

THE GREAT PALM OIL SCANDAL

LABOUR ABUSES BEHIND
BIG BRAND NAMES

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1. EXECUTIVE SUMMARY

Palm oil and palm-based ingredients are found in approximately 50% of common consumer products. Besides its use as a cooking oil, palm oil is found in many food products such as packaged bread, breakfast cereals, margarine, chocolate, ice cream, biscuits, and snack food. It is also used in household detergents, shampoos, creams, soap, lipsticks and in biofuels for cars and power plants.

Global production of palm oil has doubled over the last decade and experts estimated that it will have doubled again by 2020. Indonesia is the largest producer of palm oil in the world and produces 35 million tonnes of the oil per year. The rapid expansion of palm oil plantations in Indonesia has been driven by an increase in the global demand for vegetable oils for food and non-food uses, including biofuels. Palm oil plantations have been developed by clearing forests and the resultant deforestation has been linked to serious environmental problems, including the destruction of habitats for orangutans and the Sumatran tiger.

In response to criticisms over the negative environmental and social impacts of palm oil, the Roundtable on Sustainable Palm Oil (RSPO) was set up in 2004. The stated objective of this body is to enable the palm oil industry to operate sustainably, without environmental damage or exploitation. Palm oil certified by the RSPO is marked as sustainable palm oil, including on the consumer products in which much of the oil ends up.

This report investigates labour exploitation on plantations in Indonesia that provide palm oil to Wilmar, which is the world's largest processor and merchandiser of palm and lauric (palm kernel) oils and controls over 43% of the global palm oil trade. The report also traces the palm oil produced in Indonesia for Wilmar to a range of consumer goods companies that use palm oil in their products. The investigation is based on both fieldwork in Indonesia and desk research. Researchers interviewed 120 plantation workers, including workers holding supervisory roles, on plantations directly owned by two Wilmar subsidiaries and on plantations owned by three companies that supply oil to Wilmar's Indonesian refineries. The two Wilmar subsidiaries are PT Perkebunan Milano (PT Milano) and PT Daya Labuhan Indah. The three suppliers are PT Sarana Prima Multi Niaga (SPMN), PT Abdi Budi Mulia (ABM) and PT Hamparan Masawit Bangun Persada (PT Hamparan), part of the BEST Group, which supplies Wilmar. Wilmar, SPMN, and all but one of its buyers whom Amnesty International contacted, are members of the RSPO.

Amnesty International found serious human rights abuses on the plantations of Wilmar and its suppliers. These included forced labour and child labour, gender discrimination, as well as exploitative and dangerous working practices that put the health of workers at risk. The abuses identified were not isolated incidents but due to systemic business practices by Wilmar's subsidiaries and suppliers, in particular the low level of wages, the use of targets and 'piece rates' (where workers are paid based on tasks completed rather than hours worked), and the use of a complex system of financial and other penalties. Workers, especially women are employed under casual work arrangements, which make them vulnerable to abuses.

HARVESTING AND PROCESSING OF PALM OIL

Oil palm trees can grow up to 20 metres tall and have an average life of 25 years. Trees start to bear fresh fruit bunches after three years and reach peak production between the sixth and tenth year. Fresh fruit bunches can contain from 1,000 to 3,000 individual fruits (the size of small plums), together weighing 10 to 25 kg. The fresh fruit bunches have to be transported to palm oil mills within 24 hours of harvesting to

start processing the harvested fruits. The extracted oil is transported to refineries where it is processed further. Wilmar has its own plantations and mills and owns 15 refineries in Indonesia. These refineries also source from non-Wilmar owned mills (Wilmar refers to these as third-party suppliers).

The work involved in harvesting palm fruit is extremely physically demanding. Harvesters use long steel poles (*egrek*) with a sickle at the end, which can weigh around 12 kg, to cut the palm fruit bunches down from trees, which may be up to 20 m tall. For smaller palm trees up to three metres tall, harvesters use a shorter pole with a big chisel (*dodos*) at the end. The fresh fruit bunches are then loaded onto wheelbarrows and taken to collection points, often over uneven terrain.

WORK, PAY AND PENALTIES AT WILMAR'S SUBSIDIARIES AND SUPPLIERS

Indonesian law sets limits on hours of work (40 hours a week) and overtime (a maximum of three hours per day or 14 hours per week). It also specifies the payments that workers should receive for overtime work (one and a half to three times the hourly wage). The Governor of each province in Indonesia sets the minimum wage for each province and each city and can also identify minimum wages for particular business sectors. The minimum wages applicable in North Sumatra and Central Kalimantan, where the plantations are located, are quite low. They are insufficient to meet a family's living needs, especially as plantations are located far away from towns and goods are more expensive.

Companies that Amnesty International investigated use a complex system to calculate workers' wages, based on both time worked and output per worker. Companies set output targets for the tasks that workers need to complete. Harvesters (always men) are set targets for the total weight of the fresh fruit bunches that they need to collect. For example, ABM a Wilmar supplier in Indonesia, sets harvesters a target of collecting 950 kg per day from trees that were planted in 2006 (targets for harvesters are set based on the age and expected productivity of the trees). If the harvester meets his target, he receives his basic monthly wage. If he doesn't meet his target, the company deducts one-seventh of his salary, irrespective of the fact that he has worked his working hours or longer. Harvesters receive a bonus for any fresh fruit bunches that they collect over the target.

Workers in plant maintenance units (mostly women) are given targets for the number of sacks of fertilizer that they should spread, tanks of chemicals that they need to spray or rows of plants that they need to weed, etc. For example, in PT Milano, a Wilmar subsidiary, workers have to spray nine tanks of chemicals every day. Other workers have a target of spreading 15 to 17 sacks of fertilizers. If the worker is unable to meet the target, she will be paid the daily wage but the work that she hasn't completed is added on to her next day's target.

The targets that workers have to achieve are set by individual companies, and appear to be set arbitrarily to meet companies' needs rather than being based on a realistic calculation of how much workers can do in their working hours. The consequences of not meeting the targets vary across the different Wilmar subsidiaries and suppliers that Amnesty International investigated and across categories of workers. Workers can face deductions of their salary for failing to meet their targets, in some cases leading to their salaries falling below the minimum wage, or lose out on 'bonus' payments despite working long hours in excess of the working hours limit. Workers are rarely paid overtime for extra hours worked.

CHILD LABOUR

In order to meet their targets, earn bonuses and avoid penalties, workers on all the plantations that Amnesty International investigated said that they get help from their spouses, children or others to complete certain tasks.

Indonesian law prohibits anyone from employing and involving children (any person under the age of 18) in the worst forms of labour. The worst forms of child labour include work that is harmful to the health, safety or morals of children; this is regulated under a Ministerial Decree. Children between 13 and 15 are allowed to do 'light work', which does not disrupt their physical, mental or social development. The minimum age of employment is 15 years of age but work that may endanger the health, safety or morals of children is prohibited until the age of 18.

Amnesty International documented evidence of the involvement of children in hazardous work on plantations owned by two Wilmar subsidiaries (PT Daya Labuhan Indah, PT Milano) and three Wilmar suppliers (ABM, SPMN, and PT Hamparan). Workers employed by these companies told researchers that they have seen children working on the plantation, helping their parents. Because of a fear that they could lose their jobs if they spoke about this issue, parents were nervous about being interviewed about child labour. Researchers however interviewed five children who help their fathers and also interviewed their fathers. They interviewed five other fathers, who are harvesters, who described how their children work with them on plantations.

Some children started working from the age of eight years onwards and all were below 15 years of age. Most of the children help their parents in the afternoons, after attending school, and on weekends and holidays. However, some children have dropped out of schools and work for all or most of the day. Children carry heavy loads, as they have to carry sacks of loose fruits and some transport wheelbarrows full of heavy palm fruit bunches over uneven terrain and narrow bridges. They run the risk of injuries from repetitive movements, carrying heavy loads and from working in an environment where they are exposed to chemicals.

Amnesty International researchers interviewed B, who is 14 years old. His father works for a Wilmar subsidiary. B told researchers: *"I have helped my father every day for about two years [since B was 12 years old]. I studied till sixth grade in school. I left school to help my father because he couldn't do the work anymore. He was sick. I am concerned that I haven't finished school. ... I would like to go back to school, I left because my father was sick and I had to help."*

C, a ten-year-old boy, dropped out of school after the second grade and helps his father who works at a Wilmar supplier. He has helped his father since he was eight years old. His father, K, said: *"I get the premi [bonus] from the loose fruit that's why my kids help me. I wouldn't be able to meet the target ... otherwise. ... The foreman sees my children helping me. The foreman says it is good that my child is helping me. [A senior manager] ... has come when my child was helping me and not said anything. He doesn't come out of his car. He yells out orders from his car to the foreman."*

The involvement of children is contrary to Indonesian and international human rights law, including the prohibition on involvement of children under the age of 18 in the worst forms of child labour, as well as Wilmar's own company policy.

Amnesty International wrote to all of the companies and presented the organizations evidence of child labour. Wilmar responded to Amnesty International saying: *"Child labour has no place in Wilmar's operations, and is a non-negotiable requirement for our suppliers"*. The company said that *"a lack of access to education and child care is one of the key reasons why this happens"* and pointed to its investment in providing primary education and childcare facilities. It stated that plantation supervisors and managers put up signs that say that child labour is prohibited, and carry out regular patrols to monitor child labour. *"Where the presence of children is detected, specifically during the school holidays when some workers*

may bring their children to the plantations because there is no one to look after them at home, stern warnings are given to the workers not to bring children to their workplace. Disciplinary action is taken against repeat offenders."

Wilmar's response to Amnesty International completely disregards the role played by Wilmar's business practices in creating and sustaining the conditions that lead to child labour on its plantations. Wilmar does not acknowledge the impact of low wages and the use of targets and penalties for certain tasks as causative factors that lead to parents bringing their children to help them with their work. The company instead attempts to shift responsibility exclusively onto parents. Wilmar's response also fails to acknowledge that supervisory staff have allowed child labour to continue and the company has benefited from the work the children have done. The evidence gathered by Amnesty International demonstrates that the Wilmar Group is responsible for the involvement of children in the worst forms of child labour on plantations owned by the Wilmar Group.

TSH Resources, the parent company of SPMN, was the only one amongst Wilmar's suppliers who responded and did not engage with the evidence presented by Amnesty International.

Wilmar's subsidiaries' and suppliers' working practices, in particular the use of high targets and penalties, have resulted in children working. By employing children under the age of 15 the companies may have committed a felony as set out under Article 185 of the Manpower Act. The companies may also have breached Article 74 and therefore committed a felony under Article 183 of the Manpower Act because of the involvement of children under the age of 18 in jobs that are harmful to their health and safety.

FORCED LABOUR

Indonesia is a party to the International Labour Organization (ILO) Forced Labour Convention and has adopted the Convention in its national legislation. Forced labour is defined under the Convention and Indonesian law as "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*"

Employers can penalize workers for failing to meet targets, do certain tasks or for mistakes in their work (for example, for picking unripe fruit). In most cases, the penalty has a financial dimension and workers can face deductions from their salaries or yearly bonuses or have to give up a day's work or leave. Casual daily labourers are particularly vulnerable as they can be 'scorched' (stopped from working for one or more days or let go altogether) if they fail to meet targets. The large number of penalties, which can be applied at the employer's discretion, and the lack of clarity and transparency on deductions from wages, makes workers vulnerable to pressure from their supervisors, who can exact work under the threat of loss of pay or loss of employment.

Amnesty International documented cases of foremen threatening women workers in plant maintenance units with not being paid or having their pay deducted in order to exact work from them. U works as a casual daily labourer in the plant maintenance unit at PT Milano. She said: "*The target is [to spread] 15 – 17 sacks ... If I don't finish my target, they ask me to keep working but I don't get paid for the extra time or get any premi [bonus]. I have to finish all the sacks before I can leave. Around three months ago, my friend and I told the foreman that we were very tired and wanted to leave. The foreman told us if you don't want to work, go home and don't come again.*" Researchers found that SPMN and PT Hamparan, Wilmar's suppliers, oblige workers to work beyond normal working hours and in excess of overtime limits set out under Indonesian law, as only in so doing can they earn the minimum wage. The ILO Committee of experts has said that these kinds of practices amount to forced labour.

PAID BELOW THE MINIMUM WAGE AND ARBITRARILY DENIED PAY

Article 17 of the Ministry of Manpower Decree No. 7/2013 provides that 'piece rate' workers should not be paid below the daily or monthly minimum wage as applicable. As highlighted above, two Wilmar suppliers, SPMN and PT Hamparan use a piece rate system. For example, H, who works for SPMN, is given a target of collecting 24 sacks of loose fruit in order to get paid 84,116 Indonesian Rupiahs (US\$6). She said: "*when I pick up the loose fruit, the most I can collect is 18 bags so I only get paid 3,300 (Indonesian Rupiahs) per bag. ...It is very difficult to collect one full sack of loose fruit. ...My lower back hurts from all the bending to pick up the loose fruit*". Despite doing a full day's work she is only paid 59,400 Indonesian Rupiahs ((US\$4), significantly below the daily minimum wage of 84,116 Indonesian Rupiahs. Other workers also confirmed they are paid below the daily or monthly minimum wage when they don't meet their targets. Workers who are involved in spraying plants do not get paid at all or paid for half a day, if it rains at a certain time, despite the work they have already done till that point.

Amnesty International found evidence that Wilmar's subsidiaries, PT Milano and PT Daya Labuhan Indah, and its suppliers ABM, SPMN and PT Hamparan do not pay workers a daily minimum wage if they do not meet targets set by the company or if it rains at a certain time of day. All of the companies may therefore have contravened Article 90 of the Manpower Act, which prohibits employers from paying wages lower than minimum wages, and may have committed a felony under Article 185.

WORKING HOURS LIMITS AND OVERTIME

In all the Wilmar subsidiaries and suppliers that Amnesty International investigated, harvesters work long hours, in excess of the limit of 40 hours per week set out under Indonesian law. In the high harvest season, following the rains, workers work long hours to try to earn bonuses. In seasons where fruit is less plentiful, especially during the dry season, workers work longer hours to meet their targets but do not earn much. Harvesters employed by Wilmar's subsidiaries described working up to 10-11 hours a day, while harvesters who work for Wilmar's suppliers described working up to 10-12 hours a day. These long hours are a major concern, particularly taking into account the physically demanding nature of the work done by harvesters. Some workers also work on Sundays in an effort to earn enough money to survive or make up for missing targets. Amnesty International documented cases of individuals working 12 hours a day, seven days a week, for below the legal minimum wage. Harvesters employed by PT Milano, a subsidiary of Wilmar, are offered an additional payment, referred to as kontanan, to work on Sundays. They are paid 40,000 Indonesian Rupiahs (US\$ 3) per ton of fresh fruit bunches that they collect instead of overtime pay, as required under Indonesian law. Amnesty International's investigation revealed that all five companies may have breached Article 78 of the Manpower Act. This requires that companies pay workers certain levels of overtime pay for working beyond working hours, to limit the amount of overtime that a worker may do, and to meet certain conditions around overtime. Harvesters can earn good bonuses during the harvest season, in particular, when the fruits are plentiful. While bonuses for exceeding targets could be a positive feature and one that many workers value, they do not make up for the risk of abuses which are generated by the use of targets and which Amnesty International documented. They can also mask the fact that the work actually requires two people to work, as harvesters often get help from their wives or children. Bonuses linked to targets should be in addition to and not replace overtime pay.

ABUSES OF THE RIGHTS TO HEALTH AND TO SAFE AND HEALTHY WORKING CONDITIONS

Palm oil plantations use a range of pesticides and herbicides to manage pests and weeds. Plantations also use a large amount of fertiliser to improve yields. Environmental organizations have highlighted the risks of contamination of other crops, soil and groundwater by the chemicals in these products.

One such controversial chemical, which is used as a herbicide (to control weeds), is paraquat dichloride (paraquat). Paraquat is a highly toxic chemical, which poses severe risks to health. Paraquat has one of the highest acute toxicity values among commercial herbicides and can result in toxicity after ingestion, inhalation or dermal exposure; its use is banned in the European Union and restricted in several other countries. The Indonesian Ministry of Agriculture regulates paraquat as a restricted use pesticide. Only people who have been trained and certified are allowed to apply paraquat.

In 2008 Wilmar committed to phasing out the use of paraquat in its operations and stated that it had done so by 2011. It required its suppliers to stop using paraquat by the end of 2015. Amnesty International researchers found evidence of the use of paraquat-based herbicides by Wilmar's suppliers, in particular SPMN. The RSPO certification assessment of SPMN undertaken in July 2015 confirmed that the company used paraquat but stated that the estate management had plans to reduce its usage. Researchers however confirmed through recent photographs taken in October 2016 and interviews that SPMN continues to use paraquat. In its responses to Amnesty International, TSH Resources, SPMN's parent company, did not deny the use of paraquat or Gramoxone (a paraquat-based herbicide). Staff at PT Hampanan, another Wilmar supplier, said that the company uses Gramoxone and other paraquat-based herbicides. A worker employed by ABM, who mixes the chemicals that the workers spray, also stated that this company uses Gramoxone.

Amnesty International's investigation revealed a significant gap in the provision and maintenance of personal protective equipment for workers who spray chemicals or spread fertilizers. Some companies failed to provide equipment, while others did not replace equipment, such as boots, masks, gloves, coveralls (aprons) and goggles, when these were worn out. In addition, Amnesty International found that workers who deal with or spray chemicals do not have adequate information on the chemicals that they handle or the specific health risks associated with these chemicals. Workers described experiencing negative health effects after exposure to chemicals. Amnesty International documented severe injuries caused to workers, including the case of Yohanna who worked at SPMN and was splashed in the face with Gramoxone, leading to severe damage in her eye and her optic nerve. Yohanna told researchers: *"I can't see through the eye. I get headaches in part of my head, when I do, my eye feels really swollen. I still get a bit dizzy"*. The delay in obtaining the treatment Yohanna required worsened her condition.

Most Wilmar subsidiaries and suppliers test the blood of employees for exposure to chemicals but the results are not shared with workers. Workers whose blood tests reveal anomalies are told that there is a problem with their blood but still not provided a copy of the results. Those showing abnormalities are often simply moved to other tasks without ever knowing what the blood test results signify. This leaves the workers extremely anxious about their health.

GENDER DISCRIMINATION

The report highlights a discriminatory pattern of hiring women as casual daily labourers, denying them permanent employment and social security benefits such as health insurance and pensions. Workers in plant maintenance units, who are almost all women, continue to be casual even when they work for the company for years. Wilmar's subsidiaries and suppliers employ some harvesters as casual daily labourers but most harvesters – who are always men – are employed on permanent employment contracts.

Amnesty International asked workers in all companies and the supervisory staff it interviewed whether there were any women employed as permanent workers by the companies. SPMN was the only company at which women were hired on permanent contracts to work on plantations and in supervisory capacities. Researchers were repeatedly told by workers at all the other companies that women are only hired as casual

daily labourers and only to work in plant maintenance. There are some limited exceptions, including women who are retained in office administration who are permanent.

Supervisory staff in several companies whom Amnesty International interviewed confirmed that the women working in the fields are not permanent. N, who works in a supervisory position for a Wilmar supplier said: *"I don't know why this is. Some women in the offices are permanent. The women in the fields work harder than ones in the office so I am not sure why they are not made permanent"*. Wilmar, ABM and PT Hampan have not offered any reasonable and objective justification for their failure to offer permanent employment to the majority of women workers employed on their plantations.

BIG BRAND MANUFACTURERS THAT BUY WILMAR'S INDONESIAN PALM OIL

Using export data and information published by Wilmar, Amnesty International traced palm oil from the plantations it investigated to Wilmar's Indonesian refineries and then to nine global food and household goods companies. Archer Daniels Midland Company (ADM) purchases palm oil from mills that are supplied by plantations where Amnesty International documented severe labour rights abuses. Agrupación de Fabricantes de Aceites Marinos (AFAMSA), Colgate-Palmolive, Elevance Renewabe Sciences, The Kellogg Company (Kellogg's), Nestlé and Reckitt Benckiser are sourcing palm oil from refineries where the palm oil has been directly supplied or, at the very least, been mixed with palm oil produced on plantations where there are severe labour rights abuses. It is highly likely that Unilever and Procter & Gamble, who confirmed that they source from Wilmar's Indonesian operations are sourcing palm oil from refineries where the palm oil has been directly supplied or, at the very least, been mixed with palm oil produced on plantations where there are severe labour rights abuses. All but one of these firms are members of the Roundtable on Sustainable Palm Oil, and claim they use "sustainable palm oil" on their websites or product labels. None of the companies Amnesty International contacted denied that the abuses were taking place, but neither did they provide any examples of action taken to deal with labour rights abuses in Wilmar's operations.

As buyers of Wilmar's oil, these companies have a responsibility to ensure their supply chain is free from abuses such as child labour and forced labour. This is a well-accepted international standard. Amnesty International contacted each of the buyers to ask for their response to the organization's findings and to seek information on what due diligence they undertook on their supply of palm oil. None of the companies was aware of the abuses until contacted by Amnesty International, which in itself strongly suggests that their due diligence is insufficient. The risks of labour abuse on palm plantations in Indonesia is known; NGOs have previously published information and Wilmar itself has stated that its 'No Exploitation' policy was not achieved by the end of 2015. Knowing that the risks existed, it was incumbent on the buyers to check whether the palm oil they purchased was produced in exploitative circumstances.

Each of the companies provided some information on their due diligence processes although none provided any explanation for why their processes had not detected the abuses documented. The weaknesses in the due diligence processes went beyond failing to identify the actual abuses; none of the companies appeared to have even identified the risk factors, such as piece rate payments and the system of penalties. Had they been identified these practices should have acted as red flags to buyers, worthy of investigation as to their impacts. Some of the companies refuted Amnesty International's allegation that they were failing to exercise adequate human rights due diligence. The full text of the company responses can be found in the Annex to the report.

In addition to the failure to exercise adequate due diligence, the consumer goods companies that buy Wilmar palm oil demonstrated a lack of transparency. Amnesty International sent the companies lists of consumer products that include palm oil as a component, and asked if these items contained palm oil from

Wilmar's Indonesia operations. Reckitt Benckiser confirmed that palm derivatives sourced from Wilmar were used to manufacture bar soap. Kellogg's confirmed that palm oil sourced from the identified Wilmar refineries went into Pringles chips made and distributed in China by its joint venture with Wilmar. Colgate-Palmolive and Nestlé said none of the products Amnesty International listed contained palm oil from Wilmar's Indonesia operations. They did not say which of their products do, although both companies acknowledged that they receive palm oil from Wilmar refineries that Amnesty International linked to the plantations investigated for this report. Two other companies (Unilever and Procter & Gamble) did not confirm that the listed products contained palm oil from Wilmar's Indonesia operations but they also did not correct the list. The other consumer companies offered vague or no responses. The lack of transparency around consumer products is worrying, suggesting these companies do not value the rights of the consumers to make informed choices and are attempting to shield themselves and their products from legitimate scrutiny.

FAILURES OF THE ROUNDTABLE ON SUSTAINABLE PALM OIL

The RSPO has criteria for what it considers to be sustainable palm oil - that is oil produced without exploiting workers, without deforestation and without environmental and social harm. Wilmar and most of its buyers place great reliance on its membership and certification by the RSPO as proof of due diligence and respect for human rights. Amnesty International's investigation reveals that the RSPO is acting as a shield which deflects greater scrutiny of Wilmar's and other companies' practices. The implementation and monitoring of the RSPO criteria are extremely weak and based on a superficial assessment system. Amnesty International also found that the companies that buy from Wilmar overly rely on the RSPO certification system, especially for checking conditions at the plantation level. Three of the five palm growers that Amnesty International investigated are certified as producing "sustainable" palm oil under the RSPO, despite the severe abuses that researchers found on their plantations. While large consumer goods companies claim that the palm oil used in their products is "sustainable", Amnesty International's investigation contradicts this claim. Membership of the RSPO and certification assessments cannot and should not be used as proof of compliance with workers' human rights.

CONCLUSION AND RECOMMENDATIONS

Wilmar, its subsidiaries PT Milano and PT Daya Labuhan Indah, and its suppliers, ABM, SPMN and PT Hamparan have abused workers' rights to just and favourable conditions of work, health, and social security. Wilmar, and those companies that buy from it, do not have an adequate due diligence process in place to identify, prevent, mitigate and account for how they address adverse human rights impacts linked to their business operations. Wilmar failed to carry out adequate due diligence on its suppliers. All of the buyers investigated failed to conduct adequate human rights due diligence in relation to the Indonesian palm oil sourced from Wilmar. All of these companies are benefiting from, and contributing to, severe labour abuses in their palm oil supply chain

Indonesia has a strong general legal framework on labour rights, though the government needs to urgently address the critical gaps in protection around forced labour, casual workers and other issues identified by Amnesty International. Based on the information gathered by Amnesty International, several of the companies may have breached Indonesian law and may have potentially committed numerous criminal offences. The government is failing to adequately monitor and enforce its labour laws and to prevent and remedy abuses. It is violating its obligation to protect people from abuses of their rights.

Addressing the serious and systemic abuse of labour rights on palm oil plantations requires a broad commitment by Wilmar, its suppliers, and companies that buy from Wilmar. The working practices prevalent on plantations run by Wilmar's subsidiaries and suppliers, such as the use of piece rates, targets,

penalties, casual work arrangements, use of hazardous chemicals which create risks to workers' safety, must be eradicated or substantially modified in order to end the human rights abuses identified in this report. Wilmar must ensure such reforms are enacted without delay.

The companies that buy palm oil from Wilmar must address the serious shortcomings in their due diligence processes. None identified the severe labour abuses documented in this report prior to being contacted by Amnesty International. Companies that want to end abuse need to fundamentally change their mind-set and practices. Such changes must include monitoring and investigations that are designed to detect labour abuses. A compliance based approach linked to RSPO certification is not sufficient to ensure respect for workers' human rights. Companies must be able to carry out physical checks – not merely rely on the guarantees of others, a process that cannot provide them with the level of knowledge and assurance to make commitments to their customers.

Both those companies that produce consumer goods that contain palm oil and the governments in countries where these products are sold must ensure consumers can purchase goods labelled as using “certified” or “sustainable” palm oil with confidence. Right now consumers are asked to rely on a voluntary scheme that cannot give confidence. Companies should be far more transparent and governments should act in the consumers' interest by requiring transparency. A truly sustainable palm oil industry will only be feasible if companies – from the plantation owners to those that make the end products for sale to consumers – take all necessary actions to meet the challenges the industry faces. The serious and systemic labour abuses documented by Amnesty International have been occurring on palm oil plantations in Indonesia for years. They are the direct result of how the businesses are run. Wilmar's dominance in the palm oil sector means the company has substantial scope to set the parameters for palm oil production and ensure conditions that safeguard against abuse. Similarly, Wilmar's buyers – many of them huge consumer brand companies – have, individually and collectively, ample scope to require Wilmar to enact reforms on its plantations and those of any company that supplies it.

2. METHODOLOGY

Amnesty International investigated working conditions on palm oil plantations owned by Wilmar International's (Wilmar) subsidiaries and by its suppliers. Amnesty International selected Wilmar as the focus of the investigation as it controls over 43% of the global palm oil trade. It is the largest processor and merchandiser of palm and lauric (palm kernel) oils worldwide, and the largest palm oil refiner in Indonesia and Malaysia. Wilmar adopted a 'No Deforestation, No Peat, No Exploitation Policy' (the Policy) in December 2013. The Policy applies to Wilmar's own operations as well as all suppliers that Wilmar purchases palm oil from or with which it has a trading relationship. Wilmar, and many of the large consumer goods companies that purchase palm oil from it, have committed to producing and using sustainable palm oil, which does not involve the exploitation of workers. Amnesty International investigated labour abuses on plantations owned by two Wilmar subsidiaries in North Sumatra and three suppliers in North Sumatra and Central Kalimantan in Indonesia. Researchers investigated whether the companies were complying with Indonesian laws and international human rights and labour standards. The Roundtable on Sustainable Palm Oil (RSPO) is a global, multi-stakeholder initiative that brings together palm oil producers and traders, consumer goods manufacturers, retailers, banks, investors, and NGOs. The RSPO has developed a set of environmental and social criteria which companies must comply with in order to produce 'Certified Sustainable Palm Oil'.¹ Amnesty International's investigation also tried to establish the extent to which Wilmar's Policy and its membership of the RSPO had led to respect for workers' human rights.

Researchers consulted with various national and international NGOs who have worked on the palm oil sector in order to identify the specific plantations and geographical areas on which to focus the investigation. Amnesty International visited North Sumatra and Central Kalimantan in February, October and November 2015. Due to the risk of harassment of and reprisals against workers, Amnesty International only conducted interviews with workers when it was possible to do so without jeopardising their safety. Researchers interviewed 120 adults and children who worked on the plantations; this included 13 people who are currently or had formerly been employed in a supervisory capacity. Amnesty International's investigation primarily focused on harvesters and people working in the plant maintenance units. Researchers interviewed some loaders (who load the fruit onto vehicles to be transported to the mills), drivers (who transport the fruits to the mills and the extracted oil to refineries), as well as security guards. Researchers also met with and interviewed activists and staff of NGOs. Interviews were conducted in Indonesian Bahasa and English, with the assistance of translators. To protect the safety of people whom Amnesty International interviewed, their real names have not been used in the report. When referring to individual statements in particularly sensitive cases, the names of companies, interview locations, and dates of interviews have also not been disclosed to ensure the individual's safety.

Researchers saw and collected copies of workers' pay slips and other documents, such as medical referrals and reports. They saw the personal protective equipment used by workers and photos of chemicals used by the companies. They collected documents related to the companies' working practices.

Since its visit to these areas, Amnesty International has received updates by phone and email.

In order to track where the palm oil from the plantations investigated ends up, Amnesty International took steps to identify Wilmar's customers and trace exports. Amnesty International commissioned Profundo, an

¹ For more information see www.rspo.org.

economic research consultancy, to assist with initial research. Profundo used publicly available data to compile a list of companies that had connections to Wilmar. From this list Amnesty International prioritised large consumer goods companies, which are members of the RSPO. Researchers selected five key countries for the initial research where these companies had manufacturing operations or were headquartered to trace exports to these countries.

Wilmar had made data available on its website about its refineries, listing the mills that supply each refinery. Amnesty International, had identified which mills were directly supplied by the plantations the researchers investigated. Profundo obtained export data from Indonesia and US customs data to trace exports from Wilmar companies from ports closest to the refineries to the five selected countries. Amnesty International itself obtained and analysed some additional export data. Only a limited number of exports to Wilmar's customers could be confirmed through the export data as Wilmar tends to ship consignments to another Wilmar entity, rather than directly to the purchaser.

Amnesty International did further analysis, using newer data published by Wilmar, and established which Wilmar refineries received palm oil from mills supplied by the plantations investigated. Through this information and export data, Amnesty International traced the movement of palm oil from the plantations that it investigated to refineries and ports to a number of countries all over the world, where companies identified as having connections to Wilmar have manufacturing facilities. The 12 companies that were selected through the initial research and export analysis were: *Agrupación de Fabricantes de Aceites Marinos* (AFAMSA), Archer Daniels Midland Company (ADM), Colgate-Palmolive, ConAgra, Elevance Renewable Sciences (Elevance), Kellogg Company (Kellogg's), Mars, Mondelez International, Nestlé, Procter & Gamble, Reckitt Benckiser and Unilever. Amnesty International wrote to each of these companies to ask them to confirm if they were Wilmar's customers, which mills and/or plantations supplied the palm oil that the company purchases and the names of ports from which they received palm oil shipments. If companies stated that they were customers of Wilmar and sourced oil from Indonesia, Amnesty International asked them to confirm if they sourced palm oil from any of the refineries that were directly supplied by mills linked to the plantations it investigated.

Researchers undertook a detailed review of publicly available company documents including policies, sustainability and other progress reports, and RSPO certification assessment reports of plantations that were investigated. Amnesty International corresponded with Wilmar, its suppliers, and the 12 companies listed, about the findings of our investigation.

Wilmar, AFAMSA, ADM, Colgate-Palmolive, ConAgra, Elevance, Kellogg's, Mars, Mondelez International, Nestlé, Procter & Gamble, Reckitt Benckiser and Unilever replied to Amnesty International. Of the three suppliers, only TSH Resources Berhad responded to Amnesty International. The companies' responses are included in Annex I.

With the assistance of a legal consultant, Amnesty International identified and assessed provisions of Indonesian labour laws that apply to palm oil plantations.

Amnesty International has shared its findings with the government of Indonesia.

Amnesty International is grateful to Sawit Watch, Wahana Lingkungan Hidup Indonesia (WALHI), Central Kalimantan, Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan (OPPUK) and Rainforest Action Network for their advice and assistance. The organization would like to thank all the workers who agreed to speak to its researchers.

COMPANIES THAT AMNESTY INTERNATIONAL FOCUSED ON IN ITS INVESTIGATION

Wilmar International Limited (Wilmar), headquartered in Singapore, describes itself as “Asia’s leading agribusiness group”.² As of December 2015, Wilmar reported being one of world’s largest oil palm plantation owners with a total planted area of 240,956 hectares globally, 69% of which is in Indonesia. It is the largest palm oil refiner in Indonesia and Malaysia.³ Wilmar is a member of the Roundtable on Sustainable Palm Oil (RSPO). Wilmar has diversified from palm oil to other commodities including refining other edible oils, sugar, and milling rice and flour. It manufactures consumer products, speciality fats, oleochemicals (chemical compounds derived from oils such as glycerine), biodiesels (an alternative fuel produced from vegetable oil or fat) and fertilisers. Wilmar’s business is an ‘integrated business model’, meaning that Wilmar oversees the whole supply chain from cultivation, to processing, merchandising to manufacturing. According to Wilmar this model has been the key to its success.⁴ Wilmar is listed on the Singapore stock exchange with a market capitalisation of US\$20.92 billion. Wilmar has over 500 manufacturing plants and sells and distributes its products through a vast distribution network in more than 50 countries.⁵

PT Perkebunan Milano (PT Milano), a wholly owned Wilmar subsidiary in Indonesia, is a grower of palm fruits and miller of palm oil.⁶ The company is included in the list of significant subsidiaries named in Wilmar’s Annual Report. It is one of eight Indonesian subsidiaries named in the Annual Report. PT Milano owns four estates (palm oil plantations) and a mill in North Sumatra. PT Perkebunan Milano is certified by the RSPO.

PT Daya Labuhan Indah, a subsidiary of Wilmar in North Sumatra, is a grower of palm fruits and miller of palm oil.⁷ Wilmar owns 95% of PT Daya Labuhan Indah.⁸ PT Daya Labuhan Indah also has a mill and two estates in North Sumatra. PT Daya Labuhan Indah is certified by the RSPO.

PT Sarana Prima Multi Niaga (SPMN), based in Central Kalimantan, is an Indonesian subsidiary of TSH Resources Berhad. It is a grower of palm fruits and a miller of palm oil. TSH Resources Berhad (TSH) is a Malaysian company, and a member of the RSPO. TSH owns 90% of PT SPMN⁹, which is also certified by the RSPO. SPMN has a mill and an estate. Wilmar has confirmed PT SPMN as a supplier in the documents that it has made available on its website tracing its supply chain.

PT Abdi Budi Mulia (ABM), based in North Sumatra, is a privately owned company which is a grower of palm fruits, and a miller and producer of palm oil.¹⁰ Wilmar has confirmed that the company is one of its suppliers.

PT Hamparan Masawit Bangun Persada (PT Hamparan), located in Central Kalimantan, is a grower of palm fruits.¹¹ It is one of four growers of palm oil in Indonesia that are owned by the BEST Group. Neither PT Hamparan nor the BEST Group are listed as suppliers of Wilmar, but in a letter responding to Amnesty International, Wilmar confirmed that it sources palm oil from PT

² Wilmar International, *Wilmar in Asia: Annual Report 2015*, p. 1.

³ Wilmar International, *Wilmar in Asia: Annual Report 2015*, pp. 14, 32.

⁴ Wilmar International, *Wilmar in Asia: Annual Report 2015*, p. 16.

⁵ Wilmar International, *Wilmar in Asia: Annual Report 2015*, pp. 1, 5.

⁶ BPS-Statistics Indonesia, *Direktori Perusahaan Perkebunan Kelapa Sawit (Directory of Palm Oil Companies) 2015*, pp. 39, 88 and 94.

⁷ BPS, *Directory of Palm Oil Companies 2015*, p. 38.

⁸ Wilmar International, *Wilmar in China: Annual Report 2009*, p. 173.

⁹ TSH owns 90% ownership interest in PT Sarana Prima Multi Niaga, and holds its interest through a holding company, based in Singapore, Jatoba International Pte. Ltd. TSH states in its annual report that 10% of PT Sarana Prima Multi Niaga is held by a non-controlling interest. See TSH Resources Berhad, *Annual Report 2015*, p. 128.

¹⁰ BPS, *Directory of the Palm Oil Companies 2015*, p. 87.

¹¹ BPS, *Directory of the Palm Oil Companies*, p. 294.

Batara Elok Semesta Terpadu, a refinery in Indonesia owned by the BEST Group. PT Batara Elok Semesta Terpadu is a member of the RSPO and is supplied by plantations owned by the BEST Group¹².

¹² See <http://bestindustrygroup.com/news.php?id=1> (last accessed 22 November 2016).

3. BACKGROUND

PALM OIL AND ITS ROLE IN OUR DAILY LIVES

Palm oil and palm oil based ingredients are found in approximately 50% of common consumer products.¹³ Besides its use as a cooking oil, palm oil is found in many food products such as packaged bread, breakfast cereals, margarine, chocolate, ice cream, biscuits, and snack food. It is also used in household detergents, shampoos, creams, soap, lipsticks and in biofuels for cars and power plants.

Global production of palm oil has doubled over the last decade and it is estimated that it will double again by 2020.¹⁴ Indonesia is the largest producer of palm oil in the world and produces 35 million tonnes of the oil, followed by Malaysia which produces 21 million tonnes.¹⁵

Palm oil is considered the highest-yielding vegetable oil crop as it needs less land area and fewer inputs in terms of fertilizers and pesticides. The palm oil sector is a significant source of revenue for the government of Indonesia, particularly through taxes on exports.¹⁶ However, the rapid expansion of palm oil plantations in Indonesia has contributed to extensive deforestation and considerable harm to wildlife species.¹⁷ This expansion has been driven by an increase in the global demand for vegetable oils for food and non-food uses, including biofuels.¹⁸ Palm oil plantations have been developed by clearing forests and on peatland, resulting in a major loss of biodiversity and release of greenhouse gas emissions.¹⁹ A study published in the journal, *Science*, in 2013 calculated that from 2000 to 2012, Indonesia lost more than six million hectares of primary forest – an area half the size of England.²⁰ In 2014, a study published in *Nature Climate Change* found that Indonesia has the highest rate of loss of tropical primary forests in the world.²¹ Greenpeace analysed Indonesian Ministry of Forest maps in 2013 and stated that the palm oil sector was the single largest driver of deforestation between 2009 and 2011. This deforestation threatened forests that were key

¹³ GreenPalm, 'What is palm oil used for', <http://greenpalm.org/about-palm-oil/what-is-palm-oil/what-is-palm-oil-used-for> (last accessed 23 October 2016).

¹⁴ The Guardian, 'From rainforest to your cupboard: the real story of palm oil', www.theguardian.com/sustainable-business/ng-interactive/2014/nov/10/palm-oil-rainforest-cupboard-interactive.

¹⁵ Source: IndexMundi, www.indexmundi.com/agriculture/?commodity=palm-oil, (last accessed 23 October 2016).

¹⁶ K. Obidzinski, 'Fact File – Indonesia world leader in palm oil production', 8 July 2013, CIFOR, <http://blog.cifor.org/17798/fact-file-indonesia-world-leader-in-palm-oil-production?fnl=en>. The fact file states: "The oil palm sector, particularly CPO production, is an important source of government revenues. The main source of these revenues is the export tax; this ranges from 0 percent (if the export reference price is less than \$500 per tonne) to 25 percent (when the domestic reference price exceeds \$1,300 per tonne), according to the World Bank. In 2008, CPO generated \$12.4 billion in foreign exchange from exports; in the same year, the government earned at least \$1 billion in export tax."

¹⁷ Friends of the Earth, *Greasy palms: The social and ecological impacts of large-scale oil palm plantation development in Southeast Asia*, January 2005.

¹⁸ World Bank and International Finance Corporation, *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector*, 31 March 2011, pp. 11 - 13, available at: http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/agribusiness/resources/palmoil_strategydocument (last accessed on 17 November 2016).

¹⁹ P. Pacheco, 'Zero deforestation in Indonesia: Pledges, politics and palm oil', <http://blog.cifor.org/39085/zero-deforestation-in-indonesia-pledges-politics-and-palm-oil?fnl=en>, 7 January 2016 (last accessed 17 November 2016).

²⁰ M. C. Hansen, P. V. Potapov, et. al., 'High-Resolution Global Maps of 21st-Century Forest Cover Change', *Science*, 15 November 2013, Volume 342, Issue 6160, pp. 850 – 853 and N. Sizer, M. Hansen, and R. Moore, 'New High-Resolution Forest Maps Reveal World Loses 50 Soccer Fields of Trees Per Minute', www.wri.org/blog/2013/11/new-high-resolution-forest-maps-reveal-world-loses-50-soccer-fields-trees-minute, 14 November 2013 (last accessed 17 November 2016).

²¹ B. A. Margano, P. V. Potapov, S. Turubanova, F. Stolle, and M. C. Hansen, 'Primary forest cover loss in Indonesia over 2000 – 2012', *Nature Climate Change*, published online 29 June 2014, available at: www.umdrihtnow.umd.edu/sites/umdrighnow.umd.edu/files/nclimate2277-aop_2.pdf (last accessed 17 November 2016).

to Sumatran tigers and to orangutans in Sumatra and Kalimantan.²²

NGOs have also pointed to the negative impacts of acquisition and conversion of land for palm oil plantations for Indigenous Peoples and other rural communities,²³ as well as cases of abuses against migrant and other workers on plantations in Malaysia and Indonesia.²⁴

The Roundtable on Sustainable Palm Oil (RSPO) was set up in response to criticisms of the palm oil industry for its negative environmental, social and human rights impacts. It comprises palm oil producers and traders, consumer goods manufacturers, retailers, banks, investors, and NGOs. In 2007, the RSPO developed a set of environmental and social criteria that are used to certify palm oil producers. The RSPO has significant influence over purchasers of palm oil as demonstrated by the effect of its suspension of the Malaysian company, IOI Group, in April 2016 for not meeting the RSPO's environmental criteria.²⁵ Many major multinationals dropped the IOI Group from their list of approved suppliers following the suspension.²⁶ However, some NGOs have pointed to the weaknesses in the RSPO's criteria and certification systems. They have also pointed to the RSPO's unwillingness to strictly enforce its standards.²⁷ RSPO members account for around 40% of global palm oil production.²⁸ The RSPO certifies 11.45 million tonnes (17%) of palm oil produced globally.²⁹

WHAT IS PALM OIL AND HOW IS IT PROCESSED?

The oil palm (*Elaeis guineensis*) plant originated in West Africa but was developed on a large scale as an agricultural crop in Southeast Asia in the 20th century.³⁰ Oil palm trees can grow up to 20 metres tall and have an average life of 25 years.³¹ The tree starts to bear fresh fruit bunches (FFBs) after three years and reaches peak production between the sixth and tenth year. A FFB can contain from 1,000 to 3,000 individual fruits (the size of small plums), together weighing 10 to 25 kilograms. The fruit yield is about 10 to 35 tonnes per hectare.³²

²² Greenpeace, *Licence to Kill: How deforestation for palm oil is driving Sumatran tigers towards extinction*, Greenpeace, October 2013, pp. 4 – 7.

²³ See for example M. Colchester and S. Chao (eds.), *Conflict or Consent? The oil palm sector at a crossroads*, Forest Peoples Programme, Sawit Watch and TUK Indonesia, November 2013.

²⁴ See for example, Tenganita and Pesticide Action Network (PAN) Asia and the Pacific, *Poisoned and Silenced: A Study of Pesticide Poisoning in the Plantations*, March 2002, E. B. Skinner, 'Indonesia's Palm Oil Industry Rife With Human-Rights Abuses', <http://www.bloomberg.com/news/articles/2013-07-18/indonesias-palm-oil-industry-rife-with-human-rights-abuses>, 20 July 2013, International Labour Rights Forum (ILRF) and Sawit Watch, *Empty Assurances: The human cost of palm oil*, 14 November 2013, OPPUK, Rainforest Action Network and ILRF, *The Human Cost of Conflict Palm Oil*, June 2016.

²⁵ RSPO, 'Notice to RSPO Members on the suspension of IOI Group's Certification', 1 April 2016, available at: www.rspo.org/news-and-events/announcements/notice-to-rspo-members-on-the-suspension-of-ioi-groups-certification. The IOI Group's suspension was lifted on 8 August 2016. See RSPO, 'Update on the status of IOI Group's Certification', 5 August 2016, available at: www.rspo.org/news-and-events/announcements/update-on-the-status-of-ioi-groups-certification, (last accessed 189 November 2016).

²⁶ J. Murray, 'Multinationals drop palm oil supplier as sustainability certifications start to bite', BusinessGreen, 6 April 2016, available at: <http://www.businessgreen.com/bg/analysis/2453623/multinationals-drop-palm-oil-supplier-as-sustainability-certifications-start-to-bite> (last accessed 19 November 2016).

²⁷ Environmental Investigation Agency (EIA) and Grassroots, *Who watches the Watchmen? Auditors and the breakdown of oversight in the RSPO*, November 2015, Greenpeace, *Certifying Destruction: Why consumer companies to go beyond the RSPO to stop forest destruction*, September 2013. See also P. Castka, and D. Leaman (eds), *Certification and Biodiversity – How voluntary certification standards impact biodiversity and human livelihoods*, *Policy Matters*, Issue 21, September 2016, International Union for Conservation of Nature and Natural Resources.

²⁸ Greenpeace, *Certifying Destruction: Why consumer companies to go beyond the RSPO to stop forest destruction*, September 2013, p. 1.

²⁹ RSPO, 'Impacts', <http://www.rspo.org/about/impacts>, updated on 30 September 2016, (last accessed 19 November 2016).

³⁰ Food and Agriculture Organization (FAO), 'Oil Palm', www.fao.org/docrep/005/Y4355E/y4355e03.htm, (last accessed 17 November 2016). The oil palm requires a wet tropical climate with temperatures between 24 and 32 degree Centigrade throughout the year. This means its growth is generally limited to latitudes of approximately ten degrees north and south of the equator, at altitudes below 700 meters.

³¹ GreenPalm, 'What is palm oil?', <http://greenpalm.org/about-palm-oil/what-is-palm-oil> (last accessed 17 November 2016).

³² J. W. van Gelder, *Greasy Palms: European buyers of Indonesian palm oil*, Friends of the Earth, March 2004, p. 4.

Each part of the palm fruit is used: crude palm oil (CPO) is extracted from the flesh of the fruit, crude palm kernel oil (CPKO) is extracted from the kernel (the nut found in the centre of each fruit), and the pulp left over is pressed together to form palm kernel meal or expeller.³³ The FFBs have to be transported to palm oil mills within 24 hours of harvesting to start processing the harvested fruits. Mills are therefore located close to the plantations. At the mills, the FFBs are sterilized and threshed and the palm fruit is separated from the kernel. The palm kernel is sent to a crushing plant in order to obtain CPKO. The rest of the oil palm fruit is pressed to obtain CPO. The palm kernel meal or expeller which is left over is used in the animal feed industry. See diagram 1 for an overview of the palm oil processing system.

The CPO and CPKO is transported to refineries where the oils are processed further into edible oils; speciality fats (used in chocolate, confectionary, cosmetics and other products); oleochemicals (chemical compounds derived from oils such as glycerine); and biodiesel (an alternative fuel produced from vegetable oil or fat).³⁴

Wilmar, under what it describes as its “vertically integrated business model”,³⁵ operates at each stage of the palm oil processing and distribution system. Wilmar has its own plantations where palm fruits are grown and mills where the FFBs are processed. Wilmar owns refineries in Indonesia where CPO and CPKO are processed further. These refineries also source CPO and CPKO from non-Wilmar owned mills (Wilmar refers to these as third-party suppliers). Refineries are generally located close to ports from which the palm oil can be shipped to other destinations. Wilmar owns shipping companies such as Yihai Kerry International Trading Co. Ltd which transport palm oil and other related palm oil products around the world. It has refineries in other parts of the world where the oil may be processed further.³⁶ It sells palm oil and palm-related derivatives to numerous companies and itself produces and markets consumer products such as edible oils, soaps and detergents.³⁷

As palm oil is a liquid commodity, it is mixed at different stages of processing. The Roundtable on Sustainable Palm Oil identifies four supply chain models.³⁸ Under one of these models, the ‘identity preserved’ supply chain model, palm oil from a single identifiable certified source is kept separate from ordinary palm oil throughout the supply chain. Unless a company sources ‘identity preserved’ palm oil, it will receive palm oil which consists of oil from different plantations and mills. Wilmar’s refineries and those of its subsidiaries are mostly certified as ‘mass balance’ and ‘book & claim’.³⁹

WORKERS ON PALM OIL PLANTATIONS

According to the World Bank Group in 2011, the palm oil sector employed an estimated six million people worldwide and approximately two to three million in Indonesia.⁴⁰ Due to low levels of mechanization, large

³³ GreenPalm, ‘What is palm oil?’, <http://greenpalm.org/about-palm-oil/what-is-palm-oil> (last accessed 17 November 2016).

³⁴ For further information see <http://www.wilmar-international.com/our-business/tropical-oils/manufacturing/tropical-oils-products/>.

³⁵ Wilmar International, *Wilmar in Asia: Annual Report 2015*, p. 15.

³⁶ See Wilmar International, *Sustainability Report 2015*, pp. 27 – 28.

³⁷ For further information see Wilmar International, *Wilmar in Asia: Annual Report 2015*, pp. 9 – 17.

³⁸ The four models are: 1) Identity preserved: Sustainable palm oil from a single identifiable certified source is kept separately from ordinary palm oil throughout supply chain; 2) Segregated: Sustainable palm oil from different certified sources is kept separate from ordinary palm oil throughout supply chain; 3) Mass balance: Sustainable palm oil from certified sources is mixed with ordinary palm oil throughout supply chain; and 4) Book & claim: The chain is not monitored for the presence of sustainable palm oil. For further information see <http://www.rspo.org/certification/supply-chains> (last accessed 17 November 2016).

³⁹ RSPO, “Members - Wilmar International Ltd - RSPO Annual Communications of Progress 2014”, available at: www.rspo.org/file/acop2014b/submissions/wilmar%20international%20Ltd-ACOP2014b.pdf, (last accessed 17 November 2016).

⁴⁰ World Bank and International Finance Corporation, *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector*, 31 March 2011, pp. 4 and 14.

palm oil plantations generate more jobs than other large-scale farming operations.⁴¹ Most of the jobs associated with the palm oil industry are concentrated around growing and harvesting palm fruits rather than the extraction and refining phases (see diagram 1). Clearing and preparing the land for cultivation, planting, fertilizing and managing the plants and trees, and harvesting palm fruits are highly labour-intensive activities. Most of the work is done manually by workers.⁴²

Large palm oil plantations are based in remote, rural areas of Indonesia. The largest areas of land under cultivation are on the islands of Sumatra and Kalimantan. Companies that operate palm oil plantations rely heavily on internal migrants from other parts of the country for their workforce. Many of these internal migrants were bought to Sumatra and Kalimantan as part of the Indonesian government's controversial transmigration program. Under this program, which was first started by the Dutch colonial government but continues to this day on a smaller scale, millions of landless people were paid by the government to move to the country's less populated islands. Most of these people came from Java and Bali and are referred to as 'transmigrants'.⁴³ Recent and older internal migrants often work on palm oil plantations, especially in Central Kalimantan, which is one of the least populated provinces in Indonesia.⁴⁴ There are very limited options for alternative employment in these rural areas, which are dominated by palm oil plantations.

TYPES OF JOBS THAT WORKERS DO ON PLANTATIONS

Each plantation organises workers into multiple divisions, based on the size of the plantation. Workers are then divided into units based on the types of jobs that they do. The principal units linked to growing and harvesting palm fruits are:⁴⁵

- 1) Plant maintenance – workers in this unit, many of whom are women, on the plantations which Amnesty International focused on, are responsible for planting and maintaining the plants. Amongst other tasks, this requires them to apply fertilizers to planted crops and chemicals to control pests, diseases and weeds.
- 2) Harvesters – these workers, who are always male, are responsible for harvesting fresh fruit bunches from palm trees. They cut fresh fruit bunches from the tree using long poles with sickles attached to them, collect bunches and any loose fruit kernels which have fallen from the tree and take them to collection points to be transported to the mill.
- 3) Transport – loaders and drivers pick up the harvested fresh fruit bunches, load them manually on to small trucks and deliver them to mills where they are processed. Mills are typically located on or near palm oil plantations. Drivers transport extracted crude palm oil and crude palm kernel oil to refineries where the oil is processed further to turn it into refined and edible oils.

⁴¹ World Bank and International Finance Corporation, *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector*, 31 March 2011, p. 14. See also, WWF, FMO, and CDC, *Profitability and Sustainability in Palm Oil Production: Analysis of Incremental Financial Costs and Benefits of RSPO Compliance*, WWF, March 2012, p. 4, which states that the "industry is inherently labor-intensive, requiring a global average of five workers per hectare. Competing oil crops often require approximately one worker for every 200 hectares".

⁴² Accenture, *Exploitative Labor Practices in the Global Palm Oil Industry*, Prepared by Accenture for Humanity United, no date, p. 19, available at: http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf (last accessed 3 August 2016).

⁴³ World Bank, Independent Evaluation Group, 'Transmigration in Indonesia', <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/4B8B0E01445D8351852567F5005D87B8> (last accessed on 3 August 2016).

⁴⁴ L. Potter, 'Oil Palm and the New Transmigration in Indonesia: Examples from Kalimantan', available at: https://crawford.anu.edu.au/rmap/pdf/seminars/seminar_paper_6091.pdf, no date.

⁴⁵ Amnesty International's interviews with workers and supervisory staff in Central Kalimantan and North Sumatra, in February, October and November 2015.

Workers are also employed on mills on plantations but milling is a highly automated process,⁴⁶ and as noted earlier, the majority of workers on palm oil plantations are employed to grow and harvest palm oil fruit.

STATUS OF WORKERS

Under Indonesian law, workers can be employed either on a permanent or a fixed-term employment contract.⁴⁷ Employers can also hire people as daily labourers for work which is changeable and for which wages are based on attendance, as long as the workers do not work more than 21 days a month. Individuals who work under these daily agreements are commonly referred to as casual day labour (*buruh harian lepas* or BHL workers).⁴⁸

Casual daily labourers, the majority of whom are women on the plantations Amnesty International investigated, are not provided with social security benefits such as health insurance and pensions. Their employment status is fundamentally insecure and they have no safeguards around termination of employment.

⁴⁶ Accenture, *Exploitative Labor Practices in the Global Palm Oil Industry*, Prepared by Accenture for Humanity United, no date, p. 23, available at: http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf (last accessed 3 August 2016).

⁴⁷ Article 56, Law 13 of 2003 Concerning Manpower (Manpower Act). Article 1, Minister of Manpower and Transmigration Decree No. 100/2004 Concerning Stipulation in Implementation of Work Agreement for Specified Period of Time, (Keputusan Menteri TenagaKerjadan Transmigrasi Republik Indonesia Nomor: Kep.100/Men/VI/2004 Tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu).

⁴⁸ Article 10, Minister of Manpower and Transmigration Decree No. 100/2004.

4. QUOTAS FOR EXPLOITATION

Amnesty International investigated labour rights abuses on plantations owned by two Wilmar subsidiaries in North Sumatra, PT Perkebunan Milano (PT Milano) and PT Daya Labuhan Indah. Researchers also investigated working practices at plantations owned by three companies that supply palm oil to Wilmar; PT Sarana Prima Multi Niaga (SPMN) and PT Hamparan Masawit Bangun Persada⁴⁹ (PT Hamparan), based in Central Kalimantan, and PT Abdi Budi Mulia (ABM) based in North Sumatra. This chapter describes the output targets and piece rates that companies set for workers and examines the human rights abuses that result because of these targets and piece rates.

A COMPLEX AND OPAQUE SYSTEM WHICH ENABLES EXPLOITATION

Companies that Amnesty International investigated use a complex system to calculate workers' wages, based on both time worked and output per worker. Companies set output targets for the tasks that workers need to complete which are based on either the volume or the area which must be covered. Harvesters are set targets for the total weight of the fresh fruit bunches that they need to collect. The weight of each fresh fruit bunch varies based on the age of the tree so targets are set in relation to the age of the trees that the harvester is collecting fruits from. For example, ABM, a Wilmar supplier, sets harvesters a target of collecting 950 kgs per day (this amounts to 23,750 kgs per month) from trees that were planted in 2006. Targets for harvesters are set based on the age of the trees, and this is linked to the expected productivity of the trees of a given age. If the harvester meets his target, he receives his basic monthly wage. If he doesn't meet his target, the company deducts one seventh of his salary, irrespective of the fact that he has worked his working hours or longer throughout the month.⁵⁰ Harvesters receive a bonus of 37 Indonesian Rupiahs (US\$0.003)⁵¹ per kilogram for any fresh fruit bunches that they collect over the target (that is anything above 950 kgs per day).

Workers in the plant maintenance units are given targets for the number of sacks of fertilizer that they should spread, number of tanks of chemicals that they need to spray or rows of plants that they need to weed, etc. For example, in PT Milano, a Wilmar subsidiary, workers have to spray nine tanks of chemicals every day. Each tank is 12 litres and the workers has to cover an area of five hectares. Workers have a target of spreading 15 to 17 sacks of fertilizers. If the worker is unable to meet the target, she will be paid the daily wage but the work that she hasn't completed is added on to her next day's target. On the following day, she has to meet her normal daily target and complete any work left over from the previous day's target.⁵²

⁴⁹ PT Hamparan one of four growers of palm fruits owned by the BEST Group. Neither PT Hamparan nor the BEST Group are listed as suppliers of Wilmar, but in a letter responding to Amnesty International, Wilmar confirmed that it sources palm oil from PT Batara Elok Semesta Terpadu, a refinery in Indonesia owned by the BEST Group. PT Batara Elok Semesta Terpadu receives palm oil from plantations owned by the BEST Group according to the information on the BEST Industry Group's website, see <http://bestindustrygroup.com/news.php?id=1> (last accessed 22 November 2016).

⁵⁰ Amnesty International's interviews with workers, North Sumatra, October and November 2015.

⁵¹ All currency conversions in this report from Indonesian Rupiahs to US Dollars have been done using www.xe.com/ucc, exchange rates as of 23 November 2016.

⁵² Amnesty International's interviews with workers, North Sumatra, October and November 2015.

Drivers' and loaders' targets are set with reference to the weight of fruits that they load or transport.⁵³

MINIMUM WAGE AND OVERTIME PAYMENTS

Indonesian law sets limits on hours of work (40 hours a week) and overtime (a maximum of three hours per day or 14 hours per week).⁵⁴ It also specifies the payments that workers should receive for overtime work (one and a half to three times the hourly wage).⁵⁵

The Governor of each province in Indonesia sets the minimum wage for each province and each city and can also identify minimum wages for particular business sectors.⁵⁶ There is a wide divergence in the minimum wage across the country. For example, in 2015 the minimum wage in Jakarta was 2.7 million Indonesian Rupiahs (US\$199), two and a half times greater than Central Java, the province with the lowest minimum wage in that year.⁵⁷

The Governor of Central Kalimantan set the minimum wage in 2015 at 1,896,367 Indonesian Rupiah (US\$139) per month and the sectoral minimum wage for plantations at 1,999,185 Indonesian Rupiah (US\$147). Both of these values, set by the Governor, are lower than the amount identified, by wage councils in the province⁵⁸, as necessary for people to have a 'minimum decent standard of living': this amount is 2,254,000 Indonesian Rupiahs (US\$166) per month.⁵⁹ The minimum wage per day works out to 84,611 Indonesian Rupiahs (US\$6).

In North Sumatra the minimum wage for 2015 was 1,625,000 Indonesian Rupiahs (US\$120) and the sectoral minimum wage was 2,250,000 Indonesian Rupiahs (US\$167).

Across all the companies that Amnesty International investigated, workers in plant maintenance units and harvesters are rarely paid overtime for extra hours worked. Companies pay harvesters on the basis of targets of weights of fresh fruit bunches that they need to collect and a 'bonus' payment for meeting or exceeding these weights. The targets are set by individual companies and, in general, the daily and monthly targets are set so that the worker needs to reach the target in order to be paid the minimum wage. Families are heavily dependent on the 'bonuses' that harvesters receive for exceeding targets in order to earn enough to be able to meet their families' needs. They would struggle to do so if either or both spouses just earned minimum wages, which are too low to meet the living costs for the entire family. Workers who live on one of the plantations investigated by Amnesty International said that the prices of basic goods is more expensive at the shops on or near the plantation as they are far away from main markets.⁶⁰ For example, one of the plantations that Amnesty International focused is situated approximately 100 kms from the closest town. It takes the workers about two and a half hours by motorbike to get to the town. An activist who collected information on living expenses for families working on plantations in Central Kalimantan found that families

⁵³ Amnesty International's interviews with workers and supervisory staff, Central Kalimantan and North Sumatra, February, October and November 2015.

⁵⁴ Articles 77 and 78, Manpower Act.

⁵⁵ Article 11, Minister of Manpower and Transmigration Decree No.102/2004 Concerning Overtime Work and Overtime Pay, (Keputusan Menteri Tenaga Kerja dan Transmigrasi Nomor Kep.102/MEN/VI/2004 Tentang Waktu Kerja Lembur dan Upah Kerja Lembur).

⁵⁶ Articles 88 and 89, Manpower Act.

⁵⁷ The Economist, 'Stage set for stormy minimum-wage negotiations', 1 October 2015, available at:

<http://country.eiu.com/article.aspx?articleid=1153548699&Country=Indonesia&topic=Economy> (last accessed 17 November 2016)

⁵⁸ Articles 89 and 98, Manpower Act. Minister of Manpower and Transmigration Regulation No. 13/2012 on Components and Implementation of Steps to Achieve the Needs of Adequate Living (Peraturan Menteri Tenaga Kerja dan Transmigrasi Nomor 13 Tahun 2012 tentang Komponendan Pelaksanaan Tahapan Pencapaian Kebutuhan Hidup Layak) and Minister of Manpower and Transmigration Regulation No. 2/2016 on the Minimum Decent Standard of Living (Kebutuhan Hidup Layak).

⁵⁹ See www.bps.go.id/linkTableDinamis/view/id/1212 (last accessed 17 November 2016)

⁶⁰ Amnesty International interviews with workers in Central Kalimantan, November 2015.

with two children need to spend around 1.8 million Indonesian Rupiahs (US\$132) just on food for the family. He also recorded that the price for food can be 40% – 50% higher in shops on the plantations, in comparison to towns.⁶¹

CONSEQUENCES OF NOT MEETING THE TARGET

The consequences of not meeting the target diverge across the different Wilmar subsidiaries and suppliers that Amnesty International investigated and across categories of workers. Workers can face deductions of their salary for failing to meet their targets, in some cases leading to their salaries falling below the minimum wage, or lose out on 'bonus' payments despite working long hours in excess of the working hours limit.

In SPMN, a Wilmar supplier, harvesters and those who work in plant maintenance are paid through piece rates for the work done. Piece rate pay occurs when workers are paid by the unit performed (for example the number of trees pruned) instead of being paid on the basis of time spent on the job.⁶² For example, each worker has the target of spreading 18 sacks of manure (fertilizer) per day. If she finishes spreading all the sacks, she is paid the daily minimum wage in Central Kalimantan. If she doesn't, the company will deduct an amount from her pay for each sack that she has not completed (she will only be paid *pro rata* for the sacks she has spread). If she manages to exceed the target and spread more sacks of manure, she will be paid an additional amount for each additional sack.⁶³ For certain types of work such as clearing pathways, workers in SPMN receive a fixed daily wage.

ABM, another Wilmar supplier, deducts a harvester's wages if the worker fails to meet their targets. Harvesters have a target of collecting 950 kgs of fresh fruit bunches per day for trees that were planted in 2007. If harvesters are not able to meet their monthly target, their monthly salary is deducted by one seventh (there is no known basis for the amount that is deducted). Workers in plant maintenance can lose either a full day's wages or half a day's wages if they do not meet their targets.⁶⁴

PT Hampanan, part of the BEST Group which supplies Wilmar, deducts workers' pay if they do not meet their targets and workers are only paid for a random proportion of the hours they have worked in the day. Workers in plant maintenance are paid through piece rates.⁶⁵

PT Milano, a subsidiary of Wilmar, deducts the payment that harvesters are meant to receive for picking up loose fruit if they don't meet their targets. In addition to collecting fresh fruit bunches from trees, harvesters are supposed to pick up any loose fruit that falls to the ground and they receive an additional payment per kilogram of loose fruit that is collected. However the payment for the loose fruit that they have collected is deducted by the company by an unspecified amount to make up the gap when a worker hasn't met his target.

⁶¹ Information shared with Amnesty International by email, November 2016.

⁶² See www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439067/lang-en/index.htm for more information on the need for regulation on piece rates to make sure that workers are still paid a fair wage (last accessed 22 November 2016).

⁶³ Amnesty International interviews with workers, Central Kalimantan, February and November 2015. Amnesty International obtained a copy of a circular letter, dated 12 June 2014, from the Assistant General Manager which sets out the rates that workers will be paid at for manuring (spreading fertilisers), loading fresh fruit bunches and upkeep. The circular sets out, for example, that workers will be paid 20,000 Indonesian Rupiah per hectare for spreading fertiliser at the dosage of 0.5 – 1 kg (rates vary based on the dosage). They will be paid 18,000 Indonesian Rupiah per hectare for spraying chemicals using controlled droplet applications (CDA) and 10,000 Indonesian Rupiah per ton for loading fresh fruit bunches.

⁶⁴ Amnesty International interviews with workers, North Sumatra, October 2015.

⁶⁵ Amnesty International interviews with workers, Central Kalimantan, February and November 2015.

If workers in maintenance don't meet their targets, the work that they have not completed is added on by their supervisors to their next day's target.⁶⁶ In PT Daya Labuhan Indah, another subsidiary of Wilmar, workers in maintenance may not be paid if they don't meet their targets. They can carry over the work to the next day but if it takes the worker two days to meet the target, she will only be paid for one day's work. Harvesters who don't meet their targets may receive an oral warning.⁶⁷

Targets appear to be set arbitrarily to meet companies' needs rather than based on a realistic calculation of how much workers can reasonably do in their working hours. A staff member in a supervisory capacity employed by a Wilmar supplier told researchers: "*The company looks at the number of plants in one acre and then decides how many people are needed to collect the fruit and this is used to determine how many fruits a worker should collect*".⁶⁸ Another supervisor who is employed by a different Wilmar supplier said: "*I am afraid that if workers consistently make over the target, the company will raise the target. The company increased the target when they switched to the piece rate system*".⁶⁹ The targets are not modified in low seasons (when there is a lower yield of palm fruits) and this shifts the burden of poor yield or bad weather conditions on to workers who have to work long hours to meet the same target even though there are fewer fruits to be collected. As discussed in greater detail below, workers in plant maintenance are not paid for the day if it rains at a certain time of the morning. This is ostensibly because the rain washes away or dilutes the chemicals they have applied to the plants and this seems to be treated akin to the workers not having met their targets.

"What we want is that if we work for seven hours, we are paid the daily wage but if we work more than that then they pay us for the [extra] work we do. Right now even if we work 10 hours or all day, we cannot get the daily wage ... if we spray until 11[am] from the morning and then it rains – we won't get paid for that day because what they sprayed has been diluted and has been in vain. We cannot predict nature. If we work until 12[pm] and it rains, we won't get paid because the poison will be ineffective or less effective. We have to do the work again and only then we will get paid. We don't get paid additionally for the extra work just the daily wage.

The harvesters have to meet various criteria: the number of fresh fruit bunches - 185ffb for 2005/2006 plants [185 fresh fruit bunches for trees planted in 2005 or 2006] - to get 80,000 [the daily wage]. If they don't get it, their pay is cut and some people work into the afternoon. The company looks at the number of plants in one acre and then decides how many people are needed to collect the fruit and this is used to determine how many fruit a worker should collect (this is called the harvest frequency rate). If they don't get the number of fruit they are supposed to, they will get a pay cut.

The number of fruit they can collect is based on the yield, if the yield is low, then it takes longer to collect the fruit. What we want is that we get paid the daily wage for the hours we do. In factories, people get paid more when they work extra hours." – B, who works for PT Hamparan, part of the BEST Group which supplies Wilmar.⁷⁰

PHYSICALLY DEMANDING WORK

The work that harvesters and workers in plant maintenance do is extremely physically demanding. Harvesters use long steel poles (*egrek*) with a sickle at the end which can weigh around 12 kgs, to cut the palm leaves and branches, and then the palm fruit bunches, down from trees which may be up to 20

⁶⁶ Amnesty International interviews with workers, North Sumatra, November 2015.

⁶⁷ Amnesty International interviews with workers, North Sumatra, October and November 2015.

⁶⁸ Amnesty International interview, details withheld to protect identity.

⁶⁹ Amnesty International interview, details withheld to protect identity.

⁷⁰ Amnesty International interview with B, Central Kalimantan, date withheld to protect identity.

metres tall. For smaller palm trees up to three metres tall, harvesters use a shorter pole with a big chisel (*dodos*) at the end. Each palm fruit bunch can weigh from 15 to 25 kgs and harvesters have to load the fresh fruit bunches onto wheelbarrows and take them to collection points. They often have to manoeuvre heavy wheelbarrows filled with fruit over uneven terrain and across narrow bridges that connect harvest areas to the road.

E, a harvester who works for a Wilmar supplier said: *"The work is really hard for me because of the condition of the field. During the rainy season the rows fill with water and we cannot carry the fruit by wheelbarrow so our feet get stuck in the peat and it is tough for us to walk. We have to harvest the fruit and collect the loose fruit. If the area around the tree is clear, it is easier for us, if there is grass, it is hard for us collect the fruit. We have to cut the fruit bunch close to the stem, which is tough. We have to take the fruit to the collecting point. It is very hard to harvest the fruit when the fruit bunches are surrounded by branches. I have to cut the branches to reach the fruit. I have to put all the branches I have cut in a line in the row. I have to cut the leaves and put them in the row. I collect the fruit in a sack and put them in a wheelbarrow and take them to the collecting point. The collecting point is 150 metres from the farthest tree. My working area is two hectares."*⁷¹

Workers in the plant maintenance units carry out weeding, spread fertilizers, and spray chemicals on plants, amongst other tasks. All of these are manual tasks which are physically demanding. Workers carry heavy sacks of fertilizers to spread them. The protective equipment that they need to wear when handling chemicals is also uncomfortable to wear in the heat.

Literature on musculoskeletal disorders amongst agricultural workers point to a high prevalence of musculoskeletal disorders amongst palm plantation workers.⁷² Most of the studies have pointed to prevalence of musculoskeletal disorders linked to repetitive movements, awkward posture, lifting heavy weights and use of tools to manually cut fresh fruit bunches.⁷³ There has been a limited focus on the work done by women.

ADDITIONAL TASKS AND PENALTIES

There are a number of smaller tasks which harvesters are required to do in addition to their core tasks of harvesting and collecting the fresh fruit bunches. These include:

1. Cutting down large palm leaves (fronds) from the tree, cutting each frond into two and putting them in special stacking areas between trees;
2. Cutting the main stem on each bunch of palm fruits into a 'V' shape;
3. Cutting down overgrown small plants which grow on the bark of or around the palm trees;
4. Collecting loose fruit kernels which fall from the tree, cleaning them and putting them into sacks; and
5. Organising the fresh fruit bunches at the harvest collecting site after transporting them there in wheelbarrows.

Workers can face financial and other penalties such as receiving an oral or written warning if they fail to

⁷¹ Amnesty International interview with E, Central Kalimantan, November 2015.

⁷² See for example, Y. Guan NG, et. al., 'The prevalence of musculoskeletal disorder and association with productivity loss: A preliminary study among labour investing manual harvesting activities in palm oil plantations', *Industrial Health*, Volume 52, 2014.

⁷³ See for example, E. H. Sukardarin, et. al., 'Investigation of Ergonomics Risk Factors for Musculoskeletal Disorders among Oil Palm Workers using Quick Exposure Check (QEC)', *Advanced Engineering Forum*, Volume 10, 2013.

complete any of these tasks.⁷⁴

EXAMPLES OF PENALTIES FACED BY HARVESTERS

Harvesters who work for Wilmar's subsidiaries in North Sumatra can receive a warning for not completing any of the following tasks:

- For not picking up loose fruits
- For throwing away loose fruits
- For not putting the loose fruit in a sack
- For not arranging the palm fronds properly
- For leaving the stem on a bunch of palm fruit or not cutting it into the 'V' shape
- For taking off their boots when it is hot
- For not attending two days in a month without a sick note

If a worker gets a warning letter, rather than an oral warning, their yearly bonus⁷⁵ can be deducted. After a third letter of warning, a worker may be transferred to another job or dismissed.⁷⁶

Additional penalties applied by Wilmar's subsidiaries and suppliers include:⁷⁷

- If a worker harvests palm fruits which are still raw, Wilmar's subsidiaries and SPMN, a Wilmar supplier, deduct 5,000 Indonesian Rupiahs (US\$0.4) from the worker's wages. ABM, another Wilmar supplier, deducts 10,000 (US\$0.7) Indonesian Rupiahs.
- ABM workers can be fined 5,000 Indonesian Rupiahs (US\$0.4) if they do not collect the loose fruit kernels
- In Wilmar's subsidiaries, workers may be asked to give up a day's leave or if they are casual daily labourers, a day of work, if they don't cut overgrown plants on the palm tree. If a worker is late for the morning briefing three times in a row, they are sent home and lose a day's pay

As discussed later in this chapter, the wide range of penalties that can be applied at the employer's discretion make workers vulnerable to pressure from their supervisors who can exact work under the threat of loss of pay or employment.

UNPAID WORKERS AND CHILD LABOUR

In order to meet their targets, earn bonuses and avoid penalties, workers on all the plantations that Amnesty International investigated said that they get help from their spouses, children or others to complete certain tasks.⁷⁸

Harvesters from all plantations confirmed that they ask their wives and in some cases, as discussed in greater detail below, their children to help complete tasks such as picking up loose fruits.⁷⁹

J, who works for a Wilmar subsidiary in North Sumatra, said: "*It depends on the harvest, if it is harvest time, we work seven days. On Sunday we work for kontanan [cash payment for additional work]. If we want to get a bonus, we work longer. My wife helps me then I get 2.7 million [Indonesian Rupiahs]⁸⁰. All of us work extra because we are scared of our bonus being deducted. This is why I bring my wife to work to help me work extra. ...My wife helps me when she has time, nowadays she is helping me every day because my*

⁷⁴ Amnesty International interviews with workers and supervisory staff, Central Kalimantan and North Sumatra, February, October and November 2015.

⁷⁵ Wilmar's subsidiaries pay workers an annual bonus.

⁷⁶ Amnesty International interviews with workers, North Sumatra, October and November 2015.

⁷⁷ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

⁷⁸ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

⁷⁹ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

⁸⁰ US\$ 199.

salary isn't enough.

... My wife helps pick up the loose fruit. I haven't met the target sometimes and then the foreman and other managers get angry with me. I lost my loose fruit bonus. I feel upset with the company because the condition is not caused by me but by the availability of the fruit, how come they cut my salary for a target which is not met by the fruit? The fear of losing that payment makes me work longer hours, that's why I take my wife.”⁸¹

T, who works in plant maintenance for a Wilmar supplier, said: *“My husband is a harvester and I help him. ... Based on the type of fertilizer, I need to spread 14 or 15 sacks. I try and finish as quickly as possible and then go to help my husband so we can collect as much money as possible. We are not from here, we are from Central Java. If there is a lot of fruit, we work seven days a week otherwise six days. Our working day depends on the yield, sometimes I finish at 12pm, other days I work till 3pm or 4pm. We take a break for lunch and go back out when there is a lot of fruit to collect.”⁸²* T and the other women who help their husbands can end up working 10 to 12 hour days when they finish their own work and help their husbands in the afternoons. They are however not paid by the company for the work that they do alongside their husbands. Their contribution affects the pay their husbands receive and also helps their husbands avoid penalties for not completing certain tasks. Wilmar does not acknowledge the additional work done by the women in any of its reports on compliance with the companies' policies. It also did not address this issue in response to Amnesty International while discussing the high numbers of female temporary workers.⁸³

Some women workers also said that they ask their husbands or another male worker to help them reach their target so as not to lose their pay, though this was rarer. For example, E, who works for a Wilmar subsidiary as a casual daily labourer in the plant maintenance unit said that she pays a male worker some money to buy cigarettes to help her when she is struggling to meet her target and if her husband is not available to help.⁸⁴

N, a former supervisor who worked for a Wilmar supplier said: *“Most of the time after 2pm, you can see harvesters' wives helping them collect to add to the number of fruit. The wife may be working in the maintenance but will come to help the husband after finishing her shift. It is rare for them not to help their husbands. Out of one year, they would not do that only during three to four months, when the trees have less fruits [the wives help their husbands all year long, other than the three to four months in the low harvest season] ...It is easily visible at the end of the month the people who had assistants earned more.”⁸⁵*

HIERARCHY AMONGST SUPERVISORY STAFF

General Manager

Manager

Field Officer (FO)

Field Assistant (FA)

Foreman (*Mandor*)

Kerani [clerk who checks and makes note of the number or weight of the fruits]

⁸¹ Amnesty International interview with J, North Sumatra, October 2015.

⁸² Amnesty International interview with T, location and date withheld to protect identity.

⁸³ Wilmar International letter to Amnesty International, dated 17 October 2016.

⁸⁴ Amnesty International interview with E, location and date withheld to protect identity.

⁸⁵ Amnesty International interview with N, location and date withheld to protect identity.

CHILD LABOUR

Indonesian law prohibits anyone from employing and involving children (any person under the age of 18) in the worst forms of labour.⁸⁶ The worst forms of child labour include work which is harmful to the health, safety or morals of children; it is regulated under a Ministerial Decree.⁸⁷ The Ministerial Decree defines these types of work to include: jobs using certain types of tools or machinery; working in a dusty environment; working in extreme temperatures or with harmful chemical substances; and work which involves manually lifting or carrying heavy loads. The Decree's definition includes any jobs which involve manually lifting and carrying loads that are higher than 12 kgs (if the child is a boy) or 10 kgs (if the child is a girl).⁸⁸ The National Action Plan for the Elimination of the Worst Forms of Child Labour, adopted under Presidential Decree No. 59 of 2002, states that the definition of worst forms of child labour in Indonesia includes children employed on plantations.⁸⁹

Article 68 of the Manpower Act states the employers should not employ children (defined under Article 1 as anyone below the age of 18 years of age). An exception is made for light work and employers are permitted to employ children aged between 13 and 15 years for light work, which does not disrupt their physical, mental or social development. Such light work should not be for longer than three hours a day and should not disrupt children's schooling.⁹⁰ However, Indonesia has also adopted Law No. 20/1999 (through which Indonesia ratified the ILO Minimum Age Convention, No. 138) and that law defines the minimum age of employment as 15 years of age. The Minister of Manpower and Transmigration Decree No. 235/2003 on Forms of Dangerous Labour against Health, Safety and Moral of the Child also provides that children aged 15 and above may work, other than in work which may endanger the health, safety or morals of children which is prohibited till the age of 18.⁹¹

Wilmar's company policy states that the company, its suppliers or sub-contractors should not knowingly use or promote the use of child labour and shall take appropriate measures to prevent the use of such labour in connection with their activities.⁹²

Amnesty International documented evidence of child labour, including work that would meet the definition of worst forms of child labour, on plantations owned by PT Daya Labuhan Indah, PT Milano, ABM, SPMN, and PT Hamparan.

Workers employed by all of these companies told researchers that they see children working on the plantation, helping their parents. Because of a fear that they could lose their jobs if they spoke about this issue, parents were nervous about being interviewed about child labour. Researchers however interviewed five children who help their fathers and also interviewed their fathers. They interviewed five other fathers, who are harvesters, who described how their children work with them on plantations. All these interviews had to be done carefully because of the risks to the workers and families. Some children started working

⁸⁶ Article 74, Manpower Act.

⁸⁷ Article 74 (2) (d) and (3), Manpower Act.

⁸⁸ Minister of Manpower and Transmigration, Decree No. 235/2003 on Forms of Dangerous Labour against Health, Safety and Moral of the Child (Keputusan Menteri Tenaga Kerja dan Transmigrasi No. Kep-235/Men/2003 tentang Jenis-jenis Pekerjaan yang Membahayakan Kesehatan, Keselamatan atau Moral Anak).

⁸⁹ Presidential Decree No. 59/2002 on National Action Plan to Eliminate Worst Forms of Child Labour (Keputusan Presiden Republik Indonesia Nomor 59 tahun 2002 Tentang Rencana Aksi Nasional Penghapusan Bentuk-Bentuk Pekerjaan Terburuk Untuk Anak).

⁹⁰ Article 69, Manpower Act.

⁹¹ Article 3, Minister of Manpower and Transmigration Decree No. 235/2003.

⁹² Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013.

from the age of eight years onwards. Most of the children help their parents in the afternoons, after attending school, and on weekends and holidays. However, some children have dropped out of schools to help their parents and work for all or most of the day.

THE WORST FORMS OF CHILD LABOUR

Indonesia is a party to the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182), which requires governments to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour.⁹³ Children are defined as all persons under the age of 18⁹⁴ and 'the worst forms of child labour' comprises amongst others, "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."⁹⁵

The ILO has identified various hazards linked to common tasks in crop agriculture, these include potential health consequences of carrying heavy loads or while weeding and harvesting, risks of using sharp tools, and exposure to extreme weather.⁹⁶ Most recent research has however centred on health impacts of exposure to pesticides. The ILO notes: "*Although not well researched, long-term pesticide exposure at low levels has been associated with chronic health problems in children, such as cancer and reproductive health problems ... Particularly alarming are studies that show that young people's neurological development is affected by exposure to pesticides.*"⁹⁷

The ILO has also identified specific safety and health hazards in relation to children working on palm oil plantations. These include being hit by falling fruit branches; injuries from cutting tools; skin abrasions due to contact with oil palm fruit and thorns; eye damage from falling palm fronds; poisoning and long term health effects from pesticide use or exposure; musculoskeletal injuries from repetitive movements and lifting and carrying heavy or awkward loads; high levels of sun exposure which can result in skin cancer and heat exhaustion; long working hours; stress; and snake and insect bites (especially mosquitoes and fire caterpillars, an oil palm pest). The use of the *dodos* and *egrek* to harvest fruit bunches puts a lot of strain on the musculoskeletal system.⁹⁸ The Indonesian Minister of Manpower and Transmigration carried out a pilot action research on hazardous forms of child labour in the palm oil plantation sector. The Minister interviewed 75 child labourers aged between nine to 17 years. Amongst other findings, they highlighted that: the average load carried was 10 kilograms over a distance of 250 metres; nearly 75% did not have gloves, and most had suffered cuts, scratches and abrasions; nearly 90% had no training before working; 68% experienced heat exhaustion at a "heavy heat stress level"; and the average working time was more than four hours per day, without any regular break time.⁹⁹

CHILDREN WHO HAVE DROPPED OUT OF SCHOOL TO WORK

X, works as a harvester for a Wilmar subsidiary. He said: "*My son who is 14 years old helps me. He has helped me for the last two years. He doesn't go to school because I often feel unwell and can't meet my target so I asked him to help me. My sons collects fruits and when I am tired, he harvests and transports*

⁹³ Article 1, ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

⁹⁴ Article 2, ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

⁹⁵ Article 3 (d), ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

⁹⁶ ILO, *Children in Hazardous work: What we know, what we need to do*, 2011, pp. 21 - 22, available at: www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_155428.pdf (last accessed 14 September 2016)

⁹⁷ ILO, *Children in Hazardous work: What we know, what we need to do*, 2011, p. 23, available at: www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_155428.pdf (last accessed 14 September 2016)

⁹⁸ ILO, *International Programme on the Elimination of Child Labour Safety and Health Fact Sheet: Hazardous Child Labour in Agriculture – Oil Palm*, March 2004, p. 1.

⁹⁹ ILO, 'Child labour in plantation', available at: www.ilo.org/jakarta/areasofwork/WCMS_126206/lang--en/index.htm (last accessed 14 September 2016)

fruits to the collection point. He also weeds. I have two other children who are 10 and 12 and they help me after school as does my wife.”¹⁰⁰

Amnesty International researchers interviewed X's family as he is helped by his 14 year old son B who has dropped out of school to help him and after school by his 10 and 12 year old sons J and M. His son B, who is 14 years old, said: “I have helped my father every day for about two years [since B was 12 years old]. I studied till sixth grade in school. I left school to help my father because he couldn't do the work anymore. He was sick. I am concerned that I haven't finished school. ... I would like to go back to school, I left because my father was sick and I had to help.

I help my father from the morning till the evening. I join the morning briefing at 7am. I meet the foreman there. The foreman one, the assistant and the manager have all come to the morning briefing when I have been there. The foreman, foreman one, assistant and the kerani [clerk who checks and makes note of the number or weight of the fruits] come every day. The manager comes every week.

I work from 8am till 4pm. We work from Monday to Saturday. I cut the fruit with the dodos [short pole with a chisel], I transport the fruit using the wheelbarrow, I collect the loose fruit, I throw away the branches, I organise the fruit at the collection point. It is tiring. It is hard to use the dodos, I learnt to use it from my father. My palms hurt and my arms are tired and sore. The foreman asks me every day whether my block was completed or not. Around the time I started, the foreman told me to put the loose fruit into the sack. The kerani asks me every day how many fruit have I collected? They have never asked why I am not in school. There are other children of my age who join the morning briefing. I have joined the morning briefing every [working] day for the last two years.

I regret leaving school. I would have liked to gone to school to become smarter. I would like to become a teacher.”¹⁰¹

C, a 10 year old boy, dropped out of school after the second grade and helps his father who works at a Wilmar supplier. He has helped his father since he was eight years old. He said: “I help my father from 6am – 12pm every day from Monday to Saturday. I don't go to school ...I only pick up the loose fruit. I carry the sack with the loose fruit by myself but can only carry it half full. It is difficult to carry it, it is heavy. I do it in the rain as well but it is difficult. I collect two to five full sacks. The hardest thing is to gather the loose fruit because they are heavy. My hands hurt and my body aches. The foreman talks to me. I see other children helping their parents.”¹⁰²

His father, K, said: “I get the premi (bonus) from the loose fruit that's why my kids help me. I wouldn't be able to meet the target ... otherwise. ... The foreman sees my children helping me. The foreman says it is good that my child is helping me. [A senior manager] ... has come when my child was helping me and not said anything. He doesn't come out of his car. He yells out orders from his car to the foreman.”

K's other children also sometimes work with him. K told Amnesty International that his 14 year old daughter helps him in the afternoon and C, his 10 year old son, helps him in the morning and sometimes also in the afternoons. His daughter takes the fruit bunches using a wheelbarrow to the collection point. K also works in maintenance in the afternoons to make additional money and said that his daughter helps him

¹⁰⁰ Amnesty International interview with X, North Sumatra, date and company name withheld to protect the worker's safety.

¹⁰¹ Amnesty International interview with B, North Sumatra, date and the company name withheld to protect the child's safety.

¹⁰² Amnesty International interview with C, location, date and the company name withheld for safety.

weed.¹⁰³

HAZARDOUS WORK BY YOUNG CHILDREN

Children described to Amnesty International researchers how they work without any safety equipment, not even gloves, in an environment where they are vulnerable to injury from handling the fruits (which have thorns and can also have worms) and from falling branches. As discussed in the next chapter, all the palm oil plantations made extensive use of chemicals, including weedicides, pesticides and fertilizers and children are exposed to these chemicals when they work in harvesting or in plant maintenance. All of the children described carrying heavy loads, as they have to carry sacks of loose fruits, which normally weigh 25 – 30 kgs if full and 12 – 15 kgs if they are only half filled. Some transport wheelbarrows full of heavy palm fruit bunches over uneven terrain and narrow bridges. Even children who attend school are working longer hours than permitted even in situations where children are engaged in light work in safer circumstances (a maximum of three hours a day). Children like B who use long poles to harvest palm fruits are particularly at risk of musculoskeletal injuries but all the children run the risk of musculoskeletal injuries from repetitive movements and lifting and carrying heavy or awkward loads.¹⁰⁴ They are given no training and have no protection in the event of accidents or injuries. The nature of the work that the children do on plantations owned by Wilmar's subsidiaries and suppliers is hazardous and contravenes the prohibition on involvement of children under the age of 18 in the worst forms of child labour.

E, works for a Wilmar supplier as a harvester. He said: *"It is common to see children working. I have seen children of 10 years and below working. Once the child can work, the parents will bring them to plantation. In the afternoon my children help after school. My children are 12 year old boy and a nine year old girl. After 1pm, I take them to the fields. If my children are not lazy, I take them every day but if they feel lazy, I leave them. They help me from 2 – 5pm collecting loose fruits. They do their homework before the electricity goes at night.*

*There are children who help their parents in the morning and don't go to school. In my division, there is a boy of around 12 year old who helps his father. The foreman sees the child working in the morning and he doesn't do anything about it. Honestly, it is too hard for us to meet the target, that's why we take our children to work. If we can get the target by ourselves we would not take our children."*¹⁰⁵

D, his 12 year old son told Amnesty International:

"I go to school, I am in sixth grade. I help him every day, from Monday to Saturday, from 2 – 6pm. My father works till 6pm. I pick up the loose fruits. It is not tough to pick up the fruit but there is a small worm (fire worm) that bites me. I put the fruits into the sack and carry it to the collection point. I cannot carry the full sack so I carry half [full] sacks. By the end I collect 10 full sacks. The hardest thing is to gather all the loose fruit which are scattered everywhere. I don't wear gloves and it hurts to pick them up. I don't wear boots, I wear sandals. I work when it is raining, it is slippery. I slip while carrying the sack. I have fallen sometimes, I get bruised but there is no bleeding or cuts.

I do my homework after going home. I do it for around half an hour. I feel very tired at the end of the day. I don't have enough time to study. I would like to have more time. During the Eid holidays, I go to our village.

¹⁰³ Amnesty International interview with K, location, date and the company name withheld for the worker's safety.

¹⁰⁴ ILO, *International Programme on the Elimination of Child Labour Safety and Health Fact Sheet: Hazardous Child Labour in Agriculture – Oil Palm*, March 2004, p. 1.

¹⁰⁵ Amnesty International interview with E, location, date and the company name withheld to protect the worker's safety.

I help my father all day on school holidays otherwise. There are other children who help their parents. There are some children who don't go to school at all. The foreman seems me helping my father everyday but he doesn't say anything.

I want to be a policeman when I grow up. It seems cool to be a policeman and I like the guns.”¹⁰⁶

E told Amnesty International that he didn't think he could pay for his son's education to support him to become a police officer.¹⁰⁷

J and M, B's brothers (B is featured above, he dropped out of school to help his father full time), told researchers that they help their father, X, who works as a harvester for a Wilmar subsidiary, every day after school. They said that they collect loose fruit, help throw away branches, and take the fruit to the collection point using the wheelbarrow.

J, a 10 year old boy, said: *“I help him [my father] till 4pm or 5pm. My hand hurts when using the wheelbarrow. I have met the foreman and he said it is good that you pick up the loose fruit. We end school at 12pm and we go help dad. We also help on the weekends.*

...We missed school for two weeks to help our father when he was sick. The teacher warned us and said why aren't you at school? I told them I am working.”¹⁰⁸

M, who is 11 years old, said: *“I do my homework later in the evening or at night. The work is not hard but it is tiring sometimes. When you throw away the branches it is the hardest as the branches have thorns. My back hurts when using the wheelbarrow. I have met the foreman almost every week”.¹⁰⁹*

O, who works as a harvester at a Wilmar supplier told researchers that his son has been helping him in the morning for the last two years. His son dropped out of school after finishing the eighth grade to help him in his work. His younger children who are between 10 and 12 years of age attend school in the morning but then help his wife, who works in maintenance, for five hours to meet her targets. They help her every day in tasks such as cutting grass. O said: *“The company is happy if we bring children because they can collect loose fruit. ...The ... manager ...came this month and saw me working with my children and said ‘It is good that you have your children to help you’”.¹¹⁰*

Some harvesters were reluctant to admit that their children help them. P, a harvester who works for a Wilmar subsidiary, said he brings his four children who are aged between five to eight years old once or twice month. He said his children played with the loose fruit though his colleagues said that he brought his children regularly to help collect loose fruit.¹¹¹

Other workers interviewed by Amnesty International confirmed that that they had been present when staff in supervisory and management positions had visited and children were working in the fields with their parents and had not taken any action. B, who works as a supervisor for a Wilmar supplier, said: *“In almost every plantation, children are helping their parents with their work, every day. They don't get paid themselves but*

¹⁰⁶ Amnesty International interview with D, location and date withheld for safety.

¹⁰⁷ Amnesty International interview with E, location and date withheld for safety.

¹⁰⁸ Amnesty International interview with J, location and date withheld for safety.

¹⁰⁹ Amnesty International interview with M, location and date withheld to protect identity.

¹¹⁰ Amnesty International interview with O, location, date and company name withheld for safety.

¹¹¹ Amnesty International interview with P and other workers, North Sumatra, date withheld to protect identity.

are helping their parents. I am on plantation ... and there are still children helping their parents harvest ... a worker is helped by his 10 year old son... the kid is not going to school ... the foreman knows that the child helps his parents."¹¹² A woman who works in plant maintenance for another Wilmar supplier said that she sees a 14 year old boy helping another harvester when she helps her husband, who is a harvester, in the afternoons. R, who works as a harvester for a Wilmar subsidiary told researchers: "*Every day the [two to three] workers [in my unit] bring their children [he though they were about 17 years old] even in the morning, though they won't stand in the assembly. If there is a guest, they are told by the foreman to hide them. The assistant have seen the children but they pretend not to know. I have been physically present when the assistant has come and the children are working with the parents and he doesn't say anything. There are signs in the plantation saying that children should not work.*"¹¹³ A harvester at another Wilmar subsidiary also said that his friends bring their children to help on regular work days to collect loose fruits. He said that he sees people bring younger children to help them on weekends. He described how foremen and field assistants see children working but don't say anything.¹¹⁴

G, a harvester employed by a Wilmar subsidiary told researchers that he had heard a foreman tell a worker that the company doesn't allow workers to bring children below the minimum age and if there was an accident, the company would not take responsibility. G also said that the company doesn't ask workers to bring their wife or children but it doesn't stop workers from doing so. He said his wife, who works as a casual daily labourer in plant maintenance, helps him by collecting loose fruit but he doesn't bring his daughter to work because the work is dangerous.¹¹⁵

Children as young as eight years old are working on plantations owned and operated by Wilmar's subsidiaries and suppliers, far below the minimum age of employment in Indonesia. Each of the five children Amnesty International interviewed starting working on plantations when they were under 15 years of age. Amnesty International was told about other children both below and above 15 working on plantations. Even children who are now between 15 to 18 years of age should not be involved in the work considering its hazardous character and the risk to children's health and safety. The work carried out on palm plantations absolutely cannot be considered to fall within the exception for light work for children aged 13 to 15 years of age under Article 69 of the Manpower Act. The involvement of children is contrary to Indonesian and international human rights law, including the prohibition on involvement of children under the age of 18 in worst forms of child labour, as well as Wilmar's own company policy.

COMPANIES' RESPONSES TO AMNESTY INTERNATIONAL

Amnesty International wrote to Wilmar and all three of its suppliers and presented them with a summary of its detailed findings. Only Wilmar and TSH Resources, SPMN's parent company responded.

Wilmar responded to Amnesty International and said: "*Child labour has no place in Wilmar's operations, and is a non-negotiable requirement for our suppliers*". It pointed to "*a lack of access to education and child care is one of the key reasons why this happens*" and to its investment in providing primary education and child care facilities. It stated that plantation supervisors and managers put up signs that say that child

¹¹² Amnesty International interview with B, location, date and company name withheld for safety.

¹¹³ Amnesty International interview with R, North Sumatra, date withheld to protect identity.

¹¹⁴ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, dates withheld to protect identity.

¹¹⁵ Amnesty International interviews with G, North Sumatra, October 2015.

labour is prohibited, and carry out regular patrols to monitor child labour. *“Where presence of children is detected, specifically during the school holidays when some workers may bring their children to the plantations because there is no one to look after them at home, stern warnings are given to the workers not to bring children to their workplace. Disciplinary action is taken against repeat offenders.”*¹¹⁶

Wilmar’s response to Amnesty International completely disregards the role played by Wilmar’s business practices in creating and sustaining the conditions lead to child labour on its plantations. Wilmar does not acknowledge the impact of low levels of minimum wages, combined with the use of targets and penalties for certain tasks, as causative factors which lead to parents bringing their children to help their with their work. The company instead attempts to shift responsibility exclusively onto parents, men and women who work for Wilmar on low wages and face the threat of lost wages if work targets are not met. Wilmar’s response also fails to acknowledge that supervisory staff have allowed child labour to continue and the company has benefited from the work children have done.

To attempt, as Wilmar has done, to shift the corporate responsibility to prevent child labour on its plantations onto the parents runs completely contrary to the international standards on business and human rights, which require companies to identify the impacts of their business practices. It also demonstrates a lack of willingness by Wilmar to act even in the face of evidence.

Regardless of its attempt to reframe the issue, the evidence gathered by Amnesty International demonstrates that the Wilmar Group is responsible for the involvement of children in the worst forms of child labour on plantations owned by the Wilmar Group.

It should not penalise parents for its own failures. The company needs to take responsibility for its own actions and omissions and address these causative factors so that parents do not need to bring their children to work in order to earn enough money for their families.

TSH Resources, the parent company of SPMN, was the only one amongst Wilmar’s suppliers, who responded to Amnesty International. It stated in its response that only people over the age of 18 and above are employed, that there is daily supervision to ensure that no children work in the field, and this is also communicated regularly at the morning briefings.¹¹⁷ TSH Resources did not engage with the evidence that Amnesty International presented.

POTENTIAL CRIMINAL OFFENCES BY THE COMPANIES

Amnesty International documented evidence that children under 15 years of age work on plantations owned by PT Daya Labuhan Indah, PT Perkebunan Milano, PT Abdi Budi Mulia, PT Sarana Prima Multi Niaga, and PT. Hamparan Masawit Bangun Persada. The companies’ working practices, in particular the use of high targets, and penalties, have resulted in children working. Amnesty International documented evidence that supervisory staff are aware of children’s work. This is contrary to Article 68 of the Manpower Act, which prohibits ‘entrepreneurs’ from employing children (under the age of 18 according to the Act and under 15 according to the Ministerial Decree¹¹⁸). Article 73 provides that children shall be assumed to be at work if they are found in a workplace unless there is evidence to prove otherwise. This provision indicates that an employment relationship shall be assumed if children are found in a workplace unless there is evidence

¹¹⁶ Wilmar International letter to Amnesty International, dated 17 October 2016.

¹¹⁷ TSH Resources Berhad’s responses to Amnesty International, received on 18 November 2016.

¹¹⁸ Minister of Manpower and Transmigration, Decree No. 235/2003.

that they are not working. These companies may therefore have committed a felony as set out under Article 185 of the Manpower Act.¹¹⁹ The companies may also have breached Article 74 because of the involvement of children under the age of 18 years of age in jobs that are harmful to their health and safety and committed a felony under Article 183 of the Manpower Act¹²⁰.

The corporate legal entity itself can be held criminally liable under specific laws in Indonesia though the existing Criminal Code only covers individuals. The Manpower Act defines the responsibility of 'entrepreneurs' who can be individuals, partnerships or an enterprise, which is defined as every form of business which employs workers.¹²¹ Offences are defined as 'whosoever violates' particular provisions under the Act and therefore cover both individuals who are employers as well as businesses.¹²² Companies can therefore be held criminally liable under the Manpower Act.

RIGHTS AT WORK

Article 7 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of all persons to the enjoyment of just and favourable conditions of work. Amongst other things, this right includes:

- Remuneration which provides people with fair wages;
- Equal remuneration for work of equal value, without discrimination;
- Remuneration that provides all workers with a decent living for themselves and their families;
- Safe and healthy working conditions;
- Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; and
- Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

This right is also guaranteed under a range of Conventions adopted by the ILO which set out detailed standards in relation to minimum wage, occupational health and safety, hours of work and rest, part-time work, protection during maternity etc.¹²³

PAID BELOW THE MINIMUM WAGE AND ARBITRARILY DENIED PAY

Wilmar's company policy provides that the company and its suppliers/sub-contractors shall ensure all workers are paid a wage equal to or exceeding the legal minimum wage.¹²⁴

Article 17 of Minister of Manpower Decree No. 7/2013 provides that piece rate workers should not be paid below the daily or monthly minimum wage as applicable. As highlighted earlier, SPMN, a Wilmar supplier,

¹¹⁹ Article 185 provides that "Whosoever violates what is stipulated under" Article 68: "shall be subjected to a criminal sanction in jail for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of a minimum of Rp100,000,000 (one hundred million rupiah) and a maximum of Rp400,000,000 (four hundred million rupiah)" [US\$7,369 – US\$29,451].

¹²⁰ Article 183 states: "Whosoever violates the provision under Article 74 shall be subjected to a criminal sanction in jail for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of a minimum of Rp200,000,000 (two hundred million rupiah) and a maximum of Rp500,000,000 (five hundred million rupiah)" [US\$14,811 – 36,850].

¹²¹ Articles 1(5) (6) and (15). Article 1(4) defines an employer as an "individual, entrepreneur, legal entities, or other entity that employ manpower by paying them wages or other forms of remuneration".

¹²² See for example Article 185, described above.

¹²³ These include to name a few: the Safety and Health in Agriculture Convention, 2001 (No. 184), Minimum Wage-Fixing Machinery Convention, 1986 (No. 26), Minimum Wage Fixing Convention, 1970 (No. 131), Part-Time Work Convention, 1994 (No. 175), and Maternity Protection Convention 2000 (No. 183).

¹²⁴ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013.

switched workers to a piece rate system in 2014. This means they are only paid *pro rata* for the work done for most tasks such as harvesting fresh fruit bunches or spraying chemicals.¹²⁵ For some tasks, workers still receive a fixed daily wage. H, a permanent worker in the plant maintenance unit at SPMN told Amnesty International researchers that prior to 2014 she used to be paid the monthly minimum wage in Central Kalimantan. She isn't assigned to any particular tasks and the foreman tells her each day which tasks she needs to undertake that day, which may vary from collecting loose fruit to spraying chemicals or spreading fertilizers. She described how, since the system has been changed, she gets below the daily minimum wage when she collects loose fruits. She is given a target of collecting 24 sacks of loose fruit in order to get paid 84,116 Indonesian Rupiah. She said: *"when I pick up the loose fruit, the most I can collect is 18 bags so I only get paid 3,300 [Indonesian Rupiahs]¹²⁶ per bag. ...It is very difficult to collect one full sack of loose fruit. ...My lower back hurts from all the bending to pick up the loose fruit"*. Despite doing a full day's work she was only paid 59,400 (US\$4) Indonesian Rupiah, significantly below the daily minimum wage of 84,116 Indonesian Rupiahs (US\$6) in 2015.¹²⁷

This was confirmed by other workers in maintenance who described how they are paid below the daily or monthly minimum wage when they don't meet their targets.¹²⁸ F, is a permanent worker with SPMN and works in plant maintenance. She described how she is only paid 1.6 million Indonesian Rupiahs per month, because she often misses her target. This means that she is paid 500,000 Indonesian Rupiahs less than the monthly minimum wage in Central Kalimantan, even though she works the full month. She explained how she has to find water to mix into the chemical to spray onto the plants (the workers are given chemicals in small bottles but have to find water themselves to mix with the chemical). She takes water from ditches in the fields but finds it difficult to find the water when it is very dry. She struggles to survive on her salary and has to take on additional work. She said: *"Usually I spend more, 500,000 or 600,000¹²⁹ [Indonesian Rupiahs], on food, the rest I spend on my youngest child's education expenses. My salary isn't enough for me and my family so I take side jobs like doing laundry and cooking for other families. I also do massage and then I make enough to live on for the month"*.¹³⁰

PT Hamparan, part of the BEST Group which supplies Wilmar, also pays workers in plant maintenance through a piece rate system where workers are paid *pro rata* for that work they complete. P works as a casual daily labourer in plant maintenance at PT Hamparan. She told researchers: *"Per day I have to do five to six blocks. If we don't meet the target, they don't count it as a working day and I only get 9,000 – 10,000 [Indonesian Rupiahs] for the day. I never meet the target, the most I have gotten is 600,000 [Indonesian Rupiahs] for the month."* P was paid 10,000 Indonesian Rupiahs (US\$ 0.7) when she doesn't meet her target though the daily minimum wage was 84,116 Indonesian Rupiahs (US\$6) in 2015. Other workers employed by the company also confirmed the extremely low wages paid by PT Hamparan to workers in plant maintenance, far below the minimum wage applicable in Central Kalimantan.¹³¹ These cases illustrate the unrealistic nature of the targets set by PT Hamparan, which make workers vulnerable to abuses such as being paid far below the minimum wage.

Workers employed by SPMN and PT Hamparan described how they are not paid at all or only paid for half a

¹²⁵ Amnesty International interviews with workers, Central Kalimantan, February and November 2015. Amnesty International obtained a copy of a circular letter, dated 12 June 2014, from the Assistant General Manager which sets out the rates that workers will be paid at for manuring (spreading fertilisers), loading fresh fruit bunches and upkeep.

¹²⁶ US\$ 0.2.

¹²⁷ Amnesty International interview with H, Central Kalimantan, November 2015.

¹²⁸ Amnesty International interviews with workers, Central Kalimantan, February and November 2015.

¹²⁹ US\$37 – US\$44.

¹³⁰ Amnesty International interview with F, Central Kalimantan, November 2015.

¹³¹ Amnesty International interviews with P and other workers, Central Kalimantan, February and November 2015.

day for the work they have done if it rains at a certain time in the day. This is apparently because the rain washes away or dilutes the chemicals they have applied to the plants and this seems to be treated akin to the workers not having met their targets or having done the work at all. H who works for SPMN said: “*The morning briefing is at 5am and we start work at 6am. If it rains at 10am or after, we get paid for what we have done, if it rains before then we don't get paid*”. Amnesty International was told by workers and staff in supervisory roles that it was up to each field assistant to decide if the workers are paid or not when it rains. So for example, F who works for SPMN told researchers that she is paid for half a days' work when it rains but H and other women said that they were not paid at all.¹³²

The ILO has emphasized: “*To be fair and effective, piece rate systems should be transparent, reward employees according to the difficulty and quality of their work, and ensure that motivated workers can earn substantially more than the minimum wage. If a larger group is not making the minimum wage, it usually means the piece rate pay is set too low, and workers' efforts are being undervalued.*”¹³³ The piece rates set by SPMN and PT Hamparan are set at levels which mean that workers may be paid below the minimum wage, contrary to Article 17 of Minister of Manpower Decree No. 7/2013.

These issues are not unique to SPMN and PT Hamparan or only linked to the use of the piece rate system of payment by these companies. Practices in other Wilmar subsidiaries and suppliers also result in casual workers being denied pay arbitrarily. Women workers in the plant maintenance unit in ABM, a Wilmar supplier in North Sumatra, described how they are not paid at all if they don't meet their target, if it rains or if the equipment that they are using breaks down at some point during their working hours. Z, who is employed as a casual daily labourer by ABM, told Amnesty International how she has to go home without a day's wage if the sprayer she is using breaks down after she has sprayed four to five tanks. She is not paid for the work she has done and is told to go home. She said: “*This happens one to two times a month. When it rains, the sprayer doesn't work well and I spray six to seven tanks and then it breaks down. ...I feel upset and heartbroken because I have worked so hard*”.¹³⁴

J, another woman who is a casual daily labourer in the plant maintenance unit at ABM, said: “*If it rains at 10am then I am told to go home and I don't get paid for the day. ... If I don't reach my target, then no pay.*” She said on average over the last six years, there were at least two to three days per month where she had worked but not been paid. She said this could increase to two to three days per week in the rainy season when she was only paid for the work she had done if it rained after 10.30am.¹³⁵

Workers in the plant maintenance units at PT Milano, a subsidiary of Wilmar in North Sumatra, also told researchers that they are not paid for the work they have done if it rains before or at 9am. U, a casual daily labourer, told Amnesty International researchers: “*If I have sprayed and the rain comes before 9am, I don't get paid. ...If the rain comes between 9am and 12pm, they pay me but I have to come the next day and redo the work. If you do not come, you won't be paid.*” She asked the researcher, “*when we work for one or two hours, should we get paid? We don't know anything, we are only the workers.*”¹³⁶ As noted earlier, Amnesty International documented instances where workers in PT Daya Labuhan Indah are not paid for the day's work if they do not meet their targets. They have to complete the work the next day and are only paid for one day though they have worked for two, effectively losing out on one day's minimum wage.

¹³² Amnesty International with workers, Central Kalimantan, November 2015.

¹³³ ILO, *Minimum Wage Policy Guide*, undated, p. 10, available at: www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/genericdocument/wcms_508526.pdf (last accessed 22 October 2016)

¹³⁴ Amnesty International interview with Z, North Sumatra, October 2015.

¹³⁵ Amnesty International interview with J, North Sumatra, October 2015.

¹³⁶ Amnesty International interview with U, North Sumatra, November 2015.

COMPANIES' RESPONSES TO AMNESTY INTERNATIONAL

Amnesty International wrote to Wilmar and all three of its suppliers and presented them with a summary of its detailed findings. TSH Resources, SPMN's parent company and Wilmar responded.

TSH Resources, the parent company of SPMN, was the only company that responded to Amnesty International. TSH stated: "*a. Piece rate has been in practice since 2011. This is a common practice in most of the Oil palm industries but the only difference could be the unit of measurement b. Purpose of piece rate system is because it eliminates wastage and rewards performers. In return, employees have the opportunity to earn more or above the regulatory minimum wage. c. To determine the targeted piece rate within the stipulated work hours i.e. 7hrs, time motion studies and historical daily productivity records were taken into consideration ... The piece rates were also reviewed and amended from time to time in accordance to the national minimum wage policy. f. Minimum wage is monitored and checked monthly. Employees not meeting minimum wage were consulted. Reason for not achieving the minimum wage were also recorded. g. Cases of Employees not meeting the minimum wage requirements due to uncontrolled circumstances i.e. due to low crop or bad weather, normally referred to Management to determine the top up.*"¹³⁷

TSH Resources' response appears to acknowledge that some employees do not achieve the minimum wage. It also suggests that when people have not been able to earn the minimum wage through the piece rates they are paid, due to circumstances outside their control such as low crop yields or bad weather, they are not paid a daily minimum wage automatically. Instead this is referred to management to determine how much money they can get. Amnesty International's investigation found that the piece rates that have been set by SPMN require people to meet extremely high targets to earn a minimum wage, and leave people at risk of not being paid the minimum wage, even when they have worked a full day or month.

WILMAR'S INTERNAL ASSESSMENT OF LABOUR ISSUES AT PT MILANO AND PT DAYA LABUHAN INDAH

Wilmar informed Amnesty International in its second letter that: "*In August 2016, we have been made aware of labour issues in the same plantations cited in your letter, and we immediately initiated an internal review process which is still ongoing.*" Its letter included a timeline for the review, which stated that an inquiry into wage practices had been undertaken by the human resources department from 12 August to 2 September and that a second assessment to check progress was planned for November 2016. Wilmar specified that site visits with BSR and Wilmar's internal team were planned for December 2016. At Amnesty International's request, Wilmar shared a copy of the report of the inquiry. The document titled *Internal Assessment Report on Human and Labour Rights Issues in North Sumatra* is publicly available.¹³⁸ The report states that the assessment was carried out by four Wilmar staff members. The issues assessed included unfair payment of wages, Underpayment of wages, child labour, discrimination on women and temporary workers, handling of hazardous chemicals without personal protective equipment and lack of access to portable water.

Amnesty International appreciates Wilmar's transparency in making the assessment public. However, in Amnesty International's view, the fact that Wilmar needed to undertake an internal assessment of abuses directly linked to practices and issues that are entirely under its control such as wages, targets and personal protective equipment illustrates the company's failure to respect human rights in its operations.

¹³⁷ TSH Resources' responses to Amnesty International, dated 22 November 2016.

¹³⁸ Wilmar International, *Internal Assessment Report on Human and Labour Rights Issues in North Sumatra*, 16 September 2016, available at: www.wilmar-international.com/sustainability/wp-content/uploads/2016/11/Internal-Assessment-Report-on-Human-and-Labour-Rights-Issues-in-North-Sumatra.pdf (last accessed 22 November 2016)

POTENTIAL CRIMINAL OFFENCES BY THE COMPANIES

Article 90 of the Manpower Act prohibits employers from paying wages lower than the minimum wage and the Manpower Decree No. 7/2013 provides that piece rate workers should not be paid below the daily or monthly minimum wage as applicable.

Amnesty International found evidence that PT Perkebunan Milano, PT Daya Labuhan Indah, PT Abdi Budi Mulia, PT Sarana Prima Multi Niaga and PT Hampan Masawit Bangun Persada do not pay workers a daily minimum wage if they do not meet targets set by the company or if it rains at a certain time of day. PT Sarana Prima Multi Niaga and PT Hampan Masawit Bangun Persada use a piece rate system of pay, which results in workers being paid below the daily minimum wage when they fail to meet targets set by the company. In these situations the workers have registered for the day's work and worked for some or all their working hours but are not paid the daily minimum wage. All of the companies may therefore have contravened Article 90 of the Manpower Act, which prohibits employers from paying wages lower than minimum wages and may have committed a felony under Article 185¹³⁹.

AN OPAQUE SYSTEM

Workers' do not get a clear breakdown of pay based on targets met or the deductions that have been applied. Workers repeatedly told Amnesty International that it was very difficult for them to understand how they are paid because the payslips do not include a breakdown of the weight of fruit that they have collected or loaded.¹⁴⁰ Targets for harvesters are set based on the year that palm trees are planted and the average weight of a fruit bunch. For example, in PT Milano, for trees that are planted in 1986, the target for harvesters is set at collecting 900 kilograms (kgs) of fresh fruit bunches per day. Worker try to collect 40 fresh fruit bunches daily as workers are told by the foreman that, on average, each fresh fruit bunch weighs 22 kgs. However, the company weighs the fruit after it has been collected and it may turn out that the average weight is 21 kgs. The worker, who may think he has met his target by collecting 40 fresh fruit bunches every day could find that he has not met the target as by the company's calculations he has only collected 840 kgs per day. He is therefore 1,500 kgs short of his monthly target (which is 900 kgs x 25 days) but the weight of the fruit and the calculations are not included on his pay slip. For casual workers, in some companies, the payslips can be even more basic and just show the numbers of days for which they are being paid. Some casual workers also said that they did not have any contracts or letters confirming their employment, nor did they receive payslips.

WORKING HOURS LIMITS AND OVERTIME

Wilmar's company policy provides that the company and its suppliers/sub-contractors shall ensure that workers are not working more than sixty (60) hours per week, including overtime; that overtime hours are worked on a voluntary basis; and that workers have at least one day off in seven.¹⁴¹

WORKING OVER THE WORKING HOUR LIMIT

In all the Wilmar subsidiaries and suppliers that Amnesty International investigated, harvesters work long hours, in excess of the limit of 40 hours per week set out under Indonesian law.¹⁴² Harvesters start work between 5.30am to 6.20am. They have to attend a morning assembly, where they are briefed by the foreman and field assistants, before going to their working area where they harvest palm fruits. They work a six day working week, which means under the law if they start work at 6am they should only work seven

¹³⁹ Article 185 is described above.

¹⁴⁰ PT Daya Labuhan Indah had better practices in this regard because even though the information was not provided in harvesters' pay slips, harvesters told Amnesty International that they were allowed to see a copy of the foreman's book which contains the numbers of fresh fruit bunches collected, the weight of what was collected and the average monthly weight for the fruit.

¹⁴¹ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013.

¹⁴² Article 77, Manpower Act.

hours each day and should stop work by 1pm (barring any breaks). The companies however count their working hours from the time they reach their working area rather than the assembly, despite attendance at the assembly being a mandatory requirement. The official hours are therefore considered to be 7am to 2pm for harvesters working in Wilmar's subsidiaries in North Sumatra. Workers at suppliers said that they start earlier; their morning briefings can be at 5.30am. In the high harvest season, following the rains, workers work long hours to try and earn bonuses. In seasons where fruits are less plentiful, especially during the dry season, workers work longer hours to meet their targets but do not earn much. Harvesters employed by Wilmar's subsidiaries in North Sumatra described working up to 10 – 11 hours a day, while harvesters who work for Wilmar's suppliers in North Sumatra and Central Kalimantan described working up to 10 - 12 hours a day.¹⁴³ These long hours are a major concern taking into account the physically demanding nature of the work done by harvesters and the risk of musculoskeletal injuries.¹⁴⁴

COMPANIES IGNORE REGULATIONS ON OVERTIME WORK

Harvesters employed by SPMN, one of Wilmar's suppliers, told researchers that they usually work a seven day week during seasons where there is a low yield of fruits, in order to meet their targets. They are paid piece rates for the fresh fruit bunches they collect. N said that harvesters usually work 11 or 12 hours daily and highlighted the low rates of payment by the company. For palm trees planted in 2005, the harvesters are paid 52,000 Indonesian Rupiahs (US\$4) per ton of fresh fruit bunches collected and this increases to 70,000 (US\$5) Indonesian Rupiahs per ton for fruits planted in 2007. This means that harvesters need to collect 1.5 tonnes of fruit, a very high amount, from trees planted in 2005 to receive a daily minimum wage. V told researchers that harvesters usually have to work on Sundays, meaning work seven days a week, in order to earn the monthly minimum salary of 2.1 million Indonesian Rupiahs (US\$155).¹⁴⁵

Harvesters employed by PT Hamparan said that they often work 11 to 12 hours to earn 80,000 (US\$ 5.8) Indonesian Rupiahs. They told researchers that they used to work on Sundays and be paid for their work but the company changed the policy in January 2015.¹⁴⁶

Harvesters employed by PT Milano, a subsidiary of Wilmar in North Sumatra, are offered an additional payment, referred to as *kontan*, to work on Sundays. They are paid 40,000 Indonesian Rupiahs (US\$ 3) per ton of fresh fruit bunches that they collect instead of overtime pay.

S works as a harvester for PT Milano. He said:

"I work from 6.15am for seven working hours but it depends on the target, sometimes I work till 4pm as we are forced to get 60 ffb [fresh fruit bunches] per day. If we cannot fulfil the target, our loose fruit [the loose fruit workers are required to collect] will be used to count the target. ...Management doesn't consider this to be overtime. The management tell us we have a 60 ffb target, we never get any record of our extra time. ...I am scared when I don't meet the target because the foreman can get angry with me. I am scared of getting fired. I feel when I lose my loose fruit bonus that I am being colonised. I work hard for that. I sweat for that. ...The longest I work is from 6.15 to 4pm with a 20 minute break for lunch. I am a married man, however hard it is, I need to do the work.

¹⁴³ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

¹⁴⁴ See for example, Y. Guan NG, et. al., 'The prevalence of musculoskeletal disorder and association with productivity loss: A preliminary study among labour investing manual harvesting activities in palm oil plantations', *Industrial Health*, Volume 52, 2014.

¹⁴⁵ Amnesty International interview with N and V, Central Kalimantan, November 2015.

¹⁴⁶ Amnesty International interview with workers, Central Kalimantan, November 2015.

For working on Sundays, I get 50,000 [Indonesian] Rupiahs for the whole day – for seven hours. I can work from 8am to 4pm. I don't get a day off to make up for that day. The company forces us to pick up the loose fruit [on Sundays] but they don't pay us for that.

For me personally, I want more welfare, I want a decent salary. ...I want to get similar welfare to people working in other companies. So that in my old age, I can see my children get higher education and not end up like me".¹⁴⁷

S is paid by the weight of the fruits collected and described being paid as little as 50,000 Indonesian Rupiahs (US\$3.7) for seven hours of work on Sunday. This payment is far less than what he should receive as overtime payment. It is also lower than the daily minimum wage. Sundays are the weekly day of rest, according to the Minister of Transmigration's Decree on Overtime. Workers should receive twice their hourly pay for the first seven hours of work and three to four times their hourly pay for the eighth and ninth hour of work if they work on Sundays.¹⁴⁸ This would mean that they should receive, at the very least, twice the daily minimum wage for working on a Sunday instead of receiving less than the daily minimum wage as S does.

As noted earlier, there are also restrictions under Indonesian law on overtime work. Any overtime work must be agreed with the worker in writing, should not exceed three hours in a day or 14 hours a week and employers should pay the worker overtime pay.¹⁴⁹ Employers are required to ensure that workers are provided with the chance to have enough rest. They should also provide them with meals and drinks of at least 1,400 calories if the overtime work is executed for three hours or more.¹⁵⁰ Wilmar's subsidiaries and suppliers do not pay harvesters overtime pay for the extra hours worked during their working week, relying instead on the system of bonuses. For overtime work on Sunday, SPMN and PT Milano pay workers by weight of fruit collected, rather than a higher hourly payment as set out under the law. Overtime is not agreed in writing, workers are not provided food or drinks and the overtime frequently exceeds the 14 hour limit, especially when workers work on Sundays.¹⁵¹ Minister of Manpower and Transmigration Decree No. 102/2004 provides that workers who work on a piece rate system should also be provided with overtime pay. The monthly wage for piece rate workers is determined based on the average wage paid over the prior 12 months and the average wage should in no circumstances be below the regional monthly wage.¹⁵²

The Manpower Act places an obligation on employers to allow workers periods of rest and leave, which includes half an hour rest after working for four hours in the day and one to two days off a week based on whether the worker works a six or five day week respectively.¹⁵³ However, workers who work on Sunday at PT Milano and SPMN are not given a day off for working on Sunday and many harvesters told Amnesty International that they have worked up to three months without any break in the high harvest season.¹⁵⁴ B, who works as a harvester at PT Milano, said: *"We run out of money by the end of the month and then I do kontanan. ...I have been warned by the harvester foreman for not doing kontanan. He said to me if you want to stay here, follow what the company says. I normally do kontanan but wasn't feeling well that day. The longest period I have worked without a break is three months".¹⁵⁵*

¹⁴⁷ Amnesty International interview with S, North Sumatra, October 2015.

¹⁴⁸ Article 11, Minister of Manpower and Transmigration Decree No. 102/2004 Concerning Overtime Work and Overtime Pay, (Keputusan Menteri Tenaga Kerja dan Transmigrasi Nomor Kep.102/MEN/VI/2004 Tentang Waktu Kerja Lembur dan Upah Kerja Lembur).

¹⁴⁹ Article 78, Manpower Act. Article 6, Minister of Manpower and Transmigration Decree No. 102/2004.

¹⁵⁰ Article 7, Minister of Manpower and Transmigration Decree No. 102/2004.

¹⁵¹ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

¹⁵² Article 9.

¹⁵³ Article 79. Manpower Act.

¹⁵⁴ Amnesty International's interviews with workers, Central Kalimantan and North Sumatra, October and November 2015.

¹⁵⁵ Amnesty International interview with B, North Sumatra, October 2015.

Loaders and drivers who transport the fresh fruit bunches to mills and refineries work to a different system of bonuses. Loaders and drivers, employed by a Wilmar subsidiary, highlighted how they work longer hours in the week (up to 12 hours a day) and on Sundays, without a day off in lieu. Q, who works in the transport unit for PT Milano said: *“When there is high season, we work every holiday and Sunday, if there is any fruit left, we work on Sunday. Within the four months of the high season, there is a rotation of harvesters, so they go back to the beginning of the block but when that doesn't happen, then we have to do kontanan. We often work for four weeks at a stretch. The longest we have gone without a break is three months. The company doesn't offer us an extra day off after we work through the weekend.*

We haven't calculated our hourly wage. We know that Indonesian law only allows a maximum of 40 hours of work so have asked the company for overtime but they say they don't want to provide overtime only kontanan. We raised this with the GM [General Manager] when there was a meeting for collective bargaining and he said he doesn't want to do that. ... This was in 2013.¹⁵⁶

BONUSES AND TARGETS

Harvesters can earn good bonuses during the harvest season, in particular, when the fruits are plentiful. Some harvesters told researchers that they can earn up to five million Indonesian Rupiahs (US\$368) in the high harvest season, with bonuses added in. Based on the company and the type of work that they do, workers in plant maintenance can also earn some bonuses though these are not as high as those earned by harvesters. While bonuses for exceeding targets could be a positive feature and one that many workers value, they do not make up for the risk of abuses which are generated by the use of targets and which have been discussed at length in this chapter. They can also mask the fact that the work actually requires two people to work – as harvesters often get help from their wives or children - to exceed the targets and still be able to do all the accompanying tasks that are required of them. Bonuses linked to targets should be in addition to and not replace overtime pay, which must be paid by the companies in line with national regulations and targets. Any targets or piece rates that are used need to be realistic, and not create risk to worker's health and safety or make them vulnerable to abuses.

POTENTIAL CRIMINAL OFFENCES BY THE COMPANIES

Amnesty International's investigation revealed that all five companies may have breached Article 78 of the Manpower Act. This requires that companies pay workers certain levels of overtime pay for working beyond working hours, to limit the amount of overtime that a worker may do, and to meet certain conditions around overtime. The companies may have contravened Article 78 (2) of the Manpower Act and may have committed a misdemeanour as set out under Article 187 of the Act.

PT Milano and PT Sarana Prima Multi Niaga may also have contravened Article 79 of the Manpower Act by failing to allow their workers to take the necessary periods of rest and leave and may have committed a misdemeanour as set out under Article 187 of the Act.

FORCED LABOUR

Wilmar's company policy states that the company, its suppliers or sub-contractors should not knowingly use or promote the use of forced labour and shall take appropriate measures to prevent the use of such labour in connection with their activities. The company shall employ remedial actions in the case that such labour or trafficking is uncovered to ensure that victims are referred to the existing services for support and assistance¹⁵⁷

¹⁵⁶ Amnesty International interview with Q, North Sumatra, October 2015.

¹⁵⁷ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013.

Indonesia is a party to the ILO Forced Labour Convention, 1930, and has adopted the Convention in its national legislation.¹⁵⁸ Forced labour is defined under the Convention and Indonesian law as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*”¹⁵⁹

The ILO Committee of Experts on the Application of Conventions and Recommendations has stated that a penalty “*need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges*”.¹⁶⁰ The ILO Committee of Experts has stressed that: “*An external constraint or indirect coercion interfering with a worker’s freedom to “offer himself voluntarily” may result not only from an act of the authorities, such as a statutory instrument, but also from an employer’s practice*”.¹⁶¹

As noted earlier, workers can face financial penalties for not meeting their targets. Employers can penalize workers for failing to do certain tasks or for mistakes in their work (for example for picking unripe fruit). In most cases, the penalty have a financial dimension and workers can face deductions from their salaries or yearly bonuses or have to give up a day’s work or leave. Casual daily labourers are particularly vulnerable as they can be ‘scorched’ and stopped from working for one or more days or let go altogether if they fail to meet targets.

The large number of penalties which can be applied, at the employer’s discretion, and the lack of clarity and transparency on deductions from wages makes workers vulnerable to pressure from their supervisors, who can exact work under the threat of loss of pay or loss of employment.

Amnesty International documented cases of foremen threatening women workers in plant maintenance with not being paid or having their pay deducted in order to exact work from them. A works as a casual daily labourer in the plant maintenance unit at PT Milano. She said: “*The target is [to spread] 15 – 17 sacks ... If I don’t finish my target, they ask me to keep working but I don’t get paid for the extra time or get any premi [bonus]. I have to finish all the sacks before I can leave. Around three months ago, my friend and I told the foreman that we were very tired and wanted to leave. The foreman told us if you don’t want to work, go home and don’t come again. It is difficult work because the target is horrifying. We have to finish 17 sacks. The terrain is especially hard because it is uphill and we have to go up and down. It is peatland and there are tree stumps everywhere. My feet hurt, my hands hurt and my back hurts after doing the work*”.¹⁶²

Z, who works for PT Daya Labuhan Indah, a Wilmar subsidiary, as a casual daily labourer in the plant maintenance unit described how she could not meet her target and finish her work because there was too much for her to do. She told the foreman the next day in the morning assembly that she could not finish. He told her that there would be no new job for her that day and she must finish the work in order to get paid. She worked for two days but was only paid for one.¹⁶³ N works as a casual daily labourer in plant

¹⁵⁸ Staatsblad No. 261 Year 1933. The Convention was ratified by the Dutch colonial government in 1933 and Indonesia has accepted that it applies to Indonesia.

¹⁵⁹ Article 2.

¹⁶⁰ International Labour Conference, *1979 General Survey of the Reports relating to the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1975, (No. 105), Report of the Committee of Experts on the Application of Conventions and Recommendations*, 65th Session, Geneva, 1979, Report III, Para 21.

¹⁶¹ International Labour Conference, *2007 General Survey of the Reports relating to the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1975, (No. 105), Report of the Committee of Experts on the Application of Conventions and Recommendations*, 96th Session, Geneva, 2007, Report III, Paras 38 – 40, available at: www.ilo.org/public/english/standards/reim/ilc96/pdf/rep-iii-1b.pdf (last accessed 23 November 2016).

¹⁶² Amnesty International interview with A, North Sumatra, date withheld to protect identity.

¹⁶³ Amnesty International interview with Z, North Sumatra, date withheld to protect identity.

maintenance for PT Hamparan. She told researchers: “*The foreman told me to keep working otherwise you won't get paid. Don't complain when you get the monthly salary. I have to make up the target the next day and don't get paid for the working day [when I didn't meet the target]*”.¹⁶⁴

U, who works as a casual daily labourer in plant maintenance for ABM, said: “*I have rheumatism and my knee joints hurt ... The foreman yells at me if I don't meet the target. I have to work through the pain otherwise the foreman will count me as only working for half a day if I don't meet the target*”.¹⁶⁵

These cases, as well as the situations where workers have to repeat the work they did because it rained at a certain time, under threat that they will not be paid otherwise, amount to forced labour as work is exacted under the threat of a penalty and the worker is no longer offering themselves voluntarily.

The ILO Committee of Experts has stated: “*In some cases, fear of dismissal drives workers to work overtime hours well beyond what is allowed under national legislation... In other cases, where remuneration is based on productivity targets, workers may be obliged to work beyond normal working hours, as only in so doing can they earn the minimum wage ... With regard to these issues raised before the Committee by workers' organizations, ... the Committee has observed that although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. The Committee has considered that, in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty and calls for the protection of the Convention, according to which the term 'forced or compulsory labour' means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily. In such cases, the Committee has requested that the necessary measures be adopted to ensure compliance with the Convention in order to protect workers in the sectors concerned, including maquilas, plantations and the public service.*”¹⁶⁶

The target-based system of pay, coupled with the wide range of penalties which may be applied at the employer's discretion, and opaque system of pay, makes it easier for company staff to exploit workers' vulnerability. Company staff use the menace of penalties, including an implicit or explicit threat of loss of privileges or threat of dismissal to make people work longer hours.

X, who works as a harvester for ABM, a Wilmar supplier, said: “*I am afraid of the sanction. I have had my pay deducted many times, this month thrice. I work longer hours because I am scared they will cut my pay. This month the target was increased ...I did not manage to [meet it]..., I could not work longer and my pay was cut by [one seventh] ...On Wednesday and Friday I worked till 5 pm. I met the target but I was forced to do more work. The foreman asked me if I met my target, I said I had but he asked me to work for longer so I get a bonus. I had to say yes, if I said no, the foreman will make it difficult for me in the future for things like my medical access. Because I work by myself, I often work till 5pm to meet the target. If I get a*

¹⁶⁴ Amnesty International interview with N, Central Kalimantan, date withheld to protect identity.

¹⁶⁵ Amnesty International interview with U, North Sumatra, date withheld to protect identity.

¹⁶⁶ ILO, *General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)*, International Labour Conference, 96th Session, 2007, paras 133 – 134, p. 71, available at: www.ilo.org/ilc/WCMS_089199/lang--en/index.htm (last accessed 23 September 2016)

*sanction, I get called to the office and the foreman gets angry with me and says 'I will take away your rice'¹⁶⁷."*¹⁶⁸

J, who works for PT Hamparan, a Wilmar supplier, told researchers: "Almost every day, I am asked to work longer to get the 185ffb and I would work till 3pm or more. The foreman would compare me to my friends and say they are collecting more and you are not. If I don't follow along, they would transfer me to a swamp area which is harder to work in. It has happened to me and to other people, if we don't follow the instructions they transfer us to areas which are harder to work in. This happened two to three months ago. I am hesitant to refuse. If I don't get 185, I only get the daily wage even if I have worked longer hours."¹⁶⁹

Other harvesters and workers in the transport units also described the pressure that they are put under by their supervisors and threats, either blatant or subtle, for them to take on extra work or work longer hours. E, who works in the transport unit of PT Milano, said: "We can say no to extra work but are met with intimidation. So if you refuse to work for two days, they may change the loader. The foreman will say in the morning briefing that if you are not serious about your work, if you are not able to do it, give up your key or give in your resignation letter. They also say finish your days off – because you need to finish your days before you resign". A harvester who works for the same subsidiary said: "I have been warned by the harvester foreman for not doing kontanan [work for an additional cash payment]. He said if you want to stay here, follow what the company says. I normally do kontanan but wasn't feeling well that day".¹⁷⁰

P, mentioned earlier, works for PT Hamparan. She described how she works extremely long hours, in excess of the working hour limits because she is told she won't get paid. She still earns below the minimum wage. She said: "It is a very demanding job, very tiring. When I do the weeding, I have to arrange the bark. I have to pick up the loose fruit and if I don't finish that, even though I have done the weeding, they ask me to keep working otherwise I won't get paid. Otherwise we have to make up the target the next day. I start work at 5.30am and because I work on a target basis, I work until 3pm. I don't get an official break, I just take breaks for 5 – 10 minutes. They don't have a lunch break. If I have the time, I eat, otherwise I keep working. I bring a lunch box with me. I work from Monday to Saturday. I work the full month but they say I only work 15 days and pay me for 15 days. I don't know why, I ask the foreman why they haven't counted all my days. The foreman just says he will check with the assistant. I work six days a week, all through the month and I only get paid 600,000 [Indonesian Rupiahs]¹⁷¹. Per day I only get 10,000 – 20,000 [Indonesian Rupiahs]."¹⁷² The monthly minimum wage in 2015 was 2.1 million Indonesian Rupiahs (US\$155) and the daily minimum wage was 84,116 (US\$6). The ILO handbook on forced labour for employers and businesses includes guiding principles to combat forced labour. One of the guiding principles to ensure there is no coercion in wage payments is that: "Workers that earn wages calculated on a performance-related or piece rate basis shall not earn less than the legally mandated minimum wage".¹⁷³

As described earlier, in SPMN the piece rate payments to workers are very low and harvesters will not earn a minimum wage even if they collect a ton of fresh fruit bunches. Harvesters frequently work 11 to 12 hours a day in the dry season and usually work all seven days of the week in order to earn a monthly minimum

¹⁶⁷ Workers receive rice as part of their pay in most of the companies investigated.

¹⁶⁸ Amnesty International interview with X, North Sumatra, date withheld to protect identity.

¹⁶⁹ Amnesty International interview with J, Central Kalimantan, date withheld to protect identity.

¹⁷⁰ Amnesty International interviews with E and other workers, North Sumatra, date withheld to protect identity.

¹⁷¹ US\$44.

¹⁷² Amnesty International interview with P, Central Kalimantan, date withheld to protect identity.

¹⁷³ ILO, *Combating Forced Labour: A Handbook for Employees & Business, Guiding Principles to Combat Forced Labour*, 2nd edition, 2015, p. 3.

wage. The remuneration paid to workers in SPMN and PT Hamparan is based on productivity targets, which oblige workers to work beyond normal working hours and in excess of overtime limits set out under Indonesian law, as only in so doing can they earn the minimum wage. In line with the guidance provided by the ILO Committee of Experts, this amounts to forced labour as work beyond working hour limits is imposed on the workers, exploiting their vulnerability, and the work is imposed under the menace of being paid below the minimum wage levels.

The ILO Committee of Experts' guidance also has implications for other Wilmar suppliers and subsidiaries where threats, both implicit and explicit, are used to make people work in excess of their normal working hours, including limits on overtime work under Indonesian law. The so-called *kontanan* system of work where workers are asked to work on Sundays but paid *pro rata*, leading to people being paid below the daily minimum wage, let alone the overtime payment required under the law, is an area of particular concern. The use of threats of penalties, such as dismissal or loss of working days or cuts in wages taking the worker below the minimum daily wage to exact extra work from workers can amount to forced labour.

Amnesty International found, in addition to the individual cases of forced labour that it documented, broader systemic risks of other people being subjected to forced labour. The target-based system of wages, especially when combined with the wide range of penalties which can be imposed on the workers at the discretion of company staff create risks of forced labour. These risks are exacerbated for casual daily labourers, as it is easier for company staff to exploit their insecure employment status. Women casual daily labourers are, as highlighted by the cases of forced labour documented by Amnesty International, particularly at risk of forced labour.

None of the companies responded to Amnesty International's findings about forced labour. As discussed earlier, TSH Resources, the parent company of SPMN included information on piece rates and minimum wages in its response. The response has been described earlier and is also included in full in Annex 1.

POTENTIAL CRIMINAL OFFENCES BY THE COMPANY

While Indonesia has adopted the ILO Forced Labour Convention, 1930 in its national legislation, it has not created a specific offence for forced labour in its Penal Code. Companies that have been prosecuted in cases of forced labour have been prosecuted under other offences such as trafficking. This is a serious failure on part of the government and is discussed further under Chapter 7.

MADE TO WORK DURING THE HAZE

For many years now, environmental groups have highlighted the damage caused because of palm oil and timber companies' use of fire as a low-cost method for preparing land for monoculture plantations in Indonesia. Despite commitments by the Indonesian government and companies, companies have continued to burn forest and peatlands, especially in the annual dry season from May to September. Distortions in weather patterns, attributed to El Niño, led to diminished rainfall in Borneo and Sumatra in 2015. According to the US National Aeronautics and Space Administration (NASA): "*This dry weather was especially problematic because it intensified seasonal fires, which are intentionally lit by farmers to clear land and manage crops. However, many fires escaped their handlers and burned uncontrolled throughout September and October, blanketed Indonesia in dangerous levels of smoke for several weeks.*"¹⁷⁴ Based on satellite records which go back to 1997, 2015 is considered to be the second worst year on record, after

¹⁷⁴ NASA, 'El Niño Brought Drought and Fire to Indonesia', 13 January 2016, available at: www.nasa.gov/feature/goddard/2016/el-nino-brought-drought-and-fire-to-indonesia (last accessed 22 October 2016)

1997, for emissions from Indonesian forest fires.¹⁷⁵

A team of scientists who analysed the smoke from the forest fires in Central Kalimantan in 2015 said that it contained carbon monoxide, cyanide, ammonia and formaldehyde. They also found high levels of fine particulate matter at concentrations which are extremely dangerous to human health.¹⁷⁶ These particles can penetrate deeply into the lungs, enter the bloodstream, and be transported to other tissues.¹⁷⁷ Health impacts that have been recorded following similar forest fires and 'haze' include a marked increase in respiratory disease, and some people have experienced severe impacts and died from respiratory causes.¹⁷⁸ The long-term effects are poorly studied but a recent study has estimated that that smoke pollution exposure results in morbidity and premature mortality.¹⁷⁹ Indonesia's national disaster management body, Badan Nasional Penanggulangan Bencana (BNPB), recorded 556,945 people as suffering from acute respiratory infections by 6 November 2015.¹⁸⁰

PSI readings for Central Kalimantan spiked in September and continued to be above a 1,000 in October. PSI readings in Pekanbaru, in Northeast Sumatra also crossed a 1,000 leading to the authorities evacuating babies under six months of age and their mothers.¹⁸¹ By late September 2015, Pollutant Standards Index (PSI) readings in Palangkarya in Central Kalimantan were recorded at 2,300. PSI readings above 100 are considered unhealthy and people are asked to reduce any prolonged or strenuous outdoor physical exertion. Readings over 300 denote hazardous levels of air pollution and it is recommended that people minimise outdoor activity.¹⁸² Both North Sumatra and Central Kalimantan experienced levels of air pollution which were two and a half to six times the levels considered hazardous.

Workers employed by Wilmar's subsidiaries and all three suppliers in North Sumatra and Central Kalimantan were asked to continue to work throughout this period even though physical exertion and working outdoors increase the risk of respiratory damage. H who is employed by a Wilmar subsidiary told Amnesty International: "*We were not given any masks during the haze. We continued to work during the haze. The company did not tell us about anything about the haze. Some workers had breathing difficulties during the haze and had to go to the company clinic*".¹⁸³ C, employed by SPMN, said: "*We had to work although we could not even see the palm fruits on the tree [because the visibility was so poor]*".¹⁸⁴ Z, employed by another Wilmar subsidiary, told researchers that the company did not give masks to the

¹⁷⁵ A. Morales, 'How Indonesia's Fires Made it the Biggest Climate Polluter', Bloomberg, 28 October 2015, available at: www.bloomberg.com/news/articles/2015-10-28/how-indonesia-s-fires-made-it-the-biggest-climate-polluter (last accessed 22 October 2016)

¹⁷⁶ S. Dayne, 'Don't inhale: Scientists look at what the Indonesian haze is made of', CIFOR Forest News, 21 October 2015, available at: <http://blog.cifor.org/36467/dont-inhale-scientists-look-at-what-the-indonesian-haze-is-made-of> (last accessed 22 October 2016)

¹⁷⁷ E. Frankenber, D. McKee, and D. Thomas, *Health Consequences of Forest Fires in Indonesia*, California Center for Population Research, October 2004, p. 5, available at: <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2004-030/PWP-CCPR-2004-030.pdf> (last accessed 22 October 2016)

¹⁷⁸ L. K. Goodman, and K. Mulik, *Clearing the Air: Palm Oil, Peat Destruction, and Air Pollution*, Union of Concerned Scientists, March 2015, p. 8, available at: www.ucsusa.org/sites/default/files/attach/2015/03/clearing-the-air-ucs-2015.pdf (last accessed 22 October 2016)

¹⁷⁹ S. N. Koplitz, et. al, 'Public health impacts of the severe haze in Equatorial Asia in September – October 2015: demonstration of a new framework for informing fire management strategies to reduce downwind smoke exposure', *Environmental Research Letters*, Volume 11, Number 9 (2016).

¹⁸⁰ OCHA, Indonesia: Haze and Forest Fire - July to October 2015, 11 December 2015, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/20151215-ochaidn_hazeforestfire_infographic-july-oct2015.pdf (last accessed 22 October 2016)

¹⁸¹ Today, 'Indonesians in worst haze spots to be evacuated', 23 October 2015, available at: www.todayonline.com/world/asia/human-evacuation-areas-worst-hit-haze-last-resort-indonesian-minister (last accessed 22 October 2016)

¹⁸² See National Environment Agency, 'PSI', available at: www.nea.gov.sg/anti-pollution-radiation-protection/air-pollution-control/psi/psi (last accessed 22 October 2016)

¹⁸³ Amnesty International interview with H, North Sumatra, November 2015.

¹⁸⁴ Amnesty International interview with C, Central Kalimantan, November 2015.

workers or for their families. He said: *“My chest gets heavy and it is tough for me to breathe. I have been to the doctor twice in the last two weeks and they said it was because of the haze. They gave me some pill at the company clinic ... which didn't help. I finally went to another hospital where I was treated ... and now I feel better.”* Amnesty International researchers saw a note from the hospital which stated that Z was diagnosed with an acute respiratory infection, along with other health issues.¹⁸⁵ A woman who works for PT Hamparan said: *“We worked during the haze. They didn't give us any masks. We had to buy it for ourselves in the market.”*

Some of the suppliers gave workers masks to use. Workers employed by ABM said that the harvesters were given one time masks but the casual daily labourers were not given anything.¹⁸⁶ Workers employed by SPMN said that they were also only provided with disposable masks on one occasion during the haze. Workers showed Amnesty International researchers the masks that they were provided by SPMN.¹⁸⁷ The masks were ordinary flat disposable paper masks, which are intended for single use and do not have any filters. Some workers bought better quality surgical masks by themselves and used them. However, even those masks do not provide adequate protection and do not filter out particulate matter.¹⁸⁸

COMPANIES' RESPONSES

Amnesty International presented its findings to Wilmar. In its response to Amnesty International, Wilmar stated that it provided *“aid to the local communities. Free face masks and food supplements were handed out to almost 13,000 villagers, and shelter and medical assistance were provided to the communities facing the highest risks”*. It did not address the issue of workers being exposed to the risk of respiratory damage or that some Wilmar subsidiaries and suppliers gave workers single use masks once in the period, which were grossly inadequate. However, in the Sustainability Brief issued on 21 October 2016, Wilmar claimed that it provided *“aid, in the form of facial masks, food supplements, shelter and medical assistance to **workers** and communities”*¹⁸⁹ (emphasis added). Amnesty International followed up on this issue in a second letter and asked Wilmar to provide details and evidence of the masks that were provided to workers and on which plantations. It also asked Wilmar if it had carried out any assessments on whether and how long workers could work outdoors after the forest fires which led to hazardous levels of pollution in Central Kalimantan and Sumatra. Amnesty International queried if Wilmar had also assessed the types of safety equipment that would be required and asked the company to provide details and evidence of the assessments undertaken and the safety measures that were put in place. Wilmar did not respond to these questions.

TSH Resources, the parent company of SPMN, responded to Amnesty International. It said: *“For haze purposes the standard recommended facemask is the 'respirator N95'. I couldn't find a standard for Indonesia but this is recommended standard in Malaysia and Singapore. The haze situation in 2015 was unexpected and the local suppliers didn't have sufficient N95 stocks. Part of the workers could have been issued with non N95 respirator mask. Memos were issued and workers and residence were briefed during the 2015 haze. Field workers must use facemask and field supervisors must ensure ready stocks are available. Workers with respiratory problem must stay indoor. Workers were advised to reduce or refrain from smoking. In house clinic Doctor to monitor the respiratory illness etc. However, the monitoring report for reparatory illness 2015 and 2016 does not seem to be significantly different. This is despite having Haze*

¹⁸⁵ Amnesty International interview with Z, North Sumatra, November 2015.

¹⁸⁶ Amnesty International interviews with workers, North Sumatra, October 2015.

¹⁸⁷ Amnesty International interviews with workers, Central Kalimantan, November 2015.

¹⁸⁸ L. K. Goodman, and K. Mulik, *Clearing the Air: Palm Oil, Peat Destruction, and Air Pollution*, Union of Concerned Scientists, March 2015, p. 9.

¹⁸⁹ Wilmar International, *Sustainability Brief*, October 2016, section 4.3.

free for 2016 (till date)."¹⁹⁰ These statements are contradicted by the evidence that Amnesty International gathered from interviews that most workers only received masks other than N95 masks. TSH Resources indicates that it itself does not have records of how many workers were provided with what kinds of masks, which is a glaring omission when dealing with hazardous levels of pollution. In any event, TSH Resources claimed that it used N95 masks as this was the recommended standard suggested by Singapore. However, the Singapore government's guidance to employers was clear that N95 masks do not provide workers with sufficient respiratory protection in hazardous haze situations and that full face respirators should be considered when performing prolonged outdoor work at 24-PSI above 400. Moreover, the primary guidance was to reduce, minimise or avoid outdoor work, to undertake risk assessments and adopt risk mitigating measures, such as mechanical aids, shortening the time spent outdoors etc.¹⁹¹ The levels of pollution in Central Kalimantan ranged from between 1000 – 2300 PSI, and during the worst phases, were over six times the level that the Singapore government referred to.

Wilmar's subsidiaries and suppliers failed to respect workers' right to health by exposing them to health risks related to smoke pollution exposure, without providing them with adequate safety equipment and taking other safety measures.

¹⁹⁰ TSH Resources Berhad's response to Amnesty International, received 18 November 2016.

¹⁹¹ Ministry of Manpower, Singapore, 'Guidelines for employers on protecting employees from the effect of haze', updated 16 September 2015, available at: www.mom.gov.sg/haze/guidelines-on-protecting-employees-from-haze (last accessed 21 November 2016).

5. CASUAL WORKERS, DISCRIMINATION, AND ABUSES OF THE RIGHT TO HEALTH

CASUAL WORKERS AND LACK OF PROTECTION

Amnesty International interviewed 32 workers, 24 women and eight men who are casual daily labourers. Eleven of these people have worked for their employers for 10 or more years; seven others have worked for over five years; and eight have been employed for more than a year. All the women work in plant maintenance. Four of the male workers carry out both plant maintenance and harvesting, two work only in plant maintenance, one as a harvester, and one in security.

Wilmar's subsidiaries and suppliers employ some harvesters as casual daily labourers but most harvesters – who are always men – are employed on permanent employment contracts. Foremen and other supervisory roles tend to be permanent employees. Other than in SPMN, one of Wilmar's suppliers, all the ordinary workers in the plant maintenance units – the majority of whom are women, typically wives of harvesters – are employed as casual daily labourers. SPMN recruited all workers, male and female, under permanent contracts till 2015.

Wilmar reported on the ratio of permanent to temporary workers in its workforce in Indonesia in 2011, comparing 2011 numbers to 2010. Its subsequent sustainability reports did not include information on temporary workers until its 2015 report. The data is reproduced in the table below.

Province	2010		2011		2015	
	Permanent workers	Temporary workers	Permanent workers	Temporary workers	Permanent workers	Temporary workers
Sumatra	7261	7898	8655	6724	10260	3439
Central Kalimantan	6421	8372	9925	5015	14566	1351
West Kalimantan	1916	6305	1699	5907	3571	3031

Source: Wilmar International, *Staying the course through challenging times: Sustainability report 2011*, p. 61 and *Sustainability Report 2015*, p. 58 (colours added by Amnesty International).

Wilmar noted in its 2011 Sustainability Report that the data on temporary workers included newly recruited workers who were hired with a view to permanency. It stated that, in Indonesia, these workers were classified as temporary workers for the initial three months of their employment.¹⁹² The Wilmar Group has reduced the number of temporary workers it employs in Indonesia, based on the data published by the company in its 2011 and 2015 sustainability reports. However the numbers continue to be high even in 2015 and, as discussed in this chapter, women workers on plantations are disproportionately affected.

COMPANIES EXPLOIT LOOPHOLES IN INDONESIAN LAWS

As noted earlier, under Indonesian law, workers can be employed either on a permanent (referred to as 'Work Agreement for Unspecified Period of Time' or PKWTT) or a fixed-term (referred to as 'Work Agreement

¹⁹² Wilmar International, *Staying the course through challenging times: Sustainability report 2011*, p. 60.

for a Specified Period of Time' or PKWT) employment contract.¹⁹³ From 1986, the government has regulated the use of fixed-terms contracts which are only permitted for work¹⁹⁴:

- a) That can be completed at once or is temporary by nature (lasts for no more than three years);
- b) Is seasonal by nature (the execution of the work depends on the season or weather condition);
- c) Related to a new product, or additional product which is still in trial or probation (can be initially for two years and extended for another year).

The protections under the Manpower Act, setting limits on the use of fixed-term contracts, were diluted by Minister of Manpower and Transmigration Decree No. 100/2004. The Decree permitted employers to enter into a 'Work Agreement for Free Daily Work' (*perjanjian kerja harian lepas*). Employers can enter into the agreement for "certain works which are changeable in the case of time and work volume and the wages are based on attendance". Such agreements are conditional on workers working less than 21 days in one month. If a worker works for 21 days or more for three or more months consecutively, the work agreement is changed into a permanent contract (PKWTT).¹⁹⁵ Workers who work under these daily agreements are commonly referred to as casual day labour (*buruh harian lepas* or BHL workers).

This is a major loophole in Indonesian law as daily work agreements are exempted from the safeguards that apply under the Manpower Act to fixed-term contracts, including that such contracts cannot exceed three years.¹⁹⁶ There is therefore no time-limit set out under the law for daily work agreements, as long as the employee does not work for more than 21 days a month for three or more months consecutively.

Employers have to enrol all workers, including fixed-term and casual daily labourers, in the workplace injury and death compensation insurance schemes.¹⁹⁷ Workers on fixed-term employment contracts who have been employed for three months and those on permanent contracts have to be enrolled in Indonesia's social security scheme (which includes health insurance and retirement benefits).¹⁹⁸ However, it is not mandatory for employers to provide social security benefits to casual daily labourers and they are excluded from health insurance and retirement benefits. According to a study commissioned by the ILO, casual day labourers are "implicitly excluded from those benefits that accrue over time such as paid annual leave and the Annual Religious Holiday Bonus because they will not have met eligibility requirements (which are 12 months of continuous service and three months continuous service respectively)".¹⁹⁹

Wilmar's subsidiaries and two of its suppliers, ABM and PT Hamparan, have exploited this loophole in Indonesian law to hire women, typically wives of workers, and some men to work as casual daily labourers rather than as permanent employees. Companies should hire people as permanent workers if they require their services on an ongoing basis and agreements for casual day labour should be restricted to situations in which companies require help with additional volumes of work on a temporary basis. However, Wilmar's subsidiaries and suppliers hire people as casual daily labourers to carry out work that the company requires on an ongoing basis. This is clearly evident from the pattern of employment: individuals employed as casual daily labourers work for the company every month, rather than just during a few months of the year, and companies continue to retain their services year on year. They manage to avoid making them permanent by meeting the conditions under Decree No. 100/2004 and employing them for less than 21 days a month or

¹⁹³ Article 56, Manpower Act. Article 1, Minister of Manpower and Transmigration Decree No.100/2004 Concerning Stipulation in Implementation of Work Agreement for Specified Period of Time, (Keputusan Menteri TenagaKerjadan Transmigrasi Republik Indonesia Nomor: Kep.100/Men/VI/2004 Tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu).

¹⁹⁴ Articles 3 – 9 (Chapters II, III and IV), Minister of Manpower and Transmigration Decree No. 100/2004.

¹⁹⁵ Article 10, Minister of Manpower and Transmigration Decree No. 100/2004.

¹⁹⁶ Article 11, Minister of Manpower and Transmigration Decree No. 100/ 2004.

¹⁹⁷ Article 2, Minister of Manpower and Transmigration Decree No. 150/1999 on the Implementation of Social Security Programme for Casual Worker, Piece Worker, and Worker for Specified Period of Time, (Keputusan Menteri Tenaga Kerja Republik Indonesia Nomor Kep-150/Men/1999 Tahun 1999 tentang Penyelenggaraan Program Jaminan Sosial Tenaga Kerja Bagi Tenaga Kerja Harian Lepas, Borongan dan Perjanjian Kerja Waktu Tertentu).

¹⁹⁸ Article 9, Minister of Manpower and Transmigration Decree No. 150/1999.

¹⁹⁹ I. Landau, P. Mahy and R. Mitchell, *The regulation of non-standard forms of employment in India, Indonesia and Vietnam*, ILO, Conditions of work and employment series, No. 63, 2015, p. 31.

making sure that workers do not work more than 21 days for three consecutive months.

Foremen may shift workers in plant maintenance units between different types of functions undertaken by the unit – spreading fertilisers, spraying chemicals or weeding etc. – but there is a continuous need for these types of functions. In its 2011 Sustainability Report, Wilmar stated that spraying is an integral part of plantation work.²⁰⁰ However Wilmar's subsidiaries and suppliers hire sprayers, most of whom are women, as casual daily labourers rather than permanent employees. People performing other types of functions, such as harvesting, transport or security, are also retained by the companies as casual day labourers, but work on an ongoing basis rather than for short periods when the company may have higher volumes of work.

Amnesty International interviewed casual daily labourers who worked as harvesters. While some of these harvesters were made permanent after working for the company for one year, workers in plant maintenance are not given permanent employment status after working for a year or more. As noted earlier, in the past, SPMN, a Wilmar supplier, hired both men and women as permanent workers even if they worked in plant maintenance. However, workers at all other Wilmar's subsidiaries and suppliers told researchers that the companies have not given permanent employment status to anyone who works as casual daily labourer in the companies' plant maintenance units.

Since companies are required to make workers permanent if the person works for 21 or more days a month, for three or more months consecutively, they only offer casual daily labourers work up to 21 days a month. Despite an ongoing working relationship which can span years, if not decades, casual daily labourers are left in a precarious situation where they cannot earn a monthly minimum wage. Workers are generally offered between 10 – 21 days of work in any given month. Those employed as casual daily workers work without access to health care, pensions and other benefits, including paid maternity leave. Their employment status is fundamentally insecure and they have no protection against termination of employment.²⁰¹

THE RIGHT TO SOCIAL SECURITY

Article 9 of the International Covenant on Economic, Social and Cultural Rights guarantees the right of all persons to social security, including social insurance. Article 10 of the Covenant provides that “working mothers should be accorded paid leave or leave with adequate social security benefits”. The UN Committee on Economic, Social and Cultural Rights has clarified that the right to social security “encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.”²⁰² The Committee has also emphasised that: “Paid maternity leave should be granted to all women, including those involved in atypical work, and benefits should be provided for an adequate period.”²⁰³

²⁰⁰ Wilmar International, *Staying the Course through Challenging Times: Sustainability Report 2011*, p. 52.

²⁰¹ However under Article 62 of the Manpower Act, a casual daily labourers is entitled to compensation if a contract is terminated by the employer prior to its expiry unless it has been terminated for one of the reasons provided under Article 61.

²⁰² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The right to social security (art. 9)*, UN Doc. E/C.12/GC/19, 4 February 2008, para 2.

²⁰³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The right to social security (art. 9)*, UN Doc. E/C.12/GC/19, 4 February 2008, para 19.

DENIED PENSIONS, OTHER BENEFITS AND HEALTH INSURANCE

“If I could talk to Wilmar, I would ask it to please help us and provide us with a pension fund. How can you just let us go like that? We are poor” – N, a 55 year old casual daily labourer. She was let go when she turned 55, without a pension, after working for a plantation owned by a Wilmar subsidiary for 20 years.²⁰⁴

Amnesty International interviewed five casual daily labourers, four women and one man, who were let go by Wilmar’s subsidiaries after turning 55 years of age, without any pension. All of them said that they had worked for the companies for between 10 to 20 years. Activists and NGOs confirmed to Amnesty International that casual daily labourers are not paid any pension on retirement, irrespective of how many years they may have worked for the company.

The workers said that they were unaware of the rule that they needed to retire once they turn 55 and were not given any advance warning that they would be asked to stop working. They were told by the foremen at the morning briefing that they were being released from work. Q, a 53 year old woman, worked for a Wilmar subsidiary for 18 years (she started working for the company before it was bought by Wilmar). She said that her identity document has the wrong age as she was married when she was very young and the age on her identity document was changed to make her appear older. *“Two days ago I was let go by the foreman ... I didn’t know anything about this 55 rule ... I bought a new pair of shoes [for my work] but then they let me go. I bought the new shoes for 80,000 [Indonesian Rupiahs]*²⁰⁵. *It is still on a lease. I haven’t paid for it yet. If I knew I was being let go, I wouldn’t have bought a new one”*.²⁰⁶

T, a 55 year old man, worked as a casual daily labourer for a Wilmar subsidiary for 14 years but was not made permanent. He said he did not know that people above 55 could no longer work: *“I came to the morning briefing and my foreman asked me ‘Why have you come to work?’ The foreman said every person above 55 has already been released from work ... Since then, I haven’t got any payment from the company ... I go around looking for sticks to sell people who make brooms.”*²⁰⁷

Two other women who were let go by Wilmar’s subsidiaries after they turned 55 said that they get no pension from the company or the government. One relies on her children for money and the other makes brooms and sells them. She earns 100,000 Indonesian Rupiahs (US\$7) in one to two weeks.²⁰⁸ To put how low that amount is in perspective, what she earns in one to two weeks is just slightly over what a person should earn as a minimum wage in one day.

Wilmar’s subsidiaries and supplier contribute to a national health insurance scheme for private sector workers, which covers permanent employees and fixed-term employees who have contracts longer than three months. A portion of each employee’s salary is also deducted by the employer for the scheme, with additional deductions for dependents. Casual daily labourers are excluded from these scheme in most of the companies investigated. SPMN enrolls casual daily labourers under the national health insurance scheme but workers said that they were only covered at the minimum level and had difficulties getting treatment for many medicines and diseases. Women casual daily labourers whose husbands are permanent workers are covered as dependents. Other women are not covered, nor are male casual daily labourers.

Casual daily labourers can access company clinics but get limited treatment. M, who works as a casual daily labourer at a Wilmar subsidiary told researchers that she doesn’t get medical benefits as her husband

²⁰⁴ Amnesty International interview with N, North Sumatra, November 2015.

²⁰⁵ US\$5.8.

²⁰⁶ Amnesty International interview with Q, North Sumatra, November 2015.

²⁰⁷ Amnesty International interview with T, North Sumatra, November 2015.

²⁰⁸ Amnesty International interviews with workers, North Sumatra, November 2015.

is not a permanent employee. She said: “*When I feel sick, the foreman says go home, the clinic gives me medicine but the next day they won't give me any treatment if I still feel sick.*”²⁰⁹

V, who works as a casual daily labourer for a Wilmar subsidiary, described how she had an accident while working and was treated by the company but did not receive any compensation and was only paid for a small portion of the days where she was unable to work. She said: “*I was riding in a jonder [small truck used to transport palm fruit and other materials], sitting on top of the fertiliser. The foreman asked me to go with the jonder because the area was far away. The jonder was trying to get over a small bridge and it capsized and I fell into a ditch and the bags of fertiliser fell on me. I drank the water in the ditch. I had pain all over my body. My legs were hurt and I couldn't walk. I got massages and injections. The company doctor came home to give me the shots. I didn't have to pay for it. I couldn't work for three months but they paid me only for 15 days. I asked but didn't get any compensation.*”²¹⁰

Amnesty International documented other cases where women casual daily labourers were injured while working for the company. Their treatment was paid for from their husbands' insurance and the husbands were asked to pay certain amounts which the company said were not covered by the insurance. The excess amounts are deducted from the husbands' monthly salaries.²¹¹

Casual daily labourers employed by ABM said that they don't get sick leave at all while those employed by the other companies get paid sick leave for a limited number of days. They also don't get paid maternity leave.

N is employed as a casual daily labourer at PT Hamparan, part of the BEST Group which supplies Wilmar. She said: “*We are not registered for any benefits and we don't get a pension. All the women workers are BHL [casual daily labourers]. There are some women foremen who may be SKU [permanent workers]. We don't get maternity leave or sick leave. Pregnant women just stop working. There are women workers who have worked here for over six years who are still BHL.*”²¹²

WILMAR'S EXPLANATION

Wilmar acknowledged in its 2009 Sustainability Report that “[a] high proportion of our workers in Indonesia are temporary workers”.²¹³ It ascribed this to new developments in Central Kalimantan and stated that it relied heavily on the use of temporary workers during the early stages of plantation development. It stated that it would reduce its reliance on temporary workers significantly over the coming years to provide better conditions and to grow a stable and productive workforce.²¹⁴

In its 2011 report, Wilmar stated that the numbers of workers with temporary status is relatively low in Central Kalimantan because there is a lack of workers from the resident population; Central Kalimantan is amongst the least populated provinces in Indonesia.²¹⁵ It stated that in other areas such as Sumatra and West Kalimantan, it often offered employment to the local community. As people often had alternative seasonal dependent income means, they preferred a flexible approach to work “*much like freelance professionals in urban cities who choose freelance work over a permanent job because of the flexible work*”

²⁰⁹ Amnesty International interview with M, North Sumatra, November 2015.

²¹⁰ Amnesty International interview with V, location and date withheld to protect identity.

²¹¹ Amnesty International interview with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

²¹² Amnesty International interview with N, Central Kalimantan, November 2015.

²¹³ Wilmar International, *Sustainability Report 2009*, p. 45, available at: www.wilmar-international.com/wp-content/uploads/2012/11/Wilmar-SR-2009_single.pdf (last accessed 9 October 2016)

²¹⁴ Wilmar International, *Sustainability Report 2009*, pp. 6 and 45.

²¹⁵ Wilmar International, *Staying the course through challenging times: Sustainability report 2011*, p. 60, available at: www.wilmar-international.com/wp-content/uploads/2012/11/Wilmar_SR2011.pdf (last accessed 9 October 2016)

schedule for their own commitments." It stated that the company would negotiate with these workers to agree on working arrangements of not more than 21 days a month, maintaining their status as temporary workers.²¹⁶

The Wilmar Group has reduced the number of temporary workers it employs in Indonesia, based on the data published by the company in its 2011 and 2015 sustainability reports. However the numbers continue to be high even in 2015. In a letter to Amnesty International, Wilmar pointed to the reduction in numbers of temporary workers as compared to 2011. It stated: "*It should be noted that temporary contract employment is offered on the basis of mutual agreement between workers, who have alternative sources of employment and prefer to work on casual basis to supplement their regular source of income, and the plantation management. This is done with the support of labour unions or worker representatives and the local government's District Labour Office.*"²¹⁷ In a Sustainability Brief, issued on 21 October 2016, Wilmar said: "*Wilmar is committed to providing equal employment opportunities regardless of gender. However, plantation work tends to be physically demanding, and inevitably attracts a higher number of male workers. While the proportion of female temporary workers is higher than male, it is important to note that almost 50% of the temporary workers are wives of the permanent workers. They prefer to be employed on a casual basis, with flexible working hours that allow them to tend to their household. Permanent work contracts do not allow for flexible working hours.*"²¹⁸

This is contradicted by the evidence collected by Amnesty International. The wives of permanent workers are not asked if they prefer permanent work contracts and are only offered employment in units where the company hires people as casual daily labourers.²¹⁹ Wilmar's claim is also inconsistent with the reality that women casual daily labourers are already engaged in physically demanding work in plant maintenance units. Many of the same women then go on to help their husbands in the afternoons, with tasks such as picking up loose fruit, but are not paid for this work.

Wilmar's assertion that contracts for temporary employment are based on mutual agreement and entered into with workers who have alternative sources of employment does not match up with what Amnesty International found. All the casual daily labourers who Amnesty International interviewed relied on their employment with the company as their main source of income. They do not work seasonally or for a few months of the year but on an ongoing basis for the company. None of the casual daily labourers that Amnesty International interviewed were given any choice by the company about their employment status or offered an option to become permanent. None had asked the company to limit their work to 21 or less days a month. On the contrary, many workers described how they repeatedly ask the foremen if they can work additional days or be made permanent but were told this was not possible because of a lack of jobs or funds. This was corroborated by supervisory staff whom Amnesty International interviewed.²²⁰ Crucially, it does not justify the Wilmar Group keeping workers in a situation of insecure employment for many years, without adequate access to health care, pensions and other benefits. Even if there are some people who prefer part-time or flexible working arrangements, the company should explore options to offer them such arrangements within more secure contracts.

Wilmar has not published any data on temporary workers employed by its suppliers. TSH Resources is the only Wilmar supplier who responded to Amnesty International's request for information. It provided data on the total number of casual daily labourers and permanent workers and a gender break down for both categories. It stated that it had no contract workers (which Amnesty International took to mean all fixed-term contract workers, including casual daily labourers) prior to March 2015. Since then however no contract workers have been made permanent. TSH Resources claimed that contract workers were entitled to

²¹⁶ Wilmar International, *Staying the course through challenging times: Sustainability report 2011*, p. 61.

²¹⁷ Wilmar International letter to Amnesty International, dated 17 October 2016.

²¹⁸ Wilmar International, Sustainability Brief, October 2016, section 3.2.

²¹⁹ Amnesty International interviews with workers and supervisory staff, North Sumatra, October and November 2015.

²²⁰ Amnesty International interviews with workers and supervisory staff, North Sumatra, October and November 2015.

the “same benefits as permanent worker i.e. housing, medical etc.”²²¹ As highlighted earlier, while SPMN enrolls casual daily labourers under the national health insurance scheme, workers said that they were only covered at the minimum level and had difficulties getting many medicines and treatment for diseases.

THE RIGHTS TO HEALTH AND SAFE AND HEALTHY WORKING CONDITIONS

Article 7(b) of the International Covenant on Economic, Social and Cultural Rights recognizes the right of all persons to safe and healthy working conditions. Article 12 of the Covenant guarantees the right to the highest attainable standard of physical and mental health, which includes the improvement of all aspects of environmental and industrial hygiene and the prevention treatment and control of occupational diseases. The UN Committee on Economic, Social and Cultural Rights has explained that: “The improvement of all aspects of environmental and industrial hygiene ... comprises ... preventive measures in respect of occupational accidents and diseases; ... the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment”.²²²

The UN Special Rapporteur on the right to health has stressed that the right to occupational health requires that employers make available and accessible information concerning all health and safety risks, including those related to production inputs and equipment, machinery and chemicals used in the work place. “In addition, workers must also be apprised of all health risks in the workplace in a clear, comprehensible manner so they may themselves determine whether to engage in dangerous or unsafe work”.²²³

The UN Special Rapporteur on human rights and hazardous substances and waste, and the UN Special Rapporteur on the right to food have called for a worldwide phase-out on use of highly hazardous pesticides because they are inflicting significant damage on human health and the environment.²²⁴

ABUSES OF THE RIGHTS TO HEALTH AND TO SAFE AND HEALTHY WORKING CONDITIONS

“The cap on the CDA [controlled droplet applicator] tank was loose and I couldn’t close it properly so I spilled a bit of the chemical on my apron and my skin every day. The skin would burn and itch where the liquid dropped. My shirt used to get wet. I told the foreman but he said just fasten it securely. This happens when I spray because the ground is uneven. Sometimes when I spray, it often spills on my lower back from the bottom of the tank. The apron is very thin and it doesn’t help. As the tank got older, it wouldn’t shut at all and I would get chemical on my back every time I bent. I had the CDA tank for five years and it spilt for me for about four years.

I used to spray both round up and Gramoxone [paraquat-based herbicide]. The foreman told us what chemicals we sprayed. He said when there were weeds to use round up. I could also see the jerry cans which had Gramoxone or round up written on them. The foreman used to bring the jerry cans to the field ... I told the FA [field assistant] I don’t feel very good when I spray or fertilise. Since last year, I feel dizzy and

²²¹ TSH Resources’ response to Amnesty International, received 18 November 2016.

²²² UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2000/4, 11 August 2000. Para 15.

²²³ UN, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/20/15, 10 April 2012, paras 24 – 25.

²²⁴ UN Office of the High Commissioner for Human Rights, “States and business must prevent harm from highly hazardous pesticides”, 28 September 2015, available at: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16510&LangID=E (last accessed 22 November 2016).

I feel nauseous. I throw up and my vomit is very bitter and yellowish. ... I told the company doctor I feel dizzy and nauseous and I throw up and he said oh, it is nothing, it is just lack of exercise. It has gotten worse over the last year, my stomach hurts sometimes and I find it hard to eat. I told the Mandor [foreman] I feel dizzy and sick but he told me to keep working. I feel dizzy when I wake up in the morning. I wake up sweating and feel dizzy but I push through it because otherwise I won't get paid." F, who works for SPMN, a Wilmar supplier.²²⁵

Palm oil plantations use a range of pesticides, weedicides and herbicides to manage pests and weeds. Plantations also use a large amount of fertilisers to improve yields. Environmental organizations have highlighted the risks of contamination of other crops, soil and groundwater.²²⁶

In 2008 Wilmar committed to phasing out the use of paraquat in its operations. It stated that it had done so by 2011 and required its suppliers to do the same by the end of 2015. Wilmar prohibited the use of paraquat under its 'No Deforestation, No Peat, No Exploitation Policy'. The policy also provides that the company and its suppliers and sub-contractors shall protect workers from exposure to occupational health and safety hazards that are likely to pose an immediate risk of permanent injury, illness or death, including exposure to hazardous chemicals.

One of those controversial chemicals used as an herbicide (to control weeds) is paraquat dichloride (paraquat). Paraquat is a highly toxic chemical, which poses severe risks to health. Paraquat has one of the highest acute toxicity values among commercial herbicides and can result in toxicity after ingestion, inhalation or dermal exposure.²²⁷ Its use is banned in the European Union and restricted in several other countries. The Indonesian Minister of Agriculture regulates paraquat as a restricted use pesticide. Only people who have been trained and certified are allowed to use paraquat.²²⁸

USE OF PARAQUAT BASED HERBICIDES BY WILMAR'S SUPPLIERS

Amnesty International researchers found evidence of the use of paraquat-based herbicides by Wilmar's suppliers, in particular SPMN. Workers and staff employed in a supervisory capacity confirmed the use of paraquat based herbicides, including Gramoxone. Workers confirmed that they have seen jerry cans of Gramoxone when the foreman bought these to the field to be used for spraying. Researchers were also shown photographs of jerry cans of Gramoxone and other brands of paraquat-based herbicides, used by the company that were stored inside its chemical storage area. The RSPO certification assessment of SPMN undertaken in July 2015 confirmed that the company used paraquat but stated that the estate management had plans to reduce its usage.²²⁹ Researchers confirmed through recent photographs taken in October 2016 and interviews that SPMN continues to use paraquat. In its responses to Amnesty International, TSH Resources, SPMN's parent company, did not deny the use of paraquat or gramoxone.

Staff at PT Hamparan, another Wilmar supplier, said that the company uses Gramoxone and other paraquat-based herbicides. A worker employed by ABM, a Wilmar supplier, who mixes the chemicals that the workers spray, also stated that the company uses Gramoxone.²³⁰

²²⁵ Amnesty International interview with F, Central Kalimantan, date withheld to protect identity.

²²⁶ Friends of the Earth, *Greasy palms: The social and ecological impacts of large-scale oil palm plantation development in Southeast Asia*, Friends of the Earth, January 2005.

²²⁷ W.T. Tsai, 'A review on environmental exposure and health risks of herbicide paraquat', *Toxicological & Environmental Chemistry*, Volume 95, Issue 2, 2013, p. 201.

²²⁸ Minister of Agriculture Regulation No. 24/PERMENTAN/SR.140/4/2011 on the Requirement and Procedure of Pesticide Registration (Peraturan Menteri Pertanian Nomor: 24/PERMENTAN/SR.140/4/2011 Tentang Syarat dan Tatacara Pendaftaran Pestisida).

²²⁹ Controlunion, *Public Summary Report: PT Sarana Prima Multi Niaga POM, TSH Resources Berhad*, 2015, pp. 28, 45.

²³⁰ Amnesty International interviews, Central Kalimantan and North Sumatra, February, October and November 2015.

Wilmar says it has eliminated the use of paraquat from its own plantations. It lists the herbicides it uses in its sustainability report.²³¹ These include: glyphosate, triclopyr butotyl, glufosinate ammonium, 2,4-D-, fluroxypyr-meptyl, and diuron which are classified as either moderately hazardous or slightly hazardous by the World Health Organization.²³² RSPO annual surveillance audits of PT Milano (undertaken from 23 – 26 May 2016) and PT Daya Labuhan Indah (24 – 28 August 2015) record that their plantations use WHO Class 1A or 1B pesticides. WHO classifies pesticides by how hazardous they are (how acute a risk they pose to health). Class 1A pesticides are classified as extremely hazardous and Class 1B as highly hazardous.²³³ The audit reports noted that the companies remain committed to or had plans to reduce their usage of these products.²³⁴

INADEQUATE SAFETY EQUIPMENT

Wilmar states in its 2015 Sustainability Report that: “*Sprayers are required to undergo extensive and ongoing training in the handling of chemicals. They are required to wear personal protective equipment (PPE) including protective eyewear, facial masks, gloves and boots. PPE must be worn whenever workers carry out their duties. Showering is compulsory after each shift. Workers are subject to regular check-ups to detect any presence of residual chemicals.*”²³⁵

Amnesty International's investigation revealed a significant gap in the provision of personal protective equipment to workers employed by Wilmar's subsidiaries and suppliers, particularly to those working in the plant maintenance units. Workers are either not given all the protective equipment they need or are given the equipment initially but then not provided with replacements.

Workers who work in the plant maintenance units at ABM and PT Hamparan, which supply Wilmar, told researchers that they are not provided with any safety equipment at all.

Harvesters employed by ABM said that the company only started providing them with boots in 2015 but workers in plant maintenance units are not given boots, masks, gloves, overalls, or goggles. Workers wear long sleeve shirts or use sarongs to cover themselves. They spread fertilisers and spray chemicals without masks, overalls, goggles or rubber gloves. J told researchers that she and many others workers don't wear shoes when they spread fertilisers and she works in her socks because it is faster and she can avoid the fertiliser getting inside her shoe and rubbing against her skin. She cut her foot [while working] and it swelled up for a week because it was infected. J said it was hard for her to breathe when she spreads the fertiliser. She breathes in the fertiliser powder, it feels heavy on her lungs and she can see powder in her saliva, if she spits it out. She described an incident from 2014 when she was spraying chemicals and spilt some chemical on her thumb, she wasn't able to clean it and it got mixed with fertiliser. “*It itched so much, I wanted to chop it off.*” Her nail has been rotting since then and she is waiting for it to fall off.²³⁶ An Amnesty International researcher saw J's nails and their condition was consistent with her account. All of her nails were discoloured and one was rotten.

²³¹ Wilmar International, *Sustainability Report 2015*, p. 53.

²³² WHO, *The WHO Recommended Classification of Pesticides by Hazard and Guidelines to Classification 2009*, 2010, available at: www.who.int/ipcs/publications/pesticides_hazard_2009.pdf (last accessed 22 October 2016)

²³³ WHO, *The WHO Recommended Classification of Pesticides by Hazard and Guidelines to Classification 2009*, 2010, p. 5.

²³⁴ TÜVRheinland, *RSPO Annual Surveillance Audit Report: Wilmar International Limited, PT Perkebunan Milano, Pinang Awan Palm Oil Mill, date of audit: 23 – 27 May 2016*, p. 28. Mutu Certification International, *RSPO Assessment Report: PT Daya Labuhan Indah*, 13 November 2015, p. 21.

²³⁵ Wilmar International, *Sustainability Report 2015*, p. 53.

²³⁶ Amnesty International interviews with J and other workers, North Sumatra, date withheld to protect identity.

Z another woman employed at ABM works without gloves as the company does not provide her with any. She said that the gloves she buys herself get wet and rot because of the chemicals she sprays on the plants. She described how chemicals often fall on her hands, while she is spraying. She said: *“My hands get itchy and scratchy. My finger nails rot and then fall out. It starts from the edge and swells up, liquid comes out of the nails and it falls off.”*²³⁷

Sprayers use backpack sprayers and carry the tank with the chemicals they are spraying on their backs. Z and other sprayers employed by Wilmar’s subsidiaries and suppliers highlighted that chemicals spill on to their backs from the tanks, especially when the tanks are old. Z said that when the tank is full, chemicals fall on her upper back. When she turns around, it falls on her lower back. She said that chemicals touch her skin almost every day, because her tank is broken and leaks. Her back feels hot after the chemicals touch it and then itches. If she scratches the skin, it gets irritated and she has to get it treated. Z goes to a clinic outside the plantation for treatment as she said that she needs a letter from the foreman to get treatment at the company clinic, but the foreman would not give her the letter. She has to stop working on some days because she can’t bear the discomfort and then goes home without any pay. She told researchers that she needed to keep working for the money, even when she is ill.

Women workers at PT Hamparan told researchers that they need to buy the tanks they use for spraying. Workers at SPMN also said that their salaries were deducted to pay for the tanks or they had to buy the tanks themselves. B, who works for SPMN, said: *“The FA [field assistant] used to tell us that if you don’t pay for the tank, you won’t get work”*. This was confirmed by other women workers at SPMN.²³⁸

Wilmar’s subsidiaries provide safety equipment to their workers. However, Amnesty International found numerous cases where Wilmar’s subsidiaries did not provide boots at all or replacement boots when the workers’ boots are broken. Researchers also documented gaps in the provision of other equipment such as masks, gloves, coveralls (aprons) and goggles. Workers told researchers that boots and aprons get worn out the fastest as they are used while spreading fertilisers or spraying. Twenty two workers employed by Wilmar’s subsidiaries and suppliers described to researchers how they bought their own boots because the companies either did not give them a pair when they joined or would not replace a broken pair. Workers buy basic boots, spending between 50,000 to 100,000 Indonesian Rupiahs (US\$4 – US\$7) of their own money.

Workers employed by some Wilmar subsidiaries, who spread fertilisers, told researcher that they are not given aprons or goggles and that these are only provided to workers who spray chemicals. Safety guidelines for the use of fertilisers however specify that protective clothing, such as dust resistant overalls, and eye protection should be used.²³⁹

Q is employed by a Wilmar subsidiary. She was working on a Saturday and got a thorn in her finger from a palm tree. She had not been provided with gloves by the company and was using gloves which she had bought herself. She told researchers that her gloves were thin and tore. She said she tried to take the thorn out but it broke off and the next morning her finger was swollen. She went to the morning assembly at 5.30am on Monday and showed her finger to the foreman who looked at it with a torch, but told her to

²³⁷ Amnesty International interview with Z, North Sumatra, date withheld to protect identity.

²³⁸ Amnesty International interviews with workers, Central Kalimantan, February and November 2015.

²³⁹ ILO, *Code of practice on safety and health in agriculture*, 2011, para 10.1.2 highlights: *“Fertilisers that are a toxic hazard for workers can cause skin irritation and potentially serious respiratory effects through the inhalation of gaseous forms of anhydrous ammonia. Care should be taken when handling fertilisers to minimize exposure”*. See also as an example of a safety data sheet for NPK type fertilisers: www.azomures.com/wp-content/uploads/2015/10/FDS_NPK_EN.pdf (last accessed 20 November 2016)

work. In the afternoon, she went to the clinic and met the midwife who washed it three times, but there was no improvement. On Tuesday, she showed her finger to both the foreman and his supervisor but they asked her to keep working. She worked for seven days and then could not bear the pain anymore. She went to the company clinic again and they referred her to the hospital. The doctor at the hospital told her that her finger was infected and amputated the finger. The foreman told her that as she had made a mistake reporting her sickness and had not informed him on the day of her accident, he could not help her get a daily payment for the days she was sick. She told researchers that she had tried to find the foreman to tell him on the day she was injured but could not find him as it was a Saturday. Amnesty International Researchers met Q after she was released from hospital and took a photo of her hand. She was in considerable pain after the amputation.²⁴⁰

Amnesty International researchers saw the safety equipment that workers wear, or photos of the equipment, at Wilmar's subsidiaries and SPMN. As discussed earlier, workers in plant maintenance units at ABM and PT Hamparan said the companies don't give them any safety equipment. The aprons do not cover the full body and leave the arms completely exposed. They also do not protect the workers' necks and if liquids are spilt from tanks, they will not prevent them from running on to the workers' backs. The masks used by Wilmar's subsidiaries and SPMN are cloth anti-pollution masks. Such masks are useful for filtering out dust and particulate matter but do not appear to be appropriate for spraying hazardous chemicals as workers should use face masks with respirators which are capable of filtering spray droplets.²⁴¹

U, who works for a Wilmar subsidiary and spreads fertilisers, said: *"The company gave us gloves and a black cloth mask. They gave me a mask once or twice and nothing after. I lost my mask and the foreman yelled at me. I had to buy a new one, it costs 5000 [Indonesian] Rupiahs. We don't use rubber gloves but cloth gloves. They have never given me boots, apron or goggles. I bought the boots myself for 80,000 [Indonesian Rupiahs]."*²⁴²

T, who works for a Wilmar supplier, told researchers that it is very difficult to wear the protective equipment, especially the rubber gloves, because it is hot. She also said that she doesn't wear the goggles in the morning because it gets foggy.²⁴³ This was repeated by other women workers who said it was too difficult for them to use goggles, because they get foggy. N, who was formerly employed in a supervisory capacity by a Wilmar supplier, told researchers that after a Roundtable on Sustainable Palm Oil assessment visit they were given a mask with filters but it was so hot in the field with the mask that workers would take it off. He said: *"When using CDA [controlled droplet applicator], the workers are meant to use a full body suit but this is kept in the storage area rather than given to the workers as it is very hot to use."* He also pointed out that sprayers take a break by resting in the shade, including under the newly sprayed plants.²⁴⁴ Guidelines for protecting workers safety after pesticide applications on agricultural establishment however include restricted-entry intervals; the time immediately after a pesticide application when entry into the treated area should be restricted.²⁴⁵

The target based system, described in Chapter 4, disincentives workers from taking breaks, which they would need to do if they wore adequate protective equipment in the heat, as they effectively lose pay if they

²⁴⁰ Amnesty International interview with Q, North Sumatra, date withheld for safety.

²⁴¹ See as an example of safety guidance for spraying paraquat:

www.cheminova.com.au/download/herbicides/label/paraquat_250sl_label_au.pdf (last accessed 22 November 2016)

²⁴² Amnesty International interview with U, location and date withheld to protect identity.

²⁴³ Amnesty International with T, Central Kalimantan, date withheld to protect identity.

²⁴⁴ Amnesty International interview with N, location and date withheld to protect identity.

²⁴⁵ See US Environmental Protection Agency, 'Restrictions to Protect Workers After Pesticide Applications', <https://www.epa.gov/pesticide-worker-safety/restrictions-protect-workers-after-pesticide-applications> (last accessed 22 November 2016).

take breaks. It also means that workers may overfill tanks or rush to complete certain tasks in an effort to meet their targets. V, who works for a Wilmar subsidiary said:

“When we try and put on our tanks on our backs, it spills on our hands because the apron doesn't cover our hands, just the body. The tanks are new but we overfill it, it is our own fault, and then some liquid spills. We are trying to meet our target and rushing to catch up with our friends who may have already started.”²⁴⁶

As discussed above, there are significant gaps in the provision of safety equipment to workers. But even when workers are given safety equipment, the targets they are set by companies do not facilitate the proper use of such equipment. There is an inherent tension between the high targets that workers, including sprayers, need to meet and ensuring that workers take requisite breaks and the time to ensure their own safety, even if this means doing the work more slowly.

HEALTH EFFECTS AND INJURIES

Amnesty International researchers interviewed workers employed by Wilmar's subsidiaries and suppliers who described experiencing negative health effects, which may be linked to exposure to chemicals. These included women who have experienced injuries after severe exposure to chemicals. Most are nervous about publicising this information as this would make them identifiable and leave them at risk.

Most described dermal exposure to chemicals because of spills on their backs and hands, resulting in a burning sensation to the skin, discomfort and itchiness. As discussed earlier, some women described how their nails rot and fall off. L works in plant maintenance for a Wilmar supplier and spilt around two litres of weedicide on her back, when the cap of her tank opened when she was bending down. She was wearing an apron but it went through the neck of the apron and down her back. She kept working and didn't take a shower when she went home because it was the dry season and she couldn't find water. She said that there was no area for the workers to shower. She started feeling dizzy and saw the doctor the next day who said she had been exposed to Gramoxone. She described how she had nausea, vomiting and dizziness for 10 days.²⁴⁷

Other workers described vomiting and feeling dizzy and nauseous after they spray chemicals. A foreman employed by a Wilmar subsidiary mixes the chemicals for the workers to spray. He does so without gloves because he says the gloves are loose and they fall in. He described to researchers how he feels dizzy, his eyes get blurry and he gets headaches after he finishes mixing the chemicals and at other points in the day. He said that workers have told him that they feel dizzy as well, as has another foreman. Some workers described a stinging sensation in their eyes after they spray as they work without any eye protection. A woman worker described how her CDA [controlled droplet applicator] sprayer wasn't working properly and when she tried to look at it to see if it was working, it sprayed into her eye. She was not given goggles. She was treated at a hospital but her eye is still red from time to time.²⁴⁸

Yohanna is one of the few workers with severe injuries who is willing to speak publicly about her experience. She and her family, who all work for SPMN, say that they are prepared to risk everything to get her the treatment and support she needs. Yohanna is 45 year old. She was employed as a 'foreman' in a plant maintenance unit at SPMN, a Wilmar supplier, and had worked for the company since 2004. She was a permanent worker. Yohanna described to Amnesty International researchers how she was splashed in the

²⁴⁶ Amnesty International interview with V, North Sumatra, November 2015.

²⁴⁷ Amnesty International interview with L, location and date withheld to protect her safety.

²⁴⁸ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, dates withheld to protect their identities.

face with Gramoxone, while trying to load a tank on her bike.

*“On 2 February 2013, I went to the shed where they keep all the poison [term commonly used by workers and staff to refer to pesticides] at about seven in the morning. I was trying to load the tank onto my bike but it slipped and fell. I ran to catch it but before I could the liquid came out of the can and splashed all over my face. Fortunately only my right eye is affected now. I left my bike and ran to the front of the shed and there was a faucet and I washed my face. It was burning a little. It felt hot like a chilli pepper. I reported to my superior – the assistant, the man who was in the warehouse called the field assistant to tell him what happened. The field assistant came and he said that I should take the poison [term commonly used by workers and staff to refer to pesticides] out to the field before I go to the clinic. I took the poison to the field ... The tank contained Gramoxone – undiluted ... When I went to the clinic after the incident, the midwife met me, there was no doctor or nurse there at the time ... I told her that my eye had poison in it and she gave me some eye drops ... They didn't wash my eye out ... In the beginning I could see through the right eye but after a month, it became blurry ... After a few days, I went to the human resources division they gave me a referral letter and the company car took me to Sampit [city nearest to the plantation] to a hospital there, but my eye was already red and swollen ... The doctor in the Sampit hospital looked at it and cleaned it and they gave me a shot through the IV [intravenous drip] and some pills to take. The doctor didn't tell me what was wrong, she just spoke to the nurse and wrote a prescription. They kept me in hospital for 15 days. It [my eye] would get red every two weeks or so especially if I went out and the eye was exposed to light – sunlight or the lamp. I would feel that the eye stings and I would feel dizzy and like I am about to fall. My eye was blurry. It felt like the eye was coming out of the socket. I kept working in the same division, handling chemicals and transferring to cans. There were no checks up in between. The foremen don't wear goggles, even when transferring the chemicals.”*²⁴⁹

By November 2014, Yohanna's symptoms became a lot worse. She said that her right eye became red and swollen and she could not open it. She got a referral from the human resources department and went back to see the same doctor in Sampit hospital. The doctor gave her some medicine but her eye did not improve. She went back to the Sampit hospital in February 2015 where she was told the eye was infected and hospitalised for nine days. She was unable to go back to work and her eye was subsequently operated on in the Sampit hospital in March 2015 to remove a membrane from the eye to reduce swelling. In September the same year, she was referred to a doctor in Banjarmasin, the capital of South Kalimantan, who put a lens in her eye, which has to be replaced every month. Yohanna said: *“The doctor told me that the lens will protect the eye from the heat but it won't do anything else. The headaches are caused by the nerves around the eye being affected ... The doctor said the injury was caused by Gramoxone and that the Gramoxone had damaged the nerves of the eye ... I can't see through the eye. I get headaches in part of my head, when I do, my eye feels really swollen. I still get a bit dizzy. I can't read as the eye is blurry. If I use my right hand a lot, my head hurts. I would just like to walk stable like I used to.”*²⁵⁰

Yohanna was unable to return to work from February 2015. The cost of her surgery and hospitalization was paid for by the medical insurance linked to her job but she said that she has to pay for the lens, because the lens isn't covered by the insurance. She explained to researchers that the lens costs 500,000 Indonesian Rupiahs (US\$37) each time. She wasn't given a copy of her medical records and stated that she thought the records were sent to the human resources department of the company. In August 2015, Yohanna said a staff member from the human resources department of SPMN took her to Sampit to the *Jamsostek* [social insurance for private sector workers] office. She described how the staff member spoke to

²⁴⁹ Amnesty International interview with Yohanna, Central Kalimantan, February 2015.

²⁵⁰ Amnesty International interview with Yohanna, Central Kalimantan, November 2015.

a person at the *Jamsostek* office and then she was paid 12 million Indonesian Rupiahs (US\$887) as compensation for her injury. The *Jamsostek* official told her that she was entitled to receive 30 million Indonesian Rupiahs (US\$2216) for her injury but they had to deduct what they had already paid for her medical treatment. She was asked to sign three receipts but not given a copy of the receipts.

Amnesty International interviewed one of the doctors who treated Yohanna. She explained that the chemical caused corneal erosion and inflammation in Yohanna's eye. She stated that the delay in getting treatment had worsened the situation and had led to an infection which damaged her optic nerve and also affected the other eye.²⁵¹ Researchers also saw copies of some of Yohanna's medical records and referral documents and a copy of Yohanna's work accident insurance document which she received subsequently.

Mikael, Yohanna's husband, is also a foreman in the plant maintenance unit at SPMN. He told Amnesty International that in January 2015, Yohanna and he were invited to a meeting with a staff member from the human resources department. The staff member told him the company wanted to offer both of them an early retirement. *"I said we can't accept that as my wife is still blind and we want her to be fully recovered before that happens. I want a doctor to say she is fully recovered and then I would let her fully retire ... [The human resources staff member] said it is because you are of retirement age that's why we are offering you retirement. I would get full retirement as I am close to retirement age [he was 52] ... [The human resources staff member] said we are going to put on retirement everyone who is ill. I told her that she is ill not because of something that happened in the camps but because of her work and demanded that they treat her."*²⁵²

Amnesty International also interviewed another worker who was offered early retirement after suffering an injury from chemical exposure, rather than compensation. Staff in a supervisory capacity at SPMN also told researchers that the company asks workers with injuries to take early retirement rather than pay them compensation.²⁵³

SPMN paid Yohanna a full salary till August 2015 but then reduced her salary to 75% and from November reduced it to 50%. Her employment was terminated in February 2016 as the company said she was unable to work again. Yohanna received 64 million Indonesian Rupiahs (US\$4,728) on the termination of her contract (see photo of receipt from SPMN), this included her pension. SPMN also told Yohanna that they were willing to cover the medicine and surgery recommended to her by the doctors, but through her husband's medical insurance.²⁵⁴

Yohanna suffered a serious and debilitating injury, which could leave her with a life-long disability, linked to the SPMN's use of Gramoxone, an acutely toxic chemical. There was a considerable delay in her obtaining the treatment she required and the company's immediate response to her being splashed in the eye was, in Amnesty International's view, negligent. Her doctor whom Amnesty International interviewed has confirmed that the delay in treatment worsened her condition and led to further damage to her eye. SPMN must ensure that Yohanna has the medical care she needs, for as long as necessary. The company should pay for and organize any treatment and rehabilitation that Yohanna requires and it should not be subject to her being able to be covered on her husband's medical insurance.

²⁵¹ Amnesty International phone interview, name and details withheld to protect identity.

²⁵² Amnesty International interview with Mikael, Central Kalimantan, February 2015.

²⁵³ Amnesty international interview with workers and staff, Central Kalimantan, dates withheld to protect identities.

²⁵⁴ Information obtained by Amnesty International through emails and phone conversations.

NON COMPLIANCE WITH REGULATIONS ON PARAQUAT AND LACK OF ADEQUATE INFORMATION ON HEALTH RISKS

Indonesian regulations stipulate that paraquat only be sprayed by trained and certified applicators.²⁵⁵ However, none of Wilmar's suppliers appear to be complying with this requirement.

Amnesty International found wide divergences in information and knowledge amongst workers, based on the company that they worked for and the attitude of the foreman who supervised their work. For example, some workers do not even know the brand names of the chemicals that they spray, and workers have different levels of safety information. A few workers employed by Wilmar's subsidiaries knew the names of the chemicals they sprayed and the fertilisers they spread. At one Wilmar supplier, workers working under one foreman said that he told them what they were spraying and what the risks were but workers supervised by other foremen did not have this information. In general however, researchers were repeatedly told by workers that they did not know or were not sure what was in the chemicals that they spray or spread. Researchers found that very few of them were aware of the specific health risks associated with the chemicals they spray.²⁵⁶

In SPMN, workers are told in their morning briefings that they should use their safety equipment. Only a few foremen however give them information on the specific health risks associated with the chemicals they handle. Workers at SPMN and supervisory staff confirmed that the company carries out regular safety inspections but they just do a visual inspection of workers in plant maintenance units to check if workers are wearing their safety equipment. They do not physically check the equipment that workers use. T told researchers: *"Sometimes when there is an audit by the company, they ask me what fertiliser do I use and whether we use our apron and mask. If we are not wearing a mask, they ask us why don't you use your mask? They just see us and ask us questions, they don't check our equipment. Unless we tell them our equipment is worn out, they won't know. I told the company inspector, two months ago, to please replace my equipment because it is worn out and the inspector said, just tell your FA [field assistant], don't tell me."*²⁵⁷

P, works in the plant maintenance unit at PT Hamparan. As discussed earlier, workers told researchers that PT Hamparan does not give them any safety equipment. She said: *"Sometimes the Manager comes to the plantation and checks to see if we have the right equipment, like a sickle and sack. If we don't have the right equipment, they send us home. They don't care if we have any safety equipment."*²⁵⁸

Workers employed by one Wilmar subsidiary were told by their head of division that the chemicals were dangerous and that they needed to use their safety equipment. Very few of them however have information about the specific health risks associated with the chemicals they spray. U told researchers that, in 2012, the foreman told them that a guest had arrived from Singapore. The guest inspected the plantation and told workers that they must wear their safety equipment and if they are not supplied with the equipment that the workers should not work. However, workers employed by the same subsidiary pointed out that gaps persist in the provision of safety equipment by the company.²⁵⁹ Researchers considered it quite unrealistic that workers in plant maintenance could refuse to work if they were not supplied with safety equipment, considering the precarious nature of their employment as casual daily labourers.

²⁵⁵ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

²⁵⁶ Amnesty International interviews with workers, Central Kalimantan and North Sumatra, February, October and November 2015.

²⁵⁷ Amnesty International interview with T, Central Kalimantan, date withheld for safety.

²⁵⁸ Amnesty International interview with P, Central Kalimantan, date withheld for safety.

²⁵⁹ Amnesty International interviews with U and other workers, North Sumatra, date withheld for safety.

COMPULSORILY TESTED BUT RESULTS NOT SHARED WITH WORKERS

Wilmar's subsidiaries and SPMN, a Wilmar supplier, organise blood tests for individuals working in the plant maintenance units. A woman who works for Wilmar's subsidiary ABM told researcher that the company had only organised a blood test for the workers once in the last six years. PT Hamparan does not organise blood tests for its workers.

According to workers employed by Wilmar's subsidiaries, they have blood tests every six months or a year. Workers employed by SPMN are tested every six months. Workers told researchers that they are not given any information on the kinds of tests that are carried out on their blood or what they are being screened for. Workers at SPMN said that they are told by their supervisors that everyone who spreads fertilisers or sprays chemicals must be tested. Some of the workers employed at PT Milano, a Wilmar subsidiary, were told by the midwives or nurses who collect their blood samples that they were being tested to check if chemicals have impacted their blood or if they could continue fertilizing. They were not given any further information on what the company is testing for. A staff member employed by SPMN told Amnesty International that the company does kidney, liver function and other blood tests.²⁶⁰

Workers are not provided with copies of the test results by the companies, despite asking for them. An exception to this is SPMN where some workers have been able to get a summary of their results, thanks to pressure from the union. In general however, the companies do not give copies of the results to the worker whose blood has been tested. Workers whose blood tests reveal anomalies are told that there is a problem with their blood but still not provided a copy of the results.

D, who works for a Wilmar subsidiary, told researchers that she was tested in 2012 and 2014. After her first test, she was told by a mid-wife who works at the company's clinic that there was some chemical in her blood and that she could no longer do spraying. She was not given a copy of her result despite asking for it. She said: *"The first time they told me there is some chemical in your blood. I got into an argument with the midwife and asked for the result. I told her I want to get it checked myself in the hospital and get it treated but she didn't give me a copy of the results."* In 2013, D asked the assistant if she could return to spraying and was allowed to. She had been spraying chemicals since then and was tested again in 2014. She wasn't given a copy of the results but was given vitamin injections every week starting from July 2015. *"The midwife told me that I was being given the injection as there was some chemical in my blood. I asked the midwife why are you only giving me vitamins, not treatment if there is chemical in my blood. I asked the midwife why are you giving it just to me and not to other ladies who work in spraying? She didn't give me any explanation ... I feel very emotional, I am very angry. I want to get the lab result. If they tell me I am sick, I want to get it checked at the hospital. I really want to know what is happening in my body. I want to get the lab result directly from the hospital. There is a question mark in my life."*²⁶¹

K is employed as a casual daily labourer in plant maintenance for another Wilmar subsidiary. She said that her blood was tested by the company in October 2015 and after the test, she was told by the midwife at the company clinic that she could not spray anymore. She said that she and five other workers from plant maintenance were called by the clinic. A midwife who had a paper with the results communicated to all the workers that they had a chemical reaction in their blood. K was told that she had a high level of cholesterol and the chemical had impacted her blood. There was a doctor present at the clinic and K asked the doctor to explain what the test result meant when it said a chemical had impacted her blood. She said that the

²⁶⁰ Amnesty International interviews with workers and supervisory staff, Central Kalimantan and North Sumatra, February, October and November 2015.

²⁶¹ Amnesty International interview with D, date and location withheld to protect identity.

doctor told her that they did not know but K did not need treatment and should eat more fruits. The doctor suggested she ask the company for a copy of the blood test results. K told researchers that she is extremely anxious as a result of being told that chemicals had impacted her blood and really wanted to get her blood tested elsewhere. However, she cannot afford to pay to consult another doctor.²⁶²

DEGRADING TESTS FOR MENSTRUAL LEAVE

The Manpower Act provides that female workers who feel pain during their menstruation period and notify their employer about this are not obliged to come to work on the first and second day of menstruation.²⁶³ Women workers employed by SPMN, a Wilmar supplier, told researchers that in order to get the menstrual leave they have to go to the clinic, wipe themselves with a piece of cotton and show the cotton to a male doctor to prove that they have their period. B said: “*We get our menstrual leave, two days, but have to go the clinic and the nurse gives us a cotton to show we are bleeding, otherwise the doctor won't believe us. Of course I am upset, it is not hygienic. I have to wipe my blood and ... I have to put the cotton in a bag and then go show it the doctor, who is a man. There are female midwives and they believe us but we have to show the doctor*”.²⁶⁴ This was confirmed by other women workers at SPMN.

In March 2016, SPMN circulated an internal memo quoting Article 8(1) of the Manpower Act with emphasis on the fact that women can only get menstrual leave if they feel pain (SPMN's emphasis) and have informed the company. The memo specified that female workers have to be checked by a nurse and obtain a notification letter from the doctor (see photos of the memo and form for the doctor's notification).

POTENTIAL BREACHES OF INDONESIAN LAW BY THE COMPANIES

Article 86 of the Manpower Act provides that every worker has the right to receive protection on occupational health and safety. Law 1 of 1970 on Work Safety requires amongst other things for managers to provide all the required personal protective equipment to workers and to demonstrate and explain all dangers which may occur in the workplace.²⁶⁵ The Minister of Manpower and Transmigration Regulation No. 08/MEN/VII/2010 Year 2010 on Safety Equipment stipulates that employers have to provide safety equipment for workers in accordance with the Indonesian national standard or applicable standard.²⁶⁶

Through their failure to provide or replace protective equipment, as described above, PT Perkebunan Milano, PT Daya Labuhan Indah, PT Abdi Budi Mulia, PT Sarana Prima Multi Niaga and PT Hamparan Masawit Bangun Persada may have breached Article 86 of the Manpower Act, Article 14 of Law No. 1 of 1970, and Article 2 of the Minister of Manpower and Transmigration Regulation No. 08/MEN/VII/2010 Year 2010 on Safety Equipment.

GENDER DISCRIMINATION

Under its 'No Deforestation, No Peat and No Exploitation' policy Wilmar has committed that “the company and its suppliers/sub-contractors shall ensure that workers are protected from any discrimination that would constitute a violation of their human rights; shall establish working practices that safeguard against any unlawful or unethical discrimination”.

The fact that Wilmar's subsidiaries and two of its suppliers, ABM and PT Hamparan, retain people as casual

²⁶² Amnesty International interview with K, date and location withheld to protect identity.

²⁶³ Article 81(1), Manpower Act.

²⁶⁴ Amnesty International interview with B, Central Kalimantan, November 2015.

²⁶⁵ Articles 9 and 14 (c).

²⁶⁶ Article 2. Article 3 includes a list of the safety equipment that may be required and it includes eye and face protection, respiratory protection, hand protection and protection of feet.

daily labourers for long periods of time leads to abuses of *both* men's and women's human rights. It is however difficult to ignore the gendered dimension of this practice. Amnesty International's investigation revealed that the majority of workers retained by the companies as casual daily labourers are women.

Amnesty International asked workers in all companies and the supervisory staff it interviewed whether there were any women employed as permanent workers by the companies. SPMN was the only company at which women were hired as workers on plantations and in supervisory capacities. Researchers were repeatedly told that women are only hired as casual daily labourers and only to work in plant maintenance. There are some limited exceptions, including women who are retained in office administration who are permanent.

Three casual daily labourers, two women and a man, who work in a plant maintenance unit in a Wilmar subsidiary told Amnesty International researchers that they had asked to be made permanent. All had worked for the company for more than two years. The two women said that the foreman told them they could only work as casual daily labourers. The male worker was told that he should become a harvester to be made permanent but could not be made permanent while he worked in plant maintenance.

A worker who works in another unit said that his wife, who worked as a casual daily labourer, had never asked to be made permanent as: *"it is impossible for a woman to be a permanent worker in Wilmar"*. This was repeated by women workers who said that they never asked for a permanent contract because they didn't think they could get one. S, who works for another Wilmar subsidiary, said: *"I have never asked for a permanent contract. I didn't know I was entitled to one. I only know that all the sprayers are daily workers. All are women and all are casual daily labourers."*²⁶⁷

Supervisory staff in several companies whom Amnesty International interviewed confirmed that the women working on the plantations are not permanent. N, who works in a supervisory position for a Wilmar supplier said: *"I don't know why this is. Some women in the offices are permanent. The women in the fields work harder than ones in the office so I am not sure why they are not made permanent."*²⁶⁸

Other workers confirmed that no worker in plant maintenance has been made permanent irrespective of their duration of service with the company. This is a problem for both men and women workers employed in plant maintenance units. However, as women working on plantations are only or mostly hired to work in plant maintenance units, it results in a situation where the majority of women employed by the company are never given permanent employment status.

Amnesty International asked Wilmar and its suppliers to provide the numbers of women who are currently employed as temporary workers by the companies in Indonesia and how many women have been made permanent since 2011. Wilmar did not include this information in its response. TSH Resources, SPMN's parent company, stated that as of October 2016, there were 219 women and 792 men employed as permanent workers and 25 women and 210 men as contract (casual/workers on fixed-term contracts) workers. As noted earlier, SPMN had no contract workers prior to March 2015. TSH Resources said since March 2015 no contract workers had been made permanent.²⁶⁹ ABM and PT Hamparan did not respond to Amnesty International.

The Convention on the Elimination of All Forms of Discrimination Against Women defines discrimination

²⁶⁷ Amnesty International interviews with S and other workers, dates and locations withheld to protect identity.

²⁶⁸ Amnesty International interviews with N and other supervisory staff, dates and locations withheld to protect identity.

²⁶⁹ TSH Resources' response to Amnesty International, received 18 November 2016.

against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²⁷⁰

The evidence that Amnesty International has collected indicates that Wilmar, ABM and PT Hamparan exclude women who work on plantations from opportunities for permanent employment. The pattern of hiring women on plantations as casual daily labourers and not offering them permanent employment amounts to differential treatment. This affects not only women’s terms and conditions of employment but also restricts their access to health insurance and social security benefits. Amnesty International’s investigation found that the majority of women are only offered employment on plantations in units where they can work as casual daily labourers rather than in units where they can be hired as or eventually made permanent employees. Even if there is no clear policy in this regard, the fact that women are greatly overrepresented amongst casual daily labourers can amount to indirect discrimination. Wilmar, ABM and PT Hamparan have not offered any reasonable and objective justification for their failure to offer permanent employment to the majority of women workers employed on their plantations. This differential treatment impairs women’s rights to and at work, to health and to social security and results in discrimination against women workers.

INTERFERENCE WITH WORKERS’ RIGHT TO JOIN THE TRADE UNION OF THEIR CHOICE

Amnesty International received evidence that ABM, a Wilmar supplier, interfered with workers’ right to join the trade union of their choice. Seven workers who tried to change trade unions in December 2015 were intimidated and threatened with dismissal by their managers. On 4 December 2015, four workers gave written notice to their current union that they wanted to leave the union. Three days later they and the three others were called by their manager and told that in order to resign from the union they had to submit the request through their foreman, supervisor, assistant and manager who all had to be informed why they were resigning. The manager also asked them if they had joined a new union because when they were employed by the company, they had signed a statement that they would not join any other union.

Three of the workers’ wives, employed as casual daily labourers, were dismissed by ABM on 10 and 11 December 2015. On 11 December one of the workers submitted a request to the Department of Social Service, Manpower and Transmigration in South Labuhanbatu to register a new union. The seven workers were asked to meet their manager on 12 December and asked to cancel their request to withdraw from the union. According to the evidence received by Amnesty International, the manager told them that if they insisted, they had to meet the Personnel, Legal and General Affairs department. The workers met a staff member from the Personnel, Legal and General Affairs department on 17 December who told them they had to withdraw their resignation. On 4 January and 5 January 2016, one of the workers received a letter and another was orally informed that their employment status would be changed from permanent employees to casual daily labourers. Following these events, the two workers agreed to sign a statement in the middle of January 2016 that they would resign from the new union. ABM then cancelled the letter changing the worker’s employment status and allowed them to retain their employment status. The three women who were dismissed were also re-employed.²⁷¹ Article 28 of the Trade Union Act prohibits anyone from preventing a worker from forming, joining or choosing not to be a member of any union.

²⁷⁰ Article 1. See also ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (Convention No. 111).

²⁷¹ Names of sources withheld to ensure their safety.

6. WILMAR AND ITS SUPPLIERS: ABUSING HUMAN RIGHTS

This chapter describes the responsibility of companies for the labour abuses described in the earlier chapter. It discusses Wilmar's responsibility for the actions of its subsidiaries. It also examines Wilmar's due diligence in relation to its third-party suppliers (suppliers). The chapter concludes with a brief overview and analysis of the Roundtable on Sustainable Palm Oil's (RSPO) principles and criteria and certification assessments.

CORPORATE RESPONSIBILITY TO RESPECT

Companies have a responsibility to respect human rights. The scope and meaning of this responsibility has been clarified in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles).²⁷²

According to the UN Guiding Principles: *"The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."*²⁷³

The responsibility to respect human rights requires that companies should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.²⁷⁴ It requires companies to: *"Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur"*.²⁷⁵ Companies therefore have a responsibility to avoid causing or contributing to adverse human rights impacts through the actions of entities within a business enterprise, such as subsidiaries. The UN Guiding Principles ask companies to go further and address risks of involvement in adverse human rights impacts which they may be linked to through their broader business relationships. The UN Guiding Principles provide that companies should: *"Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts"*.²⁷⁶

WILMAR'S RESPONSIBILITY FOR THE CONDUCT OF ITS SUBIDIARIES

As the analysis in the preceding chapters demonstrates Wilmar's subsidiaries, PT Perkebunan Milano and PT Daya Labuhan Indah, have abused their workers' rights to just and favourable conditions of work, health, and social security. These companies also discriminate against women on the basis of their sex through their hiring practices: women are employed on plantations as casual daily labourers and not offered permanent employment. Amnesty International found cases of forced labour and the involvement of children in the worst forms of child labour in the operations of Wilmar's subsidiaries. Wilmar's subsidiaries

²⁷² UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc. HR/PUB/11/04, 2011 available at: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (last accessed 23 October 2016)

²⁷³ Commentary to Principle 11, UN Guiding Principles.

²⁷⁴ Principle 11, UN Guiding Principles.

²⁷⁵ Principle 13 (a), UN Guiding Principles.

²⁷⁶ Principle 13 (b), UN Guiding Principles.

may also have contravened Indonesian laws and potentially committed criminal offences.

Wilmar wholly owns PT Perkebunan Milano²⁷⁷ and it owns 95% of PT Daya Labuhan Indah.²⁷⁸ Wilmar refers to itself and its subsidiaries as the 'Group' in all its public materials. In the corporate governance section of its Annual Report, Wilmar states that the Board is required to consider sustainability issues in the formulation of the business strategies and corporate policies of the Group.²⁷⁹ Wilmar has set up a 'Sustainability Council', headed by its Chairman and CEO, which leads the development and execution of its 'No Deforestation, No Peat, No Exploitation Policy'. The Chief Sustainability Officer is responsible for overall strategy and policy development. The Group Sustainability General Manager is responsible for the implementation of policies in the Group's own operations, "as well as ensuring third party supplier compliance".²⁸⁰ The Chief Sustainability Officer or the Group Sustainability General Manager are listed as contacts or management representatives for RSPO certification assessments of Wilmar's subsidiaries.²⁸¹ It is clear from all of these materials that 'sustainability' issues, which include prevention of labour exploitation, are overseen by Wilmar across its subsidiaries and that decision-making and oversight are centralized.

Wilmar's subsidiaries have infringed on the human rights of the workers that they directly employ. Wilmar is responsible for the conduct of its wholly or almost fully owned subsidiaries as it controls these entities. Wilmar has therefore failed to meet its responsibility to respect human rights and has abused the human rights of workers that the Group employs.

WILMAR'S SUPPLIERS' FAILURE TO RESPECT HUMAN RIGHTS

As the analysis in the preceding chapters demonstrates, PT Abdi Budi Mulia, PT Sarana Prima Multi Niaga, and PT Hamparan Masawit Bangun Persada have abused their workers' rights to just and favourable conditions of work, health, and social security. Amnesty International found cases of forced labour and the involvement of children in the worst forms of child labour in their operations. PT Abdi Budi Mulia, and PT Hamparan Masawit Bangun Persada also discriminate against women on the basis of their sex through their hiring practices. PT Abdi Budi Mulia has interfered with its workers' right to join the trade union of their choice. All three companies may also have contravened Indonesian laws and potentially committed criminal offences. As noted in Chapter 8, Wilmar has confirmed in its traceability materials that it sources palm oil from PT Abdi Budi Mulia and PT Sarana Prima Multi Niaga. PT Hamparan Masawit Bangun Persada is part of the BEST Group and Wilmar has confirmed in its response to Amnesty International that it sources palm oil from the BEST Group.²⁸²

WILMAR'S LACK OF ADEQUATE DUE DILIGENCE IN RELATION TO ITS SUPPLIERS

The UN Guiding Principles provide that companies should put in place:

"(a) A policy commitment to meet their responsibility to respect human rights;

²⁷⁷ Wilmar International, *Wilmar in Asia: Annual Report 2015*, p. 194. PT Perkebunan Milano is included in the list of significant subsidiaries in Wilmar's Annual Report. It is only one of eight Indonesian subsidiaries named in the Annual Report.

²⁷⁸ Wilmar International, *Wilmar in China: Annual Report 2009*, p. 173.

²⁷⁹ Wilmar International, *Wilmar in Asia: Annual Report 2015*, p. 63.

²⁸⁰ Wilmar International, *Sustainability Report 2015*, p. 23.

²⁸¹ See for example, PT Mutagung Lestari, *RSPO Certification Assessment: PT Daya Labuhan Indah*, approved on 13 November 2015.

²⁸² Neither PT Hamparan Masawit Bangun Persada nor the BEST Group are listed as suppliers in Wilmar's traceability materials. In a letter sent to Amnesty International, dated 17 October 2016, Wilmar confirmed that it sources palm oil from PT Batara Elok Semesta Terpadu, a refinery owned by the BEST Group which is supplied by its plantations.

- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they have addressed their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."²⁸³

POLICY

After campaigns by NGOs, in particular Greenpeace, Wilmar adopted its 'No Deforestation, No Peat, No Exploitation Policy' (the Policy) in December 2013.²⁸⁴ The policy states that all provisions apply to all Wilmar operations, including those of its subsidiaries, and "any refinery, mill or plantation that we own, manage, or invest in, regardless of stake". They also apply to all 'third-party suppliers' that Wilmar purchases palm oil from or with which it has a trading relationship.²⁸⁵

In addition to commitments to stop development of certain areas, including on peat, Wilmar commits to 'No Exploitation of People and Local Communities'. It commits "to upholding and promoting the Universal Declaration of Human Rights for all workers, contractors, indigenous people, local communities and anyone affected by our operations under the full scope of this Policy".²⁸⁶ Most of the precise commitments under the Policy related to preventing exploitation of workers have been set out in the preceding chapters.

Wilmar has implemented one of the operational principles set out under the UN Guiding Principles by adopting a clear statement of policy to respect human rights. The Policy was approved at the most senior level of the business and applies to its entire global operations, suppliers and other actors with which it has a trading relationship. These are positive steps. Nevertheless, the evidence collected by Amnesty International indicates that Wilmar has completely failed to put in place an effective system to implement this policy.

WILMAR'S FAILURE TO IDENTIFY AND ADDRESS RISKS AND ABUSES

Amnesty International's investigation revealed that women and men working on plantations owned by Wilmar's suppliers face abuses of their human rights which are systemic in nature and not *ad hoc*. These abuses are linked to factors such as the low levels of minimum wages in Indonesia; the use of performance targets or piece rates to calculate pay; the large number of penalties which can be applied at the employer's discretion; the use of casual work arrangements for people, especially women, who work for the company on an ongoing basis; and risks associated with continuing use of hazardous chemicals (which are exacerbated by the vulnerable status of casual daily labourers who work with these chemicals). All of these are obvious and predictable areas of concern and risk. Similarly, the risks to workers following hazardous levels of air pollution in Central Kalimantan and Sumatra in the dry season after forest fires in 2015 were patently obvious. Wilmar has however failed to identify and address these issues in relation to the suppliers that Amnesty International investigated. It has also failed to provide Amnesty International with evidence that it has identified and addressed these risks across its broader supply chain in Indonesia.

²⁸³ Principle 15, UN Guiding Principles.

²⁸⁴ See for example, Greenpeace, *Licence to Kill*, 22 October 2013, available at:

www.greenpeace.org/international/en/publications/Campaign-reports/Forests-Reports/Licence-to-kill1/ (last accessed 29 October 2016).

See also J. Elks, 'After Years of Pressure, Wilmar International Commits to Ending Deforestation Practices', 5 December 2013, available at:

www.sustainablebrands.com/news_and_views/behavior_change/jennifer-elks/after-years-pressure-wilmar-international-commits-endin (last accessed 29 October 2016). Wilmar states that it did not adopt the Policy due to pressure from NGOs. "We did not do this due to pressure from the non-governmental organisations (NGOs). We did it because having seen the deterioration in the environment in many countries and changes in global climate, we felt something needed to be done and that big corporates must take the lead and work together as never before. Furthermore, consumers globally are moving towards and favouring responsibly-produced commodities. The industry must therefore adjust to market needs and expectations if it wants to remain competitive". See Wilmar International, *Sustainability Report 2013*, p. 4.

²⁸⁵ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013, p. 1.

²⁸⁶ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013, pp. 4 - 5.

Wilmar set itself the target that its suppliers would be fully compliant with all provisions of the Policy by 31 December 2015.²⁸⁷ Wilmar stated that it “*will develop its own Action Plan and make this plan publicly available and will publicly and transparently report on-going progress*”. It noted that it would seek to support suppliers and “*establish clear assessment procedures to determine their own and suppliers’ performance against this Policy*”.²⁸⁸

After reviewing all of Wilmar’s progress and sustainability reports and other public materials, Amnesty International concluded that Wilmar has not provided information which can help track the effectiveness of its actions to end exploitation in its supply chain. The reports contain only sparse information on labour issues, and the data that is included tends to focus on the Wilmar Group rather than Wilmar’s suppliers. They are superficial and largely speak to the Policy rather than information on risks or actual adverse human rights impacts that have been identified and how these have or will be addressed. For example, Wilmar’s 2015 Sustainability Report states that it does not employ children under the age of 18 and that it seeks “*to identify risks to children in our supply chain and take appropriate measures to address any risks*”. It notes: “*It is not uncommon for children to work on family farms in smallholder operations. This is allowed within the RSPO standards as long as the welfare and schooling of children are not compromised.*”²⁸⁹ No further information is included on the process and methodology used to identify risks of child labour vis-à-vis its suppliers, the risks that have been identified and the concrete action taken when child labour has been discovered. Strangely, Wilmar’s older reports included more disclosure on labour rights related concerns when compared to the recent reports.²⁹⁰

It is clear from Amnesty International’s investigation that Wilmar has not meet its target of ensuring that all its suppliers are fully compliant with the labour related provisions of its Policy by the end of 2015. Wilmar itself acknowledges this in respect of issues such as the phasing out of the use of paraquat by its suppliers. In its response to Amnesty International, Wilmar acknowledged: “*Only a number of our suppliers have been able to fully implement this to date.*”²⁹¹ Wilmar states that it is working with suppliers to support processes to eliminate paraquat use. However, this is insufficient and the continued use of paraquat should have thrown up red flags for Wilmar. It should have been identified as a high risk issue which required further monitoring and mitigation measures to protect the health of workers who have been spraying and continue to spray paraquat. Wilmar has not provided any evidence that it has assessed and required mitigation of health risks to workers who continue to be exposed to paraquat.

In its response to Amnesty International, Wilmar stated: “*Wilmar acknowledges that there are ongoing labour issues in our supply chain and they are clearly identified and recognized in our “Overarching Reports”, as part of the Aggregator Refinery Transformation (ART) approach we have embarked on to drive*

²⁸⁷ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013, p. 8.

²⁸⁸ Wilmar International, No Deforestation, No Peat, No Exploitation Policy, 5 December 2013, pp. 8 - 9. Wilmar also states that it “*will cease to do business with any suppliers who our independent advisors or other stakeholders find are in serious violation of this policy, and who do not take immediate remedial action to correct those violations. However, regardless of remedial action, we will not do business with serious repeat violators of the policy.*”

²⁸⁹ Wilmar International, *Sustainability Report 2015*, p. 57.

²⁹⁰ For example, Wilmar’s 2009 Sustainability Report included the percentage of employees who were union members in Central Kalimantan and North Sumatra comparing 2007, 2008 and 2009 figures. The 2009 report also noted that one of the RSPO audits had found some workers who had been employed before they reached the age of 18. Though this data is partial and does not cover Wilmar’s suppliers, it offers a bit more detail than the broad statements included in Wilmar’s current reports.

²⁹¹ Wilmar International letter to Amnesty International, dated 17 October 2016. Wilmar also states: “*Many of our suppliers are undergoing trials to identify practical alternatives, and Wilmar continues to support this process to eliminate paraquat use.*”

sustainable transformation and real change on the ground.”²⁹²

AGGREGATOR REFINERY TRANSFORMATION

Under the ART approach, Wilmar with the assistance of The Forest Trust (TFT) selects ‘high priority’ mills from all the mills that supply a Wilmar refinery. Wilmar explains that: “A sampling regime was necessary given the large number of supplying mills, as it is not possible to conduct an assessment on all 1,000 mills”. The selection of the mills is done through a “Mill Prioritisation Process ... which is based on the analysis of spatial and non-spatial data pertaining to potential risks within a 50km radius”.²⁹³ The criteria used for prioritizing mills uses geographic information system based scoring which looks at various environmental data sources. Other non-spatial elements included in the scoring process are whether the company has its own policy and implementation plan, RSPO certification, volume importance, publicly reported information, including from NGOs, and TFT’s assessment register.²⁹⁴

Wilmar and TFT carry out field assessments at approximately 10% of mills from a sample of ‘high priority’ mills. TFT, supported by Wilmar representatives, also carries out field visits to the estates and smallholder plantations which form the ‘supply bases’ of each of the mills that has been selected. The mills, estates, and smallholders visited are assessed against Wilmar’s Policy. TFT has stated: “The assessment was not conducted as an auditor or certification body would, on the contrary, TFT approached the field visits as an opportunity to provide advice which might help the suppliers meet Market Expectations. The objective was to work together with the mills, plantations and smallholders to create pragmatic and collaborative solutions for improvement”. Each entity that is visited is issued with its individual report by TFT, which outlines in detail the findings and includes recommendations and action items for improvement. The general findings are shared with other mills and growers, who were not visited, to propose actions that could be taken to resolve commonly found issues.²⁹⁵

By the end of 2015, Wilmar stated field assessments had been carried out on 47 mills and provided a representation of their supply base in Indonesia, Malaysia, Latin America, and Ghana. 41 of these were external mills (not owned by Wilmar); 26 external mills from Indonesia were assessed. It conducted the ART process for Sandakan, Malaysia.²⁹⁶ In 2016, Wilmar made three other ART reports available on its website.

Amnesty International reviewed the overarching reports that have been made available by Wilmar. Only one sub-section of each report is focused on labour issues; the majority of the report covers environmental and other concerns. One of the overarching reports, the report for Sandakan in Malaysia, highlighted the issue of child labour on a few plantations.²⁹⁷ Most of the reports highlighted concerns about the continuing use of paraquat and other hazardous chemicals and the lack of social impact studies. The reports also point to the lack of policies and the need to improve occupational health and safety management practices at some companies. Other issues that were highlighted included the need to ensure that all employees are provided with employment contracts clearly outlining the terms of their employment; that foreign workers did not have passports and work permits (in Malaysia); that workers do not understand the wage calculations or do not receive minimum wages in a small number of plantations (also in Malaysia); and lack of grievance handling procedures.²⁹⁸ The overarching report states: “As part

²⁹² Wilmar International letter to Amnesty International, dated 17 October 2016.

²⁹³ Wilmar International, *No Deforestation, No Peat, No Exploitation: Policy Progress Update (December 2013 – December 2015)*, p. 11.

²⁹⁴ TFT, *Prioritizing mill visits*, available at www.wilmar-international.com/wp-content/uploads/2016/01/Prioritizing-Mill-Visits.pdf (last accessed 30 October 2016)

²⁹⁵ In a letter to Amnesty International dated 17 October 2016, Wilmar said: “The findings, along with recommendations on improvements are then shared through one-on-one meetings and regional supplier group workshops.”

²⁹⁶ Wilmar International, *No Deforestation, No Peat, No Exploitation: Policy Progress Update (December 2013 – December 2015)*, p. 12.

²⁹⁷ TFT, *Wilmar Integrated Policy Rapid Assessment: Sandakan Edible Oils Overarching Report*, Sandakan, Sabah, December 2014, available at: www.wilmar-international.com/sustainability/progress/aggregator-refinery-transformation-art/art-overarching-reports/ (last accessed 30 October 2016)

²⁹⁸ See TFT, *PT Wilmar Nabati Indonesia Gresik Refinery Overarching Report (July 2016)*, *PT Multimas Nabati Asahan Kuala Tanjung and PT Multimas Nabati Asahan Paya Pasir Overarching Report (April 2016)*, *Pasir Gudang Edible Oil Overarching Report (December 2015)*, and *Sandakan Edible Oils Overarching Report (December 2014)*, available at: www.wilmar-

*of the deep engagement process, targeted entities will be revisited in order to discuss the implementation of the proposed actions and to establish practical action plans for on-going monitoring.*²⁹⁹ The individual reports are not shared publicly nor is the time-frame for follow up and ongoing monitoring. The names of the parent companies, the mills, estates and small holders who have been visited are not shared. An anonymised appendix includes a summary of findings in a tabular form and indicates whether the entity complied with key elements of Wilmar's policy or whether a potential issue exists. There is no information included in the overarching reports or Wilmar's progress reports on the corrective actions agreed with the entities that were visited and the progress made since the visits.

Although the Aggregator Refinery Transformation approach may be useful, it is extremely limited in scope and covers a very small portion of Wilmar's supply base (less than 5% of mills had been visited as of 2015). It may offer a useful avenue for engaging with suppliers to work collaboratively to find solutions but does not replace the need for a far more comprehensive process to identify risks of labour abuses across Wilmar's supply chain.

The criteria used for the selection of mills for the ART are also not based on an adequate pre-assessment of the risk of labour rights abuses. Most of the selection criteria are linked to environmental factors and the ones linked to labour are based on the company's policy framework, RSPO certification and publicly available information. There is no pre-assessment of suppliers' working arrangements or risk factors such as membership of trade unions, the targets set for workers, piece-rate pay, and/or the number of casual daily labourers or migrant workers employed by the company.

To meet its responsibility to respect human rights, Wilmar should carry out human rights due diligence to identify, prevent, mitigate and account for the way it addresses adverse human rights impacts within its global operations. This requires Wilmar to actively assess its entire operations, business relationships and supply chain and identify general areas where the risk of adverse impacts is most significant. Wilmar's failure to do this is striking, given the effort that Wilmar has made to trace its supply chain. Wilmar has made an unprecedented amount of information available; for example the company has published the names of the mills which provide crude palm oil to its refineries.³⁰⁰ Wilmar's efforts to ensure greater traceability of its supply chain are positive. However, traceability is just the first step when it comes to capturing labour risks and abuses. Wilmar should have gone further and also used the process to identify risks of labour abuses in its supply chain. This requires that Wilmar collect information on working practices, at least for identifiable plantations which supply each mill. While it may have been difficult to do this for all the smallholders that supply each mill, Wilmar could at least have assessed working conditions and risk factors at plantations operated by the mill owner and other identifiable plantations. Wilmar has stated that: "*Traceability is useful because the information can be utilised to evaluate our suppliers' performance against our policy, and to engage with our supply base to achieve improvements where needed*".³⁰¹ Wilmar's efforts to trace the mills have however not been matched by efforts to evaluate the extent to which its suppliers are implementing its Policy.

Amnesty International also asked Wilmar to describe how it had monitored compliance with Indonesian and international labour standards on plantations which were not visited as part of the 'high level engagement' undertaken as part of the ART process. Wilmar, in its response to Amnesty International, pointed to the 'supply chain surveillance' work carried out on more than 40 palm oil companies at the plantation, mill or

international.com/sustainability/progress/aggregator-refinery-transformation-art/art-overarching-reports/ (last accessed 30 October 2016)

²⁹⁹ See for example, TFT, *Wilmar Integrated Policy Rapid Assessment: PT Multimas Nabati Asahan Kuala Tanjung and PT Multimas Nabati Asahan Paya Pasir Overarching Report*, Jakarta, April 2016, p. 6.

³⁰⁰ Wilmar International, 'Traceability', www.wilmar-international.com/sustainability/progress/traceability/ (last accessed 30 October 2016).

³⁰¹ Wilmar International, *No Deforestation, No Peat, No Exploitation: Policy Progress Update (December 2013 – December 2015)*, p. 6.

group level.³⁰² It did not provide information on the abuses or risks that were discovered, the companies that were monitored, and the corrective action taken. In the absence of this information, it is hard to comment on the efficacy of this initiative. Wilmar also referred to its collaboration with Business for Social Responsibility³⁰³ and to its Grievance Procedure³⁰⁴ in its responses to Amnesty International.

The UN Guiding Principles emphasize that a human rights due diligence process “*should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed*”.³⁰⁵

Despite being explicitly asked for this information by Amnesty International, Wilmar did not provide details of any instances in which it identified abuses of international labour standards amongst its subsidiaries and suppliers in North Sumatra and Central Kalimantan and the corrective action taken. It also did not respond to a question asking if it had informed the authorities when its monitoring had revealed breaches of Indonesian labour law by its subsidiaries or suppliers.³⁰⁶

Wilmar stated that no supplier had been suspended for any labour issues “*as many of the suppliers we engaged with have shown commitment to and demonstrable efforts in improving their practices*”. It stated that it wished to encourage them to continue with progress and would only discontinue a relationship if a supplier repeatedly failed to show any improvement or resolutely refused to comply with the Policy.³⁰⁷ However, it did not include details of the abuses it had uncovered or the efforts taken by the supplier to improve its practice.

Amnesty International has concluded that Wilmar does not have an adequate due diligence process in place to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. Wilmar is one of the most significant purchasers of palm oil for the suppliers that Amnesty International investigated. As the largest trader of palm oil globally, it is in a unique position to exercise leverage, influence and control, particularly when it is a direct purchaser. Wilmar’s lack of adequate due diligence contributes to the adverse human rights impacts experienced by workers employed by its suppliers.

HIDING BEHIND THE RSPO: A WEAK VOLUNTARY INITIATIVE

“The foreman told us that the RSPO is coming ... Someone from the office came and told my wife that we should plant flowers in our houses. If we don’t plant flowers, we will be called to the office. This has happened before.

³⁰² Wilmar International letter to Amnesty International, dated 17 October 2016.

³⁰³ In its letter to Amnesty International, dated 17 October 2016, Wilmar said: “*To enable a more in-depth look at labour issues, we are also currently developing a labour programme to identify labour best practices and prevent exploitative practices, in collaboration with Business for Social Responsibility (BSR), a global non-profit organisation dedicated to sustainability. This is part of a wider project also in collaboration with BSR and other industry peers to benchmark human rights and labour issues in the Indonesian palm oil industry.*” In its letter, dated 11 November 2016, Wilmar referred to a press release issued by it and Golden Agri-Resources (GAR) on 7 November announcing a collaboration with BSR. “*The collaboration will begin with a review of current labour practices in the palm oil sector in Indonesia, and is intended to formulate practical approaches to improving labour practices.*” See Wilmar and GAR, ‘GAR and Wilmar Call for Closer Collaboration to Find Solutions to Indonesian Palm Oil Sector Labour Challenges’, available at: http://media.corporate-ir.net/media_files/IROL/16/164878/News-Release-7-Nov-16-GAR-WIL-BSR-Joint-Collaboration-Final.pdf (last accessed 12 November 2016)

³⁰⁴ In 2015, Wilmar established a grievance procedure that allows any stakeholder to raise suspected breaches of the Policy. By the end of 2015, it had registered and investigated 19 cases. According to the updates on grievances published by Wilmar, two of the cases involve labour issues and Wilmar is engaging with the companies involved. Wilmar’s transparency on the grievance procedure is welcome however it is too early to judge its efficacy. See Wilmar International, *Grievance List with Progress Updates*, 27 October 2016, available at: www.wilmar-international.com/sustainability/wp-content/uploads/2016/10/161027_Grievance-update.pdf (last accessed 31 October 2016)

³⁰⁵ Principle 17, UN Guiding Principles.

³⁰⁶ Amnesty International letter to Wilmar International, dated 5 October 2016.

³⁰⁷ Wilmar International letter to Amnesty International, dated 17 October 2016.

Sometimes the company provides the flowers, sometimes we have to ask our neighbours” – B, a harvester who works for PT Milano, a Wilmar subsidiary.

The Roundtable on Sustainable Palm Oil (RSPO) is a global, voluntary, multi-stakeholder initiative which states that it aims to make ‘sustainable’ palm oil the norm. The RSPO has developed environmental and social criteria that are used to certify palm oil producers. Companies in the supply chain that use RSPO certified sustainable palm oil are audited as well to prevent overselling and mixing of certified and non-certified palm oil. These member companies can claim that they use “certified sustainable palm oil” on their product labels and the RSPO Trademark. The RSPO originated as an informal cooperation between WWF, Aarhus United UK Ltd., Migros, Malaysian Palm Oil Association and Unilever. It was formally established as an association in Switzerland in 2004. It brings together palm oil producers, processors or traders, consumer goods manufacturers, retailers, banks, investors, and NGOs who can become members of the RSPO.³⁰⁸

RSPO is the focal point for companies when it comes to addressing impacts of palm oil cultivation. Palm oil producers and traders such as Wilmar and companies who source palm oil from Wilmar place great emphasis on their membership and certification by the RSPO.³⁰⁹ As discussed in Chapter 9, Wilmar’s buyers also use RSPO certification and assessments as proof of compliance with human rights standards at the producer or plantation level.

The RSPO Principles and Criteria for the Production of Sustainable Palm Oil 2013³¹⁰ (RSPO Principles) set the standards that growers and millers should meet. The document includes indicators that list evidence that should be in place to demonstrate that the criterion is being met. It also includes some guidance for the grower or miller and auditor. Most of the principles and criteria focus on environmental or broader social impacts on adjoining communities.³¹¹

The document includes one principle (out of eight) and a limited set of criteria related to workers’ rights.³¹² The majority of the criteria fall under Principle 6 which is: “*Responsible consideration of employees, and of individuals and communities affected by growers and mills*”.

Criterion 6.13 provides that “*growers and millers respect human rights*”. The indicator under that principle is restricted to checking if the company has a policy to respect human rights and if it has been documented and communicated to all levels of the workforce and operations. Indicator 4.1.4 states that mills should record the original of all third-party sourced fresh fruit bunches. The definitions section states that “*RSPO members acknowledge the need for responsible operators to practise due diligence in sourcing of FFB from third parties to reduce the risk that unsustainable products are entering the certified supply chain. However it is also recognised that there are significant challenges in tracing all such supplies back to their point of origin. Therefore, as a minimum the mill must record the particulars of the party from which the FFB was sourced at the mill gate.*”³¹³ There are therefore no requirements for companies to demonstrate that they

³⁰⁸ See the RSPO’s website, available at: www.rspo.org (last accessed 9 November 2016).

³⁰⁹ See for example Wilmar’s website: www.wilmar-international.com/sustainability/progress/certifications/roundtable-on-sustainable-palm-oil/. See also Wilmar, *Sustainability Report 2015*, p. 24.

³¹⁰ RSPO, *Principles and Criteria for the Production of Sustainable Palm Oil 2013*, (referred to as RSPO Principles in this report), available at: www.rspo.org/key-documents/certification/rspo-principles-and-criteria (last accessed 10 November 2016).

³¹¹ It includes some provisions related to avoiding negative impacts on local communities, which Amnesty International is not analysing in this report because of the focus on the rights of workers on palm oil plantations.

³¹² The criteria related to workers are around identification of social impacts, occupational health and safety linked to pesticide use; pay and conditions for workers; rights to form and join trade unions and collective bargaining; not employing or exploiting children; not using forced or trafficked labour; no discrimination or harassment or abuse; and protection of reproductive rights. See Criteria 4.6, 4.7, 6.1, 6.5, 6.6, 6.7, 6.8, 6.9, 6.12, 6.13 and 7.1.

³¹³ RSPO Principles, p. 58. The preamble to the document says: “*Also looking forward, the growers and millers within the RSPO commit to a process whereby they aim to source third party Fresh Fruit Bunches from identified, legal and responsible sources. The RSPO Principles and Criteria Review Taskforce strongly encourages the RSPO Executive Board to resource and support a process for developing tools and*

have undertaken any human rights due diligence on third-parties that they may source palm oil from. This would involve a process for considering the conditions of trading as well as traceability. This reflects a clear weakness of this criterion and the RSPO Principles.

The RSPO Principles do not adequately address many of the labour rights issues which have repeatedly come up in relation to the palm oil sector. These, as discussed in this report, include systemic risk factors such as the use of targets and piece rates, abusive use of casual work arrangements that also lead to discrimination against women workers, lack of protections and benefits for casual workers, and health risks associated with the use of chemicals such as paraquat or air pollution due to forest fires. For example, the RSPO Principles allows companies to use of paraquat and other WHO Class 1A or 1B chemicals, or those listed under the Rotterdam and Stockholm Conventions³¹⁴, in 'exceptional circumstances'. The RSPO Principles do not require companies to demonstrate how they have managed risks to workers' health as part of the decision-making process on using hazardous chemicals. The RSPO Principles contain general criteria on provision of protective equipment, training and conducting an annual medical surveillance of pesticide operators. No additional requirements are identified for the 'exceptional circumstances' in which companies can use acutely hazardous chemicals.

The criteria are quite superficial even on the issues which are covered. For example, criterion 6.5 provides that "*Pay and conditions for employees and for contract workers always meet at least legal or industry minimum standards and are sufficient to provide decent living wages*". The guidance states that national interpretation will be used to define a decent living wage, and if one does not exist then the legal minimum wage will be used. This leaves workers vulnerable when minimum wages are set at low levels in the country or when national laws around pay are inadequate. The same weakness applies to specifying the 'conditions of work' that companies should provide as 'industry minimum standards' are not defined. There is no reference to international human rights or labour standards and requirements linked to the right to just and favourable conditions of work, which includes provision fair wages, rest periods and/or social security etc.

The RSPO has developed an Audit Checklist for assessing compliance with the RSPO Principles (Audit checklist).³¹⁵ The Audit checklist is extremely inadequate in the scope of monitoring which is required. For example, the checklist on forced labour focuses almost exclusively on migrant workers and does not assess other risks of forced labour in line with the guidance provided by the International Labour Organization.

There is an overreliance on documentary evidence with limited requirements for verification of actual working conditions by the assessment team. Amnesty International reviewed reports of certification and other assessments that were carried out on PT Perkebunan Milano's, PT Daya Labuhan Indah's and SPMN's plantations.³¹⁶ It found that the assessments rely extensively on documentary evidence, such as records of proof of age, of employment or examples of salary slips and then complement these with visual observations of selected units of workers and interviews with workers. The reports list or describe the interviews with

methodologies that can help them achieve these aims."

³¹⁴ The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade aims at promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and contribute to environmentally sound use of these chemicals. There are a total of 47 chemicals listed in Annex III of the Convention, 33 are pesticides (including three severely hazardous pesticide formulations) and 14 industrial chemicals. For the full list see www.pic.int/TheConvention/Chemicals/AnnexIIIChemicals/tabid/1132/language/en-US/Default.aspx. The Stockholm Convention on Persistent Organic Pollutants (POPs) seeks the elimination or restriction of production and use of all intentionally produced POPs but others have been added since. For details see: <http://chm.pops.int/TheConvention/ThePOPs/tabid/673/Default.aspx> (last accessed 18 November 2016).

³¹⁵ RSPO, *RSPO P&C 2013: Audit Checklist for assessing compliance*, available at: www.rspo.org/key-documents/certification/rspo-principles-and-criteria (last accessed 10 November 2016).

³¹⁶ See for example, TÜVRheinland, *RSPO Public Summary Report: Wilmar International Limited, PT Perkebunan Milano, Pinang Awan Palm Oil Mill, date of assessment: 29 July to 3 August 2015*, TÜVRheinland, *RSPO Annual Surveillance Audit Report: Wilmar International Limited, PT Perkebunan Milano, Pinang Awan Palm Oil Mill, date of audit: 23 – 27 May 2016*, Mutu Certification International, *RSPO Assessment Report: PT Daya Labuhan Indah*, 13 November 2015, Controlunion, *Public Summary Report: PT Sarana Prima Multi Niaga POM, TSH Resources Berhad*, 2015.

workers and Amnesty International's review indicated that the assessment teams interview a relatively small number.

Amnesty International asked Wilmar in our letter dated 5 October 2016, if assessment teams ever carried out visits to plantations without informing the managers of the plantations. Wilmar did not respond to this question. The evidence collected by Amnesty International indicates that the assessment teams do not carry out unannounced inspections. Workers told Amnesty International that their supervisors always inform them in advance that RSPO assessments will be carried out and make sure that on those days workers had the right equipment or kept certain groups of workers away from any interviewers. Y, who works as a casual daily labourer in plant maintenance at PT Perkebunan Milano told researchers "*When RSPO people came, the Foreman One told us they were coming and to hide inside the plantation. This was three to five months ago*". Workers also said that they were told by their supervisors what they should tell the assessment team if they were questioned. F, who works as a sprayer for SPMN said: "*Once people came from the RSPO and they told us to wear our safety gear. When they come, the medical is always kept ready and there is clean water for us to wash and the safety gear is in good condition. The FA [field assistant] told us in the morning briefing that the RSPO people are coming and told us not to tell them anything*".³¹⁷

The lack of unannounced visits has also been flagged as a concern in the past by other organizations. If supervisory staff are aware in advance of visits by assessment teams, this greatly limits the chances of the assessment team identifying abuses through their visual observations and interviews. This is a critical methodological flaw if one wishes to identify labour abuses.

The certification assessment reports include details of the professional background of each member of the assessment teams. From Amnesty International's review of these documents it appears that the assessment teams do not include people who have specific expertise and experience of detecting labour rights abuses. The weaknesses in the RSPO's methodology for certification assessments are evident from the failure of certification assessment reports to identify the serious and systemic abuses which Amnesty International found in its investigation of the conditions on the same plantations.³¹⁸

The RSPO has developed a set of 'voluntary' 'advanced, add-on criteria' to the existing principles and criteria, which member companies can choose to opt into as long as they meet certain eligibility criteria. This is referred to as RSPO Next and is voluntary unlike the RSPO Principles which all growers and millers need to comply with in order to produce "certified sustainable palm oil". RSPO Next includes additional criteria and indicators on environmental and human rights issues and greater transparency requirements. It is intended for companies who already meet and exceed current RSPO principles and criteria. The human rights criteria include:

- Prohibiting the use of paraquat;
- If there is no RSPO national interpretation definition of a decent living wage, documentation by the company of a process of collective bargaining to establish and implement a mutually agreed upon total compensation package that provides a decent living which shall include at least the minimum wage;
- No evidence of employees, including migrant, trans-migrant workers and/or contracted workers being prevented from forming or joining associations and/or participating in collective bargaining, within the limits of national legislation;
- No hazardous work (as defined by the ILO) shall be carried out by anyone under the age of 18;
- A gender committee shall be established specifically to address areas of concern to women;
- Management representatives responsible for communication with the gender committee shall be

³¹⁷ Amnesty International interviews with F, Y, and other workers, Central Kalimantan and North Sumatra, October and November 2015.

³¹⁸ The assessments did identify what they describe as areas of minor or major non-compliance but nothing which would jeopardize the companies' certification.

- female;
- All complaints / grievances of harassment or abuse shall be documented and responses & actions monitored. There shall be demonstrable efforts for reducing the number of harassment or abuse cases.

While it is positive that the RSPO has tried to address the gaps in its current Principles and Criteria, RSPO Next does not address the fundamental weaknesses related to the protection of workers' rights. Many of the 'additional' criteria that have been identified are basic requirements that companies should meet in order to meet their responsibility to respect human rights. It is completely unacceptable that the RSPO considers these to be 'voluntary' requirements for sustainable palm oil. The RSPO Principles include a criterion that growers and millers respect human rights and refers to the UN Guiding Principles on Business and Human Rights. However, RSPO Next illustrates that the RSPO does not require companies to comply with their responsibility to respect all internationally recognised human rights.

The RSPO should already require all companies to respect human rights such as the rights to fair wages, freedom of association, and collective bargaining regardless of whether the country where the company is operating is a party to particular treaties or if its national legislation provides for these rights. These cannot be treated as 'voluntary' and additional requirements on companies. This highlights that whatever the other benefits of the RSPO may be, membership of the RSPO and certification assessments cannot and should not be used as proof of compliance with workers' human rights.

7. ENABLING ABUSES: GAPS IN LAWS AND ENFORCEMENT IN INDONESIA

INDONESIA'S INTERNATIONAL OBLIGATIONS

Indonesia is a party to almost all the core human rights treaties.³¹⁹ It is a party to all the fundamental ILO Conventions, including on forced labour, worst forms of child labour, equal remuneration, freedom of association and collective bargaining.³²⁰ It has not become a party to some of the key Conventions related to agricultural workers, labour inspection, fixing minimum wage and those which cover other technical and governance issues.³²¹

The government of Indonesia is under an obligation to protect the rights of all persons to work, the enjoyment of just and favourable conditions of work, health, and social security, amongst other rights.³²² It is required to abolish forced labour³²³ and protect children from economic exploitation and from performing any work that is likely to be hazardous to or interfere with the child's education, health or development.³²⁴ The government has to guarantee that all of these rights can be exercised without discrimination of any kind, to ensure equal rights of men and women, and to take into account and address the particular problems faced by rural women.³²⁵

In order to meet its international obligations, Indonesia is required to put in place and enforce an adequate regulatory framework to ensure that third-parties, including business, employers, or other individuals do not interfere with people's rights. The UN Committee on Economic, Social and Cultural Rights has clarified that the state's obligation to protect: *"includes taking steps to prevent, investigate, punish and redress abuse through effective laws and policies and adjudication. For example, States should ensure that laws, policies and regulations governing the right to just and favourable conditions of work, such as a national*

³¹⁹ These include the following treaties which set out specific provisions related to the rights of workers: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. For a full list see http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN (last accessed 5 November 2016).

³²⁰ These are the Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Freedom of Association and Protection of the Rights to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1948 (No. 98), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182). For a full list see www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102938 (last accessed 5 November 2016).

³²¹ For a full list see www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102938 (last accessed 5 November 2016). Despite considerable pressure to do so, Indonesia has also not yet become a party to the Domestic Workers Convention, 2011 (No. 188).

³²² Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights require states parties to guarantee the rights of all persons to work and to the enjoyment of just and favourable conditions of work. Article 8 guarantees the right to form trade unions and join trade unions of your choice and Article 9 recognizes the right to social security. Article 10 requires states parties to provide special protection to mothers during and after childbirth and paid maternity leave and Article 12 sets out states obligations to ensure the right to the highest attainable standard of physical and mental health.

³²³ Article 8, International Covenant on Civil and Political Rights, Article 1, Forced Labour Convention, 1930 (No. 29), and Article 1, Abolition of Forced Labour Convention, 1957 (No. 105).

³²⁴ Article 32, Convention on the Rights of the Child, Articles 2 and 3, Minimum Age Convention, 1973 (No. 138), and Article 1, Worst Forms of Child Labour Convention, 1999 (No. 182).

³²⁵ Articles 2, 11, 12 and 14, Convention on the Elimination of All Forms of Discrimination Against Women, Articles 2 and 3, International Covenant on Economic, Social and Cultural Rights, Articles 2, 3 and 26, International Covenant on Civil and Political Rights, and Articles 1 and 2, Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (ILO Convention No. 111).

*occupational safety and health policy, or legislation on minimum wage and minimum standards for working conditions, are adequate and effectively enforced. States parties should impose sanctions and appropriate penalties on third parties, including adequate reparation, criminal penalties, pecuniary measures such as damages, and administrative measures, in the event of violation of any of the elements of the right ... State parties should ensure that the mandates of labour inspectorates and other investigation and protection mechanisms cover conditions of work in the private sector and provide guidance to employers and enterprises. Measures to protect should also cover the informal sector”.*³²⁶

The UN Committee on the Rights of the Child has emphasised that a state is “*responsible for infringements of children’s rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements*”.³²⁷ The Committee on Economic, Social and Cultural Rights has stressed the need for prohibition of forced labour and economic exploitation of children and for the protection of workers in all settings.³²⁸ It has also described states’ obligations to address issues faced by specific groups of workers, including female workers, agricultural workers, and workers in the informal economy.³²⁹

In general, Indonesia has strong labour laws. These legal provisions are outlined in earlier chapters including that breaches of key provisions are treated as criminal offences. However, as discussed below, there are some critical gaps in the legal framework related to protection of workers, and the enforcement and monitoring of labour laws is extremely weak.

The government adopted the National Action Plan on the Elimination of the Worst Forms of Child Labour under a Presidential Decree in 2002.³³⁰ In 2014, the government adopted the ‘Roadmap Towards a Child Labour-Free Indonesia in 2022’.³³¹ Education is compulsory until the age of 15 years old,³³² which is in line with the minimum age of employment in Indonesia. The government recently announced that it would extend free and compulsory education from nine to 12 years.³³³

CRITICAL GAPS IN LABOUR LAWS IN INDONESIA

Some of the critical gaps in labour laws that have been identified in the course of Amnesty International’s investigation into abuses in the palm oil sector are described briefly below.

³²⁶ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 23 on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/23, 27 April 2016, para 59.

³²⁷ UN Committee on the Rights of the Child, *General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights*, UN Doc. CRC/C/GC/16, 17 April 2013, para 28.

³²⁸ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 23 on the right to just and favourable conditions of work*, paras 5 and 6.

³²⁹ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 23 on the right to just and favourable conditions of work*, para 47.

³³⁰ Presidential Decree No. 59/2002. The National Action Plan focuses on improved data collection on the worst forms of child labour; implementation of programs to eliminate the worst forms of child labour with priority given to certain sectors and activities; harmonization of laws and regulations; greater coordination between the central and regional governments; and strengthening of capacity.

³³¹ Ministry of Manpower, *Roadmap Towards a Child Labour-Free Indonesia in 2022*, 26 December 2014, available at: www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_377170.pdf (last accessed 7 November 2016). The Roadmap attempts to integrate the roles of the Government, private sectors, trade unions, civil society organizations and other stakeholders in an effort to eliminate child labour and the worst forms of child labour in Indonesia.

³³² Article 6(1) of Law No. 20 of 2003 on National Education System (*Sistem Pendidikan Nasional*).

³³³ UN Committee on the Rights of the Child, Replies of Indonesia to the list of issues, UN Doc. CRC/C/IDN/3-4/Add.1, 6 May 2004, para 200.

FORCED LABOUR IS NOT AN OFFENCE

Article 25 of the Forced Labour Convention, 1930 requires states to ensure that the illegal exaction of forced labour is punishable as a penal offence and that the penalties imposed by law are adequate and strictly enforced. The Convention was ratified by the Dutch colonial government in 1933,³³⁴ and Indonesia has accepted that it applies to Indonesia. Indonesia also ratified the Abolition of Forced Labour Convention, 1957 (No. 105) and published it in Law no. 19 of 1999. However, it has not created a specific offence of forced labour under the Indonesian Penal Code or under its labour laws. Overtime work, without the worker's consent, breaches Article 78 of the Manpower Act and amounts to a criminal offence under Article 188. The punishment is a fine of a minimum of five million and a maximum of 50 million Indonesian Rupiahs (US\$369 to US\$3696). Employers have been prosecuted for human trafficking when the trafficking was for labour exploitation, including if it involved forced labour.³³⁵ However, forced labour itself is not punishable as an offence and victims lack effective remedies.

The UN Committee on the Rights of the Child, in its 2014 concluding observations on Indonesia's compliance with the UN Convention on the Rights of the Child, asked the government to amend its legislation to criminalize forced labour.³³⁶ The government has not complied with this recommendation or given any indication that it intends to do so. The absence of a specific offence of forced labour, with adequate penalties and enforcement, is a serious gap in the protection of workers. By not ensuring that forced labour is punishable as an offence and that the penalties imposed by law are adequate and strictly enforced, the government has violated its obligation to suppress, prohibit and prevent forced labour.

A new draft Criminal Code was submitted by the government to lawmakers in March 2015, but it does not include any provisions to criminalize forced labour. The government should amend the Criminal Code and the Manpower Act to introduce an offence of forced labour.

LACK OF ADEQUATE PROTECTION FOR CASUAL WORKERS

Chapters 4 and 5 describe how companies are able to exploit a loophole in the law to employ people as casual workers for many decades, even though they work on an ongoing basis. Amnesty International found that this practice leads to abuses of both men's and women's rights. The pattern of hiring women on plantations as casual daily labourers and not offering them permanent employment amounts to discrimination and impairs women's rights to and at work, to health and to social security. These abuses are facilitated by the lack of adequate safeguards under the law with respect to 'work agreements for free daily work' (*perjanjian kerja harian lepas*), in particular the lack of a time-limit for such arrangements. The lack of a time-limit allows an employer to retain people as casual workers indefinitely as long as they do not work for more than 21 days a month for three or more months consecutively.

Casual work arrangements may be necessary in some contexts and useful for employees and employers, such as when additional employees are required for seasonal work. Amnesty International's investigation, however, underscores that these arrangements are being grossly misused by companies. It is an anomaly that other fixed-term contracts (work agreements for a specified period of time), under which employees have more protections, cannot exceed three years while 'work agreements for free daily work' (*perjanjian kerja harian lepas*) can run indefinitely.

³³⁴ Staatsblad No. 261 Year 1933.

³³⁵ See for example *State Prosecutor v. Yuki Irawan bin Suharjo Susilo*, Judgment of the Banten High Court, in case no. 40/PID/2014/PT.BTN, 22 April 2014.

³³⁶ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Indonesia*, UN Doc. CRC/C/IDN/CO/3-4, para 72 (b).

Decree No. 100/2004 should be amended to put in place appropriate time-limits for casual work arrangements, in consultation with trade unions and workers. These time-limits should not exceed those in place for other fixed-term contracts. The Decree and the Manpower Act should be amended to provide stricter guidance on the criteria for use of such arrangements and should also preclude the possibility of these arrangements being used for hazardous work on plantations, such as spraying. Workers who carry out hazardous work should be covered under health insurance and social security schemes, so that they are protected if they experience negative health effects. The Decree and the Manpower Act should also be amended to include explicit safeguards to ensure that there is no direct or indirect discrimination in the use of work agreements for casual labour.

MINIMUM WAGE FIXING MECHANISM

In October 2015, the President of Indonesia promulgated Regulation No. 78/2015 concerning wages that modified the mechanisms and process used to fix the minimum wage. Prior to this point, minimum wages were determined with the participation of wage councils, which included representatives of employer associations, labour unions, academics and experts.³³⁷ These wage councils carried out surveys on the various elements that make up what is required to ensure that people have a “minimum decent standard of living”.³³⁸ The Governor of each province would then set the minimum wage levels taking into account the amount of money required in order for a person to live decently, as well as productivity, and data on economic growth.³³⁹ The Regulation replaced the wage councils with a formula for fixing minimum wage levels based on the previous regional minimum wage modified to take into account inflation and Gross Domestic Product (GDP).³⁴⁰

The change in the law led to mass protests and strikes by trade unions and workers. The government has argued that the new formula will ensure higher wages annually for workers and provide more certainty for employers about the wages they need to pay.³⁴¹ Trade unions have pointed to the wide divergence in minimum wage levels across the country and that they are too low to cover the basic needs of workers and their families. They have also asked for Regulation No. 78/2015 to be repealed and for an increase in the minimum wage.³⁴² In December 2015, a coalition under the name of “Gerakan Buruh Indonesia (GBI)” submitted a judicial challenge to Article 44 of Regulation No. 78/2015 to the Supreme Court on the argument that it violates Articles 88 and 89 of the Manpower Act. To date, the Supreme Court has not delivered its judgment.

The UN Committee on Economic, Social and Cultural Rights has clarified: “*States parties should prioritize the adoption of a periodically reviewed minimum wage, indexed at least to the cost of living, and maintain a mechanism to do this. Workers, employers and their representative organizations should participate directly in the operation of such a mechanism ... In setting the minimum wage, reference to wages paid for work of equal value in sectors subject to collective wage agreements is relevant, as is the general level of salaries in the country or locality in question. The requirements of economic and social development and achievement of a high level of employment also need to be considered, but the Committee underlines that such factors*

³³⁷ Articles 88, 89 and 98, Manpower Act.

³³⁸ Articles 89 and 98, Manpower Act. Minister of Manpower and Transmigration Regulation No. 13/2012 on Components and Implementation of Steps to Achieve the Needs of Adequate Living (Peraturan Menteri Tenaga Kerja dan Transmigrasi Nomor 13 Tahun 2012 tentang Komponendan Pelaksanaan Tahapan Pencapaian Kebutuhan Hidup Layak) and Minister of Manpower and Transmigration Regulation No. 2/2016 on the Minimum Decent Standard of Living (Kebutuhan Hidup Layak).

³³⁹ Article 88, Manpower Act.

³⁴⁰ Article 44, Regulation No. 78/2015.

³⁴¹ Fair Labor Association, *Issue Brief: Legal Minimum Wages in Indonesia*, February 2016, pp. 1 - 2.

³⁴² IndustriALL, ‘IndustriALL and ITUC support Indonesian living wage struggle’, 4 February 2016, www.industriall-union.org/industriall-and-ituc-support-indonesian-living-wage-struggle.

should not be used to justify a minimum wage that does not ensure a decent living for workers and their families".³⁴³ It is therefore essential that the Indonesian government retain the participation of workers and employers associations in the mechanism to fix the minimum wage and amend or repeal Regulation No. 78/2015 to do so.

After its review of Indonesia's implementation of the Covenant, the UN Committee on Economic, Social and Cultural Rights stated that it is concerned that the minimum wage is set at a level which enables a decent living only for the workers. It urged Indonesia to: "Review the method for the establishment of the level of the minimum wage so that it enables a decent living for the workers and their families, in accordance with the provisions of art. 7 of the Covenant".³⁴⁴ The government should implement this recommendation and ensure that minimum wage levels are sufficient to ensure a decent living for workers and their families and does not jeopardise their ability to enjoy other rights. Indonesia should also become a party to the ILO Minimum Wage-Fixing Machinery Convention, 1986 (No. 26) and the Minimum Wage Fixing Convention, 1970 (No. 131).

CHILD LABOUR

While Indonesia has strong laws on child labour, there are still a few areas where legal provisions could be reinforced and harmonized. The UN Committee on the Rights of the Child, after reviewing Indonesia's report, stated in 2014 that it was concerned about the absence of laws regulating the work of children between 16 and 18 years of age. The Committee urged the government to amend legislation to regulate the work of children aged between 16 and 18 years. It also asked the government to: "Ensure that no child is exposed to any hazardous conditions or the worst forms of child labour, and that the involvement of children in labour is based on genuine free choice, in accordance with international regulations, subject to reasonable time limits and does not in any way hamper their education".³⁴⁵ Earlier this year, Human Rights Watch – following its investigation into the involvement of children in hazardous child labour in tobacco farming – called on the government to: "Revise the list of jobs that endanger the health, safety, and morals of children set out in the Minister of Manpower and Transmigration's Decree 235 of 2003, or enact a new law or regulation, to explicitly prohibit children from working in direct contact with tobacco in any form".³⁴⁶

THE ABSENT STATE: POOR ENFORCEMENT OF THE LAW

The main governmental body with responsibility for monitoring and enforcing labour laws is the Ministry of Manpower (before 2015, it was known as Ministry of Manpower and Transmigration).³⁴⁷ Labour inspections are one of the Ministry's core functions. The Directorate General of Labour Inspection³⁴⁸ is responsible for inspection of working conditions, occupational safety and health, women and child workers, and labour inspection capacity building across all sectors including agriculture. It has four directorates covering each of these functions.³⁴⁹ Indonesia has decentralised labour inspection so that responsibility is in the hands of provincial and local authorities. Labour inspectors, in coordination with the police, have the authority to

³⁴³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 23 on the right to just and favourable conditions of work*, paras 20 and 22.

³⁴⁴ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Indonesia*, UN Doc. E/C.12/IDN/CO/1, 19 June 2014, para 15.

³⁴⁵ UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Indonesia*, UN Doc. CRC/C/IDN/CO/3-4, paras 71 (b) and 72 (a) and (b).

³⁴⁶ Human Rights Watch, *"The Harvest is in My Blood": Hazardous Child Labor in Tobacco Farming in Indonesia*, May 2016, p. 112.

³⁴⁷ Articles 2 and 3 of the Presidential Regulation No. 18/2015 on the Ministry of Manpower (Peraturan Presiden No. 18/2015 tentang Kementerian Ketenagakerjaan).

³⁴⁸ Direktorat Jenderal Pembinaan Pengawasan Ketenagakerjaan dan Keselamatan dan Kesehatan Kerja.

³⁴⁹ Articles 2, 3 and 19 of the Presidential Regulation No. 18/2015.

investigate labour crimes.³⁵⁰

Presidential Decree No. 21/2010 sets out the framework for coordination and states that district level authorities should report the results of labour inspections to the Governor of each Province who is then responsible for reporting this information to Ministry of Manpower.³⁵¹

Indonesia does not make information publicly available on the level of funding available to the labour inspections, the numbers of inspectors in total and per province and region, the number of inspections carried out, investigations, prosecutions, convictions or penalties imposed. An Indonesian legal researcher filed public information requests for this data to the Ministry of Manpower, Ministry of Women Empowerment and Child Protection, as well as the Indonesian Police. These agencies did not provide the information requested. Because of the lack of official data published by the government, Amnesty International has drawn on secondary sources, including information from the Asian Development Bank (ADB) and the US Department of Labor.

According to Emma Allen who wrote a paper for the ADB in 2016: “*Current labor inspection services only reach between 200,000 and 250,000 firms per year ... This leaves a large gap in provision of services, with it being estimated that less than 1% of enterprises are serviced by labor inspectors each year*”.³⁵² The government stated to the UN Committee on the Rights of the Child that, by 2015, it would increase the number of labour inspectors to 3,500.³⁵³ However, according to data collected by the US Department of Labor, the number of labour inspectors actually decreased from 2014 to 2015, from 2,400 to 1,918 inspectors. It noted that: “*According to the ILO’s recommendation of one inspector for every 15,000 workers in less developed economies, Indonesia should employ roughly 8,160 inspectors in order to adequately enforce labor laws throughout the country*”.³⁵⁴

The US Department of Labor reported that in 2015 officials had initiated prosecutions linked to trafficking and sexual exploitation of children, but highlighted that comprehensive data on law enforcement activities related to the worst forms of child labour are unavailable.³⁵⁵ The Ministry of Manpower has reported on implementation of the National Action Plan on the Elimination of the Worst Forms of Child Labour, including data on children who were withdrawn or prevented from entering worst forms of child labour. Between 2008 and 2012, the Ministry states that it withdrew 6,000 children and prevented 16,000 children from entering the worst forms of child labour. Of the children who were withdrawn, 3,200 were involved in work on plantations in Lampung, North Sumatra and East Java provinces.³⁵⁶ The Ministry of Manpower report did not include any data on inspections, investigations, prosecutions, convictions or other penalties.

The ADB paper also flagged the low level of compliance with labour regulations. For example, based on an analysis of national statistical data it noted that non-compliance with minimum wages had increased. “*By*

³⁵⁰ ILO, ‘Indonesia: Labour Inspection Structure and organization’, www.ilo.org/labadmin/info/WCMS_153136/lang-en/index.htm (last accessed 7 November 2016).

³⁵¹ Articles 10 and 11.

³⁵² E. Allen, *Analysis of Trends and Challenges in the Indonesian Labor Market*, ADB Papers on Indonesia, No. 16, March 2016, ADB, p. 31.

³⁵³ UN Committee on the Rights of the Child, *Replies of Indonesia to the list of issues*, UN Doc. CRC/C/IDN/3-4/Add.1, 6 May 2004, para 203.

³⁵⁴ Bureau of International Labor Affairs, *2015 Findings on the Worst Forms of Child Labor: Indonesia*, US Department of Labor, 2015, p. 4.

³⁵⁵ Bureau of International Labor Affairs, *2015 Findings on the Worst Forms of Child Labor: Indonesia*, US Department of Labor, 2015, pp. 4 - 5.

³⁵⁶ Ministry of Manpower, *Roadmap Towards a Child Labour-Free Indonesia in 2022*, 26 December 2014, Table 7.

August 2015 non-compliance among regular employees had increased to 47.2% [it was close to 40% between 2008 and 2013].³⁵⁷ Academics have also pointed to the failure of labour inspectors to bring criminal enforcement proceedings, including when employers pay below the minimum wage.³⁵⁸

The UN Committees on the Rights of the Child and on Economic, Social and Cultural Rights have stressed the need for the government of Indonesia to increase the number of labour inspectors and strengthen their capacity. The UN Committee on the Rights of the Child has asked the Indonesian government to: “*Ensure that [there are] thorough investigations and robust prosecutions of persons violating labour laws and that sufficiently effective and dissuasive sanctions are imposed in practice*”.³⁵⁹

Although Indonesia has a strong general legal framework on labour rights, it needs to urgently address the critical gaps in protection that have been highlighted above. It is failing to adequately resource, monitor and enforce its labour laws and to prevent and remedy abuses. The government is violating its obligation to protect people from abuses of their rights. It urgently needs to implement the recommendations of UN treaty monitoring bodies and increase the number and capacity of labour inspectors to monitor abuses. It should make disaggregated information publicly available on the number of inspectors, inspections, investigations, prosecutions, convictions and other penalties imposed.

³⁵⁷ E. Allen, *Analysis of Trends and Challenges in the Indonesian Labor Market*, ADB Papers on Indonesia, No. 16, March 2016, ADB, p. 24.

³⁵⁸ See for example S. Tjandra, ‘Disputing Labour Dispute Settlement: Indonesian Workers’ Access to Justice’, *Law, Social Justice & Global Development Journal*, 2010, Issue 1, available at: www2.warwick.ac.uk/fac/soc/law/elj/lgd/2010_1/tjandra/ and B. Santoso and K.H. Hassan, ‘Enforcing Minimum Wage through Criminal Sanctions: A Case of Indonesia’, *International Business Management*, Volume 8, Issue 1, 2014, pp. 7 – 12.

³⁵⁹ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Indonesia*, UN Doc. E/C.12/IDN/CO/1, 19 June 2014, para 15 (c). UN Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Indonesia*, UN Doc. CRC/C/IDN/CO/3-4, paras 72 (b) and (d).

8. TRACING THE MOVEMENT OF PALM OIL FROM THE PLANTATIONS TO THE BUYERS

ANALYSIS OF WILMAR'S TRACEABILITY SUMMARIES

Wilmar and The Forest Trust (TFT) have published data on the source of palm oil (known in the industry as traceability information or 'traceability summaries'). The Wilmar and TFT data includes, for each Wilmar refinery, a list of the mills and refineries which supply that facility.³⁶⁰ The traceability summaries do not include information on the plantations which supply the mills. Amnesty International was however able to identify the mills supplied by the plantations it investigated, using RSPO certification assessments³⁶¹ and other sources, including interviews. The RSPO certifications included information on the plantations which supply the mill owned by the entity. For example, the RSPO certification of DLI 2 Palm Oil Mill confirms that it is supplied by two estates (plantations) owned by PT Daya Labuhan Indah and one estate owned by PT Milano. It confirms that the mill also receives fresh fruit bunches from another estate, PT Milano's Merbau estate.³⁶² Amnesty International was able to use these reports to confirm which mills were supplied by the plantations it investigated.

The exception to this was PT Hamparan Masawit Bangun Persada (PT Hamparan), one of four growers of palm fruits, owned by the BEST Group. In a letter to Amnesty International, Wilmar confirmed that it sources palm oil from PT Batara Elok Semesta Terpadu, a refinery in Gresik, Indonesia owned by the BEST Group and supplied by its plantations. However, as noted earlier neither, PT Hamparan nor PT Batara Elok Semesta Terpadu or the BEST Group are listed as suppliers of Wilmar in its traceability summaries. It was therefore not possible for Amnesty International to trace the movement of palm oil from PT Hamparan using the traceability summaries.

After going through all the traceability summaries for Wilmar's Indonesian refineries, researchers concluded that palm oil produced by PT Milano, PT Daya Labuhan Indah, PT Abdi Budi Mulia and PT Sarana Prima Multi Niaga has been supplied directly to the following Wilmar refineries: PT Multimas Nabati Asahan in Kuala Tanjung; PT Wilmar Nabati Indonesia in Bagendang³⁶³; PT Wilmar Nabati Indonesia in Padang; PT Wilmar Nabati Indonesia in Gresik; PT Wilmar Nabati Indonesia, Dumai; PT Wilmar Nabati Indonesia, Pelintung; and PT Multimas Nabati Asahan, Pulo Gadung. These seven refineries then supply the following Wilmar refineries in Indonesia: PT Wilmar Nabati Indonesia, Balikpapan, PT Sinar Alan Permai, Palembang, PT Multimas Nabati Sulawesi, Bitung, and PT Wilmar Cahaya Kalbar, Pontianak. See the diagram for the movement of palm oil from plantations to mills to refineries.

³⁶⁰ Each summary includes a percentage breakdown of the palm and lauric supplied to the refinery which is traceable to mill, traceable to plantation, and how much is unknown. It also includes a breakdown of the number and percentages of suppliers by categories (Wilmar owned mills, third party mills, Wilmar refineries, and others).

³⁶¹ TÜVRheinland, *RSPO Public Summary Report: Wilmar International Limited, PT Perkebunan Milano, Pinang Awan Palm Oil Mill*, date of assessment: 29 July to 3 August 2015, Mutu Certification International, *RSPO Assessment Report: PT Daya Labuhan Indah*, 13 November 2015, Controlunion, *Public Summary Report: PT Sarana Prima Multi Niaga POM, TSH Resources Berhad*, 2015.

³⁶² Mutu Certification International, *RSPO Assessment Report: PT Daya Labuhan Indah*, 13 November 2015, pp. 1 – 6.

³⁶³ Wilmar International and TFT, *PT Wilmar Nabati Indonesia, Bagendang: Traceability Summary - Supplies October 2014 - September 2015*, listed PT Sarana Prima Multi Niaga's mill as one of the supplying mills. The traceability summary for the period July 2015 – June 2016 no longer does so, though it lists Multimas Nabati Asahan in Kuala Tanjung as a supplying refinery.

Wilmar has 15 refineries in Indonesia (including the seven listed above). Eleven out of these 15 refineries are supplied directly or indirectly by mills that are supplied by the plantations where Amnesty International found severe labour rights abuses. The volumes of palm oil received from different sources at any given point of time are not known. However, as the oil is mixed from different sources at the refineries, the fact that 11 refineries receive palm oil directly or indirectly from plantations which Amnesty International investigated is extremely significant. This is all the more so as Wilmar has stated that the majority of the palm oil it produces and trades comes from plantations and processing facilities in Indonesia and Malaysia. Any buyer of palm oil from Wilmar and Indonesia is therefore likely to receive palm oil from refineries which have links to the plantations where Amnesty International found severe labour abuses. Certainly any company buying palm oil from Wilmar's Indonesia operations would have to assume it receives oil which has been mixed with oil from these sources. This would be the case unless it could demonstrate that it only received palm oil from the four refineries which do not have links or received 'identity preserved' or 'segregated' palm oil.³⁶⁴

Amnesty International also traced the movement of palm oil from refineries in Indonesia to other parts of the world, especially to countries where key purchases of palm oil have manufacturing facilities. Researchers traced palm oil from the 11 Wilmar refineries to Wilmar refineries in Europe, North America, China and India amongst other locations. These include Wilmar refineries in the Netherlands and Germany as well as Wilmar's refinery in Stockton in the US. See the diagram which shows the onward movement to selected countries.

ANALYSIS OF EXPORT DATA

As explained in the methodology, Amnesty International commissioned Profundo, an economic research consultancy, to assist with initial research, including tracing exports. Profundo obtained and analysed export data from Indonesia as well as US customs data and traced exports from Wilmar companies from ports closest to the Indonesian refineries which are directly or indirectly supplied by the mills that are supplied by the plantations which Amnesty International investigated. Amnesty International obtained some additional export data. The export data shows that Wilmar companies exported large volumes of palm oil and palm-related derivatives from ports close to the refineries in Indonesia which have links to the plantations where Amnesty International found severe labour abuses. The palm oil and palm-related derivatives are exported to countries all over the world, where the buyer companies have manufacturing facilities.

Wilmar tends to ship palm oil consignments to another Wilmar entity in the country of import rather than directly to the ultimate purchaser. Profundo however identified eight shipments of crude palm oil in bulk from Wilmar Nabati Indonesia, a subsidiary of Wilmar, from Dumai to Vigo, Spain in 2015.³⁶⁵ The port of Dumai is close to PT Wilmar Nabati Indonesia, Dumai, one of the refineries which links to the plantations Amnesty International investigated and which is likely to be the origin of these shipments. Port Authorities in Vigo, Spain, confirmed to Profundo that the importer for the shipments is Agrupación de Fabricantes de

³⁶⁴ Under the RSPO's 'identity preserved' supply chain model, sustainable palm oil from a single identifiable certified source is kept separate from ordinary palm oil throughout supply chain. Under the 'segregated' model, sustainable palm oil from different certified sources is kept separate from ordinary palm oil throughout supply chain. See www.rspo.org/certification/supply-chains (last accessed 22 November 2016)

³⁶⁵ Source: Export Genius, "HS_151110000_JAN15_DEC15 Indonesia_export genius", March 2016 (procured by Profundo). Profundo bought BTBMI Code 1511.10.00.00 data from 'ExportGenius' (a data provider company). This data contains all exports registered by Indonesia under the BTBMI code 1511.10.00.00 for the years 2014 and 2015. The BTBMI Code 1511.10.00.00 is one of the eleven codes used by Wilmar to export from Indonesia.

Aceites Marinos, S.A. (AFAMSA), a Spanish company.³⁶⁶

BUYERS RECEIVE PALM OIL FROM REFINERIES WITH LINKS TO PLANTATIONS WITH SEVERE LABOUR RIGHTS ABUSES

Archer Daniels Midland Company (ADM) is the only Wilmar buyer that Amnesty International investigated which publishes information on the source of its palm oil/other (referred to as traceability information). ADM along with TFT publishes a list of the mills from which it receives palm oil for its global operations, as well as for specific ADM refineries. As with Wilmar, this level of transparency is positive. ADM's traceability summaries confirm that it receives palm oil from Abdi Budi Mulia's and Sarana Prima Multi Niaga's mills. In a response to Amnesty International, ADM said: "*Palm oil from these mills is in our supply chain but indirectly through a number of different suppliers, not just Wilmar*".³⁶⁷ ADM also lists Wilmar's Perkenbunan Milano's Pinang Awan mill and Daya Labuhan Indah's mill among its list of supplying mills.³⁶⁸ An analysis of ADM's traceability summaries reveals that one or more of these mills supply both its European and North American facilities.³⁶⁹ ADM therefore sources palm oil from mills which receive the oil from plantations where Amnesty International documented the labour rights abuses described in this report.

Amnesty International asked all the other companies that it identified as buying from Wilmar³⁷⁰ if they source or had sourced palm oil or palm-related derivatives directly or indirectly from PT Multimas Nabati Asahan in Kuala Tanjung; PT Wilmar Nabati Indonesia in Bagendang; PT Wilmar Nabati Indonesia in Padang; PT Wilmar Nabati Indonesia in Gresik; PT Wilmar Nabati Indonesia, Dumai; PT Wilmar Nabati Indonesia, Pelintung; and PT Multimas Nabati Asahan, Pulo Gadung. As described earlier, these seven refineries directly receive palm oil from mills which are supplied by plantations where Amnesty International found severe labour rights abuses. Colgate-Palmolive, Nestlé and Reckitt Benckiser confirmed that they receive palm oil or palm-related derivatives from one or more of these refineries.³⁷¹

Kellogg's confirmed that it sourced palm oil for its joint venture with Wilmar in China from Kerry Shangai Oils/Wilmar. It stated that Wilmar/Kerry Shangai Oils sources palm oil from PT Multimas Nabati Asahan, Kuala Tanjung (MNA, Kuala Tanjung), PT Wilmar Nabati Indonesia, Gresik (WINA, Gresik), PT Wilmar Nabati Indonesia, Dumai (WINA, Dumai), and PT Multimas Nabati Sulawesi, Bitung (MNS, Bitung).³⁷² The first three refineries directly receive palm oil from mills which are supplied by plantations where Amnesty International found severe labour rights abuses. PT Multimas Nabati Sulawesi, Bitung indirectly receives the palm oil as it receives palm oil from PT Wilmar Nabati Indonesia, Gresik.

Elevance did not reply to Amnesty International's request. However, the company had confirmed in an earlier letter that its joint venture with Wilmar - a biorefinery which produces speciality chemicals - is based

³⁶⁶ Email exchange between Profundo and the Billing and Statistics Department at Vigo Ports Authority, 26 April 2016, copy on file with Amnesty International. Amnesty International presented this information to AFAMSA but did not receive a response.

³⁶⁷ ADM letter to Amnesty International, dated 15 November 2016.

³⁶⁸ ADM and TFT, *ADM Global: Traceability Summary – Supplies July 2015 – June 2016*, available at: www.adm.com/en-US/responsibility/2014CRReport/progresstracker/palmoil/Pages/SupplyChainMap.aspx (last accessed 22 November 2016)

³⁶⁹ See for example ADM and TFT, *ADM North America: Traceability Summary – Supplies July 2015 – June 2016 and ADM Europe, Czerin S.A.: Traceability Summary – Supplies July 2015 – June 2016*, available at: www.adm.com/en-US/responsibility/2014CRReport/progresstracker/palmoil/Pages/SupplyChainMap.aspx (last accessed 22 November 2016)

³⁷⁰ Initially Amnesty International also wrote to ConAgra, Mars and Mondelez International. Mars confirmed that they purchase from Wilmar, but from Malaysia. Mondelez International did not confirm to Amnesty International if it directly or indirectly purchased palm oil from Wilmar (discussed in Chapter 9). ConAgra stated that it "*sold its trading and merchandising business, including its interest in CTG Wilmar PTY Ltd*". Amnesty International sent a follow up question asking whether it purchases palm oil directly or indirectly from Wilmar. ConAgra responded, but not on this specific point, ConAgra email to Amnesty International dated 15 November 2016.

³⁷¹ Colgate-Palmolive letter to Amnesty International, dated 11 November 2016, Nestlé letter to Amnesty International, dated 11 November 2016, Reckitt Benckiser letter to Amnesty International, dated 11 November 2016.

within a larger Wilmar facility in Gresik in Indonesia, and utilizes palm oil.³⁷³ In its Annual Communications of Progress report to the RSPO in 2014, Elevance stated that: “*Our current bio-refinery is located within the Wilmar International Limited [sic] Gresik, Indonesia facility which is RSPO certified*”.³⁷⁴ The biorefinery is therefore co-located within PT Wilmar Nabati Indonesia’s refinery complex in Gresik. In its 2015 Annual Communications of Progress report to the RSPO, Elevance said: “*Our sole feedstock supplier, Wilmar, certified our JV site in 2016 for 100% RSPO [certified sustainable palm oil] and this plan is complete*”.³⁷⁵ It also noted in its replies to other questions from the RSPO about its certified sustainable palm oil uptake that this was managed by its JV partner, Wilmar. In a filing to the US Securities and Exchange Commission in 2011, Elevance stated that the joint venture will be operated by Wilmar.³⁷⁶ Wilmar is therefore not only the sole supplier of palm oil to the joint venture, but is the operator of the joint venture and its biorefinery, which is co-located with Wilmar’s refinery. These facts lead to the conclusion that Wilmar’s refinery in Gresik supplies the joint venture with palm oil. As discussed earlier, Wilmar’s refinery, PT Wilmar Nabati Indonesia, Gresik sources palm oil from mills supplied by plantations investigated by Amnesty International.

Analysis of US customs data from 2015 also revealed that Elevance received two shipments of palm-related derivatives, in Illinois. One shipment was from a Wilmar subsidiary with a North Sumatra shipping address.³⁷⁷ The second from Wilmar Elevance 2 Pte Limited, which based on a check of the shipping address, originated from Wilmar’s refinery complex in Gresik.³⁷⁸

AFAMSA did not respond to Amnesty International’s request but as described earlier, Port Authorities in Vigo, Spain confirmed that AFAMSA was the importer of crude palm oil from Wilmar from Dumai, the port closest to Wilmar’s Dumai refinery.³⁷⁹

Unilever³⁸⁰ and Procter & Gamble (P&G)³⁸¹ confirmed that they purchase palm oil from Wilmar and from Indonesia but did not give information on the refineries that they source from. Unilever stated that Wilmar is one of its key palm oil suppliers and that the palm oil supplied by Wilmar goes into our products across our foods, home and personal care categories.³⁸² It is highly likely that Unilever and P&G source palm oil from one or more of the eleven Indonesian refineries that receive palm oil directly or indirectly from plantations which Amnesty International investigated.

³⁷² Kellogg’s letter to Amnesty International, dated 10 November 2016.

³⁷³ Elevance Renewable Sciences letter to Amnesty International, dated 26 October 2016.

³⁷⁴ Elevance, RSPO Annual Communications of Progress 2014, available at:

<http://www.rspo.org/file/acop2014b/submissions/elevance%20renewable%20sciences,%20inc.-ACOP2014b.pdf> (last accessed 20 November 2016).

³⁷⁵ Elevance, RSPO Annual Communications of Progress 2015, p. 2 available at:

www.rspo.org/file/acop2015/submissions/elevance%20renewable%20sciences,%20inc.-ACOP2015.pdf (last accessed 20 November 2016).

³⁷⁶ Elevance, Prospectus, Issued 20 September 2011, submitted under Form S-1, p. 47, available at:

<https://www.sec.gov/Archives/edgar/data/1510100/000119312511252530/d231495ds1.htm> (last accessed 20 November 2016).

³⁷⁷ Panjiva, Custom Shipment data of Wilmar International, www.panjiva.com, February 2016 (procured by Profundo). The customs data also includes a record of a shipment from Pt. Wilmar Nabati Indonesia with a shipping address from Medan to Elevance as the consignee (data on ports is not included).

³⁷⁸ Panjiva, Custom Shipment data of Wilmar International, www.panjiva.com, February 2016 (procured by Profundo). The customs data also includes a record of a shipment from Wilmar Elevance 2 Pte. Ltd. to Elevance as the consignee. The shipping address was PT Wilmar Nabati Indonesia Jln K Darmo S 56 Jatim Gresik which is the address of Wilmar’s Gresik refinery.

³⁷⁹ Amnesty International presented this information to AFAMSA but did not receive a response.

³⁸⁰ Unilever letter to Amnesty International, dated 26 October 2016.

³⁸¹ Telephone call, 31 October 2016. During this discussion, the company advised that it would not provide a written response to Amnesty International’s questions. In an email dated 10 November 2016, a P&G representative stated “*I have received your email with the 2 attachments and I have no further data to add to beyond what I have shared with you previously. I hope you have had the opportunity to fix a meeting with Wilmar to go through the data your [sic] found.*”

³⁸² Unilever letter to Amnesty International, dated 26 October 2016. It also said: “*Wilmar is both a direct and indirect supplier to Unilever of conventional and RSPO certified palm oil – the traded palm oil from Wilmar also enters our supply chain via other refiners and processors. As the largest palm oil trader, Wilmar captures around 45% of all the palm oil traded globally. While most of the palm oil originates from Indonesia, Wilmar’s palm oil also comes from their plantations and third parties in Malaysia and Africa.*”

ADM purchases palm oil that is directly linked to the severe labour abuses documented in this report. AFAMSA, Colgate-Palmolive, Elevance, Kellogg's, Nestlé, Reckitt Benckiser are sourcing palm oil from refineries where the palm oil has been directly supplied or, at the very least, been mixed with palm oil produced on plantations where there are severe labour rights abuses. It is highly likely that Unilever and P&G are sourcing palm oil from refineries where the palm oil has been directly supplied or, at the very least, been mixed with palm oil produced on plantations where there are severe labour rights abuses. All of these companies are benefiting from severe labour abuses in their palm oil supply chain.

9. WILMAR'S BUYERS AND THEIR FAILURE TO RESPECT HUMAN RIGHTS

This chapter analyses the responsibility of the companies that source palm oil from the plantations investigated by Amnesty International. It assesses the adequacy of the measures they take to fulfil their responsibility to respect human rights. It also considers the willingness of companies to be transparent with regard to their palm oil trading practices and the palm oil contained in their products.

As established in Chapter 8, ADM, AFAMSA, Colgate-Palmolive, Elevance, Kellogg's, Nestlé and Reckitt Benckiser source palm oil from refineries where the oil has been directly supplied or, at the very least, been mixed with palm oil produced on the plantations investigated for this report, on which severe labour rights abuses have occurred. It is also highly likely that Unilever and Procter & Gamble (P&G) are sourcing palm oil from these plantations.³⁸³

Amnesty International's investigation revealed that women and men working on plantations owned by Wilmar and its suppliers face abuses of their human rights which are systemic in nature and not *ad hoc*. These abuses are linked to factors such as the low levels of minimum wages in Indonesia; the use of performance targets or piece rates to calculate pay; the large number of penalties which can be applied at the employer's discretion; the use of casual work arrangements for people, especially women, who work for the company on an ongoing basis; and risks associated with continued use of hazardous chemicals. All of these are obvious and predictable areas of concern and risk. However, none of the companies that buy palm oil from Wilmar could demonstrate to Amnesty International that they had identified and addressed the actual abuses documented by Amnesty International.

As outlined in Chapter 6, all companies have a responsibility to respect human rights in their global operations. All of the companies that buy palm oil or palm oil products from Wilmar (referred to in this chapter collectively as the "Buyers") must take adequate steps to identify risks to and abuses of human rights in the way the palm oil is produced. This requires a proactive approach, known as human rights due diligence. The risks linked to palm oil production are well known, and specific industrywide measures such as the RSPO (also explained in Chapter 6) identify labour rights abuses as a risk. Companies purchasing palm oil therefore have no excuse for failing to robustly address this risk.

Amnesty International contacted each of the Wilmar Buyers named in Chapter 8 and asked them for their responses to the serious human rights abuses identified. All of the companies agreed that these abuses were unacceptable. Most said that the abuses contravened their human rights policies, which apply to all suppliers, including Wilmar. All said that they had processes in place to check their palm oil supply chain, and described their various measures, initiatives and programmes.³⁸⁴ However, they did not explain why these processes failed to alert them to the abuses documented by Amnesty International. All of the Buyers

³⁸³ Initially Amnesty International also wrote to ConAgra, Mars and Mondelez International. Mars confirmed that they purchase from Wilmar, but from Malaysia. Mondelez International did not confirm to Amnesty International if it directly or indirectly purchased palm oil from Wilmar (addressed later in this chapter). ConAgra stated that it "*sold its trading and merchandising business, including its interest in CTG Wilmar PTY Ltd*". Amnesty International sent a follow up question asking whether it purchases palm oil directly or indirectly from Wilmar. ConAgra responded, but not on this specific point, ConAgra email to Amnesty International dated 15 November 2016.

³⁸⁴ These included: tracing back to mills, auditing practices, supplier engagement, NGO partnerships, traceability, monitoring and one pilot project.

except one (AFAMSA) referred to their participation in the RSPO as proof that they took action to address labour issues.

In Amnesty International's view, all of the responses are inadequate. None of the companies can credibly claim not to have been aware of the risk of labour abuses. The risks are public.³⁸⁵ However, none could point to any engagement with Wilmar on these or other risks factors prior to receiving Amnesty International's letter. This is despite Wilmar's own public acknowledgement that its target of ensuring that all its suppliers are fully compliant with the labour-related provisions of its Policy by the end of 2015 has not been met.

In addition to their failure to identify the actual abuses, none of the companies appear to have identified the predictable risk factors associated with these labour rights abuses, such as the use of targets and piece rates, low wages, and the vulnerability of casual workers. None could point to any engagement with Wilmar on these or other risks factors.³⁸⁶ This is particularly concerning given the publicly available information relating to labour abuses on Indonesian plantations.

The failure of the companies that buy from Wilmar to identify either the actual abuses occurring on plantations from which the palm oil they buy comes, or even the risk factors for such abuses suggests that their due diligence systems are ineffective. Amnesty International asked each company about the processes they have in place to identify and address human rights abuses. Their response and an assessment of those responses, using the UN Guiding Principles on Business and Human Rights as a framework, is set out below.

HUMAN RIGHTS POLICIES

All the Buyers, except Elevance and AFAMSA, have published statements of policy on respect for human rights.³⁸⁷ Not having a policy is a clear weakness; it reflects a basic failure by these companies to demonstrate a recognition of the corporate responsibility to respect human rights in their operations. More importantly, without articulating such a commitment it is difficult to effectively implement relevant action, such as human rights benchmarks in supply chain contracts.

All the other companies have stand-alone human rights policies and/or integrate human rights standards into codes of conduct or palm oil supply chain policies. All policies, (except for ADM's), explicitly recognise the UN Guiding Principles, ILO standards, or specific international human rights treaties. Many are detailed and are integrated into supplier contracts. For example, most require that suppliers, such as Wilmar, comply with laws applicable to: child labour, including the worst forms of child labour, forced labour, minimum wages, working conditions, and discrimination. Unilever was the only company to have a specific code for crop protection products (chemical use) which specified that sprayers' equipment needed to be "maintained" according to "manufacturers" recommendations.³⁸⁸ These are positive steps. However, based on the evidence collected by Amnesty International the Wilmar Buyers have failed to implement their

³⁸⁵ The US Department of Labor has listed palm oil as a good produced by child labour in Indonesia as far back as 2010, see US Department of Labor, *List of Goods Produced by Child Labor or Forced Labor*, available at www.dol.gov/ilab/reports/child-labor/list-of-goods/ (accessed 20 October 2016)

³⁸⁶ After receiving Amnesty International's letter dated 18 October 2016, Colgate-Palmolive advised that it planned to meet with Wilmar. P&G also advised that it had contacted Wilmar and would go back to them. Unilever advised that it had been in contact with Wilmar. Elevance advised that they had received and reviewed a copy of Wilmar's response letter to Amnesty International dated 17 October 2016.

³⁸⁷ *Agrupación de Fabricantes de Aceites Marinos, S.A. (AFAMSA S.A.)*, <http://afamsa.com/> (accessed 7 October 2016); Elevance Renewable Sciences, www.elevance.com (accessed 9 November 2016).

³⁸⁸ Unilever, *Sustainable Agriculture Code 2015*, available at www.unilever.com/Images/sac-2015_tcm244-427050_en.pdf (accessed 9 October 2016)

policies effectively, at least in respect of palm oil from Indonesia.

ALL BUYERS FAILED TO CARRY OUT ADEQUATE DUE DILIGENCE

Amnesty International asked each company for information on what actions it took, or takes, to identify and address labour and human rights risks linked to the purchase of Indonesian palm oil from Wilmar.³⁸⁹ In the context of palm oil, companies need to have in place adequate measures to identify the plantations from which they source oil, and a means to establish what the labour conditions on those plantations are.

For example, the Buyers could have used the traceability information available from Wilmar, which traces palm oil supply back to refineries and mills, as a basis to identify risks of labour abuses in the supply chain and at the plantation level.³⁹⁰ Wilmar's Buyers could at least have assessed working conditions and risk factors at plantations operated by the mill owner and other identifiable plantations which supply each mill.

Had Wilmar's Buyers sought to apply their policies by mapping the context of Indonesian palm oil production, and assessing the potential and actual risks in their palm oil supply chain, it is inconceivable that they would not have learned of practices such as piece-work payment and financial penalties imposed on plantation workers – 'red flags' which would have presented an obvious starting point for further investigation. _

Elevance confirmed that it did not carry out any independent steps to investigate human rights risks or abuses on Indonesian palm oil sourced from Wilmar. It stated that as a "small company, with limited resources" it "relies" on the RSPO organisation and "follows Wilmar's compliance as described in its published documents, such as its annual Sustainability Reports."³⁹¹ However, the UN Guiding Principles make it clear that all companies should carry out human rights due diligence. As explained in Chapter 6, the RSPO Principles have failed to adequately address many of the labour rights issues which have repeatedly come up in relation to the palm oil sector. Amnesty International also found fundamental weaknesses in the RSPO certification assessments that it reviewed both in terms of the scope of issues that are assessed and the methodology used.

As discussed in Chapter 6, Wilmar's sustainability reports do not provide information which can help track the effectiveness of its actions to end exploitation in its supply chain. For this reason, it is entirely inadequate for Elevance (or any other company) to have relied on Wilmar's self-reporting as a primary basis for assessing risk of adverse human rights impacts within its own supply chain. The failure of Elevance to conduct any independent checks on the palm oil supplied by Wilmar is even more striking given their joint venture³⁹² in Gresik, Indonesia.³⁹³

ADM also confirmed that it is not carrying out human rights due diligence on Wilmar either as a business

³⁸⁹ Amnesty International letter, dated 18 October 2016. Questions asked to each company included: 1) to explain the nature of their business relationship with Wilmar, 2) specific due diligence that had been carried out in relation to Wilmar and the palm oil that it sourced from Indonesia; and 3) to provide transparency with respect to from where the palm oil sourced from Wilmar comes (refineries and mills) and into which products that same palm oil goes.

³⁹⁰ Buyers, such as P&G, confirmed that they receive traceability information from Wilmar which traces palm oil supply back to refineries. However, as established in Chapter 6, traceability alone is not enough when it comes to capturing labour risks and abuses.

³⁹¹ Elevance Renewable Sciences letter to Amnesty International, dated 26 October 2016.

³⁹² A joint venture is a contractual arrangement where two or more actors agree to operate as one entity for the purpose of carrying out a single transaction. All joint ventures involve certain rights and responsibilities, the specifics of which are defined by the JV agreement. See: <http://legal-dictionary.thefreedictionary.com/Corporate+joint+venture> (last accessed 22 November 2016).

³⁹³ As explained in Chapter 8, Elevance is in a joint venture with Wilmar which uses palm oil sourced from the Wilmar facility in Gresik, PT Wilmar Nabati Indonesia. This refinery sources palm oil from mills supplied by the plantations investigated by Amnesty International.

partner or Buyer. ADM developed a human rights policy in 2013. However, it is weak in that it benchmarks practices against the Human Development Index³⁹⁴ rather than key international human rights standards – for example, ILO conventions. ADM told Amnesty International that: “... as part of the on-going implementation of our human rights policy, our initial focus was ensuring compliance at the company-owned locations at which we have direct control and we prioritized our efforts at the locations where the risk was perceived to be the greatest (Paraguay, South Africa, and India).”³⁹⁵

ADM also said that it had reached out to Wilmar as part of its supplier out-reach programme, but implied that no further action was required:

*“Given that Wilmar has its own policies, which such policies are closely aligned with our own, and in light of the transparent nature with which Wilmar is working to address these issues, we were provided with a measure of confidence in their approach, progress and handling.”*³⁹⁶ ADM did not provide any details about discussions that it may have had with Wilmar relating to labour exploitation.

Given ADM’s global commercial presence as well as its long-standing engagement as a palm oil trader³⁹⁷ and its joint venture partnership with Wilmar, it is completely unacceptable that ADM has undertaken no human rights due diligence in relation to its palm oil supply chain.

OLENEX: WILMAR AND ADM’S JOINT VENTURE

ADM and Wilmar launched Olenex, a company headquartered in Switzerland in 2012 “to handle the sales and marketing of refined vegetable oils and fats to the European [Economic] Area and Switzerland”.³⁹⁸ In December 2015, ADM and Wilmar announced that Olenex would become a full-function joint venture.³⁹⁹ As part of the agreement, the partners would each transfer palm or tropical oil refining and speciality oils and fats facilities to the joint venture. The agreement also stipulates that refined oils and fats from ADM’s other plants in the Czech Republic, Germany, the Netherlands, Poland and the UK will be marketed by Olenex.⁴⁰⁰ On 14 November 2016, ADM and Wilmar announced that Olenex had now transitioned to a full-function joint venture with its own assets.⁴⁰¹

Even prior to becoming a full-function joint venture, Olenex marketed palm oil from Wilmar’s and ADM’s European refineries which, through other refineries in Indonesia, source palm from mills supplied by plantations that Amnesty International investigated. Wilmar and ADM have transferred four refining and oil processing facilities to the new joint venture.⁴⁰² All four of

³⁹⁴ This term is commonly used in the field of International Development. It is used to emphasize that human capacity should be the primary criteria for assessing a country’s development. It is defined by the UN as “...a summary measure of average achievement in key dimensions of human development.” See www.hdr.undp.org.

³⁹⁵ ADM letter to Amnesty International dated 15 November 2016.

³⁹⁶ ADM letter to Amnesty International dated 15 November 2016.

³⁹⁷ ADM’s total revenue in 2015 was \$67.7 billion and its earnings were \$1.85 billion. ADM employs over 32,000 people in 160 countries and owns 290 processing plants and 429 crop procurement facilities. See ADM, *Annual Report 2015*, available at www.adm.com/en-US/investors/Documents/2015%20Annual%20Report.pdf (accessed 20 November 2016) and ADM, ADM Facts, available at www.adm.com/en-US/company/Facts/Pages/default.aspx (accessed 20 November 2016)

³⁹⁸ Wilmar International, ‘2012’, available at: www.wilmar-international.com/who-we-are/milestones/2012-2/ (last accessed 20 November 2016). In its response to Amnesty International, ADM said that Olenex was initially a marketing and sales organization with its own assets. See ADM letter to Amnesty International, dated 4 November 2016.

³⁹⁹ ADM, ‘Olenex to Become a Full-Function Joint Venture’, Press Release, 10 December 2015, available at: <http://www.adm.com/en-US/news/layouts/PressReleaseDetail.aspx?ID=696> (last accessed 20 November 2016).

⁴⁰⁰ ADM, ‘ADM, Wilmar Receive Approvals for Olenex Joint Venture, Anticipate Launch in Coming Weeks’, Press Release, 23 September 2016, available at: www.adm.com/en-US/news/layouts/PressReleaseDetail.aspx?ID=754 (last accessed 20 November 2016).

⁴⁰¹ ADM, ‘New Full-Function Olenex JV Provides Comprehensive, Integrated Capabilities in Edible Oils and Fats’, Press Release, 14 November 2016, available at: <http://adm.com/en-US/news/layouts/PressReleaseDetail.aspx?ID=766> (last accessed 22 November 2016).

⁴⁰² See European Commission, DG Competition, *Case M.7963 - ADM/ WILMAR/ OLENEX JV*, 8 September 2016, p. 3, available at: http://ec.europa.eu/competition/mergers/cases/decisions/m7963_416_3.pdf (last accessed 20 November 2016).

these facilities, through refineries or suppliers in Indonesia, receive palm from mills supplied by plantations that Amnesty International investigated. Therefore, as of 14 November 2016, ADM's joint venture with Wilmar also operates facilities which receive palm oil linked to the human rights abuses that Amnesty International found.

ADM did not disclose to Amnesty International the percentage of its shares in the new full-function joint venture but the European Commission DG Competition decision states that ADM will hold 37.5% of the shares and Wilmar will hold 62.5%.⁴⁰³

Despite being asked, ADM did not provide Amnesty International with details of any human rights due diligence undertaken prior to entering into the original or the new joint venture. As both a Buyer and joint venture partner, ADM's lack of due diligence is a glaring omission.

Additionally, as ADM confirms in its letter, it is also a major shareholder of Wilmar. It holds 23% interest in the company. As a shareholder, it is also financially benefiting directly from Wilmar's practices. ADM, directly and through its joint venture with Wilmar, benefitted from severe labour abuses in Wilmar's palm oil supply chain and has been for many years.

P&G confirmed that the company does not undertake any independent inspections at plantation level to identify labour risks or abuses linked to Indonesian palm oil sourced from Wilmar. The company said that it relies on the RSPO certification scheme.⁴⁰⁴ As discussed earlier, RSPO standards are insufficient for identifying and addressing labour issues, and relying on RSPO audits is inadequate as a response to the serious risk of labour abuse. P&G also told Amnesty International that it relies on Wilmar to self-report labour issues as part of the quarterly updates that it provides to the company. P&G did not explain what information is required in the quarterly updates so it is not possible to assess the extent to which P&G requires Wilmar to report on labour abuses in these updates. Moreover, this approach – predicated on self-reporting of abuses by Wilmar, rather than proactive assessments by P&G – reflects a derogation of the responsibility to respect human rights.⁴⁰⁵

AFAMSA, Kellogg's and Colgate-Palmolive go a step further and carry out audits of their suppliers. However, none of these companies explained what exactly is audited, nor why the audits failed to identify labour abuses at plantation level.

AFAMSA has not published a human rights policy. The company told Amnesty International that it requests information from its suppliers in relation to employees' working conditions, and that this information is then contrasted with an audit that it conducts. No details of the audit were provided and it is unclear if it goes beyond checking documents provided by the suppliers. AFAMSA pointed out that Wilmar has a labour policy as well as a "*non-negotiable requirement for their suppliers to implement the abolition of child labour*". AFAMSA said that Wilmar implements this policy by putting up signs on plantations, and by having estate supervisors and managers patrol and monitor the plantations. AFAMSA appears to accept Wilmar's statements and does not take steps to verify their accuracy or efficacy.⁴⁰⁶ This is a serious weakness in AFAMSA's due diligence. As discussed in Chapter 4, children are involved in hazardous work on Wilmar's own plantations and its supervisory staff have allowed child labour to continue. As detailed in Chapter 6,

⁴⁰³ European Commission, DG Competition, *Case M.7963 - ADM/ WILMAR/ OLENEX JV*, 8 September 2016, p. 2.

⁴⁰⁴ Telephone call, 31 October 2016. During this discussion, the company advised that it would not provide a written response to Amnesty International's questions. P&G also provided some information on its deforestation plan but not on how it relates to identifying labour risks and abuses.

⁴⁰⁵ In an email dated 10 November 2016, a P&G representative stated "*I have received your email with the 2 attachments and I have no further data to add to beyond what I have shared with you previously. I hope you have had the opportunity to fix a meeting with Wilmar to go through the data your [sic] found.*"

⁴⁰⁶ AFAMSA did not reply to an Amnesty International's letter dated 4 November 2016, in which the findings were presented to the company.

Wilmar's sustainability reports do not provide information which can help track the effectiveness of its actions to end exploitation in its supply chain.

Similarly, Kellogg's referred to using an audit program to review its suppliers' facilities in high-risk categories or high-risk regions. However, the company revealed that both palm oil and Wilmar will only be assessed in 2017 as part of its Global Supplier Code of Conduct. This indicates that to date no human rights due diligence has been conducted on Wilmar.⁴⁰⁷

Kellogg's said: *"We are reviewing this report [meaning Amnesty International's letter] to understand the allegations and actions taken by Wilmar to investigate and address the identified issues. We will be continuing this discussion with Wilmar."*⁴⁰⁸

Colgate-Palmolive said that it has begun to include palm oil refineries in its audit program, but also confirmed that it had not carried out any independent monitoring of working conditions on plantations related to Wilmar's supply chain: *"We recognise that the SRSA [Supplier Responsible Sourcing Assessment] Program does not currently reach beyond facilities audited. To address this opportunity, we are beginning to explore solutions that focus on worker voice to increase our coverage."*⁴⁰⁹

Colgate-Palmolive stated that its audit covered labour practices, human rights, and health and safety. It said: *"The audit resulted in a number of findings and all of the findings were remediated by Wilmar"*.⁴¹⁰ However, it did not provide details of the methodology used for the audit, the findings or the corrective action required of, and taken, by Wilmar.

The inclusion of one of Wilmar's refineries in its auditing programme is positive, but does not constitute sufficient human rights due diligence. By its own admission, the audit did not include verification at the plantation level and is limited in scope.

Colgate-Palmolive also said that it sponsored training efforts for mill owners, who supplied Wilmar's audited refinery, which focused on "social and environmental management of their facilities."⁴¹¹ However, this is separate to analysing labour risks and abuses at the plantation level.

Colgate-Palmolive said that Amnesty International's assessment of its due diligence processes was "inaccurate and misleading."⁴¹² However, Colgate-Palmolive could not point to having identified the severe labour abuses linked to Wilmar's plantations and Wilmar's suppliers documented in this report.

Reckitt Benckiser confirmed that it sourced from one of the refineries identified by Amnesty International as being linked to plantations where labour abuses occur.⁴¹³ The company referred to how it supports or

⁴⁰⁷ As explained in Chapter 8, Kellogg's is in a joint venture with Wilmar, called Yihai Kerry. Kellogg's confirmed that the joint venture receives palm oil from refineries identified by Amnesty International

⁴⁰⁸ Kellogg's letter email, dated 11 November 2016.

⁴⁰⁹ Colgate-Palmolive letter to Amnesty International, dated 26 October 2016. Colgate-Palmolive advised that it has conducted independent investigations when specific concerns (such as those outlined in Amnesty International's letter) were brought to its attention. While positive, this reflects a purely reactive approach which is insufficient. Under UN Guiding Principles pro-active steps are also required to identify and prevent human rights risks and abuses in its palm oil purchasing practices.

⁴¹⁰ Colgate-Palmolive letter to Amnesty International, dated 11 November 2016

⁴¹¹ Colgate-Palmolive letter to Amnesty International, dated 11 November 2016.

⁴¹² Colgate-Palmolive letter to Amnesty International, dated 11 November 2016.

⁴¹³ Reckitt Benckiser letter to Amnesty International, dated 11 November 2016. Reckitt Benckiser stated that the palm oil it sourced from PT Wilmar Nabati (Indonesia Gresik) is used in soap noodles. Reckitt Benckiser stated that 8 mills were selected as high priority for the Wilmar Pasir Gudang Edible Oils (PGEO) refinery based on a detailed "on the ground" compliance assessment.

relies on the Aggregator Refinery Transformation Plan (ART), described in Chapter 6. It stated that it had made efforts, along with Wilmar and TFT, to trace palm oil back to mills to identify those that are high priority (known as its Mill Prioritisation Process). While the ART approach may be useful for engaging suppliers, it is extremely limited in scope. The criteria used for selection of mills are not based on an adequate pre-assessment of the risk of labour rights abuses. Therefore, engaging in the ART plan alone is insufficient to identify labour risks and abuses linked to palm oil plantations. A review of the mill prioritisation document also shows that the assessment was heavily based on environmental rather than labour criteria.⁴¹⁴

Nestlé told Amnesty International that it has been monitoring Wilmar for human rights related reasons since 2010. Despite this claim, Nestlé does not appear to have identified the severe labour abuses investigated by Amnesty International on Wilmar's and its suppliers' plantations.

Nestlé said that it had suspended a portion of trade with Wilmar from 2010 to 2012 for reasons related to environmental practices.⁴¹⁵ In a letter to Amnesty International, the company said that: *"...origins of a proportion of palm oil provided [by Wilmar] were not in alignment with RSG [Responsible Sourcing Guidelines]. However, following extensive engagement we received assurances that it would change its practices, and our full commercial relationship restarted."*⁴¹⁶

Nestlé said that between the years of 2010 and 2013 the company was *"...also gathering information on human rights issues during this period."* In relation to Wilmar, it said that *"56.06% (25,587 tonnes) [of palm oil] is being monitored through our Responsible Sourcing Action Plan"*.⁴¹⁷ It stated: *"Wilmar does not currently comply with all Nestlé's RSG requirements yet", but that Wilmar "...has made a policy commitment, with a time bound Aggregator Refinery Transformation (ART) plan."*⁴¹⁸

As noted above, the ART plan is extremely limited in scope. While Nestlé states that Wilmar is non-compliant with parts of its own RSG policy, it does not disclose whether this non-compliance relates to labour standards.

In response to Amnesty International's findings, Nestlé stated that: *"We believe that our due diligence system, based upon the various steps noted above (risk assessment, supply chain transparency, on the ground assessments and action plans with suppliers, backed by suspending suppliers who are unwilling to improve) is a strong one."*⁴¹⁹ However, despite its detailed response, Nestlé failed to demonstrate that it had, through its internal processes, identified labour risks or abuses linked to Wilmar's Indonesian palm oil supply prior to being contacted by Amnesty International.

Unilever is one of the largest buyers of palm oil and is the largest end user of *"physically certified"* palm oil in the consumer goods industry.⁴²⁰ In its response to Amnesty International, Unilever confirmed that Wilmar

⁴¹⁴ Reckitt Benckiser letter to Amnesty International, dated 11 November 2016. The company said that it conducts *"... supply chain risk mapping, that our soap noodle suppliers are identified as high risk and that working with TFT and our suppliers, we have targeted action plans in place to help address specific and industry-wide environmental and social issues in Indonesia and Malaysia."*

⁴¹⁵ Nestlé letter to Amnesty International, dated 11 November 2016.

⁴¹⁶ Nestlé letter to Amnesty International, dated 26 October 2016.

⁴¹⁷ Nestlé letter to Amnesty International, dated 11 November 2016.

⁴¹⁸ Nestlé letter to Amnesty International, dated 26 October 2016.

⁴¹⁹ Nestlé letter to Amnesty International, dated 11 November 2016. The company further states that *"In fact, whilst we are constantly assessing the risks based upon our own findings and the insights from other organizations, we are aware that we may not uncover all issues, so we welcome insights and findings from NGOs and civil society organizations and will always investigate any evidence and cooperate to achieve change on the ground."*

⁴²⁰ Unilever, Transforming the palm oil industry, <https://www.unilever.com/sustainable-living/the-sustainable-living-plan/reducing->

is one of its “key palm oil suppliers,” and that Wilmar supplies it directly and indirectly. It also confirmed that most of the palm oil it receives comes from Indonesia.⁴²¹

Unilever has policies in place with respect to a range of human rights issues, including gender discrimination, forced labour, and the use of chemicals. However, based on the evidence gathered by Amnesty International, the company has failed to put its policies into practice.

Unilever said it was developing a roadmap for supplier compliance with its Palm Oil Sourcing Policy and provided some details relating to verification efforts. The company advised that: “...we are also working towards independent verification of our palm oil supply chain, especially on high risk mills where we have identified issues including those relating to wages, working hours, environment and health and safety issues. We have developed a programme for risk verification and have piloted this through three independent assessments.”⁴²²

Unilever does not provide any explanation for why it has taken so long for the company to put in place a process to identify significant risks for labour rights issues and to check its suppliers, particularly since it has been sourcing from Wilmar for more than 10 years.⁴²³ Its efforts are still at the piloting stage and the future potential for addressing these issues is uncertain.

Summing up, Unilever agreed that the industry is “in need of structural and sustainable change” and stated that: “We will continue to support the drive across the industry for greater visibility and transparency of the palm oil sector’s supply chain. We are committed to the continuous improvement in the processes for the identification and remediation of social issues.”⁴²⁴

TRACEABILITY NOT MATCHED BY TRANSPARENCY OF PRODUCTS

The companies that buy oil from Wilmar confirmed that Wilmar provided them with information that allowed them to trace the palm oil or palm-related derivatives (generally referred to as “palm oil”) back to each refinery and back to each of the mills that supply those refineries.⁴²⁵

As noted in Chapter 8, Wilmar makes public data on the source of palm oil (known in the industry as traceability information or ‘traceability summaries’). Of all the Wilmar Buyers assessed for this report, only one, ADM, also makes this information public.

Amnesty International asked the Buyers to disclose the traceability information on the trade and shipping data for palm oil sourced from Wilmar.

As noted in Chapter 6, Reckitt Benckiser, Nestlé, Kellogg’s, and Colgate-Palmolive, confirmed that they

[environmental-impact/sustainable-sourcing/transforming-the-palm-oil-industry/](#) (accessed 20 November 2016)

⁴²¹ Unilever letter to Amnesty International, dated 26 October 2016.

⁴²² Unilever letter to Amnesty International, dated 26 October 2016.

⁴²³ “In a 2006 declaration to institutional investors, Wilmar announced that its key international customers include Procter & Gamble, Cargill, Unilever, Nestlé and China Grains & Oils Group Corporation.” See Greenpeace, *How Unilever palm oil supplies are burning up Borneo*, p.15, available at <http://www.greenpeace.org/international/PageFiles/24549/how-unilever-palm-oil-supplier.pdf> (accessed 20 November 2016)

⁴²⁴ Unilever letter to Amnesty International, dated 11 November 2016.

⁴²⁵ Amnesty International discussion with P&G, 31 October 2016; Colgate-Palmolive letter to Amnesty International, dated 26 October 2016; Kellogg’s letter to Amnesty International dated 26 October 2016; Nestlé letter to Amnesty International, dated 26 October 2016; Reckitt Benckiser letter to Amnesty International dated, 26 October 2016; and Unilever letter to Amnesty International, dated 26 October 2016.

source palm oil from at least one refinery supplied by the plantations where Amnesty International found severe labour abuses.

By contrast, P&G said that it could not provide information on their palm oil supply chain because this information was commercially sensitive and subject to confidentiality agreements with Wilmar. P&G confirmed that Wilmar provided it with information including the number and the names of refineries and mills from which the palm oil it purchased was sourced.⁴²⁶ However, P&G was unwilling to disclose this information publicly. The company stated: *"We have a confidentiality agreement with Wilmar, so P&G can't share that information. ... Wilmar want to keep it confidential, they don't want people to know where the palm oil is going."*

However, in follow-up communications, Wilmar confirmed to Amnesty International that it does not require its buyers to keep this type of information confidential: *"We do, however, wish to clarify and assure you that Wilmar neither restricts our customers from sharing traceability information provided by Wilmar, i.e. mill names and GPS coordinates, with other parties. We do not deem traceability information (with an exception on volumes) as commercially sensitive or confidential."*⁴²⁷

Elevance did not reply to Amnesty International's request. However, as explained in Chapter 8, its joint venture with Wilmar, a bio-refinery, is supplied by Wilmar's refinery in Gresik which receives palm oil from mills linked to the plantations investigated by Amnesty International.

AFAMSA did not respond to Amnesty International's request to confirm which refineries it sources from.⁴²⁸ However, as discussed in Chapter 8, Port Authorities in Vigo, Spain confirmed that AFAMSA was the importer of crude palm oil from Wilmar from Dumai, the port closest to Wilmar's Dumai refinery.⁴²⁹

Unilever told Amnesty International that it sourced Indonesian palm oil directly and indirectly from Wilmar but did not confirm from which refineries the palm oil originated.

Amnesty International also asked Wilmar's Buyers to provide a list of all of their products that contained palm oil sourced from Wilmar. Kellogg's confirmed that palm oil sourced from the identified Wilmar refineries went into Pringles chips made and distributed in China by its joint venture with Wilmar. Reckitt Benckiser confirmed that a palm derivative (soap noodles) sourced from one of the identified Wilmar refineries was used to manufacture bar soap, which is sold globally. It did not however confirm the brands of bar soaps that the palm derivative sourced from Wilmar is used in.⁴³⁰

No other company provided information on which of their products contained Wilmar palm oil.

Amnesty International then presented a list of products that contain palm oil⁴³¹ to each of Wilmar's Buyers and asked them to confirm which of their products contained palm oil sourced from Wilmar and Indonesia.

⁴²⁶ P&G advised that it did not get information on volumes sourced from each mill; Amnesty International telephone discussion, 31 October 2016.

⁴²⁷ Wilmar International letter to Amnesty International, dated 11 November 2016.

⁴²⁸ Amnesty International email to AFAMSA dated 8 November 2016 and follow up email dated 20 November 2016.

⁴²⁹ Amnesty International presented this information to AFAMSA but did not receive a response.

⁴³⁰ Reckitt Benckiser letters to Amnesty International dated 26 October 2016 and 11 November 2016. Reckitt Benckiser email to Amnesty International dated 14 November 2016.

⁴³¹ Amnesty International created these lists from publicly available information on the websites of the companies, their brands and their products and from ingredient information detailed on the websites of supermarkets.

Unilever and P&G provided a response, but did not point out any corrections on the list of products sent to them.⁴³²

Colgate-Palmolive confirmed that it could trace back to one of the refineries identified by Amnesty International, but that none of the products presented to it contained palm derivatives from that refinery.⁴³³ Nestlé confirmed that the products presented to it contained palm oil, but not palm oil sourced from Wilmar.⁴³⁴ However, Colgate-Palmolive and Nestlé did not disclose the products they manufacture, which use palm oil sourced from the specific Wilmar refineries.

ADM provided an ambiguous response to Amnesty International's request to know which products contain Wilmar palm oil stating that: *"Coroli, Oilio [ranges of edible oils] and NovaLipid [a range of low-fat serving oils and shortenings] are broad product categories. Sometime these products can contain palm oil but sometimes they do not."*⁴³⁵

Elevance and AFAMSA did not respond to Amnesty International's letter asking them to confirm which of their products contained palm oil sourced from Wilmar.

In addition to Wilmar's Buyers mentioned above, Amnesty International asked Mondelez International to confirm information relating to the palm oil it sources. The company provided information about its broad engagement with suppliers and its palm oil action plan. It stated that 90% of the palm oil sourced by the company was traceable to mill but refused to confirm if it had sourced or currently sources Indonesian palm oil from Wilmar either directly or indirectly. This is despite information existing in the public domain which suggests that the company purchased palm oil from Wilmar in 2013.⁴³⁶

With respect to traceability data and product related information, Amnesty International does not accept the position that this information is commercially sensitive. Wilmar has confirmed that it does not perceive traceability data as sensitive and is already putting this information in the public domain.⁴³⁷ As noted above, ADM is also making traceability data publicly available which shows that as a buyer, it does not perceive this information as commercially sensitive.

It is not in the public interest to keep information on the source of palm oil, from refineries to mills (or plantations where possible), opaque – particularly since palm oil is being marketed by most Buyers either on their websites or on the end-products themselves as certified or sustainable palm oil. Without publicly disclosing this information, the Buyers, other than ADM, are not acting in the public interest and interests of the ethical consumer. They claim to the public that their products use certified or sustainable palm, but their refusal to put traceability information into the public domain is ensuring that no one can verify their claims. This lack of transparency by companies obstructs the ability of consumers, environmental and human rights groups to check if the products are made using 'sustainable' palm oil. This in turn denies the

⁴³² Unilever letter to Amnesty International dated 11 November 2016; P&G email to Amnesty International dated 10 November 2016.

⁴³³ Colgate-Palmolive letter to Amnesty International, dated 11 November 2016.

⁴³⁴ Nestlé letter to Amnesty International, dated 11 November 2016.

⁴³⁵ ADM letter to Amnesty International, dated 15 November 2016.

⁴³⁶ See: Greenpeace, *Licence to Kill: How deforestation for palm oil is driving Sumatran tigers towards extinction*, Greenpeace, October 2013, p. 26. Kraft was identified as a buyer of Qinhuangdao Goldensea Specialty Oils & Fats Industries Co., Ltd, a joint venture between Wilmar Yihai China Holdings Pte. Ltd and Hebei Port Group Co.,Ltd. In 2011, Kraft Foods Inc. split into two companies, a snack food company and a grocery company. The snack food company became Mondelez International Inc., see Golden Sea Industries, Company Profile, available at <http://www.golden-sea.cn/yihai/en/main.html> (accessed 19 November 2016).

⁴³⁷ Wilmer International, Sustainability Dashboard available at <http://www.wilmar-international.com/sustainability/> (accessed 9 October 2016)

individual consumer the opportunity to seek verification about the products they purchase, and interferes with their ability to make informed choices.

The lack of willingness by those companies that buy from Wilmar to disclose this information is inconsistent with the claim that they use “sustainable palm oil” in their products. The logical conclusion is that those companies that are unwilling to disclose this information are trying to shield themselves from public scrutiny.

Unless the companies that buy and use palm oil are willing to disclose it, information available on the full palm oil supply chain is limited. Currently, there is no law that requires companies to make information public, nor is it required under the RSPO. Without companies, such as the Buyers mentioned in this report, voluntarily disclosing it, the trade in RSPO certified palm oil remains opaque. It is critical that they disclose this information on two levels: 1) the names of the refineries or mills, and 2) the end products which contain palm oil from these sources.

FAILURE OF BUYERS TO ENGAGE EFFECTIVELY WITH WILMAR OVER RISKS AND ABUSES

Several factors exist which facilitate the ability of Wilmar’s Buyers to engage with and influence Wilmar on the issue of labour abuses, with a view to ensuring abuses on both Wilmar’s own plantations or those of its suppliers, are identified and swiftly remedied. All are consistent trading partners, some of which purchase substantial volumes from Wilmar.⁴³⁸ Many have been trading with Wilmar for years, and in some cases for a decade.⁴³⁹ Importantly all, except AFAMSA, are also RSPO members and some have been for a number of years. Many of the companies state publicly that they procure “certified sustainable palm oil” or “sustainable palm oil”.⁴⁴⁰ Many Buyers also appear to use the same consultants or NGOs, as does Wilmar, as resources for addressing risks relating to palm oil trading.

Wilmar’s Buyers have been willing to engage with the company over social and environmental issues in the past. For example, Unilever told Amnesty International that: *“In 2013, Unilever played an instrumental role in engaging Wilmar to release its sustainable palm oil policy and commit to the principles of no deforestation and no exploitation of people and communities.”*⁴⁴¹

Nestlé, which said it has traded with Wilmar for more than 10 years, said that it was currently engaging with Wilmar to improve certain practices. Furthermore, it said that in the past it had partially suspended trade with Wilmar and supported it to improve its practices.

ADM has leverage as a major shareholder (23%) in Wilmar. However, as far as Amnesty International could discover, ADM has not used its influence in an effort to improve Wilmar’s labour practices, both on Wilmar’s own plantations and on those operated by its suppliers.

⁴³⁸ Unilever confirmed to Amnesty International that Wilmar is one of their key palm oil suppliers. Reckitt Benckiser advised that Wilmar is one of their top five suppliers of palm oil.

⁴³⁹ Nestlé indicated that it has been trading with Wilmar for more than ten years; Colgate-Palmolive more than five years; Kellogg’s since 2014. *“In a 2006 declaration to institutional investors, Wilmar announced that its key international customers include Procter & Gamble, Cargill, Unilever, Nestlé and China Grains & Oils Group Corporation.”* See Greenpeace, *How Unilever palm oil supplies are burning up Borneo*, p.15, available at <http://www.greenpeace.org/international/PageFiles/24549/how-unilever-palm-oil-supplier.pdf> (last accessed 20 November 2016)

⁴⁴⁰ All the companies except AFAMSA. Nestlé advised that it does not promote palm oil in its products as RSPO compliant, although this information is promoted on their website. Reckitt Benckiser states on its website that “100% palm purchased covered by Green Palm certificates”, available at <http://www.rb.com/responsibility/sourcing/> (accessed 20 November 2016)

⁴⁴¹ Unilever letter to Amnesty International, dated 26 October 2016

In addition to individual leverage which companies such as Unilever, Nestlé and ADM have, most of the Buyers (except AFAMSA) that Amnesty International investigated are RSPO members, as is Wilmar. As mentioned above, many use the same consultants or NGOs as each other, as does Wilmar, to provide services on environmental and social practices. Clearly there exists a tight network around the palm oil supply chain market itself, which makes it possible for Buyers to engage in a structured way with Wilmar on human rights issues.

The implication of all these factors is that the Buyers have significant influence with Wilmar and the means to engage Wilmar in a coherent and coordinated way. Yet, despite the significant influence, none of the Buyers demonstrated that they have exercised this leverage to address risks or actual adverse human rights impacts linked to their trading relationship with Wilmar. As such, each is contributing to labour abuses on Wilmar's own plantations and those of Wilmar's suppliers.

In conclusion, most of the Buyers covered in this chapter source palm oil from refineries that are directly linked to the plantations where Amnesty International found severe labour abuses. As P&G and Unilever confirmed that they purchase Indonesian palm oil from Wilmar, it is highly likely that they source palm oil from refineries directly linked to these plantations. This conclusion is supported by the fact that 11 out of Wilmar's 15 refineries in Indonesia are supplied directly or indirectly by mills that are supplied by the plantations where Amnesty International found severe labour rights abuses.

Most of the Buyers (except AFAMSA) are also members of a tight network with Wilmar, and are long-standing buyers of its palm oil. None of the companies can credibly claim not to have been aware of the risk of labour exploitation. These risks have been publicly reported. Wilmar itself reported non-compliances with its 'No Exploitation' policy relating to the use of paraquat by its suppliers. Wilmar's Buyers' continue to use the RSPO as a shield and some do so despite recognising its limitations.⁴⁴²

All failed to conduct adequate human rights due diligence in relation to the Indonesian palm oil sourced from Wilmar. None identified the severe labour abuses documented in this report prior to being contacted by Amnesty International. Given they must have known of the risks, their failure to take effective action to address the risks is inexplicable.

Not only did Wilmar's Buyers fail to fulfil their responsibility to respect human rights, but they contributed to and benefit from the severe labour abuses in their palm oil supply chain. Immediate steps need be taken to remediate the harm suffered by those workers whose abuses have been documented in this report.

⁴⁴² Colgate-Palmolive letter to Amnesty International, dated 26 October 2016; Kellogg's letter to Amnesty International, dated 26 October 2016; and Unilever letter to Amnesty International, dated 26 October 2016. Colgate-Palmolive, Kellogg's and Unilever stated in their letters that they source RSPO certified palm oil, whilst also recognising the RSPO's limitations.

10. CONCLUSION AND RECOMMENDATIONS

Wilmar, its subsidiaries PT Perkebunan Milano and PT Daya Labuhan Indah, and its suppliers, PT Abdi Budi Mulia, PT Sarana Prima Multi Niaga, and PT Hamparan Masawit Bangun Persada have abused workers' rights to just and favourable conditions of work, health, and social security. Amnesty International found cases of forced labour and the involvement of children in the worst forms of child labour in the operations of Wilmar's subsidiaries and suppliers. PT Perkebunan Milano, PT Daya Labuhan Indah, PT Abdi Budi Mulia, and PT Hamparan Masawit Bangun Persada discriminate against women on the basis of their sex through their pattern of hiring practices. PT Abdi Budi Mulia has interfered with the right of workers to join the trade union of their choice. All of these companies may have contravened Indonesian laws and potentially committed criminal offences.

Wilmar does not have an adequate due diligence process in place to identify, prevent, mitigate and account for how it addresses adverse human rights impacts linked to its business operations. As the largest trader of palm oil globally, Wilmar is in a unique position to exercise leverage, influence and control, particularly when it is a direct purchaser. Wilmar's lack of adequate due diligence contributes to the adverse human rights impacts experienced by workers employed by its suppliers.

ADM purchases palm oil that is directly linked to the severe labour abuses documented in this report. AFAMSA, Colgate-Palmolive, Elevance, Kellogg's, Nestlé, Reckitt Benckiser are sourcing palm oil from refineries where the palm oil has been directly supplied or, at the very least, been mixed with palm oil produced on plantations where there are severe labour rights abuses. It is highly likely that Unilever and P&G are sourcing palm oil from refineries where the palm oil has been directly supplied or, at the very least, been mixed with palm oil produced on plantations where there are severe labour rights abuses. All failed to conduct adequate human rights due diligence in relation to the Indonesian palm oil sourced from Wilmar. None identified the severe labour abuses documented in this report prior to being contacted by Amnesty International. Given they must have known of the risks, their failure to take effective action to address the risks is inexplicable. All of these companies are benefiting from, and contributing to, severe labour abuses in their palm oil supply chain.

Indonesia has a strong general legal framework on labour rights, though the government needs to urgently address the critical gaps in protection around forced labour, casual workers and other issues identified in this report. The government is failing to adequately monitor and enforce its labour laws and to prevent and remedy abuses. It is violating its obligation to protect people from abuses of their rights. It must increase the number and capacity of labour inspectors to monitor abuses.

Wilmar is the world's largest trader of palm oil and supplies it to companies all around the world. This report highlights the failure of governments to put in place laws requiring companies to undertake mandatory due diligence on their global operations, including in relation to their supply chains and trading relationships.

The palm oil industry has come under intense scrutiny, been the target of multiple consumer campaigns and the focus of many voluntary initiatives. Companies have committed publicly that they will end exploitation and ensure that consumer products contain palm oil that has been produced sustainably. Amnesty International's investigation highlights that, despite all this attention and promises, workers on plantations in Indonesia continue to suffer severe labour rights abuses. It is time for all the companies

involved to move beyond words on paper to making practical and effective changes to working practices to end these abuses. The Indonesian government must hold companies accountable for their failures to respect human rights and provide effective remedies to victims.

Addressing the serious and systemic abuse of labour rights on plantations requires a broad commitment by Wilmar, its suppliers, and companies that buy from Wilmar. Working practices such as the use of piece rates, targets, penalties, casual work arrangements, use of hazardous chemicals which create risks to workers' safety, must be eradicated or substantially modified in order to end the human rights abuses identified in this report. Such changes must be accompanied by monitoring and investigations that are designed to detect labour abuses. A compliance based approach linked to RSPO certification is not sufficient to ensure respect for workers' human rights. The compliance approach has been repeatedly shown to be weak and fails to identify actual abuse. Companies that want to end abuse need to fundamentally change their mind-set and practices.

Governments need to recognise that they have to engage with the impacts on human rights and the environment of products sold and traded in their jurisdictions. Consumers are increasingly demanding information to enable them to make informed decisions. Both those companies that produce consumer goods that contain palm oil and other derivatives and the governments in countries where these products are sold, must ensure consumers can purchase goods labelled as "sustainable" with confidence. Right now the consumer is asked to rely on a voluntary scheme that cannot give confidence. Companies should be far more transparent and governments should act in the consumers' interest by requiring transparency.

Governments should also act to enable and ensure companies operate ethically throughout their global operations. Where serious abuses are a risk, it is not sufficient to assume the host state will address the issues. No government should want or allow companies headquartered in their country to benefit from or contribute to abuse.

RECOMMENDATIONS TO WILMAR, PT ABDI BUDI MULIA, TSH RESOURCES (PARENT COMPANY OF PT SARANA PRIMA MULTI NIAGA) AND THE BEST GROUP (PT HAMPARAN MASAWIT BANGUN PERSADA)

- Immediately stop abusing workers' rights and urgently modify working policies and practices on plantations to comply with Indonesian labour laws and international human rights and labour standards.
- Ensure that all workers receive fair wages that are sufficient to enable a decent living for the workers and their families. Guarantee that workers will be paid, at least, the daily minimum wage for every day that they work even if factors outside their control such as rain or faulty equipment impede their work.
- Revise targets and piece rates to ensure that they do not result in abuses, exploitation or put people's health and safety at risk. At the minimum, no target or piece rate should result in people being paid below the minimum wage, working longer hours without overtime pay or relying on help from their spouses or children to complete their work.
- Bonuses linked to targets should be in addition to and not replace overtime pay, which must be paid in line with national regulations.
- Immediately end forced labour and ensure that threats of penalties, including those related to targets, of dismissal, loss of privileges, and payments below the minimum wage are not used to exact work involuntarily from people. Any penalty linked to employment should be limited to those strictly necessary to ensure a fair and safe workplace and should never infringe the dignity or safety of workers.
- Offer permanent contracts to all casual daily labourers who have been working under 'work agreements for free daily work' (*perjanjian kerja harian lepas*) for more than three years. Make retroactive

arrangements for payments of benefits to workers who have worked as casual daily labourers for more than three years and cover them under health insurance and social security schemes.

- Set out clear criteria for the use of 'work agreements for free daily work' (*perjanjian kerja harian lepas*) and ensure that these arrangements are not being disproportionately used for women workers or for units where the majority of employees are women.
- Ensure that there is no direct or indirect discrimination against women workers. Companies should proactively review their operations to identify and address discrimination against women, and should take decisive action to address such discrimination without infringing the rights of others. They should regularly conduct checks and publish updates on what they have done.
- Ensure that all sprayers are employed on permanent employment contracts and covered under health insurance schemes. There should be no targets or use of piece rates for sprayers because this jeopardizes their ability to use adequate safety equipment, take necessary breaks as required, and may result in extended exposure to hazardous chemicals.
- Phase out and eliminate the use of highly hazardous pesticides because of the risks they pose to workers' health. In the interim, use them only in exceptional circumstances where the company can demonstrate that it is not feasible to use a safer alternative, that it has undertaken assessments and put in place additional measures to manage risks to workers' health.
- Provide all workers with adequate personal protective equipment for the tasks that they undertake, including replacements as needed.
- Provide workers with information on all potential health risks in the workplace in a clear, comprehensible manner, especially those related to the chemicals that they handle or spray. Ensure that workers are given the choice to refuse to spray certain chemicals if they consider them to be too dangerous to their health and are not penalized for their refusal.
- Conduct health monitoring, with workers' informed consent, to identify and address any negative health effects that may have been caused to workers due to exposure to hazardous chemicals.
- Guarantee that no punitive action will be taken against parents who are helped by their children. Stop child labour by addressing the causative factors for children's involvement in the work by providing fair wages and revising targets and penalties.
- Remediate harms suffered by workers as well as children who have been involved in hazardous work on plantations. Provide compensation for all abuses, rehabilitation for negative health effects and injuries suffered by adults and children, and support for reintegration of children into the school system where necessary.
- Respect the right of workers to form and join trade unions of their choice and ensure that there is no intimidation or harassment of workers because of their membership or participation in trade union activities.
- Guarantee that no punitive action will be taken against any worker for sharing information with Amnesty International.

ADDITIONAL RECOMMENDATIONS TO WILMAR IN RELATION TO ITS SUPPLY CHAIN

- Put in place an adequate due diligence process to identify, prevent, mitigate and account for how the Wilmar Group addresses potential and actual adverse human rights impacts in its global palm oil sourcing practices. Demonstrate that the company has identified areas where the risks of adverse impacts are most significant, in its palm oil supply chain and trading relationships, and put in place concrete measures to mitigate these risks and prevent abuses.
- Immediately engage with PT Abdi Budi Mulia, TSH Resources and the BEST Group to ask them to comply with the recommendations above, providing them with support as necessary.
- Remediate, in cooperation with PT Abdi Budi Mulia, TSH Resources and the BEST Group, the harms suffered by workers as well as children who have been involved in hazardous work on their plantations.

RECOMMENDATIONS TO WILMAR'S BUYERS (AFAMSA, ADM, COLGATE-PALMOLIVE, ELEVANCE, KELLOGG'S, NESTLÉ, PROCTER & GAMBLE, MONDELEZ INTERNATIONAL, RECKITT BENCKISER AND UNILEVER)

- Put in place an adequate due diligence process in place to identify, prevent, mitigate and account for how the company addresses adverse human rights impacts in its global palm oil sourcing practices. This includes taking a more investigative approach to identifying labour risk and abuses, including by establishing base line information on suppliers' working practices. Companies should identify areas where the risks of adverse impacts are most significant in their supply chain and put in place concrete measures to mitigate these risks and prevent abuses. They can start by prioritising the risks and labour abuses identified in this report and make use of traceability data which is already available.
- Individually, and collectively, use their considerable influence as major buyers, and in some cases, business partners, to immediately engage with Wilmar to ask it to comply with the recommendations above.
- Remediate, in cooperation with Wilmar, the harms suffered by workers as well as children who have been involved in hazardous work on plantations of the Wilmar Group or its suppliers in Indonesia.
- Publicly disclose the Wilmar refineries, Wilmar or its suppliers' mills and, where known, the plantations, from which the company sources palm oil or palm-related derivatives. Publicly disclose the end products manufactured using this palm oil or palm-related derivatives.
- If the company claims to use 'sustainable' or 'certified sustainable palm oil', in any of its public materials, it should disclose on its website a list of products made with palm oil or palm-related derivatives. It should also disclose the countries and companies from which the palm oil or palm-related derivatives are sourced. If not already known, it should take immediate action to trace where the palm oil used in the company's products comes from.

RECOMMENDATIONS TO THE GOVERNMENT OF INDONESIA

TO THE PARLIAMENT

- Amend the Criminal Code and the Manpower Act to introduce an offence of forced labour. Ensure that the penalties imposed by the law are adequate and strictly enforced.

TO THE PRESIDENT

- Amend or repeal Regulation No. 78/2015 to retain the participation of workers and employers associations in the mechanism to fix the minimum wage.
- Implement the recommendation of the UN Committee on Economic, Social and Cultural Rights and ensure that minimum wage levels are sufficient to ensure a decent living for workers and their families and which does not jeopardise their ability to enjoy other rights.
- Work with the parliament to ensure Indonesia becomes a party to the ILO Minimum Wage-Fixing Machinery Convention, 1986 (No. 26), the Minimum Wage Fixing Convention, 1970 (No. 131), and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

TO THE MINISTRY OF MANPOWER

- Investigate all the potential criminal offences and other breaches of Indonesian law set out in this report. Based on the results of the investigations, take all necessary enforcement actions in collaboration with other relevant agencies, including prosecutions in accordance with international standards for fair trials, against the companies involved.

- Ensure that all victims have access to effective remedies and reparation, including to complaint mechanisms that are accessible and safe.
- Amend Decree No. 100/2004 to put in appropriate time-limits for casual work arrangements, in consultation with trade unions and workers. These time-limits should not exceed those in place for other fixed-term contracts.
- Amend Decree No. 100/2004 and initiate an amendment to the Manpower Act to establish stricter criteria for use of such arrangements, including explicit safeguards to ensure that there is no direct or indirect discrimination in the use of 'work agreements for free daily work' (*perjanjian kerja harian lepas*), and measures to preclude the possibility of these arrangements being used for hazardous work on plantations, such as spraying.
- Increase the number of labour inspectors and strengthen the capacity of labour inspectors to monitor and enforce breaches of labour laws, including on palm oil plantations across the country.
- Ensure thorough investigations and, in collaboration with relevant agencies, prosecutions of employers who breach the laws and commit offences.
- Make disaggregated information publicly available on the number of inspectors employed by the Ministry, inspections, investigations, prosecutions, convictions and other penalties imposed for breaches of labour laws, with a break down per sector, including for palm oil plantations.

RECOMMENDATIONS TO HOST AND PALM OIL IMPORTING GOVERNMENTS

- Institute legal and policy reforms to require companies domiciled or headquartered in the country to carry out adequate human rights due diligence throughout their global operations, including their supply chains.
- Require companies to report publicly on their human rights due diligence policies and practices.
- Engage with the companies named in this report who are domiciled or headquartered in the country to ensure that they comply with the recommendations above.
- Ensure that adequate measures are in place which can be used to verify or monitor company claims (on labels or in corporate materials) that the palm oil used in their products is certified or sustainable.
- Hold companies to account for any misleading claims relating to the marketing of certified or sustainable palm oil. This could be done by requiring statutory bodies responsible for consumer protection or advertising standards to review industry practice with regard to the marketing of products as "sustainable", "certified", "ethical", or making similar guarantees to consumers. Any evidence that claims are misleading or incorrect, should be publicly disclosed.

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