

# DESTINED FOR TROUBLE?

The potential impact to investor and stakeholder interests from increased transparency and reporting of risk and liabilities arising from the inadequate management, governance and disclosure of labour from vulnerable peoples in the palm oil industry.

## LIBERTY SHARED

CREATING AN ENVIRONMENT  
SAFE FROM TRAFFICKING

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**INTRODUCTION**

The palm oil industry continues to be a highly controversial business and social proposition. Its detractors lay before society a long list of grievances covering a wide range of environmental, social and management issues. While its supporters continue to refute or ignore the depth of the problems, pointing to its financial success, palm oil’s wide range of uses and the current lack of a credible commercial alternative for buyers.

The range of allegations against the industry makes for grim reading:

- Forced labour<sup>1</sup>
- Child labour<sup>2</sup>
- Gender violence<sup>3</sup>
- Wage ‘theft’<sup>2</sup>
- Use of toxic pesticides<sup>2</sup>
- Deforestation/illegal logging<sup>4</sup>
- Wildlife destruction<sup>1</sup>
- Violence against indigenous people<sup>5,6</sup>
- Pollution<sup>7</sup>

As we shall see, it is argued that these issues arise and continue because there isn’t sufficient industry investment to improve management, governance and disclosure. The counter is that it is measures such as audit, certification and industry self-censure that urge and promote the needed improvement in the standard of practices. At present, it might feel as if the industry just hopes that what happens on plantations, stays on plantations.

We contend that the problem is structural and systemic. To that end, we have identified various structural weaknesses and gaps in the risk assessment of the industry, the operational governance, internal controls and management of the industry and the management of its relationship with the communities of people the industry draws upon for labour

**PRODUCTS CONTAINING PALM OIL**

 Biodiesel	 Breakfast Cereal	 Chocolate
 Detergent	 Face Cream	 Ice Cream
 Lipstick	 Margarine	 Packaged Bread
 Shampoo	 Soap	 Soda
 Cookies	 Instant Noodles	 Pizza Dough

<https://greenpalm.org/about-palm-oil/what-is-palm-oil/what-is-palm-oil-used-for>  
<https://a-z-animals.com/palm-oil/products/>

<sup>1</sup> <http://www.fairlabor.org/content/assessing-forced-labor-risks-palm-oil-sector-in-indonesia-and-malaysia>  
<sup>2</sup> [https://d3n8a8pro7vhnmx.cloudfront.net/rainforestactionnetwork/pages/15889/attachments/original/1465330857/RAN\\_The\\_Human\\_Cost\\_of\\_Conflict\\_Palm\\_Oil.pdf?1465330857](https://d3n8a8pro7vhnmx.cloudfront.net/rainforestactionnetwork/pages/15889/attachments/original/1465330857/RAN_The_Human_Cost_of_Conflict_Palm_Oil.pdf?1465330857)  
<sup>3</sup> <https://wrm.org.uy/books-and-briefings/oil-palm-companies-lie-when-say-to-respect-womens-rights/>



Weak management and governance continue to allow industry participants to operate businesses that in many people's opinion and observation cause considerable harm to humans, wildlife and environment. But opinion and observation do not yet seem to be enough to be persuasive.

It is then important that investors and stakeholders share in the risk of the vulnerable desperately seeking work (should they carry the burden solely?) so it is also in their interests to want to protect the vulnerable. Or as the essayist and former risk analyst Nassim Taleb<sup>8</sup> describes it, to rebalance the hidden asymmetries in the system of society.

In this document, we examine underlying harmful means of supplying labour to plantations and failings of the industry to provide proper internal controls and effective governance and management that would lead to the eventual elimination of actual and potential abuse of vulnerable workers. These weaknesses may have increasing impact on investor and stakeholder interests as the extent of the abuse becomes better understood and risks can then be priced more accurately.

## WHY PALM OIL?

There are six clear reasons why palm oil has and will continue to dominate discussion:

- (i) it replaced unhealthy fats in western food<sup>9</sup>;
- (ii) producers try to keep the price low<sup>9</sup>;
- (iii) it has replaced more expensive oils in many domestic and personal products<sup>9</sup>;
- (iv) it is now widely used as cooking oil in Asia<sup>9</sup>;
- (v) as those Asian countries have grown richer, they have begun to consume more fat, much of it in the form of palm oil<sup>9</sup>;
- (vi) aside from a number of people in the West, most people don't yet care or feel much risk from being an investor, purchaser or product consumer<sup>10</sup>.

The prevalence of palm oil in the West can be partly traced back to Unilever in 1994 and the effort to replace trans fats with palm oil<sup>7</sup> in their huge range of products. Also that year, the U.S. Food and Drug Administration gave U.S. manufacturers three years to remove trans fats and most of this was replaced by palm oil<sup>9</sup>. In

the East, during that same period, India and China's economic rise accelerated and demand became truly global and voracious<sup>9</sup>. Palm oil was embraced fully as a mechanism of economic development for South-East Asia, a solution to a health crisis in the West, a wonder product for manufacturers and cheap food ingredient for the low income population across Asia.

Little more than twenty years later and the overall demand is obviously much greater, with India and China growing massively during this period, but the general sentiment about the palm oil industry has become more subdued and circumspect. There is now a similarly simmering distaste for palm oil on social and environmental grounds, as there was for trans-fats on the grounds of individual healthcare.

## BROADER MARKET DYNAMICS

In the first week of February 2019, the EU released the draft Delegated Act for the Renewable Energy Directive (RED). RED seeks to put a freeze on biofuels until 2023 and currently there is a barring of palm oil from RED because of high risk of indirect land use change<sup>11</sup>, but what worries the palm oil industry is that RED is essentially making good on a broader promise by the EU to cease use and reliance on palm oil. Both the Malaysian and Indonesian governments have voiced their displeasure and are considering a range of responses<sup>12</sup> to the EU's palm oil ban, from diplomatic missions to cancelling potential orders for aircraft. And while both countries consider their approach, both are seeking to sell more to China and India. China is set to increase its already huge palm oil imports from Malaysia<sup>13</sup>, after the large purchase earlier this year, and, while India has slightly decreased its import from Indonesia, the second largest populated country remains the world's largest importer of edible oils<sup>14</sup>.

Potential business opportunities with these two Asian economic behemoths are significant but despite these possibilities, there are reasons to believe that the industry would be wise to improve its current management practices and offer an altogether more compelling and comprehensive argument for the global economy to support it. After all, as all business students know, once a large market has been established (here in edible oils), the next challenge is to retain that market and prevent the competition from taking it away. The loyalty to palm oil is not high<sup>15</sup> and while there are good arguments that replacing palm oil would just precipitate a disaster elsewhere<sup>16</sup>, all products in a marketplace

are at risk of being replaced, and many eventually are. There is always someone competing for a share, large or small. For example, look at the ambitions of Revive Eco in Scotland making edible oils from the mountains of hipster coffee grounds<sup>17</sup>.

## THE TWO SIDES OF THE LOOKING GLASS – WHAT IS THE RISK?

Risks may already be quietly accruing to industry stakeholders who participate and engage with palm oil businesses though this has not been clear until recently, and we explore a number of these problems in this document. At the same time, society has become less tolerant with the social and environmental impact of industry and commerce in general and increasing portions of global society, whether acting as investors, bankers, purchasers, service providers, governments, NGOs or consumers, desire to distance themselves from an unwanted affiliation to those causing social and environmental harm. For many though, whether a supporter of or an adversary to the palm oil industry, there is concern with the seeming inability of the palm oil industry to take the strident action needed to prevent the issues recurring. Demands for change and threats to withdraw support are increasingly common from many quarters. When there is a viable substitute to palm oil, it seems possible the market will move.

Decisions concerning social issues by those currently invested or who have commercial relationships with the palm oil industry are heavily shaped by credible adverse publicly available information. For those who have not worked in a business, it must be remembered that if investors and businesses see financial and commercial opportunity and benefit from a relationship or transaction, such as in palm oil, they then need to identify risks and costs to dissuade them from proceeding. It is not the other way around. Commerce and finance are about risk appetite and identifying the limits. Conducting due diligence, benefit and risk analysis and entering into transactions are ongoing and constant, these activities are fundamental to the very nature of investment, commerce and trade.

Company disclosure and information, primarily from local and international investigative civil society and investigative journalists, form a considerable corpus of the adverse information/intelligence used to create risk assessments, ratings and screenings and conduct due diligence. For years most information on palm oil has come from the environmental groups but more recently groups in the anti-trafficking and forced labour movement and those providing protection to vulnerable

peoples have produced more information about the treatment of workers and their families and communities. In parallel, the palm oil industry has organized itself collectively by establishing the Roundtable on Sustainable Palm Oil (RSPO) which, amongst much other work, has created a means of lodging complaints with their case tracker<sup>18</sup> platform and does work towards providing responses to the complaints submitted.

As a case in point, at the end of November 2018 FGV Holdings, more generally known as Felida, received a letter from the RSPO<sup>19</sup> setting out it was to be sanctioned for charges including forced labor, complicity in trafficking of workers and a range of related unacceptable practices. The pressure on Felida, which obviously presses the RSPO to respond too, arose from a Wall Street Journal article in July 2015<sup>20</sup>. The long three year response time is certainly an indication of the difference between the urgency of RSPO as a self-regulating industry association rather than a government appointed regulator with regulatory powers to fine.

The global discussion and focus on the management of palm oil businesses and the industry in relation to social issues started roughly five years prior to the RSPO's letter to Felida. In July 2013, the results of Benjamin Skinner's investigations into Indonesian palm oil hit Bloomberg Businessweek magazine<sup>21</sup> causing consternation to many in society and business that a widely used but relatively uninteresting intermediate product from South East Asia, found in chocolate to lipstick, was produced with wide ranging labour abuse.

Between Ben Skinner's work and Felida's censure last year, Finnwatch reported on IOI Group (2014)<sup>22</sup>, Rainforest Action Network reported on Indofood (2016)<sup>23</sup>, Amnesty International reported on Wilmar Indonesian business (2016)<sup>24</sup>, Greenpeace reported across the industry (2017)<sup>25</sup>, Danish Institute for Human Rights reported on Nestle's supplychain (2018)<sup>26</sup> and the Fair Labor Association, for the Consumer Goods Forum, reported on wide ranging abuses (2018)<sup>27</sup>. The Associated Press, The Guardian, BBC, Wall Street Journal, New York Times, Bloomberg, the South China Morning Post and others all regularly publish news on incidents and long reads on the palm oil industry. All these reports, thanks to internet scraping and media monitoring, are captured as adverse information/ intelligence on the industry and the companies involved by risk scoring and rating platforms and toolkits. Such as those developed by civil society like the Zoological Society of London's SPOTT<sup>28</sup> and the World Wildlife Fund's PalmOilScoreCard<sup>29</sup> and by investment risk reporting

<sup>4</sup> <https://www.theguardian.com/environment/2018/jun/26/palm-oil-disastrous-for-wildlife-but-here-to-stay-experts-warn>

<sup>5</sup> <https://www.tuk.or.id/2019/03/21/press-release-unsustainable-sime-darby-buyers-and-financiers-must-stop-their-business-relations?lang=en>

<sup>6</sup> <https://www.aljazeera.com/news/2018/08/palm-oil-threatens-indigenous-life-malaysia-180817060716266.html>

<sup>7</sup> <https://international.thewestslens.com/article/107781>

<sup>8</sup> [https://en.wikipedia.org/wiki/Skin\\_in\\_the\\_Game\\_\(book\)](https://en.wikipedia.org/wiki/Skin_in_the_Game_(book))

<sup>9</sup> <https://www.theguardian.com/news/2019/feb/19/palm-oil-ingredient-biscuits-shampoo-environmental>

<sup>10</sup> <https://www.scmp.com/magazines/post-magazine/long-reads/article/2187593/cheap-versatile-palm-oil-everywhere-and-has>

<sup>11</sup> <https://palmoilmonitor.org/2019/02/18/the-red-delegated-act-an-analysis/>

<sup>12</sup> <https://palmoilmonitor.org/2019/04/02/palm-oil-monitor-weekly-update-2nd-april-2019/>

<sup>13</sup> <https://www.nst.com.my/business/2019/04/482989/china-buy-extra-400000-tonnes-malaysian-palm-oil-year>

<sup>14</sup> <https://www.thestar.com.my/business/business-news/2019/03/16/indias-feb-palm-oil-imports-ease-as-soy-oil-purchase-jumps/>

<sup>15</sup> <https://wattsupwiththat.com/2019/01/05/sustainable-choices-on-palm-oil-must-be-easier-for-consumers-says-new-study/>

<sup>16</sup> <https://www.iucn.org/news/secretariat/201806/saying-no-palm-oil-would-likely-displace-not-halt-biodiversity-loss--iucn-report#>

<sup>17</sup> <https://www.bbc.com/news/uk-scotland-scotland-business-48023412>

<sup>18</sup> <https://askrspo.force.com/Complaint/s/casetracker>

<sup>19</sup> <https://qz.com/1479562/palm-oil-giant-felida-sanctioned-over-worker-trafficking-allegations/>

<sup>20</sup> <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>

<sup>21</sup> <https://www.bloomberg.com/news/articles/2013-07-18/indonesian-palm-oil-industry-rife-with-human-rights-abuses#p1>

<sup>22</sup> <https://finnwatch.org/images/pdf/palmoil.pdf>

and research firms such as Sustainalytics<sup>30</sup>, Bloomberg ESG dashboard, Truvalue Labs<sup>31</sup>, MSCI etc for comparison against metrics such as the recommendations set out in the UN Principle for Responsible Investment<sup>31</sup>.

A good example of the responses to the accretion of these adverse media articles and reports, and the numerous other research alongside them, came from the EU earlier this year, as mentioned above. But there have now been more determined actions from retailers, not just on removing palm oil based products but in offering alternatives. Major British retailer, Selfridges, became the first in its sector to remove palm oil from all its own-branded products<sup>32</sup> and online retailer Ocado Group established a palm oil free “aisle” listing more than 5,000 branded items, ranging from bread and cereal to spice mix and shampoo<sup>33</sup>, while UK supermarket giant Iceland continues its aim to be palm oil free<sup>34</sup>. Transparency through adverse information does work.

Intelligence and information can also be generated by setting out standards, such as “No Deforestation, Peat and Exploitation (NDPE)” and waiting for the industry response. Greenpeace showed in its November 2017 report, *Still Cooking the Climate*<sup>35</sup>, palm oil traders have largely failed to establish any meaningful systems, either individually or collectively, to enforce their NDPE commitments. The same is true of their palm oil customers. Greenpeace’s analysis indicated that four years after making their commitments, traders and consumer brands had still failed to:

- require the producer groups in their supply chains to publish concession maps and disclose the extent of their operations;
- monitor proactively their entire supply chains to identify all producer groups that are still involved in deforestation;
- ensure producer groups cease and then remedy their deforestation (and other non-compliant behaviour) in a transparent and timebound fashion;
- exclude producer groups that miss deadlines or refuse to reform; and
- obtain independent verification that all remaining producer groups are fully compliant with NDPE standards across their operations.

Greenpeace concluded,

“As a result of these collective failures, the global market remains contaminated with palm oil from some of the most

destructive producer groups in Southeast Asia. In other words, brands are not just complicit in rainforest destruction and exploitation, but – through their palm oil purchases – actively funding those responsible for it.”

Palm oil continues to be included in lists of industries which utilize forced labour and child labour. The U.S. Dept of Labor continues to list palm oil in Malaysia as produced with forced labour and child labour and in Indonesia with forced labour<sup>36</sup>. The U.S. State Department’s Trafficking in Persons Report 2018<sup>37</sup> lists palm oil as an industry in both countries where forced labour is indicated as occurring.

#### INJURY TO VICTIMS IS NOT INCLUDED IN RISK CALCULATIONS – THE INFORMATION ASYMMETRY DILEMMA

All of this published data, information and reaction is collected, scraped and aggregated into adverse news and is used in risk assessment. Unfortunately, what is not included is the vast range of unpublished experience of most of the actual victims. It is important for anyone who is examining the palm oil industry, or any industry, to remember that whatever your sentiment is currently and however you are pricing palm oil business propositions and risk, you are yet to include comprehensive knowledge from the ground. One is, to put it nicely in the terms of Nobel economist George Akerlof, in the market for lemons<sup>38</sup>. There is a huge information asymmetry between what is publicly available (and therefore what is in the aforementioned tools and platforms) and what is actually happening to hundreds of thousands of vulnerable people who might become victims of trafficking, debt bondage, labour violations and years of abuse.

On the ground in both Malaysia and Indonesia, civil society continues to support victims who are working on or have escaped from palm oil plantations. But the records of their injuries, physical, financial and psychological, are only just beginning to be captured in a structured system but as yet big anonymized datasets of victim experiences in the palm industry are not publicly available. It is too simplistic to describe the experiences of those abused as just forced labour, and it is time for those who are concerned, whether they be investors, industry stakeholders, purchasers or end consumers, to be clear about the hurt and injury inflicted on those who provide their labour. The absence of effective governance and management to ensure safe recruitment, workplace, work activities and assured compensation on payday means these workers never enjoy basic

<sup>22</sup> [https://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/15889/attachments/original/1467043668/The\\_Human\\_Cost\\_of\\_Conflict\\_Palm\\_Oil\\_RAN.pdf?1467043668&0=](https://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/15889/attachments/original/1467043668/The_Human_Cost_of_Conflict_Palm_Oil_RAN.pdf?1467043668&0=)

<sup>23</sup> <https://www.amnesty.org/download/Documents/ASA2152432016ENGLISH.PDF>

<sup>24</sup> <https://storage.googleapis.com/planet4-southeastasia-stateless/2019/04/0a48e8fb-0a48e8fb-still-cooking-the-climate.pdf>

<sup>25</sup> <https://www.humanrights.dk/publications/labour-rights-assessment-nestles-palm-oil-supply-chain-indonesia>

<sup>26</sup> [https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia\\_web.pdf](https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf)

<sup>27</sup> <https://www.spott.org/>

<sup>28</sup> <http://palmoilscorecard.panda.org/>

<sup>29</sup> <https://www.sustainalytics.com/esg-blog/palm-oil-deforestation-missed-opportunity-for-rspo/>

<sup>30</sup> <http://lipperalpha.refinitiv.com/2016/11/failing-scores-for-esg-raters/>



personnel administration and management.

Some employees were actually born on plantations and have known no other life, while others have been deceived and trafficked or migrated under misleading circumstances and once on the plantation are susceptible to the whims of plantation supervisors, local police and recruitment agents. At present certification, commercial audits, policy initiatives and promises and strategic visions for a better future haven't, as Greenpeace have shown, managed to create robust and proper industry internal controls which would create a work environment where current labour abuses are suddenly impossible, the continued absence of such controls makes them all too probable. Unless employees, such as plantation supervisors, work under a more robust management and governance structure and cannot, for example, act in their own interests and against the long term interests of their employer, the industry and its stakeholders, abusive actions against workers will continue.

### WEAK VICTIM CASE REPORTING OR NO VICTIMS TO REPORT?

A deep misunderstanding of the risk of human trafficking and forced labour arises from the false negative conclusion and then confirmation bias that because there are few reported cases, and the Trafficking in Persons Report published by the U.S. State Dept states that the total number of victims identified globally in 2017 is only 100,409<sup>39</sup>, the problem is marginal or irrelevant, i.e. of low risk.

The truth is that most victims do not receive attention and many vulnerable people who are misled into accepting abusive labour situations are unaware that the abusive conditions are unlawful and criminal. Sadly, they see it as the lives they deserve and must lead. Victims do not necessarily come forward on their own, they have been rendered powerless, perhaps most of their lives, and do not actively seek access to justice. The information about the experiences of those victims that do receive care are not available for analysis because recordkeeping practices are nascent and are certainly not in the public domain, except via the International Organization for Migration's Counter Trafficking Data Collaborative (CTDC)<sup>40</sup>. There is definitely nothing in financial and non-financial risk and pricing calculations. However, it should be noted that victim case data collection is changing, as the creation of the CTDC demonstrates, and NGOs are becoming more diligent in their recordkeeping and management

systems are becoming available. One of which was developed by Liberty Shared and is used by over 55 NGOs across 20 countries containing over 30,000 cases<sup>41</sup>, one day elements of this data, as it pertains to industries, companies and commerce will be priced in, as it should always have been. This grim social impact should no longer be considered an externality to the industry's economics.

### FAILINGS OF CURRENT RISK MANAGEMENT TOOLS TO ACCOUNT FOR FORCED LABOUR

As we have discussed earlier, businesses, investors and industry stakeholders may use various risk management and risk rating tools which rely on corporate disclosure and credible adverse media reports available in the open source environment, ie on the internet. It would obviously be unacceptable to base businesses decisions purely on allegations. Media reports generally do not name victims for security purposes but tend to focus on the perpetrators once they are the criminal justice system or who have been the subject of thorough investigative reporting where facts have been clearly established and parallel checked. Moreover, as discussed above, victim case recordkeeping has been weak and little is currently available though this is changing.

Here then, is the reason for the false negative conclusions and the confirmation bias which leads to the continuing perception that the risk in the palm oil industry from forced labour and human trafficking is low. In countries, such as Malaysia and Indonesia, where forced labour of undocumented workers is not yet fully recognized as a crime or civil breach under local law, victims are unable to seek access to justice and there is little possibility of prosecution of or a successful suit against "perpetrators". By logical extension then, there will then be no cases to report and therefore no adverse media or reports. And so the perception is that there is no problem, which for many people confirms their current belief and risk assessment. Those that do search the internet for cases may find only a few thousand incidents of human trafficking and forced labour across the whole of South East Asia, in fact, the annual number of convictions for any type of human trafficking per annum globally fell in 2017 to 7,045 from 9,072 in 2016<sup>42</sup>. Access to justice and prosecutions for human trafficking offences have traditionally concentrated almost exclusively on sex trafficking and it was only during the last five years or so forced labour became a focus of criminal legal action.

9,072 individual convictions on a global level may seem surprisingly few, and they are mostly for sex trafficking offences. Only a very small number of corporations have been held liable for forced labour. This is in part because mechanisms of corporate accountability and liability for abusive labour practices are nascent and their development in Malaysia and Indonesia is weak and faces considerable headwinds. Liberty Shared, with support from USAID and Winrock International examined the corporate accountability and liability in the Malaysian palm oil industry<sup>43</sup> and our primary conclusions were that ethical and corporate responsibility has proved insufficient, the law doesn't yet require high standards of governance and management and the mechanism to assist undocumented migrant workers needed improving. With few cases brought to courts, civil or criminal, and very few won, there is a paucity of information and data to support accurate risk assessments of the exposure and reliance on forced labour by the palm oil business.

Liberty Shared has been working to close some of these gaps and is an active provider of information and data of human traffickers and perpetrators of forced labour to a wide number of financial crimes risk management data providers including market leaders Refinitiv World-Check<sup>44</sup> and Dow Jones Factiva who service a majority of the world's financial service providers. Liberty Shared has gathered, with a network of other NGOs, over 9,000 profiles of human traffickers, again mostly sex traffickers, from media sources but less than 30 relate to palm oil. However, as mentioned, we have also started deploying our victim case management system with NGOs and worked on gathering worker interviews. Both these programs corroborate the conclusion that forced labour of contracted undocumented workers is prevalent and present on many plantations. As much as we should be impressed by data gathered from open source, much of what happens in the world is still not recorded and made available via the internet.

We argue then that industry stakeholders must examine structural risk of the industry and its operating environment, they must look beyond the internet and demand more from commercial risk advisory services. There is a high potential for victimization in any industry without effective governance and human resources management that relies heavily on manual labour provided by illegal and criminal transactional criminal recruitment infrastructure<sup>45</sup>:

- In late 2014, Malaysian Minister of Human Resources Richard Riot stated that there were 2.1 million pass holders and 4.6 million undocumented workers, **making a total of 6.7 million (69% undocumented)**<sup>45</sup> – all are vulnerable to abuse by virtue of their precarious status and efforts to provide their welfare.
- As academic researchers and NGOs have found the labour recruitment process for undocumented workers is powerful and embedded. It exists as a part of the **regional migration infrastructure**<sup>46</sup> **which is a mixture of lawful and criminal activities** to recruit workers from local towns and villages via a well organised platform for deceiving, smuggling, trafficking and forcing labour.
- As has been established by Greenpeace<sup>47</sup> and many others, **governance over thousands of square miles of plantation is weak.**
- As we have examined previously **industry disclosure and reporting is very much in need of development**<sup>47</sup>
- And as we have examined in detail **corporate accountability mechanisms, such as in Malaysia for the palm oil industry are need of substantial development**<sup>48</sup>

Above then, are all the elements of a coming perfect storm for the abuse a large vulnerable population seeking improvements in their welfare and who are prepared to use a recruitment infrastructure to find whatever work that is available to them. They are moved by the millions to very large and very small organisations, their subsidiaries and affiliates, to work without proper human resource management which affords protection from abuse and assurance of compensation, and because there is no access to justice and so ultimately there is nothing to report. Little of what happens on the ground is then revealed through risk management platforms and rating screens, the data is not captured and not available, and as discussed below there are no requirements to disclose their existence as part of the operating model. The vulnerable and their misery remain unrecognised.

Such failure to develop internal controls to protect and improve a business would be unacceptable in some other industries, perhaps an analogy might be that forced labour and human trafficking are to agricultural industries needing unskilled labour, as money laundering from drug trafficking is to financial services, except only the latter is currently a criminal offence.

<sup>31</sup> <https://www.unpri.org/investment-managers>

<sup>32</sup> <https://www.theguardian.com/business/2019/may/07/selfridges-makes-all-own-brand-foods-free-of-palm-oil>

<sup>33</sup> <https://www.ocado.com/browse/free-from-organic-30489/free-from-46010/palm-oil-free-230097>

<sup>34</sup> <https://www.ft.com/content/b032046a-1360-11e9-a168-d45595ad076d>

<sup>35</sup> <https://www.greenpeace.org/southeastasia/publication/641/still-cooking-the-climate/>

<sup>36</sup> <https://www.dol.gov/sites/default/files/documents/ilab/ListofGoods.pdf>

<sup>37</sup> <https://www.state.gov/j/tip/rls/tiprpt/2018/>

<sup>38</sup> <https://www.econlib.org/library/Enc/bios/Akerlof.html>

<sup>39</sup> <https://www.state.gov/documents/organization/282798.pdf>

<sup>40</sup> <https://www.ctdatacollaborative.org/>

<sup>41</sup> <https://libertyshared.org/victim-case-management-system>

<sup>42</sup> <https://www.statista.com/statistics/459622/number-of-convictions-related-to-human-trafficking-worldwide/>

<sup>43</sup> [https://s3.ap-southeast-1.amazonaws.com/freedom.collaborative.prod/uploads/palmoil\\_malaysia\\_2019.pdf](https://s3.ap-southeast-1.amazonaws.com/freedom.collaborative.prod/uploads/palmoil_malaysia_2019.pdf)

<sup>44</sup> <https://www.thomsonreuters.com/en/press-releases/2017/june/thomson-reuters-world-check-and-liberty-asia-clear-5000-names-in-anti-human-trafficking-initiative.html>

<sup>45</sup> [https://www.iseas.edu.sg/images/pdf/ISEAS\\_Perspective\\_2018\\_25@50.pdf](https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_25@50.pdf)

<sup>46</sup> Migration Infrastructure, Biao Xiang & Johan Lindquist, International Migration Review, 2014

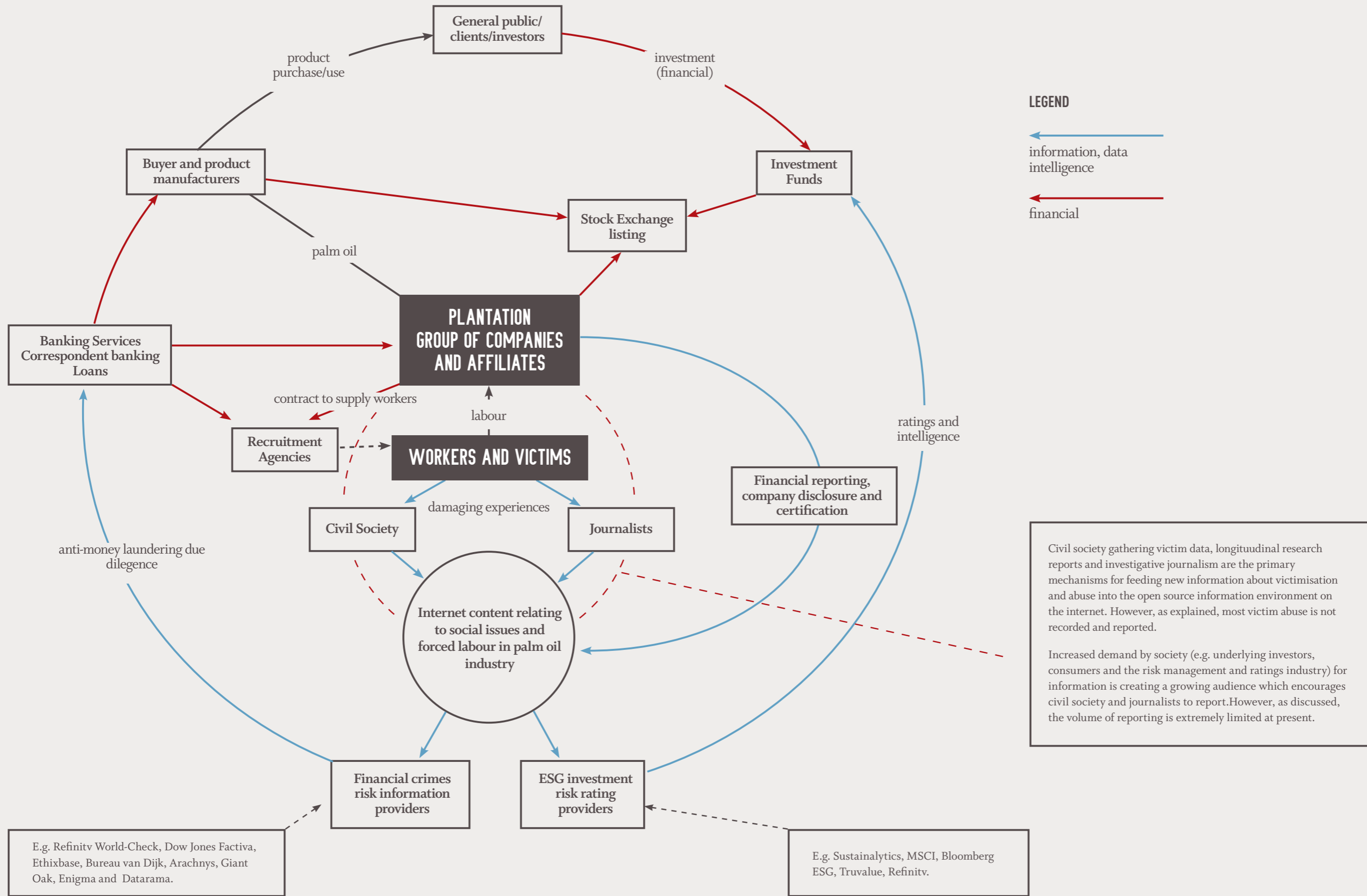
<sup>47</sup> <https://www.greenpeace.org/international/publication/18455/the-final-countdown-forests-indonesia-palm-oil/>

<sup>48</sup> [http://freedom.collaborative.prod.s3.amazonaws.com/Malaysia\\_Analysis\\_120218\\_FINAL.pdf](http://freedom.collaborative.prod.s3.amazonaws.com/Malaysia_Analysis_120218_FINAL.pdf)

<sup>49</sup> [https://s3.ap-southeast-1.amazonaws.com/freedom.collaborative.prod/uploads/palmoil\\_malaysia\\_2019.pdf](https://s3.ap-southeast-1.amazonaws.com/freedom.collaborative.prod/uploads/palmoil_malaysia_2019.pdf)

<sup>50</sup> <https://uk.reuters.com/article/palmoil-labour-idUKL3N0N92GF20140427>

<sup>51</sup> Chapter 12, The Oil Palm Complex – Smallholders, Agribusiness and the State in Indonesia and Malaysia, Sunny Sanderson (2016)



# MODERN SLAVES ON MODERN PLANTATIONS

## INFRASTRUCTURE OF RECRUITMENT

As has been discussed, the primary reason that investors and stakeholders underestimate and undervalue the risk to their interests in the palm oil industry from forced labour and smuggling is that the set of information used to price that risk is very limited – open source media based information, publicly available disclosures supplemented with other information such as company interviews and consultant reporting. It is important to understand that this very bounded set of information provides only a limited reflection of what is actually happening.

The degree of the asymmetry between the set of information used, as discussed above, to assess risk of a company's revenue streams and business model relying on forced labour and underlying criminal activity and what is actually happening is massive and substantial. One primary area of difference in understanding is the nature of recruitment. Currently, there is still a belief that the recruitment of migrant labour functions as a process or network for white collar jobs, but is occasionally tainted by agents who are unlawful and may tend towards criminality. This could not be further from the truth.

In 2014, perhaps as much as 10% of the palm oil crop was lost due to labour shortages, which was estimated to cost Malaysia's palm oil industry around MYR 2.5 billion in export revenue<sup>50</sup>. Workers are needed continuously. Indonesian workers are seen as labour lifeline for the Malaysian palm oil industry, for example nearly 80-90% of workers in Sarawak's palm oil industry are Indonesian<sup>51</sup>.

To reach a plantation, individuals will enter into an arrangement with local agents, likely unregistered, who have approached them in their village. The agent may be paid up to several hundred US dollars by the individual to secure potential work, no assurances are given as to the location or quality of the work, and the recruitment fee is often borrowed from the agent at a rate of up to 200%<sup>52</sup>. Individuals are deceived as to the financial burden because it is not made clear how much they will earn. They are then led by the first agent to other agents, who complete their paperwork at the border, where their passports maybe taken (stolen), and eventually the workers are delivered to plantations without knowledge of their location. They may be trafficked or must pay to be smuggled and transported. On the plantations, deductions are taken from their wages, which are not paid at the office along with documented

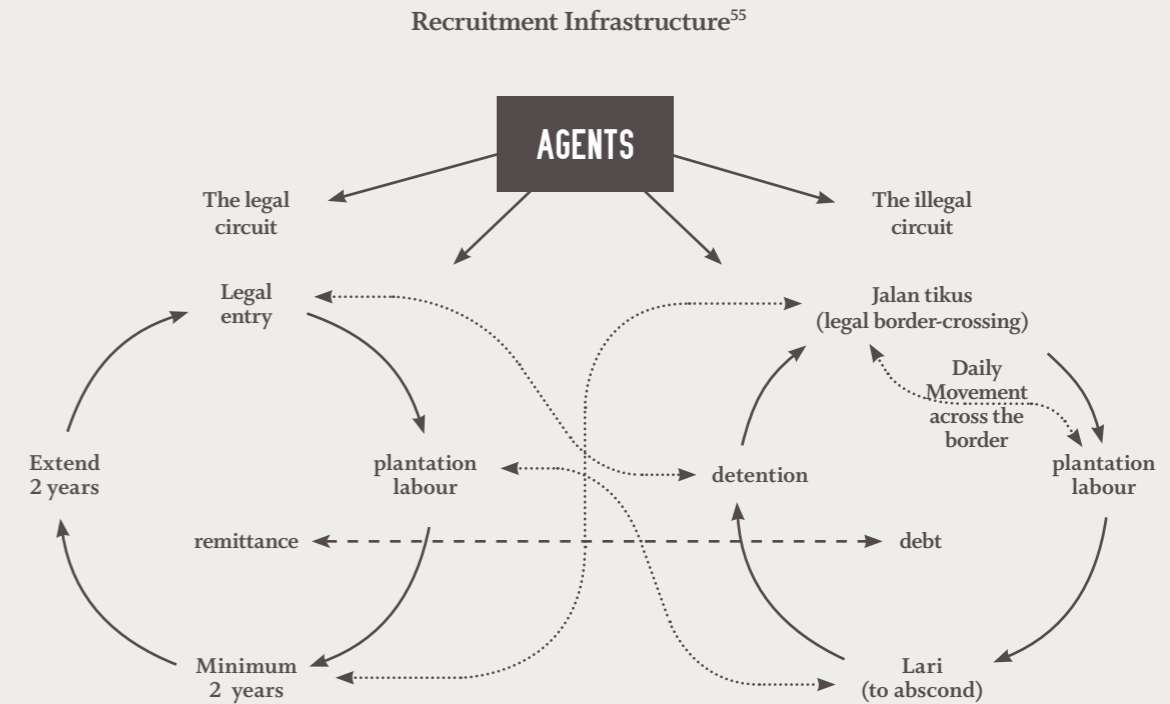
workers but are “paid amongst the palms” leaving them vulnerable to extortion, theft and with little money to repay their debts to their agents. Legal and illegal systems of migration and recruitment run concurrently because in truth the legal system lags behind the illegal system which is far more flexible and therefore can provide the labour supply needed. The legal system requires adverts to local workers first and time for potential local interested parties to respond, so as labour is continuously required it is fulfilled by undocumented migrant workers. As has been discussed earlier, there are perhaps at least one million undocumented Indonesian workers on Malaysia palm oil plantations. Researchers Professors Biao Xiang and Johan spent considerable time documenting the recruitment of migrants and described the situation not as a process or network but as “recruitment infrastructure”.

“This is increasingly obvious today, as more than ever before labor migration is intensively mediated. The notion of “migration infrastructure” the systematically interlinked technologies, institutions, and actors that facilitate and condition mobility – opens up such spaces of mediation to analysis. For analytical purposes, we stipulate five dimensions of migration infrastructure: the commercial (recruitment intermediaries), the regulatory (state apparatus and procedures for documentation, licensing, training and other purposes), the technological (communication and transport), the humanitarian (NGOs and international organizations), and the social (migrant networks)<sup>53</sup>. These five dimensions indicate distinct logics of operation rather than discrete domains. For instance, commercial infrastructure functions by interacting with regulatory, humanitarian, social, and technological infrastructures. But in each dimension, the leading actors, the driving forces, the central strategies and rationalities, and the defining modus operandi differ.<sup>54</sup>”

The dimensions identified by Xiang and Lindquist are set out in the clearer articulation below by Sanderson<sup>55</sup> which divides the activities between legal and illegal but shows how pervasive the agents involvement becomes.

The Felda case provides a timely example of both the use and reliance on this recruitment infrastructure but also the lack of transparency and admission by the company to sourcing labour by these means<sup>56</sup>. The abuse of the workers is further compounded by the lack of healthcare provisions, poor housing and working conditions and constant vulnerability to criminal activity.

The more recalcitrant investment manager may highlight that such risks from forced labour and trafficking have been



historically very low, as already discussed. It is true of course that with limited data and information and little access to justice then risk of liability seem distant. However, as we have explained the abuse of workers has been as continuous as it has been unreported. Laws are changing and accountability is quickly increasing for example the recent step in the Netherlands adopting a child labour due diligence law<sup>57</sup>. And, as discussed throughout, transparency and reporting by NGOs and journalists is increasing. Moreover, investors are demanding clarification and much greater detail. Illegal migration is built into the structure of the global economy, treaties and trade agreements aim to integrate markets to pursue free movement of economic inputs and outputs, with two notable exceptions: labour and human capital<sup>58</sup>. This failure has allowed criminals to profit from providing both labour and human capital at the lowest cost.

Over the last 18 months we have interviewed over 40 workers who have provided labour on a range plantations and can confirm the key findings of Xiang, Lindquist, Sanderson and Martin in relation to recruitment of labour for the palm oil industry.

**THE PRIMARY REASON THAT INVESTORS AND STAKEHOLDERS UNDERESTIMATE AND UNDERVALUE THE RISK TO THEIR INTERESTS IN THE PALM OIL INDUSTRY FROM FORCED LABOUR AND SMUGGLING IS THAT THE SET OF INFORMATION USED TO PRICE THAT RISK IS VERY LIMITED**

<sup>52</sup> Ibid

<sup>53</sup> Larkin (2012) points out that any discussion of infrastructure is a categorical act since the embedded nature of infrastructure means that it is difficult to mark a beginning or an end to its existence. It follows that methodology is contingent and that identifying a methodological approach to migration infrastructure is a theoretical problem (theoretical problem., 338).

<sup>54</sup> Migration Infrastructure, Biao Xiang and Johan Lindquist, IMR Volume 48

Number S1 (Fall 2014):S122–S148

<sup>55</sup> Chapter 12, The Oil Palm Complex – Smallholders, Agribusiness and the State in Indonesia and Malaysia, Sunny Sanderson (2016)

<sup>56</sup> Page 171, Merchants of Labor – Recruiters and International Labor Migration, Philip Martin (2017)

<sup>57</sup> [https://www.mvoplatform.nl/en/the-netherlands-takes-a-historic-step-by-](https://www.mvoplatform.nl/en/the-netherlands-takes-a-historic-step-by-adopting-child-labour-due-diligence-law)

[adopting-child-labour-due-diligence-law](https://www.mvoplatform.nl/en/the-netherlands-takes-a-historic-step-by-adopting-child-labour-due-diligence-law)

<sup>58</sup> Twenty-First-Century Globalization and Illegal Migration, The Annals of the American Academy, Katharine M. Donato and Douglas S. Massey (July 2016)

<sup>59</sup> <https://www.somo.nl/the-underbelly-of-the-financial-world/>

<sup>60</sup> <https://chainreactionresearch.com/wp-content/uploads/2017/02/banks-financing-palm-oil-crr-170203.pdf>

<sup>61</sup> <https://chainreactionresearch.com/>

<sup>62</sup> <https://chainreactionresearch.com/wp-content/uploads/2017/02/banks-financing-palm-oil-crr-170203.pdf>

<sup>63</sup> [https://www.banktrack.org/download/maybank\\_the\\_single\\_largest\\_palm\\_oil\\_financier/maybankreportenglish210218.pdf](https://www.banktrack.org/download/maybank_the_single_largest_palm_oil_financier/maybankreportenglish210218.pdf)

<sup>64</sup> Opening the Black Box of Migration: Brokers, the Organization of Transnational Mobility and the Changing Political Economy in Asia, Johan Lind-



# LIFE AND WORK OF A FEMALE PLANTATION WORKER IN MALAYSIA



 **BORN IN PERAK, MALAYSIA (1960)**

She grew up in Sungai Bernam Estate and came to current place at age 8.

Studied in school until age 12 and then stayed at home for 2 years.


**AGE 12**  
Parents passed away. Father died from a heart attack and mother died because of a motorbike incident.

**AGE 14**  
Started work at estate as a contract worker collecting loose fruit.

 Sister becomes sole caretaker. They collect bananas to eat at the roadside and eat coconuts. There is no rice.

She is age 14/15 when sister goes to work at the estate. Sister is 20/21. They were given a house on the estate.

She worked as a contract worker for 1.5 years and collected loose fruit. Then they took her on permanently as a general worker on the estate.

 She originally worked in a cocoa factory, on the same estate, when it was first working with cocoa. The plantation turned to palm oil in 1997/1998. When she worked with cocoa, they worked from 7 o'clock in the morning to 7 o'clock at night. Children would come follow their parents after school. Her son would come and help and take out the cocoa sheet from the cocoa. Her son was 6/7 at the time.

 **PRESENT**

Now most sprayers on the plantation are men, from Indonesia and Bangladesh.

She now has 6 children and 1 grandchild.


When asked what she hopes for her future—They have no money. She wants her children to have a good job and good life. She's lived in her current place 13 or 14 years.


One of her sons works in a mill in the estate. She will retire in 2 years.

Currently her salary is 38 ringgit (US\$9.10) per day. She is the manager working in the bungalow and makes the same salary as a general worker. Her salary has varied over the years.

**AGE 58**

She has back pain now. When she was hurt, she took unpaid leave and went to a doctor (from the estate) and they gave her a letter – telling her to do exercise. No x-rays were taken. She did not get paid medical leave. Only unpaid leave. When a doctor sent her to a government hospital for her pain and do an xray, the doctor said she had a problem in her bone. The doctor took her phone number and said he'd send her to a bone specialist but never called her.

  
**2013**  
**HER HUSBAND DIES OF A HEART ATTACK.**

  
**AGE 27**  
Her salary is 32 ringgit (US\$7.60) per day.

**AGE 32**  
Her salary is 27 ringgit (US\$6.50) per day.

She has salary deductions for electricity and cooperative insurance and water.

**AGE 21 TO 42**  
She worked as a sprayer. Her manager did not tell her risks of working with pesticides. When spraying, they use a backpack like a full tank. When she carried it, her back was wet with the pesticide and it itched. They used the chemical "Gramoxone." They had no protective gear other than goggles and boots and aprons. As a sprayer, she walked into the pesticide. Most of the sprayers were women. She also has 5 boils on her back, probably because of the backpack and sprays. The pesticide was hot and burns. When she had a baby and was breastfeeding, she had these boils and her milk turned hard.

She switches jobs from working with cocoa to working with palm oil. She worked as a sprayer, spraying pesticides. At the time, she was 4 months pregnant.

**AGE 21**  
She is married and pregnant. She says she wants to switch to working with palm oil. Her husband also works in the estate—bringing the water tank to workers who mix it and then spray.

# WORK OF A MALE PLANTATION WORKER IN MALAYSIA



## MOVED WITH HIS PARENTS TO ENTETE (1999)



He moved with his parents to Entete – East Nusa Tenggara (Province in Indonesia).

He used to work in a field, planting corn and sweet potatoes. The land wasn't his, so he wanted to come to Malaysia to save up enough money to buy land back home.

His parents worked in a rice paddy field.

He has 4 brothers and 1 sister.

## 2005

He came to work in Malaysia. He came through an agent. His brother-in-law told people in the village there were jobs in Perak, and together with an agent from Dumai, this person recruited people to work in Malaysia. He trusted him because it was his brother-in-law.

The agent told him: You can come to Malaysia to work and the employer will pay for the expenses of coming to Malaysia. The agent also handled the passports, and when they arrived in Malaysia, the agent took 3800 ringgit (US \$915) from him for the cost.

The employer cut their salaries every month.

The agent took care of the passport and food during transit. And the cost of coming to Malaysia.

They took a bus from the village to the capital city, and then took a flight. They took a flight from his capital city to Bali. They took a flight from Bali to Surabaya and from Surabaya to Jakarta and then Jakarta to Dumai.

## PRESENT

They didn't have money, so they called up their current employer and asked him to send money. He sent them money so they had enough to eat, drink, and come back to Malaysia.

## PRESENT

He's worked with his current employer 10 years and has gone back to Indonesia twice to see his kids.

He has 2 kids, one 10-year-old and one 8-year-old. The 8-year-old was born in Malaysia and was undocumented. The child and his mother went back to Indonesia when the baby was 8 months old.

They are contract workers, and in a good month, they can make 1600 or 1700 ringgit (US \$384-410). In a not so good month, they can only make 600 ringgit (US\$145). How much they make depends on how many days they work in a month and the yield.

He bought land back home and visits once every year. He hopes that his kids finish school and get jobs. He says he is working for his children and for his parents.

The worker comes back to Malaysia to work after spending time in Indonesia.

Their employer was Chinese Malaysian.

They were brought to the place and there was a large piece of wood. Hands and legs were tied. The cane was a small bamboo cane, the size of a thumb.

He was in prison 2 months and then went to clinic for check-up to see if they were physically fit for caning.



He worked in Perak, but he fought with his employer about his salary. His employer didn't pay him what was promised, so the employer got the police to catch him and he was detained. 5 police came and took their cell phones and money.

He served detention and then went back to Indonesia. The employer stamped the passport and said he was no longer employed. They dropped him off in Dumai, and he couldn't get back to his hometown because he had no money.

## 2007

He came back to Malaysia illegally and went to work in Kuantan. After 14 days, he was caught for being illegal. When he was working up north, 26 Indonesians were arrested. They were from East Nusa Tenggara. They were working on the palm oil plantation.

They were in detention for 10 days and 10 nights. After detention, they were brought to court and sentenced to 2 months imprisonment as well as one whipping.

He couldn't send any money home for 2 years.

When he first came to work, he earned 15-20 ringgit (US\$3.60-4.80) per day. In one month, he would earn 600 ringgit (US\$145), and his employer would deduct money from his salary. After paying for food and cigarettes, he had nothing left to send home at the end of the month.

When he first came to work in Malaysia, he couldn't send any money back because his salary was low and he paid a lot of money for his permit.

10 people traveled together from his village.

# LIFE OF A MALE PLANTATION WORKER FROM TIMOR LESTE IN MALAYSIA



## HE IS FROM TIMOR LESTE.

His parents were farmers and passed away.

There are 5 kids in his family and he is number 2.

One of his relatives came to him when his mother was ill. His relative told him there was a job in Malaysia and he can do it and take care of his mom. He agreed to go.

He came with another man. They flew from East Nusa Tenggara to Batam. Then they came illegally via a boat.

The man who recruited this worker knew how to travel to Malaysia, because he had been there before. His employer asked him to go back and bring a few people for work. An employer in Johor paid for the cost of bringing them. They had to pay the employer back 2000 ringgit (US \$480).

He worked for that employer for two months, and in that time, he did not receive payment because they took it to cover his recruitment fee.

His mom had cancer of the womb and passed away one month after he arrived.



He was a bit afraid, especially of the police, because he did not have his passport.

After two months, he left for better work with 7 others. They left with a new employer to work in Muar, also in Johor. There was someone who worked in Muar who communicated with the workers who wanted to leave.

At the time, he was working on a watermelon farm.

His employer was Chinese. There were two employers, male and a female. The female always said they had a hard time and could not pay his salary.

His salary was 28 ringgit (US\$6.50) per day with the first employer, and he promised after the third month of deductions he would receive his salary.

The new place he went to work at was in the middle of the jungle. It was working with oil palm. They often saw monitor lizards and cobras and snakes. He decided to leave there, because he didn't like the living conditions in the middle of the jungle, and he contacted his uncle to help him leave and find new work.

**PRESENT**

He starts work at 7 o'clock in the morning and when he feels like coming back from work, he can because he's a contract worker.

He's been at his current place of work for 2 months.

There are 12 people working the 300 hectares of land.

The plantation he works at is 300 hectares. The manager goes and gets a contract from the main company and passes it to the workers to handle.



**PRESENT**

He feels a bit lonely. He has a very young sibling back home and no parents, so he has to work in order to take care of his younger sibling. He usually sends money back. He'll stay working until his youngest sibling finishes school – around 5 more years.

He has been in Malaysia one year.

He is 23 years old.

**ON THE OTHER SIDE** of the looking glass, there are those who believe that the palm oil industry is still very much worth a financial bet, and they are not yet dissuaded by the risk or impact of the social and environmental issues. As already referenced, the demand for palm oil is huge, global and expanding, but sentiment for the industry may be low and there might be no love lost when replacement products become viable. But for the present there is a financial incentive to continue supporting industry participants and believing in the overall narrative of the RSPO, audits, certifications and various mechanisms of disclosure.

The institutional stakeholders who continue to support the financial potential of the palm oil industry, namely banks, investors, buyers and service providers, may hope that eventually the industry will make its way to proper governance and management that doesn't harm people, wildlife and the environment. They continue their engagement for the present because, at present it is still acceptable and it is still profitable but as we will see some of these stakeholders are pressing for change.

The financial services industry plays two distinct roles in supporting the palm oil industry, first as a provider of financing, such as loans, for operations but also for basic everyday financial services, like correspondent banking and credit facilities. Secondly, from the investment buy side of the industry, financial institutions invest in the industry via the financial markets, such as mutual funds.

In relation to their first role, loans and financing, there have been a limited number of studies analyzing loans and financing of the palm oil industry. The Dutch Centre for Research on Multinational Corporations (SOMO), along with Tuk Indonesia, looked hard at the range of loans and credit facilities provided to certain industry participants in their paper, "The Underbelly of the Financial World"<sup>59</sup> and they drew upon Chain Reactions research paper "Banks Finance More Palm Oil Than Investors"<sup>60</sup> which contained a list of banks providing loans and underwriting services from 2006 – 2015.

Chain Reaction<sup>61</sup> identified the following financial services institutions providing significant financing to sixteen of the biggest palm oil companies:

OCBC; Mitsubishi UFJ Financial; Sumitomo Mitsui Financial; HSBC; Development Bank of Singapore; Mizuho Financial; Rabobank; BNP Paribas; CIMB Group; Bank Mandiri; Bank Central Asia; Commonwealth Bank of Australia; United Overseas Bank; ANZ; and Malayan Banking<sup>62</sup>.

Chain Reaction also identified the following financial institutions underwriting bond and share issuances to 16 of the biggest palm oil companies:

CIMB Group; Malayan Banking; RHB Banking; Citigroup; JPMorgan Chase; Morgan Stanley; Credit Suisse; Deutsche Bank; DBS; OCBC; HSBC; BNP Paribas; Public Bank; CITIC; Mitsubishi UFJ Financial<sup>62</sup>.

Tuk Indonesia's research on Maybank services to Indonesian palm oil companies<sup>63</sup>.

At the date of Tuk Indonesia's research, Maybank was the world's single largest financier of the palm oil sector providing 11% of all loans and underwriting to selected palm oil companies in the period 2010 - 2016. It had no publicly available risk policy for financing the sector. Maybank has financial relationships with a large number of palm oil companies that are involved in environmental, social and governance issues. These issues leave Maybank likely exposed to significant financial and reputational risk.

Maybank's top 5 palm oil clients active in Indonesia at the time of the research were all involved in conflicts related to deforestation of HCV and HCS areas, the development of peat areas, conflicts with local communities over land grabbing, lack of Free, Prior and Informed consent, and bad labour conditions, including forced labour.

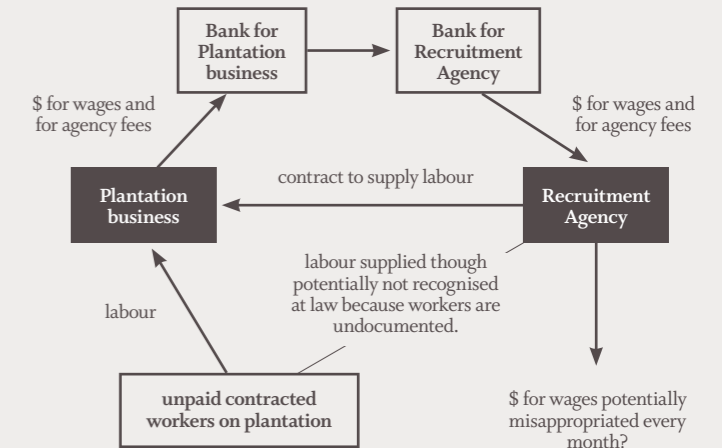
## MONEY LAUNDERING RISK FOR CORRESPONDENT BANKING BETWEEN PLANTATIONS AND RECRUITMENT AGENCIES.

Still within the scope of the first role played by banks to provide financial services, there is clearly risk for banks supporting payments between plantations and recruitment agencies as this is the business relationship allowing forced labour and is the primary concern for civil society.

The system of migrant labour supplied to palm oil plantations should be considered infrastructure<sup>64,65</sup> not simply a network or process. With this in mind, one must visualise a continual and organised movement of people, trafficked, smuggled or 'assisted', across borders, eventually to plantations, by various levels of organize recruitment agents and local people acting in agent type roles. At the plantation, undocumented migrant workers, provide their labour via contract or recruitment agent<sup>66</sup>, unsurprisingly there is no direct contractual arrangement with the plantation business itself and the worker in this regard. This arrangement is deliberate because it removes the liability to pay the workers directly by the plantation, placing the responsibility on the contractor recruitment agency.

This is the very heart of the problem. Workers are not receiving full or partial wage payments. If monies are not reaching the workers but they are being remitted by the plantation to the recruitment agency in good faith then the recruitment agency must be unlawfully retaining these monies, possibly committing fraud in representing that workers have been paid but likely committing criminal acts to retain monies for their own purposes, monies that are due and remain outstanding to workers.

Commercial banks providing regular remittance or payments on behalf plantation businesses to recruitment agencies for contracted labour should seek confirmation from the receiving banks that funds are not being misappropriated. As discussed throughout, unpaid workers under conditions of forced labour on plantations have been documented for many years, this should be considered a suspicious transactional arrangement, and banks should ensure they are remitting funds to a party who have not been maliciously misusing received monies intended for workers. Those monies are owed to the plantation workers and as we explored in our paper on implied contracts of service and legal liabilities for wages the time limitation for



a suit is 30 years in Indonesia<sup>67</sup>.

## LACK OF DISCLOSURE AND TRANSPARENCY OF USE OF RECRUITMENT AGENCIES IN FINANCIAL REPORTS

Currently, there is no requirement for businesses in the palm oil industry to disclose or list the recruitment agencies supplying or managing contracted labour. In Malaysia, for example, there are three employment agency associations - Association of Employment Agencies Malaysia (Papa), the Malaysia National Association of Employment Agencies (Pikap) and the National Association of Human Resources Malaysia (Pusma) - which could be used as a means of confirming suspicions that labour hiring practices were not performed by recognised organisations in a lawful manner.

Furthermore, it would seem a prudent risk management strategy for an industry heavily reliant on manual labour, that operates in an environment where there are millions of undocumented workers being moved and moving via a transnational recruitment infrastructure, to conduct due diligence on all agencies offering contracted migrant labour. In addition, this is a compelling reason to disclose the information so that civil society can assist migrants in trouble.

We propose that it also seems prudent in the interest of improving business and industry confidence to disclose a list of the recruitment agencies used and to disclose the contracts

quist, Biao Xiang and Brenda S. A. Yeoh Pacific Affairs, University of British Columbia. 2012

<sup>65</sup> Infrastructures of Escort: Transnational Migration and Economies of Connection in Indonesia, Johan Lindquist <https://ecommons.cornell.edu/handle/1813/60027>

<sup>66</sup> [http://www.fairlabor.org/sites/default/files/documents/palm\\_oil\\_report\\_flacgf\\_final.pdf](http://www.fairlabor.org/sites/default/files/documents/palm_oil_report_flacgf_final.pdf)

<sup>67</sup> <https://static1.squarespace.com/static/5592c689e4b0978d3a48f7a2/t/5b9a15438985830bc3e5b27d/1536824656319/Position+Paper%231+-+Palm+Oil.pdf>

<sup>68</sup> <https://www.ifrs.org/issued-standards/list-of-standards/ias-41-agriculture/>

<sup>69</sup> <https://www.somo.nl/investment-funds/>

<sup>70</sup> [https://www.ey.com/en\\_gl/financial-services/why-sustainable-investing-matters](https://www.ey.com/en_gl/financial-services/why-sustainable-investing-matters)

<sup>71</sup> <https://www.businessinsider.com/millennials-are-driving-a-huge-shift-in-the-way-we-shop-and-invest-2018-5>

[the-way-we-shop-and-invest-2018-5](https://www.cnb.com/2019/02/13/influx-of-young-investors-can-revitalize-sri.html)

<sup>72</sup> <https://www.cnb.com/2019/02/13/influx-of-young-investors-can-revitalize-sri.html>

<sup>73</sup> <https://www.oxfordscholarship.com/view/10.1093/oso/9780198808022.001.0001/oso-9780198808022>

<sup>74</sup> <https://www.robeco.com/en/>

<sup>75</sup> <https://www.robeco.com/docm/docu-palm-oil-policy.pdf>

<sup>76</sup> [https://www.reuters.com/article/us-hsbc-probe/hsbc-to-pay-1-9-billion-u-s-](https://www.reuters.com/article/us-hsbc-probe/hsbc-to-pay-1-9-billion-u-s-fine-in-money-laundering-case-idUSBRE8BA05M20121211)

[fine-in-money-laundering-case-idUSBRE8BA05M20121211](https://www.unpri.org/Uploads/y/y/p/investorexpectationsstatementonusustainablepalmoil_551518.pdf)

<sup>77</sup> [https://www.unpri.org/Uploads/y/y/p/investorexpectationsstatementonusustainablepalmoil\\_551518.pdf](https://www.unpri.org/Uploads/y/y/p/investorexpectationsstatementonusustainablepalmoil_551518.pdf)

<sup>78</sup> <https://www.unpri.org/news-and-press/fifty-six-investors-sign-statement-on-sustainable-palm-oil/4266.article>

<sup>79</sup> <https://www.thedodo.com/girl-scouts-demand-sustainable-433365522.html>

for labour as material allowing civil society to understand what workers should be paid and whether they are receiving the agreed amounts. This would reduce risk very quickly and is of great relevance to questions of industry sustainability and social responsibility assessments. Financial auditors have pointed out that there is no International Accounting Standard requirement, despite there being IAS 41 specifically on agriculture<sup>68</sup>, to disclose separately contracted labour costs for a plantation aside from as a part of costs of production. It is possible to have some sympathy with the accountants as the workers' undocumented migrant status does make disclosure almost paradoxical, payments to undocumented migrants workers will be unlawful so could not be included in lawful financial reporting.

Many industry stakeholders would be reassured that issues such as forced labour provided by undocumented migrants were not part of the business model because there is disclosure of good practice, disclosure of arrangements with formally recognised recruitment agencies and clear disclosure of payments due or paid to such workers. But reviewing a number of financial reports of major palm oil companies, there is no clear itemization and individual treatment of such contracted labour costs on plantations in the accounts or the notes to the accounts. Banks providing financing or money transfers/payments between plantations and recruitment agencies should be prudent and understand the nature of these relationships.

## INVESTOR PERSPECTIVE

In October 2018, The Centre for Research on Multinational Corporations (SOMO), a Dutch NGO, released a report examining the relationship between Dutch banks' investment products and industrial palm oil<sup>69</sup>. The report revealed that ABN AMRO, ING and Rabobank distributed various investment funds that included shares in certain palm oil companies SOMO had selected and they found that customers were not being informed about the identity of the securities companies in the funds, in part at least SOMO concluded because banks did not know all the issuers in each of the investment funds they distributed.

At this point, I should declare that about ten years ago, I worked for ING's Investment Management business in Asia Pacific, and have worked for other investment businesses too. In some cases, underlying investors may know the individual securities, in other investment products they may not, but they can ask. I enjoyed my nine years at ING and regularly had discussions about counterparties, investment universes, investment restrictions and the nature and scope of clients' and funds' investment objectives. If there was compelling information and data to support the decision to avoid certain investees then it was taken seriously. But information, kind of data and intelligence I can now see at Liberty Shared, was completely unavailable and unobtainable - it simply wasn't being collected on the ground

and most definitely not available at my desk.

It is also important to remember that the investment management business is a third party model in which decisions are made on behalf of the client and in the client's best interest, in accordance with any instructions from the client. Investment managers are appointed by the client and there is a fiduciary duty. If clients are indifferent to saving the environment, preventing social harm such as human trafficking then to exclude deliberately investments which might increase the clients' financial return but achieve morally desirable social aims that the client did not want, would be a breach. Today, one dimensional investment objectives focusing solely on financial returns are increasingly questioned for their myopia and it's exciting to see so many Millennial and Gen Z investors no longer silent but seeking out socially responsible and sustainable investment strategies such as ESG<sup>70</sup>.

What is important now is to provide investors and investment managers with information and data about the damage and the risk arising from industries, such a palm oil, that has previously never been available on their desks. Furthermore, Millennial and Gen Z investors will inform themselves<sup>71</sup>, they will use the internet and they are also not afraid to ask directly. They want to be informed and use their investments to shape a shared future of the planet, not just their own portfolios. After all, they will inherit this planet, whatever its condition. Increasingly, they will instruct their managers to give them products that exclude companies in industries like palm oil, unless those companies and industries prove they are of better quality - Akerlofs 'peaches'. In turn, to meet the increasingly informed objectives of these clients, managers need better risk information on potentially controversial companies, after all to fulfil their fiduciary duty to their clients they cannot be less informed than the client. This is new territory for the investment industry and tests the ability of the investment professional to meet the financial returns but also the clients' desired moral and social impact.

ESG investing is the current preferred investment approach<sup>72</sup> to help clients and managers achieve this dual objective. However, ESG is essentially a screen, which allows the investment managers to achieve some of the issues that SOMO has raised – clients can dictate what companies are in their portfolio using ratings of a company's approach to their employees, the surrounding community and responsibility to society in general. The problem in any investment screening, is very similar to the problems explored earlier in risk management service providers for financial crimes trying to exclude palm oil companies as commercial banking clients.

Screenings are achieved by rating each company against a set of metrics/indicators which comprises of company disclosure, analysis of financial accounts, interviews and performance, open source research and adverse media. As we have discussed

incident reporting in the media and by NGOs is singular and infrequent and disclosure is limited in detail because there are few requirements under accounting rules and while the occasional issue may cause some reputational risk, they rarely translate into financial risk. With poor corporate accountability and weak laws recognizing the problems, there are too few recorded cases, incidents and regulatory attention to communicate the extent of the issues. The fundamental problem is that screenings don't include a structural analysis of the industry's operating environment, such as the transnational recruitment infrastructure as observed between Malaysia and surrounding countries, as well described by Philip Martin, Professor Emeritus, Dept of Agricultural and Resource Economics, University of California Davis, in his book exploring the unskilled undocumented labour supply, *Merchants of Labor: Recruiters and International Labor Migration*<sup>73</sup>.

Dutch investment institution, Robeco<sup>74</sup> examines palm oil companies through an enhanced engagement program based on UN Global Compact principles and conducts a sector screen that benchmarks companies according to their share of RSPO certified land for palm oil cultivation. The screen aggregates information from RSPO and ZSL-SPOTT and is primarily based on two key sources – the Annual Communication on Progress (ACOP), which all RSPO members are required to submit, and the latest available results of the ZSL-SPOT benchmark. The sector screen is complemented with a company-specific assessment of relevant policies, key ESG risk and controversies. For companies directly involved in palm oil production, three main categories based on the percentage of RSPO certified land for palm oil cultivation are used: under 20% (Exclusion); 20%-80% (Enhanced Engagement); and over 80% (SI Engagement)<sup>75</sup>.

Robeco is an example of a highly engaged investment manager, in fact though SOMO is perfectly right to take the Dutch investment management industry to task, it is their role, the overall commitment across Dutch society is of a higher standard than most other industries. Robeco became a member of the RSPO in January 2019, joined the Principles for Responsible Investment (PRI) Invest Working Group on Sustainable Palm Oil as an Advisory Committee member and has contributed to the development of the Zoological Society of London's Sustainability Policy Transparency Toolkit (ZSL-SPOTT) palm oil benchmark as a member of its technical Advisory Group.

But the reality is that “Robeco acknowledges the relevance of palm oil as a commodity in today's economy. Its high yield, low cost and stable supply, makes palm oil a preferred ingredient in food and consumer products. However, as production volumes have surged, so have the environmental and social challenges.”

Casting our minds back to the big money laundering incidents at the end of the 2000s, such as HSBC's organisation-changing USD1.92billion fine by U.S. authorities for allowing itself to be

used for money laundering by clients involved in drug trafficking, the order to HSBC was essentially improve compliance and internal controls that Loretta Lynch, the U.S. Attorney in Brooklyn described at the time, as “woefully inadequate”<sup>76</sup>. These fines quickly motivated the banking industry to invest heavily to improve their internal controls and risk management around money laundering. Turning to the palm oil industry and their management of labour, many, even those who invest and buy palm oil, may also similarly describe the governance and compliance of palm oil companies in relation to environmental and social issues, as “woefully inadequate”. Unfortunately, there are no fines for these failures of governance and internal controls. The burden is currently being placed on improving due diligence conducted by parties in the supply chain rather than the more fundamental systemic change of requiring vastly improved better governance and internal controls in the palm oil companies. It is this latter commitment that will give investors and society greater confidence in palm oil companies and their treatment of workers.

The final paragraphs of this section are given to words in a letter<sup>77</sup> signed and endorsed by 58 investment organisations<sup>78</sup> representing approximately US \$7.9 trillion in assets under management.

“As investment organisations, we have a fiduciary duty to act in the best long-term interests of our beneficiaries and believe that environmental, social and governance (ESG) issues can affect the longterm financial performance of investee companies. We recognise the heightened yield and versatility that palm oil provides relative to its substitutes, as well as the contribution it makes to national development in the countries where it is grown. However, we are also concerned that the environmental and social issues associated with unsustainable palm oil production could have a material impact on companies across the palm oil value chain. It is to this end that we aim to support the continued growth of a sustainable palm oil industry.”

“The risks that companies associated with unsustainable palm oil face differ depending on their position in the value chain. Unsustainable palm oil production is associated with deforestation and land and labour rights issues, which we believe represent significant risks to our investee companies. Companies may be exposed to climate-related risks due to the association between unsustainable palm oil production and deforestation, a significant contributor to greenhouse gas emissions. Deforestation, as well as land and labour rights, can present significant reputational risks to investee companies, which can lead to a loss of their license to operate if not managed properly. Companies involved in unsustainable palm oil can also face market access risks by failing to meet the procurement contracts of their buyers. Finally, companies associated with unsustainable palm oil may face legal and regulatory risks which can manifest themselves through fines and penalties”.

“While there is no strict definition of what constitutes a

sustainable palm oil industry, there are a number of significant industry initiatives that are helping to move the industry in a more sustainable direction. We support the Roundtable on Sustainable Palm Oil's (RSPO) role in promoting a more sustainable palm oil industry, and we encourage investee companies with material exposure to the industry to become members of the RSPO and apply the RSPO's Principles and Criteria. However, as a minimum first step, we expect companies across the palm oil value chain, including producers, refiners, traders, consumer goods manufacturers, retailers and banks, to adopt and implement a publicly available No Deforestation, No Peat and No Exploitation (NDPE) policy. To help companies meet these NDPE commitments and mitigate the risks associated with unsustainable palm oil production, we expect companies to commit to full traceability of palm oil to the plantation level, and regularly report on progress and practices towards these commitments. In particular, we expect companies involved in the production of palm oil to map and disclose their palm oil concession areas."

#### CONCLUSION - DESTINED FOR TROUBLE?

Investment managers seeking to meet investor ESG requirements, banks avoiding financial crimes from their clients, manufacturers under consumer pressure (remember the power of the Girl Scouts petitioning Kellogg<sup>99</sup>), risk and ratings agencies and other service providers all want more information, data and intelligence. They scrape the internet constantly but in truth much of what is happening is not in the open source environment, and besides, as they know well, mitigation of liability is not satisfied by scraping this alone. Millennial and Gen Z ESG investors increasingly want to know the actual damage on the ground caused by a company and industry, not the notional damage derived from a limited data set bounded by a number of underlying assumptions detached from daily victim experiences. They will not live in that notional world, but in the real one. To be fair, this knowledge has been unavailable until very recently and without it stakeholders have had an inaccurate understanding but more importantly few reasons to change their decisions towards industries and companies like those in palm oil.

Criminal groups have found that building infrastructure is the best way to make substantial profit from the transport, placement and integration (similar to the three stages of money laundering) of vulnerable people into the palm oil industry. Civil society is beginning to create an infrastructure of its own in parallel to protect workers and migrant communities and to provide investors, banks, service providers and society with the information, data and intelligence they need but it has been slower than the criminals and a significant amount of investment is still required. However, the potential impact of better management practices and internal controls, communication, technology and knowledge sharing will be to close the information asymmetry and allow better risk assessment, ratings and decisions to the benefit of the protection of vulnerable people and demand robust governance and human resource management to prevent abuse and injury of all workers.





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