recruited, and transported to plantations through multiple levels of brokers which the plantations contract to supply labor. The invisible kernet workers provide much of the labor on the plantations<sup>12</sup> but by claiming no direct recruitment and hiring of the workers, the industry distances itself from any criminal or regulatory accountability and culpability even if not insulating itself fully from ethical considerations.

Not all industry participants are equally reliant on these systems. But, without market pressure to encourage internal regulation and transparency spurred on by external investigations, it is difficult to discern who is a good or bad actor. And, despite it all, there *are* good actors. While civil society views this as reason to doubt the innocence of any one member of the industry, from the perhaps more impactful perspective of global markets, this fog of indiscernibility enables the industry to be treated as all generally innocent or at least low risk for these activities.<sup>13</sup>

## ***How Issues Are Linked to Criminality, Unlawfulness and Risk of Liability***

During the year Liberty Global | Asia spent interviewing and documenting the experiences of labor rights victims in the industry, it identified two areas of material financial risk to investors.

### *1) Calculating Missing, Unpaid, or Stolen Wages*

Labor is often outsourced, workers are unpaid, and many of them are also undocumented. Malaysia and Indonesia’s minimum wage was used as a benchmark to estimate quantum of wages and industry’s financial statements to establish whether such payroll monies were transferred to the agency network for compensation to workers. But regardless of the reason of the failure of monies to reach the workers, , many people are still owed wages. The result is that US investors must consider if these outstanding monies alter any valuation models.

### *2) Breach of Internal Controls and Risk Management Under Relevant US Laws*

Some industry participants have securities, called American Depository Receipts (ADRs), that trade on US exchanges. With these US issued securities, these companies must follow US legislation such as the Foreign Corrupt Practices Act, The Travel Act, Securities Exchange Act, and Sarbanes Oxley. These, and other, laws require robust internal controls and public disclosure describing and demonstrating in their financial accounts, including contingencies, their material risks and liabilities associated with missing, unpaid, or stolen wages owed. But these companies’ annual reports do not disclose these necessary internal controls to manage the potential liabilities arising from possible exposure to missing, unpaid, or stolen wages. In fact, it is difficult to locate specific disclosure in annual reports or other documents of internal management and provisions for risk relating to outsourcing of labor.<sup>14, 15</sup>

<sup>12</sup> <https://laborrights.org/publications/human-cost-conflict-palm-oil-revisited>

<sup>13</sup> [https://en.wikipedia.org/wiki/The\\_Market\\_for\\_Lemons](https://en.wikipedia.org/wiki/The_Market_for_Lemons)

<sup>14</sup> <https://www.triplepundit.com/2017/01/palm-oil-standardize-disclosures/>

<sup>15</sup> <http://www.foodingredientsfirst.com/news/special-report-sustainable-palm-oil-where-is-the-progress.html>

## ***Broad Recommendations***

The extensive list of criminal and unlawful activities experienced, observed and recounted by victims, vulnerable communities, civil society and in some cases the perpetrators themselves is unsettling and deeply frustrating. The industry proffers a welcome narrative of modern management, governance and administration fully engaged with the global financial system and supply chains. It has become and is fully part of the complex framework of multi-jurisdictional legal and regulatory regimes that allows it to profit but which creates obligations and therefore potential liability for the industry, buyers and investors.

It is recommended that,

- i) to reduce the focus and controversy that surrounds the industry, and to prevent matters exacerbating, there be increased investment and attention by industry to management and transparency of security of land and internal controls of contracted labor to prevent relationships with crime, not dissimilar to the efforts the financial industry undertakes to avoid facilitating crime and terrorism;
- ii) there be clearer disclosure in relevant financial accounts and annual reporting in relation to labor payments and not just reference to direct labor as part of land, plant and equipment;
- iii) that there be an ongoing panel of recruitment agents and a list of the panel available for public inspection.

## ***Launch of Five Position Papers on the Palm Oil Industry***

To provide greater understanding of the problems adumbrated in this document, Liberty Global | Asia is launching five position papers on the palm oil industry.

Paper #1 will set out the issue potential legal liability under Malaysian and Indonesian Law for unpaid wages to workers and look at the impact of relevant periods of limitations.

Paper #2 examines the structure and nature of the relationships created by recruitment agents, workers providing companies and outsourcing agents with industry participants, workers and their communities.

Paper #3 explores how recruitment agents, workers providing companies and outsourcing agents become a nexus for unlawful and criminal practices including theft, deceit, bribery and money laundering.

Paper #4 explores the issue of child labour, damages arising from health issues and impact on communities living undocumented.

Paper #5 sets out development to governance, administration and management that might reduce the issues set out in the first four papers.

### **DISCLAIMER**

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