

## 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 assistance.<sup>157</sup>**

Indonesia is a party to the ILO Forced Labour Convention, 1930, and has adopted the Convention in its national legislation.<sup>158</sup> 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.*<sup>159</sup>

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*”.<sup>160</sup> 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*”.<sup>161</sup>

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

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

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/reln/ilc/ilc96/pdf/rep-iii-1b.pdf](http://www.ilo.org/public/english/standards/reln/ilc/ilc96/pdf/rep-iii-1b.pdf) (last accessed 23 November 2016).

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”*.<sup>162</sup>

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.<sup>163</sup> N works as a casual daily labourer in plant 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]”*.<sup>164</sup>

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”*.<sup>165</sup> 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.”*<sup>166</sup>

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.

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](http://www.ilo.org/ilc/WCMS_089199/lang--en/index.htm) (last accessed 23 September 2016).

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

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."*<sup>169</sup>

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".*<sup>170</sup>

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*

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.

only get paid 600,000 [Indonesian Rupiahs].<sup>171</sup>  
 Per day I only get 10,000 – 20,000 [Indonesian Rupiahs].”<sup>172</sup> 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”.<sup>173</sup>

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 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 *kontan* 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 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.

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.



## 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."*<sup>174</sup> Based on satellite records which go back to 1997, 2015 is considered to be the second worst year on record, after 1997, for emissions from Indonesian forest fires.<sup>175</sup>

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.<sup>176</sup> These particles can penetrate deeply into the lungs, enter the bloodstream, and be transported to other tissues.<sup>177</sup> 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.<sup>178</sup> The long-term effects are poorly studied but a recent study has estimated that smoke pollution exposure results in morbidity and premature mortality.<sup>179</sup> 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.<sup>180</sup>



Harvester working in the haze, following forest fires in Central Kalimantan, on 18 October 2015. © Private

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](http://www.nasa.gov/feature/goddard/2016/el-nino-brought-drought-and-fire-to-indonesia) (last accessed 22 October 2016).
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](http://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](http://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](http://reliefweb.int/sites/reliefweb.int/files/resources/20151215-ochaidn_hazeforestfire_infographic-july-oct2015.pdf) (last accessed 22 October 2016).



A student wears a face mask as she walks to school as the haze shrouded the Ogan river on October 2, 2015 in Palembang, South Sumatra, Indonesia. The air pollution or haze has been an annual problem for the past 18 years in Indonesia. It's caused by the illegal burning of forest and peat fires on the islands of Sumatra and Borneo to clear new land for the production of pulp, paper and palm oil. Singapore and Malaysia have offered to help the Indonesian government to fight against the fires, as infants and their mothers are evacuated to escape the record pollution levels. © Ulet Ifansasti/Getty Images

PSI readings for Central Kalimantan spiked in September and continued to be above 1,000 in October. PSI readings in Pekanbaru, in Northeast Sumatra also crossed 1,000 leading to the authorities evacuating babies under six months of age and their mothers.<sup>181</sup> 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.<sup>182</sup> 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".<sup>183</sup> 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]".<sup>184</sup> Z, employed by another Wilmar subsidiary, told researchers that the company did not give masks to the 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.<sup>185</sup> 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."



Workers loading palm fruits on SPMN's plantation, in the haze, following forest fires in Central Kalimantan, on 19 October 2015. © Private

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](http://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](http://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.

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

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.<sup>186</sup> 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.<sup>187</sup> 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.<sup>188</sup>



A worker unloads palm fruit at a palm oil plantation in Peat Jaya, Jambi province on the Indonesian island of Sumatra September 15, 2015.  
© Wahyu Putro A/Antara Foto/ REUTERS

## 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”*<sup>189</sup> (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.

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.



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 indoors. 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 free for 2016 (till date).”*<sup>190</sup> 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.<sup>191</sup> 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](http://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.



She works as a casual daily labourer for a Wilmar subsidiary, like most of the women whom Amnesty International interviewed. Her employment status is insecure and she is not covered by the company's medical insurance and social security schemes. © Amnesty International/Watchdoc

Province	2010		2011		2012	
	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.<sup>192</sup> 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 for a Specified Period of Time' or PKWT) employment contract.<sup>193</sup> From 1986, the government has regulated the use of fixed-term contracts which are only permitted for work:<sup>194</sup>

- That can be completed at once or is temporary by nature (lasts for no more than three years);
- Is seasonal by nature (the execution of the work depends on the season or weather condition);
- 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 the 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).<sup>195</sup> Workers who work under these daily agreements are commonly referred to as casual day labour (*buruh harian lepas* or BHL workers).

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

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.

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.<sup>196</sup> 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.<sup>197</sup> 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).<sup>198</sup> 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 daily 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)"*.<sup>199</sup>

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 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.<sup>200</sup> 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 daily 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

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.

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

at all other Wilmar's subsidiaries and suppliers told researchers that the companies have not given permanent employment status to anyone who works as a 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 labourers 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.<sup>201</sup>

## 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."<sup>202</sup> 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."<sup>203</sup>

## 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.<sup>204</sup>

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

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.

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



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].<sup>205</sup> 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”.*<sup>206</sup>

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.”*<sup>207</sup>

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.<sup>208</sup> 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 suppliers 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 schemes 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 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.”*<sup>209</sup>

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.”*<sup>210</sup>

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.

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

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

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.<sup>211</sup>

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".*<sup>212</sup>

## WILMAR'S EXPLANATION

Wilmar acknowledged in its 2009 Sustainability Report that *"[a] high proportion of our workers in Indonesia are temporary workers"*.<sup>213</sup> 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.<sup>214</sup>

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.<sup>215</sup> 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 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.<sup>216</sup>

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."*<sup>217</sup> 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*

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](http://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](http://www.wilmar-international.com/wp-content/uploads/2012/11/Wilmar_SR2011.pdf) (last accessed 9 October 2016).

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.

*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.*<sup>218</sup>

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.<sup>219</sup> 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 whom 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.<sup>220</sup> 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 the "same benefits as permanent worker i.e. housing, medical etc."<sup>221</sup> 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.



Trucks unloading palm fruits at a mill. © Amnesty International/Watchdoc

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.

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

## 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”*.<sup>222</sup>

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”*.<sup>223</sup>

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.<sup>224</sup>

## 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 roundup and Gramoxone [paraquat-based herbicide]. The foreman told us what chemicals we sprayed. He said when there were weeds to use roundup. I could also see the jerry cans which had Gramoxone or roundup 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 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*

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](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16510&LangID=E) (last accessed 22 November 2016).



*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.<sup>225</sup>*

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.<sup>226</sup>

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.<sup>227</sup> 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.<sup>228</sup>



A casual daily labourer spraying chemicals. © Amnesty International/WatchDoc

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 Syaratdan Tatacara Pendaftaran Pestisida).

## 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.<sup>229</sup> 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.<sup>230</sup>



Gramoxone, a paraquat-based herbicide. Photo taken inside SPMN's chemical storage area. © Private



Jerry cans of Gramoxone, inside SPMN's chemical storage area. Photo taken in October 2016. © Private

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.<sup>231</sup> 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.<sup>232</sup> 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.<sup>233</sup> The audit reports noted that the companies remain committed to or had plans to reduce their usage of these products.<sup>234</sup>

## 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.”*<sup>235</sup>

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 other 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.<sup>236</sup> 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.

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.”*<sup>237</sup>

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](http://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.

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





Sprayers working without protective equipment on a plantation owned by a Wilmar supplier. They are filling bottles with undiluted chemicals for each worker to carry, without gloves or goggles. Name of company withheld for safety. © Private

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.<sup>238</sup>



Sprayer working without protective equipment on a plantation owned by a Wilmar supplier. Name of company withheld for safety. © Private

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



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 researchers 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.<sup>239</sup>



Goggles for eye protection given by a Wilmar subsidiary to sprayers.  
© Amnesty International



Q's finger was amputated after she got a thorn in her finger and it became infected. She had not been provided with gloves by the Wilmar subsidiary that she worked for and was using thin gloves which she had bought herself.  
© Amnesty International

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 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

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](http://www.azomures.com/wp-content/uploads/2015/10/FDS_NPK_EN.pdf) (last accessed 20 November 2016).

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.<sup>240</sup>

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.<sup>241</sup>



Mask given by Wilmar's subsidiary to its workers.  
© Amnesty International

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 is 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]."*<sup>242</sup>

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.<sup>243</sup> 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.<sup>244</sup> Guidelines for protecting workers' safety after pesticide applications on agricultural establishments, however, include restricted-entry intervals - the time immediately after a pesticide application when entry into the treated area should be restricted.<sup>245</sup>

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 take breaks. It also means that workers may

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](http://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).

overflow 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 overflow 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.”<sup>246</sup>*

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.<sup>247</sup>

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.<sup>248</sup>



Shop selling pesticides in Sampit, Central Kalimantan.  
© Amnesty International

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.





Yohanna, 45 years old, 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 splashed in the face with Gramoxone, a paraquat-based herbicide, while trying to load a tank on her bike. The chemical caused corneal erosion and inflammation in Yohanna's eye. The delay in getting adequate treatment led to an infection which damaged her optic nerve and also affected the other eye.  
© Amnesty International

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 years 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 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.”<sup>249</sup>*

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.”<sup>250</sup>*

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 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.<sup>251</sup> 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]*

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

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

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

*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.*"<sup>252</sup>

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.<sup>253</sup>

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.<sup>254</sup>

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.

## 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.<sup>255</sup> 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.<sup>256</sup>

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

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.

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.

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.”*<sup>257</sup>

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.”*<sup>258</sup>

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.<sup>259</sup> 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.

## 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 researchers 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.<sup>260</sup>

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 midwife who works at the

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.

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

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."*<sup>261</sup>

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 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.<sup>262</sup>

## 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.<sup>263</sup> 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"*.<sup>264</sup> 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).

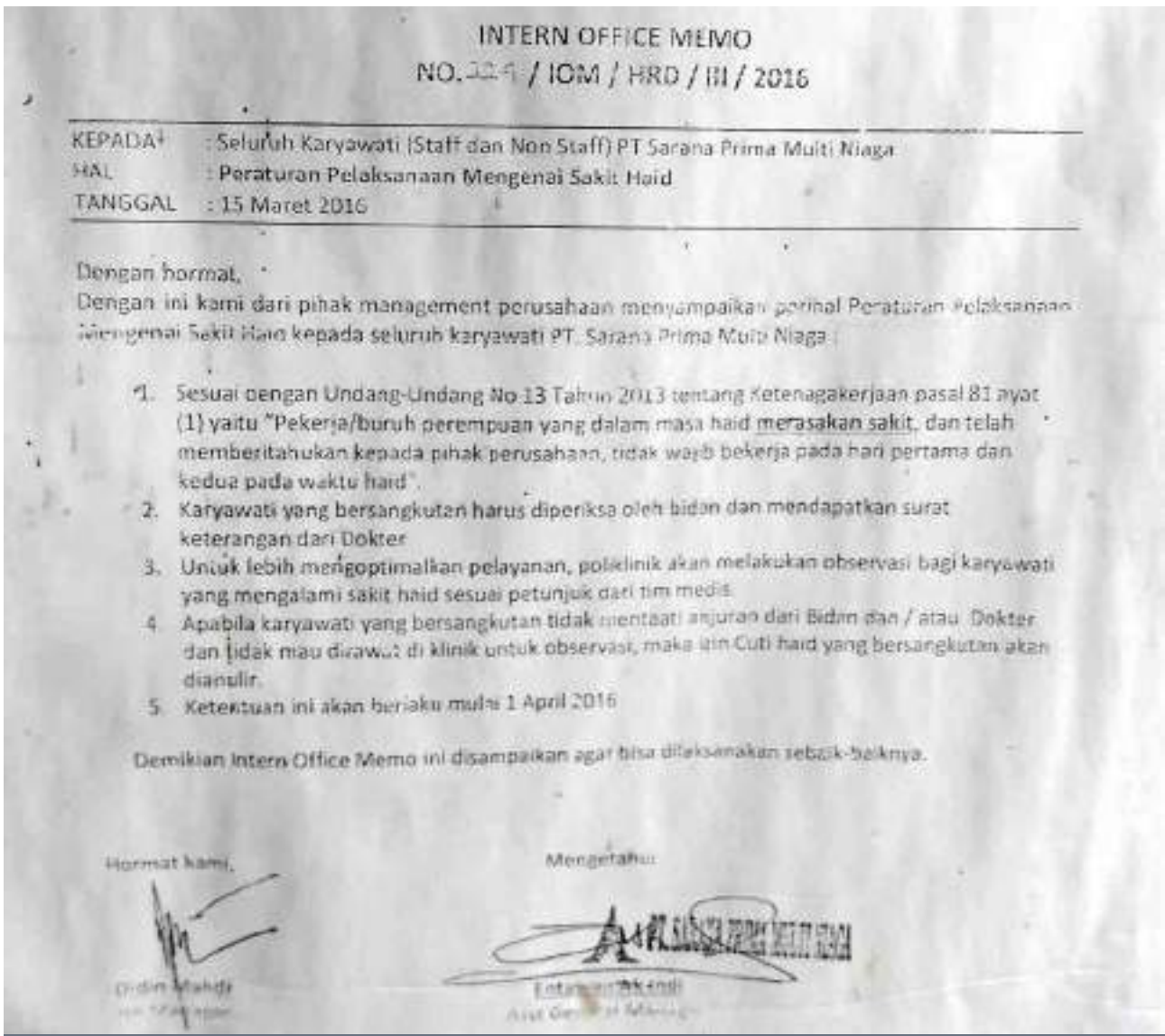
261. Amnesty International interview with D, date and location withheld to protect identity.

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

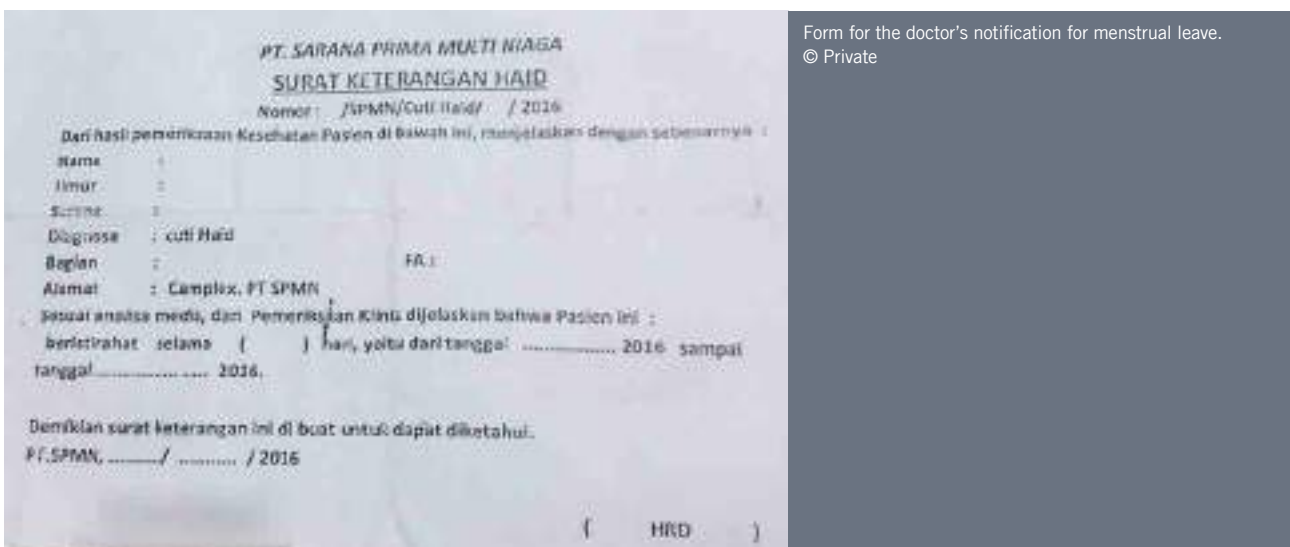
263. Article 81(1), Manpower Act.

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





SPMN's internal memo on menstrual leave. The memo specified that female workers have to be checked by a nurse and obtain a notification letter from the doctor. © Amnesty International



Form for the doctor's notification for menstrual leave. © Private

## 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.<sup>265</sup> 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.<sup>266</sup>

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 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.*"<sup>267</sup>

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.

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

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.”*<sup>268</sup>

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 workers (casual/workers on fixed-term contracts). 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.<sup>269</sup> ABM and PT Hamparan did not respond to Amnesty International.

The Convention on the Elimination of All Forms of Discrimination Against Women defines discrimination 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.”*<sup>270</sup>

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.



Road near a plantation. © Amnesty International/Watchdoc

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.

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

## **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 workers' employment status and allowed them to retain their employment status. The three women who were dismissed were also re-employed.<sup>271</sup> 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.

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).<sup>272</sup>

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."*<sup>273</sup>

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.<sup>274</sup> It requires companies to: *"Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur"*.<sup>275</sup> 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"*.<sup>276</sup>

### WILMAR'S RESPONSIBILITY FOR THE CONDUCT OF ITS SUBSIDIARIES

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

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](http://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.

Wilmar wholly owns PT Perkebunan Milano<sup>277</sup> and it owns 95% of PT Daya Labuhan Indah.<sup>278</sup> 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.<sup>279</sup> 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”.<sup>280</sup> 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.<sup>281</sup> 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.<sup>282</sup>

## 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;
- (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.”<sup>283</sup>

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.

283. Principle 15, UN Guiding Principles.

## POLICY

After campaigns by NGOs, in particular Greenpeace, Wilmar adopted its 'No Deforestation, No Peat, No Exploitation Policy' (the Policy) in December 2013.<sup>284</sup> 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.<sup>285</sup>

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".<sup>286</sup> 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.

Wilmar set itself the target that its suppliers would be fully compliant with all provisions of the Policy by 31 December 2015.<sup>287</sup> 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".<sup>288</sup>

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/](http://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](http://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.

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."

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."<sup>289</sup> 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.<sup>290</sup>

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."<sup>291</sup>

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 sustainable transformation and real change on the ground."<sup>292</sup>



Sign near PT Milano's plantation. © Amnesty International

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."

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



## 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”*.<sup>293</sup> 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.<sup>294</sup>

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.<sup>295</sup>

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.<sup>296</sup> 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.<sup>297</sup> 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

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

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.<sup>298</sup> The overarching report states: *“As part 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.”*<sup>299</sup> 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.<sup>300</sup> 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”*.<sup>301</sup>

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-international.com/sustainability/progress/aggregator-refinery-transformation-art/art-overarching-reports/](http://www.wilmar-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/](http://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.

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 group level.<sup>302</sup> 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 Responsibility<sup>303</sup> and to its Grievance Procedure<sup>304</sup> 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"*.<sup>305</sup>

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.<sup>306</sup>

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.<sup>307</sup> 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.

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](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](http://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.

## 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. 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.<sup>308</sup>

The 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.<sup>309</sup> 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.



308. See the RSPO’s website, available at: [www.rspo.org](http://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/](http://www.wilmar-international.com/sustainability/progress/certifications/roundtable-on-sustainable-palm-oil/). See also Wilmar, *Sustainability Report 2015*, p. 24.



The RSPO Principles and Criteria for the Production of Sustainable Palm Oil 2013<sup>310</sup> (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.<sup>311</sup>

The document includes one principle (out of eight) and a limited set of criteria related to workers' rights.<sup>312</sup> 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 origin 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 [fresh fruit bunches] 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."*<sup>313</sup> There are therefore no requirements for companies to demonstrate that they 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 paraquat and other WHO Class 1A or 1B chemicals, or those listed under the Rotterdam and Stockholm Conventions,<sup>314</sup> 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 survey of pesticide operators. No additional requirements are identified for the 'exceptional circumstances' in which companies can use acutely hazardous chemicals.

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](http://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 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 to 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](http://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).

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).<sup>315</sup> The Audit checklist is extremely inadequate in the scope of the 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.<sup>316</sup> 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 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”*.<sup>317</sup>

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.

315. RSPO, RSPO P&C 2013: *Audit Checklist for assessing compliance*, available at: [www.rspo.org/key-documents/certification/rspo-principles-and-criteria](http://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.

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

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.<sup>318</sup>

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 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.

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

## 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.<sup>319</sup> 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.<sup>320</sup> 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.<sup>321</sup>

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.<sup>322</sup> It is required to abolish forced labour<sup>323</sup> 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.<sup>324</sup> 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.<sup>325</sup>

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 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 ..."*

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](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](http://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](http://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).



*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*".<sup>326</sup>

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".<sup>327</sup> 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.<sup>328</sup> 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.<sup>329</sup>

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.<sup>330</sup> In 2014,

the government adopted the 'Roadmap Towards a Child Labour-Free Indonesia in 2022'.<sup>331</sup> Education is compulsory until the age of 15 years old,<sup>332</sup> 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.<sup>333</sup>

## 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.

### 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,<sup>334</sup> 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

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](http://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.

334. Staatsblad No. 261 Year 1933.

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.<sup>335</sup> 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.<sup>336</sup> 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.

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.

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).

## 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.<sup>337</sup> 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”.<sup>338</sup> 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.<sup>339</sup> 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).<sup>340</sup>

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.<sup>341</sup> 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.<sup>342</sup> 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 should not be used to justify a minimum wage that does not ensure a decent living for workers and their families*”.<sup>343</sup> 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*”.<sup>344</sup> The government should implement this

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](http://www.industriall-union.org/industriall-and-ituc-support-indonesian-living-wage-struggle).

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.

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”*.<sup>345</sup> 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”*.<sup>346</sup>

## 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 the Ministry of Manpower and Transmigration).<sup>347</sup> Labour inspections are one of the Ministry's core functions. The Directorate General of Labour Inspection<sup>348</sup> 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.<sup>349</sup> 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 investigate labour crimes.<sup>350</sup>

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 the Ministry of Manpower.<sup>351</sup>

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.

350. ILO, ‘Indonesia: Labour Inspection Structure and organization’, [www.ilo.org/labadmin/info/WCMS\\_153136/lang--en/index.htm](http://www.ilo.org/labadmin/info/WCMS_153136/lang--en/index.htm) (last accessed 7 November 2016).

351. Articles 10 and 11.



Indonesia does not make information publicly available on the level of funding available for the labour inspections, the numbers of inspectors in total and per province and region, or 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, the 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”*.<sup>352</sup> 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.<sup>353</sup> 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”*.<sup>354</sup>

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.<sup>355</sup> 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 the 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.<sup>356</sup> 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 August 2015 non-compliance among regular employees had increased to 47.2% [it was close to 40% between 2008 and 2013]”*.<sup>357</sup> Academics have also pointed to the failure of labour inspectors to bring criminal enforcement proceedings, including when employers pay below the minimum wage.<sup>358</sup>

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”*.<sup>359</sup>

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.

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/](http://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).

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.



Truck carrying palm fruits. © Amnesty International