

Palming Off Responsibility

Labour rights violations in the Indonesian palm oil sector

Case studies of Murini Sam Sam
and Aneka Inti Persada



COLOPHON

Palming off responsibility - Labour rights violations in the Indonesian palm oil sector:
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1. Introduction

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1.1 Context

CNV Internationaal works to promote decent work conditions internationally. Part of its objective is to promote sustainability in supply chains by strengthening the position of employees in standing up for their rights. CNV Internationaal intends to contribute to a decrease in inequality and injustice in societies across the world. It focuses on improving labour conditions in international supply chains. The normative standards that function as the basis of stimulating companies to provide decent labour conditions are the UN Guiding Principles on Business and Human Rights (2011) and the OECD Guidelines for Multinational Enterprises (2011).

One of the focus supply chains for the CEA programme is that of Indonesian palm oil. Palm oil is estimated to be used in up to 50 per cent of common consumer products today.¹ The US Department of Agriculture estimates that palm oil production for the year 2016/2017 will be 62.8 million tonnes.² Palm is reported to be a relatively productive crop, allowing farmers to produce more oil per hectare compared to other vegetable oils.³ Production has risen by approximately 11 per cent in the past four years, and takes place mostly in Malaysia and Indonesia.⁴ Other countries that produce significant amounts of palm oil are Thailand, Nigeria and Colombia. Together, these five producers account for approximately 92 per cent of world production.⁵ Palm is a tropical tree which grows best within 10 degrees north or south of the equator.⁶ This need for a specific climate has caused the crop's production to be highly concentrated in a small number of countries, and the industry has been an important culprit in deforestation in those respective countries.

Indonesia is the world's largest producer of palm oil, producing about 75 per cent more than runner-up Malaysia. Indonesia produces about 34 million tonnes of palm oil annually⁷, mostly on the islands of Sumatra and Kalimantan.⁸ A large proportion of this production, about 28 per cent, is consumed in Indonesia itself, while the rest is exported. The world's largest palm oil consumers are Indonesia (15 per cent of world production), India (15 per cent), the European Union (11 per cent), China (8 per cent) and Malaysia (5 per cent).

In 2014, Indonesia's top five export destinations for palm oil were India (21 per cent), China (11 per cent), Pakistan (7.6 per cent), Italy (6.2 per cent) and the Netherlands (4.8 per cent).⁹ Indonesian palm oil exports in 2014 were valued at US\$17.5 billion.¹⁰ In the same year, the Netherlands' palm oil imports came mostly from Malaysia (40 per cent) and Indonesia (38 per cent), and were valued at US\$2.21 billion. Large Dutch companies such as Unilever, Koninklijke Ahold Delhaize, Akzo Nobel and FrieslandCampina used palm oil in their products, with part of their palm oil likely coming from Indonesia.¹¹

¹ Amnesty International, *The Great Palm Oil Scandal*, November 2016, <https://www.amnesty.org/en/documents/asa21/5184/2016/en/>, 18 April 2017.

² US Department of Agriculture, *Oilseeds: World Markets and Trade*, April 2017, <https://apps.fas.usda.gov/psdonline/circulars/oilseeds.pdf>, 18 April 2017.

³ World Wildlife Fund website, *Overview*, no date, <https://www.worldwildlife.org/industries/palm-oil>, 18 April 2017.

⁴ US Department of Agriculture, *Oilseeds: World Markets and Trade*, April 2017, <https://apps.fas.usda.gov/psdonline/circulars/oilseeds.pdf>, 18 April 2017.

⁵ US Department of Agriculture, *Oilseeds: World Markets and Trade*, April 2017, <https://apps.fas.usda.gov/psdonline/circulars/oilseeds.pdf>, 18 April 2017.

⁶ Green Palm website, *Where is palm oil grown?*, 2016, <http://greenpalm.org/about-palm-oil/where-is-palm-oil-grown-2>

⁷ Food and Agriculture Organization of the United Nations, *FAOSTAT Data: oil, palm*, no date, <http://www.fao.org/faostat/en/#data/QC/visualize>, 18 April 2017.

⁸ Bloomberg, *Indonesia's Palm Oil Industry Rife With Human-Rights Abuses*, 2013, <https://www.bloomberg.com/news/articles/2013-07-18/indonesias-palm-oil-industry-rife-with-human-rights-abuses>, 18-4-2017.

⁹ Observatory of Economic Complexity website, *Where does Indonesia export Palm Oil to?*, 2014, http://atlas.media.mit.edu/en/visualize/tree_map/hs92/export/idn/show/1511/2014/, 18 April 2017.

¹⁰ Observatory of Economic Complexity website, *Where does Indonesia export Palm Oil to?*, 2014, http://atlas.media.mit.edu/en/visualize/tree_map/hs92/export/idn/show/1511/2014/, 18 April 2017.

¹¹ RSPO website, *Members*, no date, http://www.rspo.org/members/page/20?keywords=&member_type=&member_category=&member_country=Netherlands, 18 April 2017.

In its work on the Indonesian palm oil supply chain, CNV Internationaal is collaborating with an Indonesian federation of trade unions called Hukatan, or the Federation of Trade Unions of Forestry, Logging, and Plantations (Federasi Serikat Buruh Kehutanan, Perkayuan dan Perkebunan). CNV and Hukatan¹² are both members of the International Trade Union Confederation.¹³

1.2 Aim and methods

This report will attempt to provide a clear perspective on issues facing workers in the Indonesian palm oil sector. Furthermore, a discussion will be provided of the relevance of the UN Guiding Principles on Business and Human Rights (UNGPs) as well as the Roundtable for Sustainable Palm Oil (RSPO) for the Indonesian palm oil sector and the labour conditions affecting its workers. Field research was undertaken in two Indonesian palm oil plantations, and an overview of the labour rights violations that were found there is provided below. The two palm oil companies that were researched are PT Murini Sam Sam and PT Aneka Inti Persada, both of which operate in the province Riau, on the island Sumatra.

Using the case studies of these two companies, the report attempts to provide an answer to the central research question: to what extent do Indonesian palm oil companies comply with the UN Guiding Principles on Business and Human Rights (UNGPs)? To provide context to the findings, the way this international normative standard relates to Indonesian law will be discussed, and the gaps that exist between them will be explored.

Furthermore, two international initiatives for sustainable palm oil, the Roundtable on Sustainable Palm Oil and the Amsterdam Declaration on Sustainable Palm Oil, and their impact on the palm oil sector in Indonesia will be discussed. Special attention will be given to the perception civil society organisations have of their success in making palm oil production more sustainable.

As stated before, two palm oil plantations on Sumatra, Indonesia, were selected for the purpose of this research. Both companies are members of the Roundtable on Sustainable Palm Oil. PT Murini Sam Sam is owned by Wilmar, the largest palm oil company in the world, while PT Aneka Inti Persada belongs to the Sime Darby group, which also belongs to the top five largest palm oil companies worldwide.¹⁴ To learn about labour conditions at these certified plantations, the researchers organised focus group discussions and key informant interviews with around 30 workers per palm oil company.

Sime Darby and the RSPO were given the opportunity to review and provide comments on a draft version of the paper, in order to correct any factual mistakes. The feedback from both companies as well as from the RSPO has been incorporated into the report.

¹² Hukatan is an indirect member through its Indonesian confederation KSBSI.

¹³ ITUC, *List of Affiliated Organisations*, December 2016, https://www.itucpsi.org/IMG/pdf/list_of_affiliates_16th_gc_2_.pdf, 18 April 2017.

¹⁴ *Global Palm Oil Conference, An overview of the palm oil sector: countries and companies*, March 2015, <http://www.iuf.org/w/sites/default/files/Palm%20Oil%20Background%20document.pdf>, 18 April 2017.

2. Implementation of the UNGPs in Indonesia

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2. Implementation of the UNGPs in Indonesia

In their description of the UNGPs, the UN Office of the High Commissioner for Human Rights writes that the UN Human Rights Council endorsed Guiding Principles on Business and Human Rights for implementing the UN 'Protect, Respect and Remedy' Framework, providing – for the first time – a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.¹⁵ The UNGPs do not create additional legal obligations for states, but instead provide information on how existing obligations under international law, such as those created through the ratification of international human rights conventions, need to be implemented and enforced.¹⁶

In short, the UNGPs describe how states are responsible for protecting human rights, businesses are responsible for respecting human rights, and how these two actors are jointly responsible for providing remedy to victims of human rights violations. With respect to the private sector, it is set that businesses are partly responsible for human rights violations committed by their direct business partners, or by businesses further down in their supply chain. In such cases, businesses are required to use their leverage over business partners in order to mitigate the risk that human rights violations continue or recur. In case this fails, businesses are advised either to increase their leverage over business partners and again try to mitigate the risk, or to consider ending their business relationship.¹⁷

The UNGPs clarify that irrespective of a state's responsibility to implement and enforce human rights, businesses can be held accountable when they violate human rights that are legally binding in the country where they operate, as they have the responsibility to respect human rights.¹⁸ Under the UNGPs, governments remain responsible for implementing and enforcing human rights.

With regard to Indonesia, this means that businesses present in Indonesia are required to respect all human rights conventions that the country is a party to. Indonesia has ratified most key international human rights conventions, including the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work, with the only apparent exceptions being the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Rome Statute of the International Criminal Court (2003). Five of these key ratified conventions are the following:

Treaty	Year adopted	Abbreviation	Year Indonesia became a party
International Convention on the Elimination of all Forms of Racial Discrimination	1966	CERD	1999
International Covenant on Civil and Political Rights	1966	ICCPR	2006
International Covenant on Economic, Social and Cultural Rights	1966	ICESCR	2006
Convention on the Elimination of All Forms of Discrimination against Women	1979	CEDAW	1984
Convention on the Rights of the Child	1989	CRC	1990

¹⁵ UN OHCHR website, *Business and human rights*, no date, <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>, 18 April 2017.

¹⁶ UN OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, 2014, http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf, 18 April 2017.

¹⁷ UN OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, p.50, 2012, http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf, 18 April 2017.

¹⁸ UN OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, 2014, http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf, 18 April 2017.

There is uncertainty within Indonesia over whether the country's legal system follows a dualist or monist system, which complicates the legal status of international human rights in Indonesia.¹⁹ Due to this ambiguity over which legal system Indonesia uses, it is unclear whether the country is currently bound by the international human rights law that it is a party to (as in a monist system), or whether such international human rights law would need to be transformed into national law first (as in a dualist system).²⁰ Although Indonesia has ratified many international human rights treaties, lack of clarity thus exists regarding their applicability within the Indonesian legal context. Reportedly, the ratification of these treaties has often been done for the sole purpose of acquiring legitimacy, and such efforts lack the intention to actually implement the human rights obligations held within.²¹ This may be a contributing factor to the lack of implementation of human rights in Indonesia.

2.1 National Action Plan on Business and Human Rights

Following the acceptance of the UNGPs, the UN Working Group on Business and Human Rights have urged states to develop so-called National Action Plans (NAP) to guide governments' policy strategies in working towards protecting their people from human rights violations by businesses, hopefully resulting in compliance with the UNGPs.²² Such a NAP should be an outline of the country's path to effectively upholding the UNGPs, detailing that country's specific issues in the field of business and human rights, and should be developed in an inclusive process with input from various stakeholders.²³

At the moment, Indonesia does not have a NAP, although one has been in development by the Indonesian National Commission for Human Rights (Komnas HAM) since mid-2015.²⁴ In January of 2016, the NAP was supposedly ready to be published, but this has yet to be done.²⁵ In an interview with the Business and Human Rights Resources Centre, Komnas HAM provided insight into what was delaying the development of the NAP, citing the following factors as impeding their progress: the lack of resources for enforcement, monitoring and prosecution; opposition by economic interest groups, business associations and influential people outside government; opposition and lack of consensus and awareness in government; political limitations imposed by foreign governments or multilateral institutions; concern about deterring foreign investment; and other challenges of coordinating government and lack of capacity.²⁶ Recent inquiry by SOMO with people close to the process provided reports that no significant progress has yet been made on finishing the NAP, and that lack of clarity over which government ministries²⁷ should be involved in its development has caused delay. Internal issues within Komnas HAM were also mentioned as obstacles in the development of the NAP, including conflicting interests between commissioners, a lack of funds for the institution as a whole, and differing views regarding the significance of the UNGPs as opposed to Indonesian-made procedures for dealing with the issues around business and human rights.²⁸

¹⁹ Butt, S., *The Position of International Law within the Indonesian Legal System*, 2013, <http://law.emory.edu/eilr/content/volume-28/issue-1/recent-developments/international-law-indonesian-legal-system.html>, 18 April 2017.

²⁰ Centre for International Law, *CIL Research Project on International Maritime Crimes: Indonesia's Country Report*, 2011, <https://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Country-Report-Indonesia.pdf>, 18 April 2017.

²¹ Butt, S., *The Position of International Law within the Indonesian Legal System*, 2013, <http://law.emory.edu/eilr/content/volume-28/issue-1/recent-developments/international-law-indonesian-legal-system.html>, 18 April 2017.

²² UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, 2016, http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf, 18 April 2017.

²³ UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, 2016, http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf, 18 April 2017.

²⁴ ELSAM, *The Urgence of Developing The National Action Plan On Business And Human Rights In Indonesia*, 19 June 2015, <http://elsam.or.id/2015/06/the-urgence-of-developing-the-national-action-plan-on-business-and-human-rights-in-indonesia-2/>, 18 April 2017.

²⁵ *The Jakarta Post*, *Komnas to launch rights guidelines for business*, 20 January 2016, <http://www.thejakartapost.com/news/2016/01/20/komnas-launch-rights-guidelines-business.html>, 18 April 2017.

²⁶ Business & Human Rights Resource Centre, *Action Platforms: Indonesia*, no date, <https://business-humanrights.org/en/indonesia-1>, 18 April 2017.

²⁷ *The Ministries that were named were the Ministry of Law and Human Rights, Ministry of Trade, Ministry of Labor, Ministry of Finance, and the Ministry of Cooperatives and SMEs.*

²⁸ *Email correspondence with Michelle Kelsall, Indonesian Human Rights Resource Centre, http://hrrca.org/, 20 January 2017.*

3. Sustainable palm oil – international initiatives

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3.1 Roundtable on Sustainable Palm Oil

The Roundtable on Sustainable Palm Oil (RSPO) was created in 2004 to set up criteria for sustainable palm oil, and to move palm oil companies to produce such sustainable palm oil. It is a multi-stakeholder initiative with 3,000 participants, ranging from companies in every section of the palm oil supply chain to investors, to NGOs with a social or environmental focus.²⁹ Many Dutch palm oil using companies are RSPO members. These include supermarket companies like Superunie (owner of Spar and Plus), Ahold Delhaize, Jumbo Supermarkten, consumer goods producers like Royal FrieslandCampina, Nutreco and Unilever, as well as the three biggest Dutch banks, Rabobank, ABN AMRO and ING Bank.³⁰ The RSPO boasts that it certifies 21 per cent of global palm oil production, amounting to 12.2 million tonnes of palm oil per year.³¹ Most of this palm oil (51 per cent) reportedly comes from Indonesia.³²

The RSPO prescribes a list of principles and criteria³³, which is the standard that participating palm oil sector companies are required to comply with. This list consists of the following:

- commitment to transparency
- compliance with applicable laws and regulations (including international law)
- commitment to long-term economic and financial viability
- use of appropriate best practices by growers and millers
- environmental responsibility
- responsible consideration of employees and affected communities
- responsible development of new plantings
- commitment to continuous improvement in key areas of activity

Palm oil growers that intend to sell their products as ‘sustainable’ RSPO-certified palm oil are required to commission accredited certifying bodies to audit their operations. Companies in the palm oil supply chain are likewise required to commission audits, in order to prevent overselling of certified palm oil, as well as the mixing of certified palm oil with conventional palm oil.³⁴

Although the RSPO appears to be the go-to option for companies intent on buying sustainable palm oil, as evidenced by their certification of 21 per cent of the palm oil market, there has been much NGO criticism of the Roundtable’s impact on the palm oil sector. A recent Amnesty International (2016)³⁵ report describes how certified and uncertified palm oil producers in Indonesia operate alike, violating workers’ right to fair remuneration at least equal to the legal minimum wage, women’s rights, and using both forced and child labour. The report, based on field work at five palm oil plantations – three of which are RSPO-certified – thus shows how RSPO certification, and the mandatory third-party audits this includes, have had little to no effect on working conditions in palm oil plantations that were researched. Meanwhile, Amnesty International write that buyers who use palm oil from such RSPO-certified plantations depend primarily on the certification system to ensure the sustainability of that palm oil, even though the certification system has at times been shown to be incapable of identifying and addressing human and labour rights violations.

²⁹ RSPO website, *About us*, no date, <http://www.rspo.org/about>, 18 April 2017.

³⁰ RSPO website, *Members*, no date, <http://www.rspo.org/members/all>, 18 April 2017.

³¹ RSPO website, *Impacts*, 31 March 2017, <http://www.rspo.org/about/impacts>, 18 April 2017.

³² RSPO website, *About us*, no date, <http://www.rspo.org/about>, 18 April 2017.

³³ RSPO, *Principles and Criteria for the Production of Sustainable Palm Oil 2013*, 25 April 2013, <http://www.rspo.org/key-documents/certification/rspo-principles-and-criteria>, 18 April 2017.

³⁴ RSPO website, *How RSPO certification works*, no date, <http://www.rspo.org/certification/how-rspo-certification-works>, 18 April 2017.

³⁵ Amnesty International, *The Great Palm Oil Scandal*, November 2016, https://www.amnestyusa.org/sites/default/files/the_great_palm_oil_scandal_embargoed_until_30_nov.pdf, 18 April 2017.



The RSPO has published a response to Amnesty’s report, wherein it details several steps the organization and its members have been taking to remedy the violations Amnesty details. The RSPO acknowledges that there have been problems in effectively protecting labour and human rights in the palm oil sector.³⁶

The RSPO’s weakness in protecting its environmental criteria was illustrated in 2016, when palm oil producer IOI was initially suspended from the RSPO for clearing peatland areas and developing them into palm plantations without the legally required permits, but was quickly reinstated after the company came up with a plan to mitigate its violations. Greenpeace provided evidence that IOI’s environmental violations were of a structural nature, while their corrective action plan was incident-focused, making it likely that the company would cause more environmental damage in the future.³⁷ While the RSPO’s response of suspending IOI from the initiative may have been fitting, the swift resumption of IOI’s membership and lack of further repercussions arguably made for an ineffective intervention. In response, Greenpeace commented that the RSPO is sending its members the message that they can violate the Roundtable’s criteria without serious repercussions.³⁸ IOI has reportedly committed to improving its environmental practice since, and in response Greenpeace has currently suspended its campaign against the company to give it time to carry out the intended changes.³⁹

³⁶ RSPO website, *RSPO Response to Amnesty International Report “The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names”*, 20 November 2016, <https://www.rspo.org/news-and-events/news/rspo-response-to-amnesty-international-report-the-great-palm-oil-scandal-labour-abuses-behind-big-brand-names>, 5 June 2017.

³⁷ Greenpeace website, *Destructive palm oil company IOI let off the hook too easily by RSPO*, 10 August 2016, <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/IOI-palm-oil-suspension-lifted-RSPO/blog/57244/>, 18 April 2017.

³⁸ Greenpeace website, *Destructive palm oil company IOI let off the hook too easily by RSPO*, 10 August 2016, <http://www.greenpeace.org/international/en/news/Blogs/makingwaves/IOI-palm-oil-suspension-lifted-RSPO/blog/57244/>, 18 April 2017.

³⁹ *The Guardian*, *Greenpeace halts campaign against palm oil trader that has ‘come a long way’*, 28 April 2017, <https://www.theguardian.com/environment/2017/apr/28/greenpeace-halt-campaign-against-palm-oil-trader-that-has-come-a-long-way>, 5 June 2017.

Another example of the RSPO's problems was showcased by the Asiatic Persada case. Asiatic Persada, a Sumatran palm oil company and former subsidiary of RSPO member Wilmar, has been involved in a conflict over contested land with nearby communities for more than a decade. In the past years, its management and security forces have been involved in the forced eviction of hundreds, as well as the murder of one local community member.⁴⁰ Up to 2013, the RSPO and the International Finance Corporation (IFC), which is a creditor of Wilmar, attempted to mediate between the company and communities, but failed to reach an agreement. In 2013, Wilmar sold Asiatic Persada to a related company called the Ganda Group – the owners of Wilmar and Ganda Group are brothers – possibly in order to avoid its human rights responsibilities. The mediation efforts were subsequently aborted, as the Ganda Group was not willing to cooperate and was neither in debt to the IFC, nor a member of the RSPO.

These three case examples are in no way an exhaustive list of the criticism the RSPO has received, but do illustrate cases wherein the RSPO has failed to live up to its promise of providing an effective certification system for sustainable palm oil. Amnesty International writes (2016), the initiative has been used as 'a shield to deflect greater scrutiny' by multiple palm oil companies.⁴¹ A 2014 report by RSPO member and consulting firm Daemeter signalled a lack of information regarding the effectiveness of the RSPO, and advised the initiative to commission a study.⁴² Such a study is reportedly being done by SEnSOR, a recently created organization which receives its core funding from the RSPO. The organization's website explicitly states that the independence of its research is protected through a contractual agreement.⁴³

In response to the findings in this report, an RSPO representative noted that there appears to be a perception of the RSPO that because a lot of public complaints against its members are made, something must be wrong with the organization. Contesting this perception, the representative stated that RSPO complaints, many of which are valid complaints, have been reported exactly because the Roundtable has created a transparent environment for them to be addressed.⁴⁴

Considering the RSPO's size and scope, it does appear inevitable that some violations of the RSPO's principles and criteria will take place among its members, and that complaints will arise. However, a review of the RSPO's complaint mechanism by Corporate Accountability Research states that significant gaps and challenges remain which impede the complaint mechanism's effectiveness. These include a backlog of cases as well as a lack of ability to reach an agreed settlement or to impose sanctions. Limited evidence was said to exist which shows that complaint cases have stimulated learning among some of the more engaged RSPO members⁴⁵, and some meaningful reforms of the complaint mechanism have reportedly been undertaken since.⁴⁶ Although incidental evidence exists of the RSPO's failings, as shown above, it remains difficult to determine the initiative's overall effect on its 3,000 or so stakeholders in the palm oil sector, nor its success in making palm oil production more sustainable. Meanwhile, the Roundtable remains an important player in the palm oil sector, having amassed a large group of members.

⁴⁰ Forthcoming report by SOMO and Inkrispenna, to be published in June 2017.

⁴¹ Amnesty International, *The Great Palm Oil Scandal*, page 11, November 2016, https://www.amnestyusa.org/sites/default/files/the_great_palm_oil_scandal_embargoed_until_30_nov.pdf, 18 April 2017.

⁴² Daemeter, *Leading Demands for Sustainability in the Marketplace and RSPO's Response*, September 2014, http://daemeter.org/new/uploads/20140926113509_Daemeter_Report_Brosur_RSPO_Socmed_260914.pdf, 18 April 2017.

⁴³ SEnSOR website, *Programme*, no date, <http://www.sensorproject.net/programme/>, 5 June 2017.

⁴⁴ Email correspondence with S. Savi, global outreach and engagement director, RSPO, 5 June 2017.

⁴⁵ Corporate Accountability Research, *The Complaints System of the Roundtable on Sustainable Palm Oil (RSPO)*, June 2016, <http://corporateaccountabilityresearch.net/njm-report-xv-rspo>, 5 June 2017.

⁴⁶ Aidenvironment website, *Malaysian media headline: Aidenvironment in IOI Settlement – RSPO to Launch Improved Complaint Procedure*, 2 December 2016, <http://www.aidenvironment.org/news/malaysian-media-headline-aidenvironment-in-ioi-settlement-rspo-to-launch-improved-complaint-procedure/>, 5 June 2017.

3.2 The Amsterdam Declaration

The Amsterdam Declaration in Support of a Fully Sustainable Palm Oil Supply Chain by 2020, known as the Amsterdam Declaration, was signed in December 2015 by the governments of the UK, Germany, Denmark and the Netherlands. They were later joined by the governments of France and Norway. The declaration is primarily a statement of support for the 'Commitment to Support 100 per cent Sustainable Palm Oil in Europe by 2020', a separate (private-sector) declaration signed by European palm sector organisations.⁴⁷ These include the European organisation for the margarine industry (IMACE), the vegetable oil industry (FEDIOL), and the chocolate, biscuit, and confectionary industry (Caobisco), which all represent the interests of the respective business sectors their members belong to.⁴⁸ Their separate declaration, which the Amsterdam Declaration is in support of, states that the signatories will work towards RSPO certification of their palm oil supply as a minimum criterion for ensuring it is sustainable palm oil. The signatories commit to working together to develop action plans 'to overcome the various challenges in sourcing sustainable palm oil, to monitor the uptake of sustainable palm oil in Europe, and to improve traceability of palm oil through supply chains.'

The Amsterdam Declaration is a non-binding statement by governments aimed at encouraging European palm sector stakeholders to undertake a list of actions. These include the improvement and development of palm oil production sustainability standards, implementation of the OECD Guidelines for Multinational Enterprises and alignment with their domestic National Action Plans by EU companies, and the creation of annual dialogues between relevant stakeholders facilitated by the European Commission. It is not binding in any way, and so whether industry actors undertake the actions prescribed in the Amsterdam Declaration depends entirely on their interests. Arguably, the Amsterdam Declaration does not identify any new course of action governments or businesses should pursue in order to clean up the palm oil supply chain. Instead it provides general encouragement to stakeholders and support to the private sector's 'Commitment to Support 100 per cent Sustainable Palm Oil in Europe by 2020'. By doing so, it seems to revert back to already existing initiatives such as the RSPO, instead of providing new solutions.

⁴⁷ MVO – The Netherlands Oils and Fats Industry and IDH Sustainable Trade Initiative, *Commitment to Support: 100% Sustainable Palm Oil in Europe by 2020*, 7 December 2015, <http://www.sustainablepalmoil.org/wp-content/uploads/sites/2/2015/12/European-Sustainable-Palm-Oil-Initiative.pdf>, 18 April 2017.

⁴⁸ MVO – The Netherlands Oils and Fats Industry and IDH Sustainable Trade Initiative, *Commitment to Support: 100% Sustainable Palm Oil in Europe by 2020*, 7 December 2015, <http://www.sustainablepalmoil.org/wp-content/uploads/sites/2/2015/12/European-Sustainable-Palm-Oil-Initiative.pdf>, 18 April 2017.

4. Field research

Palming off responsibility



4.1 Methodology

Researchers visited the sites in order to collect information on labour conditions. Workers at the two sites were asked, whether in groups or individually, to provide details about their labour conditions. These questions covered labour contracts, working hours and wages, child labour, health and safety issues, gender equality, and freedom of association.

The Inkrispena field researchers were accompanied by Hukatan union members who helped to organise meetings with workers in January 2017. All interviewed workers were guaranteed anonymity.

All conversations were organised without consent from the management in order to avoid researchers from speaking with pre-selected workers, to protect the interviewed workers and to minimise the chances of repercussions by the management of the companies. Interviews were conducted anonymously. Following the advice of CNV Internationaal’s local partner Hukatan, to follow Indonesian custom interviewees were paid a small lump sum as compensation for their transportation costs. Because research time was limited and as it was difficult to get workers to cooperate because they were at times scared of possible repercussions by the company, only a limited number of people were interviewed: 78 persons in total. Again due to time constraints, almost all workers were interviewed in group discussions, with the exception of two workers at Murini Sam Sam, who were interviewed individually. The division of the interviewees was as follows:

Organisation	Working Unit	Gender	
		Male	Female
PT. Murini Sam Sam	Plantation Workers	10	6
	Palm-Oil Mill Workers	12	0
PT. Aneka Inti Persada	Plantation Workers	24	4
	Research Centre	3	0
PT. ADEI Trade Union Organisers	Plantation	2	0
PT. Dharmali Jaya Lestari Trade Union Organisers	Plantation	1	0
Total		52	10

Organisation	Working Unit	Gender	
		Male	Female
KSBSI	F. Hukatan Bengkalis Branch Organiser	4	0
	F. Hukatan Siak Branch Organiser	3	1
	F. KUI Siak Organiser	4	0
NGOs	WALHI	1	0
	WWF	1	1
RSP0		1	0
Total		14	2

As can be seen in the table above, more men were interviewed than women. The reason for this appears to be twofold: the palm oil plantations and mills that were visited employ more men than women, while women were also found less willing to agree to an interview when approached by the researchers.

4.2 Murini Sam Sam

PT. Murini Sam Sam (MSS) is an Indonesian palm oil company which runs a palm plantation and mill in the regency of Bengkalis, on the Indonesian island of Sumatra. The plantation's size is 967 hectares and in 2015 produced close to 26 thousand tonnes of fresh fruit bunches. The palm oil mill produced about 69 thousand tonnes of crude palm oil in 2015.⁴⁹ It is supplied with palm fruit from the MSS plantation, as well as from nearby palm farms.

The company is owned by Indonesian palm oil giant Wilmar International, which is reportedly the world's largest producer of palm oil, said to control over 43 per cent of the world's trade in palm oil.⁵⁰ MSS's owner Wilmar International is a member of the RSPO and palm oil from MSS's plantation specifically has been certified by the RSPO since June 2016.⁵¹



4.2.1 Temporary workers and contract issues

At Murini Sam Sam (MSS), three types of employees were interviewed: palm mill workers, who have permanent contracts and are paid per month, palm fruit harvesters, who often have one or two-year contracts and are paid based on whether they meet their targets, and plantation maintenance workers who are mostly employed on a seasonal basis and are paid strictly for the days they work. Plantation maintenance workers do pesticide spraying, spread fertilizers, and do weeding on the plantation.

Especially the harvesters and plant maintenance workers were found to work in a situation of insecure employment. Harvesters sign one or two-year contracts when they start their work, but do not receive a copy of their contract. Every time such a contract runs out, they are required to reapply for their job, allowing MSS the freedom to easily lay off any workers they wish. Plantation maintenance workers structurally worked without a contract until 2016. In light of their application for RSPO certification, MSS started providing their plantation maintenance workers with two-month contracts, every two months. However, recently these two-month contracts expired once again and were not replaced, meaning these workers are once again working without a contract. Some plantation maintenance workers have worked at MSS for 20 years, mostly without a contract. It should be noted that these practices are strictly against Indonesian law. Employers are required to provide their workers with a contract, and temporary contracts are only allowed to be used for work that is not permanent in nature for a maximum period of three years.⁵²

Wilmar contests the absence of employment contracts as described above, stating harvesters have been hired as permanent workers for several years now. The company does concede that there is a need to raise awareness among workers concerning their conditions of their contracts, and state that they are working towards this end.

49 TUV Rheinland, *RSPO Public Summary Report on PT Murini Sam Sam, 2016*, https://www.tuv.com/media/indonesia/brochure_2/forest_certification/rspo_public_summary/tambah/5_Public_Summary_-Certification_RSPO_-_PT_Murini_Sam_Sam.pdf, 30 May 2017.

50 Amnesty International, *The Great Palm Oil Scandal*, page 11, November 2016, https://www.amnestyusa.org/sites/default/files/the_great_palm_oil_scandal_embargoed_until_30_nov.pdf, 18 April 2017.

51 TUV Rheinland, *RSPO Public Summary Report on PT Murini Sam Sam, 2016*, https://www.tuv.com/media/indonesia/brochure_2/forest_certification/rspo_public_summary/tambah/5_Public_Summary_-Certification_RSPO_-_PT_Murini_Sam_Sam.pdf, 30 May 2017.

52 State Gazette of the Republic of Indonesia, *Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower*, article 59, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.



4.2.2 Wages and workload

All interviewed workers at MSS work six days a week from Monday through Saturday, have days off on national and religious holidays, and have 12 days of paid leave per year, including sick leave.

Workers in the palm mill regularly work nine hours a day, or 54 hours a week, composed of seven regular working hours and two hours of paid overtime, with a one-hour break. This appears to be in violation of legal limits, as Indonesian law specifies that employees can work up to 40 hours per week, while the palm oil mill workers work 42 per week. Overtime is in compliance with the law, which allows for 14 hours a week of overtime.⁵³ Furthermore, this practice appears to be in violation of the International Labour Organization's Forty-Hour Week Convention of 1935, but as Indonesia is not a signatory to that convention, it is not required to uphold it.⁵⁴

Furthermore, workers in the mill are required to work overtime, and can only skip it if they manage to obtain permission from their supervisors. This may amount to forced labour as specified under the International Labour Organization's Forced Labour Convention, to which Indonesia is a signatory.⁵⁵ In light of their working hours, interviewees reported they did not have enough time to spend with their family, but that they needed the extra overtime payment in order to make ends meet. The wages workers in the mill receive monthly were said to be equal to the legal minimum wage for palm mill workers in the regency of Bengkalis, which amounts to 2.69 million Indonesian Rupiah (IDR) (€181)⁵⁶ a month. About three-quarters of this sum was said to be paid out to the workers, while they were said to receive the remaining quarter in the form of staple foods, such as rice. For reference, the Asia Floor Wage Alliance calculate that a 2015 living wage in Indonesia was at least IDR 4.68 million (€332)^{57, 58}. Interviewees reported that overtime payment makes up an important part of their income, as it can fluctuate between IDR 1.8 and 7.5 (€128 to €533)⁵⁹ million a month, depending on the amount of overtime they are required to work.

In general, workers on the plantation do not receive wage increases over time – a worker with 20 years' experience earns the same as one who just started. They work seven hours a day for six days a week (Monday through Saturday), and forced overtime was said to occur only on rare occasions. As stated before, harvesters are paid on a target basis, having to collect at least 50 fresh fruit bunches (FFB) per day. Workers reported earnings between one and five million Rupiah (€70 to €354)⁶⁰ per month, depending on their harvest, with the average interviewee earnings being around two million Rupiah. Any wages below the minimum legal wage paid out to workers that work fulltime constitutes a violation of Indonesian law, even if such low payment is due to workers having harvested less than required by the company.⁶¹ Therefore, it seems illegal for Murini Sam Sam to pay workers an amount below the regency minimum wage for plantation workers of IDR 2.32 million (€156)⁶², even when workers do not meet their targets.

⁵³ Amnesty International, *The Great Palm Oil Scandal*, page 11, November 2016, https://www.amnestyusa.org/sites/default/files/the_great_palm_oil_scandal_embargoed_until_30_nov.pdf, 18 April 2017.

⁵⁴ International Labour Organization website, *Forty-Hour Week Convention, 1935*, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL0_CODE:C047, 18 April 2017.

⁵⁵ International Labour Organization website, *Ratifications of Co29 – Forced Labour Convention*, no date, http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::N0:11300:P11300_INSTRUMENT_ID:312174, 18 April 2017.

⁵⁶ Based on the currency exchange rate of IDR:EUR on 30 May 2017.

⁵⁷ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁵⁸ Asia Floor Wage, *Asia Floor Wage in local currency, 2015*, <http://asia.floorwage.org/asia-floor-wage-in-local-currency>, 18 April 2017.

⁵⁹ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁶⁰ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁶¹ Amnesty International, *The Great Palm Oil Scandal*, page 11, November 2016, https://www.amnestyusa.org/sites/default/files/the_great_palm_oil_scandal_embargoed_until_30_nov.pdf, 18 April 2017.

⁶² Based on the currency exchange rate of IDR:EUR on 13 April 2017.

Slightly more stable wage levels were reported by plantation maintenance workers, who stated to make between two and three million Rupiah (€142 to €213)⁶³ per month. However, a monthly wage of two million Rupiah is still below the legal minimum wage of IDR 2.48 million (€176)⁶⁴. Interviewees stated that an individual can live off these wages, but that workers with a family would need closer to six or seven million (€425 to €497)⁶⁵ Rupiah per month to make ends meet.

In a response to the findings above, Wilmar states overtime work in the palm oil mill takes place with workers' consent, although the company does report that overtime in the MSS palm mill was identified as an area for improvement during the RSPO certification process in 2015. The company also states that worker's wages are paid in accordance with the legal minimum wage, and that staple foods are only paid as a supplement. In contrast with the findings above, Wilmar states that MSS's workers are not paid below minimum wage and also receive a bonus on top of their regular monthly wages which rises with every additional year that they are employed by MSS. Furthermore, Wilmar report that workers at all its Indonesian plantations receive additional in kind payment on top of their wages, which includes free housing, electricity subsidy, free day-care for children, and free medical checks.



4.2.3 Child labour

In order to reach their daily target quickly, many harvesters bring their wives to work to assist them. Having reached their target early, workers are able to do chores around the plantation, work which is called *kontanan*, for which they receive additional payment. Some workers even bring their children to help with the harvesting, which constitutes child labour and arguably even one of the worst forms of child labour, as palm oil harvesting is heavy work in an environment that can be unsafe for children.⁶⁶ Indonesia is a signatory of the International Labour Organization's Worst Forms of Child Labour Convention, which outlaws such practices.⁶⁷ Interviewees stated that harvesters who brought their children to work were often given a warning by the company, but that these warnings were never followed up with any sanctions, and were reportedly shrugged off by workers.

In response to the above, Wilmar writes that it is currently developing a child-friendly handbook on the health and safety risks on the palm oil plantation, apparently to dissuade workers from bringing their children to work. However, Wilmar states that the bigger issue at MSS is not child labour, but rather harvesters bringing their spouses in to work. MSS is reportedly undergoing a review to investigate this matter and to develop a formal solution for the problem.



4.2.4 Health and safety

Overall, few health and safety issues were reported by interviewees. However, it was stated by pesticide sprayers on the plantation that they take off their protective apron about halfway into their shift at ten in the morning, as it is becomes hot to work in, and then work on without it. This potentially exposes them to the pesticides they spray.

⁶³ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁶⁴ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁶⁵ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁶⁶ International Labour Organization website, Worst Forms of Child Labour Convention, 1999, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:C182:NO, 18 April 2017.

⁶⁷ International Labour Organization website, Worst Forms of Child Labour Convention, 1999, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0:::NO:11300:P11300_INSTRUMENT_ID:312327:NO, 18 April 2017.



4.2.5 Gender equality

There is a clear gender-based division of labour at MSS. Women work as harvesters, picking up fallen fruit or work as plantation maintenance workers, doing pesticide spraying, spreading fertilizers, or weeding. Men work as harvesters, cutting down fresh fruit bunches, or do plantation maintenance in the form of pruning. Workers in the mill are also predominantly male.

The fact that (mostly female) plantation maintenance workers are usually employed on a seasonal basis, while (mostly male) harvesters and mill workers are employed more permanently, causes women at MSS to work under worse conditions due to their sex. This is possibly a violation of the International Labour Organization’s Discrimination Convention, to which Indonesia is a party, as the convention prohibits discrimination on the basis of sex.⁶⁸

Women who are permanently employed are entitled to three months of paid maternity leave. However, women who work as day labourers, and may have done so for years, do not get paid when they stop working due to pregnancy. This appears to be in violation of Indonesian law, which specifies that female workers are all entitled to three months of paid maternity leave.⁶⁹



4.2.6 Freedom of association

There are currently three unions at MSS: the government-controlled SPSI, Hukatan-SBSI, and a local independent union from Riau.⁷⁰ In interviews with MSS workers, there appeared to be a substantial difference in perception of freedom of association issues between the mill workers and workers on the plantation. Interviewees that work on the plantation stated they have little information about unions at MSS, and that they were not union members.

Workers in the mill stated that there had been little union activity since MSS management had fired many of Hukatan’s union organisers several years ago, in an apparent attempt to undermine the union. Before this event, Hukatan had 115 members at MSS. After the organisers had been laid off, many of Hukatan’s members became inactive, or even left the union. In response to the above allegation of union busting, Wilmar states that its termination of the union leader’s employment was not related to their union work, but rather to their performance and non-attendance at work.

Mill workers stated that they are now reluctant to be active within any union, for fear of being laid off. They also reported feeling abandoned by the union, and expressed hope that the union would change its approach and become more present. Furthermore, interviewees stated that due to the lack of an active union in the past years, workers were now unaware of what a union could do for them, and stated they have little information regarding their own labour rights, which causes workers to simply accept whatever rules the company dictates. Some interviewees said they would like to be informed about these topics.

Plantations workers overall stated they had not joined a union because they did not see the point in it. Apparently, MSS management had asked them to join a union as part of the company’s ascendance into RSPO, but the workers reportedly declined. Due to this experience, interviewees at the MSS plantation stated that they felt free to join a union without any company harassment.

⁶⁸ International Labour Organizations website, Ratifications for Indonesia, no date, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102938, 18 April 2017.

⁶⁹ State Gazette of the Republic of Indonesia, Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower, article 82, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.

⁷⁰ This local independent union was founded by former Hukatan union officials who were reportedly not re-elected for their position and chose to start their own union. It is unclear whether this union is still active at the time of writing.

During the fieldwork, interviews were held at around 9pm outside the MSS plantation with a group of women who work as plantation maintenance workers, and a group of men who work as harvesters on the MSS plantation. While these interviews were taking place, a man who was later identified as a supervisor on the MSS plantation walked towards us signalling interviewees not to say anything. Soon after, the head of security for MSS arrived at the location and sat down next to one of Inkrispena's researchers in an attempt to overhear what was being discussed in the interview. In reply to this incident, Wilmar has stated that all workers that cooperate in research are protected from retaliation by the company through its Whistleblower Policy. The fact that security showed up at the interview location outside of the plantation during the evening gives an indication of the level of control the company exerts in the area.

4.2.7 Wilmar's response

Apart from Wilmar's specific comments to the research findings, as interspersed in the text above, Wilmar was critical of the research methods employed in this research. The company states that it is concerned that paying workers to participate in interviews may have skewed the results of those interviews. The payment that is referred to here is the lump sum that was paid as compensation for workers' transportation costs, as reported in chapter 4.1. Furthermore, Wilmar states that workers were brought to the interviews under false pretext, and were then given a questionnaire containing suggestive questions. The company reports that following the field visit in January 2017, it arranged a meeting with Hukatan to gain more understanding of the purpose of the research and to address any concerns that may have arisen.

SOMO objects to allegations that the research results were somehow manipulated. Workers were clearly informed about the purpose of the research in advance of interviews, and participation was entirely voluntary. During the research no actual questionnaires were distributed. In fact, the interviewers conducted semi-structured interviews based on lists of questions which were intentionally phrased in a neutral manner. Several questions within the interviews focused on creating the space for interviewees to discuss topics concerning their labour conditions that they themselves found most relevant.

4.3 Aneka Inti Persada

PT Aneka Inti Persada (AIP) is an Indonesian palm oil company which runs three palm oil estates and mill in the regency of Siak, on Sumatra. The size of the plantation is 11,554 hectares, and in 2016 it produced 114,321 tonnes of fresh fruit bunches. The AIP mill produces about 25,000 tonnes of crude palm oil per year. The company employs about 100 workers in the mill and 600 plantation workers in each of its three estates, adding up to about 1900 employees in total.

AIP is owned by Malaysian palm oil company Sime Darby, which is one of the world's ten largest palm oil companies⁷¹, reportedly producing about 4 per cent of world palm oil output.⁷² Sime Darby is a member of RSPO⁷³, and AIP has received RSPO certification for its palm oil products.⁷⁴

At Aneka Inti Persada (AIP) only plantation workers were interviewed, as Inkrispena's field researchers were denied access to AIP's mill and were unable to contact the mill workers. These interviewees work either as harvesters, seedling nursery workers, pesticide sprayers and fertilizer distributors.

⁷¹ Global Palm Oil Conference, *An overview of the palm oil sector: countries and companies*, March 2015, <http://www.iuf.org/w/sites/default/files/Palm%20Oil%20Background%20document.pdf>, 18 April 2017.

⁷² Sime Darby website, *Our Businesses*, no date, <http://www.simedarbyplantation.com/our-businesses/overview>, 18 April 2017.

⁷³ RSPO website, *Sime Darby Plantation Sdn Bhd*, no date, <http://www.rspo.org/members/29/Sime-Darby-Plantation-Sdn-Bhd>, 18 April 2017.

⁷⁴ MUTU Certification International, *Assessment Report: PT Aneka Inti Persada*, 11 October 2011, http://www.rspo.org/sites/default/files/RSPO_Surveillance_1_Report_of_AIP_PT_ANEKA_INTI_PERSADA__Eng__RSPO_-8.pdf, 18 April 2017.



4.3.1 Temporary workers and contract issues

Most workers in the three AIP plantations have so-called permanent worker status. They are employed year round. Workers who are employed on a seasonal or temporary basis are referred to as daily workers.

Harvesters, pesticide sprayers and fertilizer distributors can be employed either daily or permanently, while workers at the palm tree seedling nursery are all daily workers. All daily workers are employed through third party contractors.

None of the interviewed workers reported ever having received an employment agreement from AIP, detailing their employment status, as well as working conditions like wages or annual leave. Permanent employees did receive a letter of appointment from the company confirming their employment around 2010, but to this day do not have their own contracts.



4.3.2 Wages and workload

Mandatory working hours for these workers are between 7am and 2pm with one hour break, amounting to six working hours, six days a week. However, workers are required to attend an assembly meeting between 6 and 7am every day, which is mandatory but which the company does not count as a working hour.

Furthermore, permanently employed harvesters, a group which consists solely of men, are required to reach their daily target before stopping their work. Targets are set at 1,300 kg of fresh fruit bunches per day, which interviewees stated was difficult to harvest in seven hours of work. The effect of this is that male harvesters often work two hours of unpaid overtime, in order to reach their target. Workers said their regular working hours are generally from 7am to between 2 and 2:30pm. Adding the forced overtime hours would bring their regular weekly working hours to between 48 and 51, thereby exceeding the Indonesian legal limit.⁷⁵ Counting the mandatory daily assembly meeting would bring their weekly working hours to between 54 and 57, which would possibly even exceed the legal limit for working hours plus overtime of 54 hours per week.⁷⁶

Interviewed permanently employed harvesters stated that on average they earned between IDR 3.5 and 4 million (€249 to €284)⁷⁷ per month, based on the amount of FFB they harvested. Their earnings consist of the legal minimum wage, of which IDR 2.19 million (€156)⁷⁸ is paid, while the rest is provided in the form of staple foods, and bonus payment for their palm fruit harvest in excess of the daily targets. Under Indonesian labour law, companies are allowed to pay up to 25 per cent of workers' earnings in the form of staple foods. The earnings these harvesters make appear to be in excess of the regency of Siak's (where AIP's plantations are located) 2017 legal minimum wage, which is IDR 2.39 million (€170)⁷⁹ per month.

Female harvesters, who are only employed as daily workers, are not subjected to the target system, but instead get paid a piece rate of IDR 2,800 (€0.20)⁸⁰ per 20 kg sack of palm fruit. It was stated that on average these female harvesters are able to collect around 10 such sacks of palm fruit a day, amounting to a daily income of IDR 28,000. Considering this figure, on average they would make about IDR 560,000 (€40) per month, which appears to be a violation of Indonesian law, as it is only a quarter of the local legal minimum wage.

⁷⁵ State Gazette of the Republic of Indonesia, Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower, article 77, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.

⁷⁶ State Gazette of the Republic of Indonesia, Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.

⁷⁷ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁷⁸ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁷⁹ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁸⁰ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

Nursery workers, who are only employed as daily workers, were said to make between IDR 2.2 and 2.3 million (€156 to €163)⁸¹ a month on fulltime basis. This is below the 2017 Siak legal minimum wage which was reportedly in the process of being implemented at the time of the field work, but may generally be in line with the 2016 Siak regency's minimum wage of IDR 2.21 (€157)⁸² million.



4.3.3 Child labour

Interviewees stated that the high targets set for harvesters often motivate them to bring their wives as well as their children to work. They assist with the harvesting by collecting fallen palm fruit. It was said that on average children that work on the plantation are about 10 years of age. The supervisors of these workers are said to be fully aware of this practice, even though AIP's official policy is that all forms of child labour are forbidden. In fact, workers stated that during the harvest season their foremen urge them to bring both their wives and children to work, in order to increase production. Children and other family members that come to work with the plantation workers are not compensated for their work. Interviewees could not recall any workplace accidents wherein children had been hurt. As stated above, Indonesia is a signatory of the International Labour Organization's Worst Forms of Child Labour Convention, which outlaws such practices.⁸³

Interviewees reported that when guests are expected to visit the plantation, their foreman will ask plantation workers not to bring their children to work, in order to hide the fact that child labour is taking place. This reportedly happens during visits by personnel from Sime Darby's Malaysian branch, and visits from sector organisations like the RSPO or Indonesian Sustainable Palm Oil (ISPO).

In their response to these findings, Sime Darby states it is aware of issues at AIP surrounding unregistered workers, and that this is a prevalent issue within the palm oil sector, which the company is focussing on. With regard to the finding of children being sent home before inspections, Sime Darby states it does not tolerate child labour within its operations, and that the company will carry out a review to improve its controls and verification process.⁸⁴



4.3.4 Health and safety

Only a few interviewees on the plantation reported that they had received training for their job and on how to ensure their own safety. The majority stated they had never received safety training from AIP. However, presentations detailing how to use personal protective equipment (PPE) was said to be provided to all plantation workers.

PPE is provided to all plantation workers for free. However, it was stated that the quality of some of the PPE is too low for the work plantation workers do. For example, the safety boots provided to workers were said get damaged every two months or so, but no replacements are provided. One plantation worker was quoted saying the following: *'I have been working here for 16 years and during that period the company only ever gave me three pairs of boots.'*

⁸¹ Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁸² Based on the currency exchange rate of IDR:EUR on 13 April 2017.

⁸³ International Labour Organization website, Ratifications of the Worst Forms of Child Labour Convention, no date, http://www.ilo.org/dyn/normtex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO, 18 April 2017.

⁸⁴ Email correspondence with I. Ismail, social performance department, Sime Darby, 22 May 2017.

The PPE was said to be quite important to plantation workers, as they face multiple hazards on the plantation, like falling palm fruit and thorns. Furthermore, it was stated that the large amount of shrubbery on the ground in the plantation has allowed many snakes to make their home there. Snake bites are not uncommon, and several workers and workers' family members have also reportedly been bitten by snakes that came into their houses.

AIP provides working equipment other than PPE for permanent workers, but daily workers are required to buy their own equipment. Considering the fact that they get paid minimum wage and the large amount of safety equipment that is needed to work on the plantation⁸⁵, this can be a real burden to workers. Meanwhile, permanent employees in need of replacements for their damaged working tools often have to wait long periods of time for the company to provide them. Some work with damaged tools, possibly creating safety hazards, such as sickles used for cutting palm fruit from trees falling from the poles they are attached to, while others resort to buying replacement tools themselves. Article 86 of the Indonesian Manpower Act states that all workers have the right to receive protection of their occupational safety from their employer, thereby possibly making AIP's practice illegal.⁸⁶

In response to the findings above, Sime Darby states that a 2016 RSPO audit noted that safety trainings for plantation workers at AIP take place on a regular basis. Issues regarding the replacement of PPE as found in this research were said also to have been identified in the RSPO audit, and AIP's management have reportedly made attempts since to improve the situation.

Workers at AIP get 12 days of paid leave per year. Sick leave is difficult to obtain, and workers are required to get permission from their foreman as well as from the plantation's medical clinic first. Interviewees stated that on occasion they had been advised at a hospital to take sick leave and to rest, after which the company clinic's medical personnel told them to keep working. At other times, workers that received their supervisor's permission to go to the clinic were sent directly back to work by medical personnel there. On their return to the plantation in the afternoon there was no work left to be done, and they had their wages docked for skipping work. In one case a plantation worker had his leg punctured by thorns. During his treatment at the clinic, the medical personnel were unable to find the pieces of thorn stuck inside him, and ordered the worker to return to work. The worker's leg subsequently became infected, and the worker had to be operated upon at a nearby hospital. Paid sick leave is protected under Indonesian law, and workers that fall ill are entitled to their regular wages.⁸⁷

Transportation to the medical clinic is said to be cumbersome, as it requires workers to travel for 30 minutes by road. This means sick or injured workers often need to ask their colleagues for help to get there, or need to take a local school bus and then hitchhike the rest of the way. In the case of an emergency, an ambulance can take them to a nearby hospital from the clinic. The clinic has approximately 14 beds, and it was reported that at times all beds are full and workers have to lie on the floor.

⁸⁵ Harvesters need an egrek (or sickle), richshaw, axe, gansu (or hook), chisel, and a tojok (or palm fruit lifter); fertilizers require a mask, knife, gloves and a sling; pesticide sprayers wear gloves, a mask, goggles, an apron and boots.

⁸⁶ State Gazette of the Republic of Indonesia, Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.

⁸⁷ State Gazette of the Republic of Indonesia, Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower, article 93, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.

In response to these findings, Sime Darby states that its records show that a maximum of 10 patients have been simultaneously bedded at the clinic to date, and that the company is unaware of cases of insufficient beds. Sime Darby states that the issues concerning the medical clinic as described above are of great concern to the company, and that it will investigate and review its practices.

During the interviews, pesticide sprayers stated that after working for about three to five years, their skin starts itching, supposedly due to structural exposure to pesticides. A further health hazard workers expressed is the fact that housing on one of AIP's three estates, called Pinang Sebatang, is supplied with water polluted by pesticides and fertilizer. They stated that the water runs by the plantation's seedling nursery, where chemicals likely seep into it. The water is said to cause skin rashes and itching skin, especially to children. Although workers and their families do not use it as drinking water, they are still required to use it to wash themselves, for lack of another sufficiently large water source.

Sime Darby states that the water quality at the Pinang Sebatang estate's housing complex has previously been analysed in a laboratory and was certified as safe for consumption and domestic use. The company also refer to the outcome of a 2016 RSPO audit which found that pesticide containers had been used for domestic water storage in the housing complex, which may have polluted the water. Whether such use of pesticide containers was so widespread as to affect all inhabitants, thereby making it an alternative explanation for the issues concerning the polluted water supply, would require further research to find out.



4.3.5 Gender equality

Just as in MSS's plantation, there is a clear gender-based division of labour at AIP. Women work mostly as pesticide sprayers, fertilizer distributors and weeders, with some women working as harvesters picking up loose fruit, while men do the rest of the harvesting work. Again, workers in the mill are predominantly male.

In Indonesia, female workers are legally entitled to two days' menstruation leave from the first day of their menstruation.⁸⁸ Female plantation workers at AIP are allowed to take these days, but have to opt for one of two ways to determine the start of their leave every month: they can request leave on the first actual day of their menstruation, after which the company requires them to use a piece of cotton to show their menstrual blood as proof of their menstruation, or they can choose to have their menstruation leave start on the same day of every month.

AIP penalises women who take their menstrual leave while being pregnant, and women who do this have their maternity leave cut from three months to 40 days. Thus, women that choose to have their menstrual leave on set dates – possibly to avoid the invasive demand for proof of menstruation – run the risk of inadvertently violating company rules by being unaware of their own pregnancy.

Responding to the above findings, Sime Darby states that the requirements for women to obtain menstrual leave will be brought to the attention of its Groups Human Rights Task Force and to AIP's Gender Committee for investigation, to ensure the dignity of workers are maintained.

⁸⁸ State Gazette of the Republic of Indonesia, Act Of The Republic Of Indonesia Number 13 Year 2003 Concerning Manpower, article 81, 2003, <https://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf>, 18 April 2017.



4.3.6 Freedom of association

Currently, four trade unions are registered within AIP. They are: Hukatan, KUI (both with the KSBSI federation), Kahutindo, and SPBun, which is part of the government-led KSPSI federation. As it stands, no legitimate Collective Bargaining Agreement (CBA) appears to exist within AIP. The company’s management has reportedly agreed upon a CBA with government-led SPBun, which they have urged Hukatan to accept. Hukatan’s current position is reportedly that they want to negotiate their own CBA, which AIP in turn has declined. According to Sime Darby, interaction between AIP and the unions is complicated by the amount of unions that exist within the company, which can make it difficult to determine who should represent AIP’s workers.

4.3.7 Sime Darby’s response

In its overall response to the findings above, Sime Darby states that continuous audits are conducted on all its operating units to ensure compliance to relevant standards and certification processes. The company does acknowledge, however, that actual implementation and operationalization of policies on-ground are critical areas that it needs to improve. Through a 2016 RSP0 audit several issues discussed in this report were also identified, and rectification plans were created. Sime Darby state that they will revisit these issues and investigate further.

5. Conclusion

Palming off responsibility



5. Conclusion

The case studies discussed above describe how two RSPO-certified palm oil companies structurally violate the labour rights of their workers. In both cases, workers are forced to work unpaid overtime in order to reach unrealistic production targets. Furthermore, these targets have motivated workers to bring their wives and children to work, thus giving rise to child labour. Other rights violations found in the field research included union busting, workers never receiving employment contracts, inadequate PPE provision and inadequate medical services. Thus, many workers' rights violations were found that breach the RSPO standard, international law, Indonesian law, or all of the above.

This report has provided a brief discussion of the implementation of the UN Guiding Principles on Business and Human Rights in Indonesia, in an attempt to showcase some of the pitfalls that hamper this process. Two of these are uncertainty over whether Indonesia has a monist or a dualist legal system, and organisational and political issues with developing the country's National Action Plan. The lack of implementation and enforcement of the UNGPs in Indonesia are illustrated by the company case studies, and the company's violations of rights enshrined in UN conventions, such as children's right not to work.

In recent years, many Dutch companies that use palm oil in their products have joined the Roundtable for Sustainable Palm Oil (RSPO), in an attempt to make their palm oil supply chains more sustainable. By procuring RSPO-certified palm oil, these Dutch companies, including supermarkets and consumer goods producers, want to ensure that the production of the palm oil they buy has taken place free of labour rights violations and environmental degradation, among other criteria.

In light of this, the RSPO's international standing and reputation was discussed. NGO reports were provided to show that, at least on an incidental basis, the RSPO certifies palm oil produced by companies that commit exactly the types of human rights and environmental violations that motivated the creation of the RSPO. Amnesty International has called the RSPO a shield used to deflect greater scrutiny.⁸⁹ Although further research would be needed to underwrite such a sweeping statement about the RSPO, the case studies presented in this report show that RSPO certification is not necessarily an assurance of sustainable palm production, and thus give cause for scepticism towards the initiative. Companies should therefore not depend solely on certification, but should undertake their own supply chain due diligence to ensure their business partners do not commit labour and human rights violations, so that they can safeguard their own compliance with the UNGPs.

⁸⁹ Amnesty International, *The Great Palm Oil Scandal*, November 2016, https://www.amnestyusa.org/sites/default/files/the_great_palm_oil_scandal_embargoed_until_30_nov.pdf, 18 April 2017.



The Foundation CNV Internationaal is a civil society organisation connected to the National Confederation of Christian Trade Unions in The Netherlands (CNV). CNV Internationaal has been working with trade unions in developing countries for more than 50 years. Together with its partner organisations CNV Internationaal protects and promotes workers' rights by means of a consultative and coherent model in which social dialogue, pluralism of the trade union movement and workers' individual responsibility are key values. CNV Internationaal's mission is to contribute to Decent Work in developing countries through strengthening the position of workers in both the formal and informal economy. The work of CNV Internationaal is centred on the themes of social dialogue, labour rights in supply chains and (youth) employability.

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