

PALM OIL REPORT



SOLIDAR
SUISSE

FIGHTING FOR GLOBAL FAIRNESS

Exploited and Illegalised:

The Lives of Palm Oil Migrant Workers in Sabah



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INTRODUCTION

Palm oil is a successful product that is found in 10 to 20% of our consumer goods, including food, cosmetics or cleaning products. One in six products sold in our supermarkets contains it.¹ Often criticized for its ecological impacts, this commodity is also at the origin of catastrophic working conditions. This is particularly the case in the Malaysian state of Sabah on the eastern side of Borneo where 9% of the palm oil consumed in the world is produced.² Illegal migrants, from Indonesia mostly, make the majority of the labour force for the plantations in the region. An estimated 840,000 migrants work and live there in inhuman conditions.³ Secluded on the plantations because of the risk of arrest, they collect the fruit in harsh and dangerous conditions and for a pay that do not allow them to live decently. They are at the mercy of their employers and risk being deported at any moment. They are trapped in a situation of extreme poverty and exploitation, which includes the fundamental elements of forced labour, as defined and prohibited in international conventions.

The situation of the children of plantation workers is also particularly worrying, as they are severely affected by their parents' economic and social precariousness. They cannot access public schools and many work to help their parents, in violation of international rules that formally and explicitly prohibit child labour. This takes place under the complacent watch of the state, which is pursuing a repressive policy towards migrants and their children, while turning a blind eye to this cheap labour force that is essential to the lucrative palm oil industry.

Solidar Suisse conducted a field survey in two plantations in the state of Sabah.⁴ By interviewing dozens of workers, it was possible to draw up an unprecedented picture of the working conditions prevailing in the field. This investigation was carried out without informing the management, in order to protect workers and avoid

possible pressure on witnesses. The real names of the plantations will not be mentioned in this report for security reasons. They will be called Mojokuto and Suluk. Due to the remoteness of plantations and the social isolation of undocumented migrants, access to reliable information about their situation is extremely difficult. This is reflected for instance in the lack of available data. The choice of the plantations studied could therefore not be made entirely freely, but depended on where contact with the migrant workers could be established and a relationship of trust established.

One third of the palm oil imported into Switzerland comes from Malaysia.⁵ One of its main importers is Nestlé, which uses large quantities of palm oil in the manufacture of its products for both Swiss and foreign markets. Nestlé actively communicates its commitment to the environment and the respect of human rights.⁶ However, Solidar Suisse has uncovered that the company, through its supply chain, is directly and indirectly linked to palm oil produced in Mojokuto and Suluk, and more generally to production throughout the entire Sabah region. This involvement is occurring despite the fact that the company in Vevey is fully aware of the human rights violations in the sector. As a global food and beverage giant, there is an urgent need for Nestlé to take greater social responsibility. It must move from words to effective action: its credibility is at stake.



FOREWORD

Sabah, located in eastern Borneo, has the lion's share of palm oil production among Malaysia's 13 states. This region alone is responsible for more than 9% of the world's supply.⁷ More than 85% of its agricultural land is in palm plantations, which cover 1.5 million hectares.⁸ Concentrated along the east coast of the island, the plantations are often owned by very large industrial groups such as Felda Global Venture, Sime Darby or IOI Group. Although unknown to the general public, these companies supply the world market with palm oil.

Our investigation focuses on two medium sized plantations, each consisting of several estates. A single Mojokuto estate covers 1500 hectares,

the equivalent of 2100 football fields, and employs about 200 workers. Estates of the Suluk plantation cover 4000 hectares each (5600 plots) cultivated by 500 workers.



LIFE AND WORK ON PLANTATIONS: ISOLATION, EXCLUSION AND ILLEGAL STATUS

Migrants exploited since the 1960s

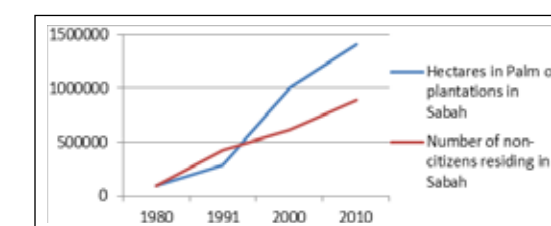
The large-scale production of palm oil dates back to the early 1960s, but has accelerated significantly since the 1990s. Designated by the acronym 3D (for dirty, difficult and dangerous) by the local population, work on plantations is very poorly paid. From the first development of the industry, the local population has been reluctant to work in palm plantations. Thus, starting in the 1960s, migrant workers from Indonesia and the Philippines have been continuously hired to fill the shortage of local workers while the industry continued its rapid expansion. However, in the 1980s, Malaysia started to implement measures design to curtail the employment of migrant workers. The government had to respond to conflicting expectations: limiting migration in an effort to respond to the resentments of the local population while guaranteeing a cheap and sufficient labour force for the owners of palm plantations.

The situation may seem like a conundrum between the labour needs of plantations and Malaysia's restrictive migration policy. The contradiction is however only an appearance as the illegal situation of Indonesian employees is in fact proving to be profitable for the palm oil industry. As the migrants find themselves without rights or protection, they are paid below the local minimum wage and are at the mercy of their employers. The exploitation of these workers is one of the components of success of palm oil, a very labor intense crop, as a cheap and competitive product on the world's markets.

Coming mainly from Indonesia and to a lesser extent from the Philippines, migrants represent a significant part of the local population. Today, out of Sabah's 3.9 million inhabitants, about 1.2 million are estimated to be foreigners, close to a third of the population.⁹ Widely hired in

oil palm plantations, a majority of workers are without work permits. According to the Director of the Sabah Immigration Department, 70% of foreigners are reportedly without work permits,¹⁰ which represents about 840,000 people in an illegal status.

Despite measures taken to discourage the influx of foreign workers, the number of migrants has increased continually. The policy in place creates extremely precarious conditions for migrants. To work legally migrant workers are required to obtain a work permit from the company that employs them and are de facto under the control of their employer. Indeed, changing employer would mean starting the entire process of obtaining a work permit all over again, an endeavor that is expensive and time-consuming. Furthermore it is at the employer's discretion whether to apply for a work permit at all. Plantations often employ workers without valid documents, which limits their mobility and ties them to the plantation.



Changes in the area in palm oil plantations (in hectares) and the migrant population in Sabah

Palm oil plantations cover huge areas. Ripe fruit must be picked and delivered within 24 hours to the mill where the oil must be extracted and processed within another 24 hours. Workers are housed in barracks inside the plantations, which are in turn located most often far from towns, roads and public infrastructure. Being undocumented workers also discourages migrants from

frequenting public places where they face the risk of arrest by police. This isolation is further reinforced by the control and restricted access measures put in place at the entrances of palm oil estates. The only access to the plantations is through monitored gates. As a result, migrants, isolated from the outside world, gather by ethnic origin in improvised villages inside plantations.

Underpaid work...

Work in oil palm plantations is divided into four main activities: harvesting fruit bunches from trees, collecting loose fruit that has fallen to the ground, weeding by hand and chemical spraying, and applying fertilizer.¹¹

In theory, Malaysian labour laws protect workers, which includes provisions on minimum wage, hours of work (8 hours per day), overtime, paid leave and other social benefits. The minimum wage is set, on paper, at CHF 220 (920 MYR)¹² per month for 2018¹³. In reality, such minimum requirements of employment are not met, whether or not workers have legal status. Hired on the basis of temporary contracts, workers are in fact paid according to the quantity of palm harvested. As a result, the effective monthly salary varies greatly from one period of the year to the next, making financial planning and security impossible. „If there are no more tasks available, we stay home,“ explains the worker Erni. In addition, „the director often tells us to work even on Sundays when we want to go to church,“ adds Martin, a Christian Mojokuto worker.

Harvesting is done in groups of 7 to 14 harvesters. In Mojokuto, a ton of fruit is paid CHF 6.6 (27 RM) to the harvesting team, and the sum is then divided up among the team members. A team can harvest between 5 and 12 tons per day - up to 15 in excellent harvests. One month of work allows a worker to earn, depending on the tasks performed, between CHF 87 (364 MYR) and CHF 240 (1003 MYR) in Mojokuto. In Suluk, salaries range from CHF 102 (425 MYR) to CHF 324 (1352 MYR). Therefore, the two plantations do not respect the legal minimum wage law. In fact, salaries would have to be doubled to between CHF 249 and CHF 410 (1040 to 1710 MYR) per month in order for a parent to be able to cover the basic needs of a family of four, according to calculations by the WageIndicator Foundation.¹⁴

...and dangerous

Harvesting activities on the plantations are carried out by hand using rudimentary tools. A pipe, to which a sickle is attached, is used, for example, to drop the fruit from the tree. Up to 15 metres long, it can weigh nearly 10 kg. Physical injuries are frequent. Daggers for loading fruit, machetes can all become extremely dangerous when used improperly. The fall of a fruit bunch weighing anywhere from 10 to 40 kg, can cause fatal injuries. Recently, one of Suluk's workers was seriously injured by a sickle.

Although harvesting fruit bunches and collecting the fruits that fall off are the main causes of physical injury, chemical spraying also has negative health impacts. The Mojokuto and Suluk plantations use toxic herbicides such as Roundup (glyphosate) and Gramoxone (Paraquat). Most workers are not properly trained by their employers and are not aware of the risks of exposure to such chemicals.

The risk of poisoning is further increased by the lack of adequate protective equipment provided by plantation operators. In the two plantations investigated, workers receive neither gloves nor breathing masks. Their noses and mouths are covered by a mere piece of fabric. Such equipment is known to be ineffective in preventing inhalation or direct skin contact when spraying or picking fruit on pesticide-soaked soils. The situation is highly problematic, especially for women who are exposed to chemicals in their pesticide and fertilizer application activities. According to a Suluk foreman, although it is mandatory that all women undergo a medical examination within three months of arrival on plantations, results are not provided to them. „We are only informed if we have dirty blood, but we don't know exactly what it means,“ explains worker Saiful.

Forced labour: workers at the mercy of their employers

The undocumented migrant workers in the two plantations studied are egregiously exploited for their working conditions through their complete

dependence on their employer. Moreover, this situation shows decisive indicators of the most extreme form of exploitation¹⁵: forced labour, as defined by the International Labour Organization (ILO).¹⁶ According to the ILO, „forced labour“ is work performed against one's will and under the threat of any penalty. People are forced to work through violence and intimidation or more subtle means such as debt, the retention of identification documents or the threat of being denounced to immigration authorities. The isolation of workers, their indebtedness during recruitment, threats of loss of employment, the deduction of wages and payments via third parties, the control exercised by employers, the risk of deportation during police raids (see next paragraph): all these elements are occurring in Sabah plantations and are characteristic of a context where forced labour prevails.¹⁷

As mentioned above, 70% of foreign workers have no legal status, which represents about 840,000 people. The strict migration regime in Sabah offers employers great, if not absolute, control over migrant workers. In Mojokuto, it does not appear that employees are formally hired and enrolled. Most of the workers interviewed do not have a working identity card. Recruitment procedures are often carried out informally: management asks an employee with legal status to hire a new employee from his or her acquaintances in Indonesia. The informal hiring of workers is particularly common during the high season, in the autumn, when the need for labour



is higher. Women usually make up a disproportionately large part of these casual jobs and are rarely employed on a permanent basis, although their work (applying fertilizers and pesticides, gathering loose fruit, etc.) extends throughout the year. They are de facto discriminated against because of their gender.

In Suluk, the plantation managers maintain two lists of employees. One contains documented employees and the other contains informal workers. Since they officially don't exist, their wages are paid to formal workers who then pass on part of their wages to informal workers. As a rule, casual workers are paid according to this method, which again disproportionately affects women. This system makes it possible to conceal illegal practices in the event of monitoring visits or an inspection. Both plantations studied intentionally recruit workers without work permits.

Even legal workers are at the mercy of employers and for two reasons. First, the plantation's managers often confiscate passports. Second, there is no guarantee even for legal workers wishing to leave their employer, that a new work permit can be obtained from another employer. Leaving one plantation for another is therefore practically impossible even when working con-

ditions are abusive. As one worker explained: «If I wanted to work for another employer with better working conditions, I would lose my work permit and passport. As I have a wife and children here, I can't leave.»

Police Pressure

Workers without work permits live in fear of police raids on plantations. Following an update of the Immigration Act in the early 2000s, they face up to 5 years in prison and up to six strokes of the cane. In 2002, during a major operation and extensive raids, 60,000 Indonesians were deported to the Indonesian border region of Nunukan. More recently, the „Ops Mega 3.0“ operation was launched by the Malaysian Department of Immigration. From January to August 2018, the Department carried out 1010 raids resulting in the round up and detention of more than 3300 migrants.¹⁸

Migrant workers have strategies to avoid being caught by the police force. The term „betapo“ (to hide) is part of their common vocabulary. Some have their own tents or semi-permanent shelters hidden inside the plantations. When they hear rumors of imminent police operations or just hear the arrival of police personnel, they flee and hide inside plantations or in surrounding forest.

In contrast, while employers hiring workers without work permits are in principle subject to sanctions, in reality plantation owner are not charged by authorities for hiring illegal migrants. This is known to have occurred when one of the largest oil palm companies, Felda Global Ventures, was publicly accused of using forced labour but no legal consequence for the firm.¹⁹ Such cases constitute consistent evidence that political authorities have no willingness to enforce the law for employers.

„I could hear the adults screaming in panic“

In August 2018, a raid took place in Mojokuto. At the entrance to the plantation, some workers were chatting near the security fence on the main road. Suddenly, an unmarked police car entered the compound. Some workers were handcuffed by police officers that rushed out of the car; others fled to hide in the palm trees. Asman, an 11-year-old boy who had just undergone minor surgery the day before, testified for Solidar Suisse about the violence of this experience: „I could hear the adults screaming in panic ‚Run! The police are on their way‘. I ran away, even though I was in pain because of the surgery.“



CHILDREN'S LIVES ON PLANTATIONS

Sabah's oil palm plantations are home to a large number of undocumented children. In the long palm oil production chain, they are the most vulnerable and pay the high price for commercial practices that constantly try to cut costs in order to increase profits. They are illegal residents because of their parents' status and thus have no access to basic services such as public schooling or health care. A significant proportion must also work on the plantations to help support their parents. How many are there? It is impossible to know their exact number for their illegal status excludes them from official statistics. However, several studies have put forward figures ranging from 50,000 to 200,000 children.²⁰ Their migration path is varied. Some arrive at an early age when their parents migrate from Indonesia to Malaysia. Others are born in Malaysia to illegal parents.

A limited legal existence

Children born to undocumented parents cannot acquire Malaysian citizenship and find themselves in an extremely precarious legal situation. The worst situation is reached when children become stateless, which can happen if their parents do not register them with the Indonesian Embassy in Sabah.

In theory, any child born in Malaysia can obtain a birth certificate through the National Registration Department of Malaysia. Although the latter does not guarantee access to citizenship, it at least formalizes their existence in Malaysia. In practice, however, this approach is limited by the illegal status of parents. The issuance of a birth certificate requires that a mother give birth in a public clinic, which means that she must travel outside the plantation. As mentioned above,



migrants are often reluctant to leave the plantations because of the risk of being arrested by the police. In addition, childbirth in clinics is only permitted for women who have undergone periodic pregnancy checks, which many migrant women cannot afford.

Precariousness from birth

Undocumented children live in plantations, in isolated, exclusive and illegal communities as described above for their parents. From birth, their life experiences are an extension of what their parents endured as irregular migrants.

Children hardly ever leave the plantations. „There are only 2 or 3 local children who have already been to the city (of Tawau). Most of them can only go to the nearby township with their parents to buy basic necessities on pay days,” explains Ivo, a teacher at the Community Learning Center (see box on p. 13). A child interviewed testifies that he first went out into the city at the age of 10 for an event organized by the Indonesian Embassy. A 12-year-old girl explains that her father forbids her to play by the river „because I could be arrested by the police“.

Irregular migrant communities provide catastrophic conditions for children to live and grow. Apart from the lack of access to education and health, many cases of smuggling, including of drugs, have been reported in Sabah. In November 2018, for example, the Narcotics Criminal Investigation Department (NCID) seized several dozen kilograms of smuggled methamphetamine. Drug use in the Mojokuto and Suluk plantations is confirmed by the worker interviews on site. Marriages and pregnancies of minors are also to be deplored. In Mojokuto for instance, a 15-year-old teenage couple celebrated a customary marriage. „When the girl, who was pregnant, gave birth, it went wrong and the baby died,” explains teacher Ita.

Child labor

Child labour in oil palm fields is a widespread problem. The phenomenon has been exposed and denounced in several reports²¹, most of which have focused on Indonesia. This report is the first to address the situation of children in Sabah specifically. The existence of child labour is closely linked to the parents' poverty and exploitation, the low family income and the control

exercised by employers. Children are becoming a regular part of the family's income-generation strategies, particularly when piece-rate payment and quotas are used on palm oil plantations.

Interviewees confirmed the presence of child labourers in the Mojokuto plantation. Asman and his sister Jessica (14), help their mother Erni pick fruit that falls from bunches during harvest. Despite their small size and bodies still growing, Asman and Jessica have to carry bags of fruit on their shoulders, each weighing between 15 and 20 kilograms. Asman already knows the technique of carrying heavy bags on his shoulder. „First lift the bag, press it against the side of the palm tree and place it on your shoulder. As for Jessica, she wants to help her mother for a very specific reason: „If I help Mom, she can finish her work sooner. We can go home together,” she explains.

There is no precise estimate of the working age of children. However, „in a place where I was teaching, I found a child as young as 6 years old who had already worked to help his mother,” explains teacher Ivo. Children mainly help their mothers, as women are responsible for the care of children. So when women go to work, they take their children with them.

Children therefore perform tasks similar to those of women, such as spreading fertilizer, spreading chemicals, pulling weeds or harvesting fruit. „It depends on the task given to us,” explains Erni. „One of our students helps her mother fill a plastic bag with fertilizer,” explains teacher Ita. „Sometimes some students ask us for permission not to attend classes when their mothers want help with fruit picking.“

Wages, insufficient to live on and paid according to the quantities harvested, create the conditions leading to child labour. Asman and Jessica, like many other children, do not receive their own salary. Their harvest is combined with that of their parents. „Children are not paid by the employer,” explains teacher Risma, „harvesting more fruit with the help of the children simply increases the family's paycheck.“

Improving the lot of children: Community Learning Center

A crucial factor in preventing child labour is access to schooling. It is the only way for them to access decent job opportunities and a future better than their parents' precarious conditions. But the illegal status of children makes school enrolment particularly problematic. Enrolment rates have even deteriorated. Before 1997, all children, regardless of their nationality, could attend public school in Malaysia. In 1997, a „foreign“ stamp was affixed to the certificates of children without Malaysian nationality and since 2002 public schools have systematically excluded foreigners and undocumented children. Since 2014, the Indonesian government has been investing in ways to provide a minimum education for the children of its citizens working in Malaysia. These basic schools, called Community Learning Centers, have been set up near plantations and enable, as of today, 23,000 children to attend school according to official statements. Nevertheless, this initiative, although a positive one, is far from reaching all children deprived of schooling. In fact, teachers must ask permission from plantation managers in order to open a Community Learning Center. Such requests are not always accepted.



EXPLOITATION IN PALM OIL PLANTATIONS IN MALAYSIA ...

Forced and child labour are not uncommon on Malaysian palm oil plantations. Although industry depends on migrant workers, migration policies are extremely restrictive, leading to the illegalisation and exploitation of adults and their children.



1.2 million Migrant workers live in Sabah, of whom **840 000** are undocumented

Between **50,000 and 200,000** undocumented children



Irregular Migration

70% of the workers are undocumented and cross the border without valid papers.

Exploitation

Migrants are dependent on the plantation operators for their work permit, but also for illegal employment. This is the root cause for forced- and child labour.



working conditions

The hard manual labour on the plantations is dangerous and the wages are low.



Social Isolation

The plantations are widely scattered and are usually difficult to reach. The fear of police checks and detention, as well as the threat of deportation, limit mobility even more.



SUPPLY CHAIN

MALAYSIA



Deforestation to development if a plantation



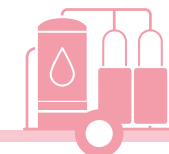
Monoculture plantation



Processing the fruits into palm oil



Transport



Further processing of palm oil



Manufacturing of products from palm oil



Sale of the products by retailers



Consumption

SWITZERLAND

PALM OIL FROM SABAH

A quarter of palm oil production in Malaysia comes from the province of Sabah.



> 9 % of the palm oil produced worldwide comes from Sabah

19 %

of Sabah's GDP is derives from agriculture



1,5 million hectares of palm oil plantations exist in Sabah, these are ...



... **85 % of the agricultural land**

1,2 million

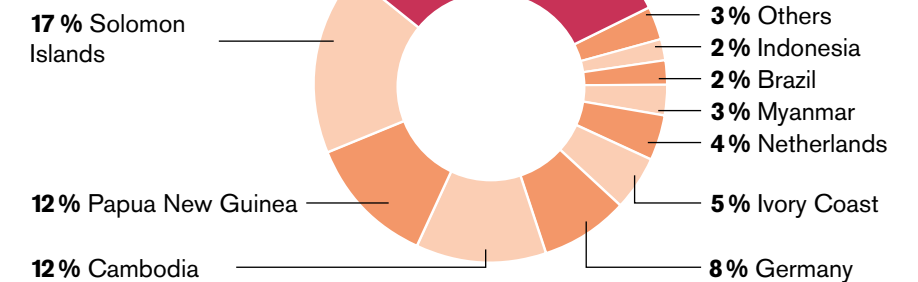
Migrant workers live in Sabah



840,000 of these are undocumented Migrant workers and about 50,000 to 200,000 are undocumented children

... FOR CHEAP PRODUCTS IN SWITZERLAND

Palm oil import into Switzerland



Palm oil consumption in Switzerland

About 10%-20% of supermarket products contain palm oil, this equals about every sixth product.



NESTLÉ

Nr. 1 Global food & Beverage Company with headquarters in Vevey (Switzerland)

91,4 billion Swiss francs turnover in 2018

10,2 billion Swiss francs profit in 2018

2000 brand articles in product range

14 main raw materials, one of them palm oil



What is child labor?

Child labor refers to engagement of children in employment prohibited under International Labour Organization (ILO) Conventions 138 and 182.

- ILO sets the minimum working age for children at 15 for most activities and 18 for hazardous work.
- Young laborers must be protected from conditions that can harm their physical, mental or emotional wellbeing.
- They must not work excessive hours.
- The work does not prevent them from attending school.

ILO Conventions do not ban age-appropriate tasks that pose low risk and do not interfere with the child's development.

What is forced labor?

ILO Convention 29 defines forced work 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.” Indicators of forced labor are often more subtle and can include:

- excessive hours of work or forced overtime
- non-payment of minimum wages
- deductions from wages
- payment of wages delayed or withheld indefinitely
- debt owed to employer or recruiter
- deception about the nature of work or location
- physical or psychological coercion
- abuse of vulnerability
- lack of access to identity or travel paperwork
- dependence on employer or recruiter for housing, food, etc.

A single indicator may not signal forced labor. The presence of several of these and other indicators may point to a serious forced labor issue.

THE LEGACY OF THIS MISERY IN SWITZERLAND

Once the fruit is harvested and processed into palm oil in Malaysian mills, the raw material is exported to the rest of the world. Of the 60 million tons produced annually, 85% comes from Malaysia (19.9 million) and Indonesia (35.7 million).²² The European Union is the second largest importer²³, with 6.9 million tons per year.²⁴

Switzerland imports one third of its palm oil from Malaysia, making it the largest single source of palm oil for Switzerland. The draft free trade agreement between Switzerland and Malaysia, which is currently pending, has been highly controversial, particularly due to customs concessions on palm oil. At the end of October 2018, Switzerland concluded a free trade agreement with Indonesia that included tariff reductions on palm oil. The agreement is also controversial and for the same reasons. Under political pressure from a coalition of Swiss NGOs and the Swiss Farmers' Union, tariff reductions were made conditional on compliance with certain sustainability criteria. However, these requirements are very broad and enforcement mechanisms not comprehensive. For example, the text explicitly excludes, in the case of palm oil, the possibility of using the arbitration procedure created under the agreement. The provision makes it uncertain whether Swiss authorities can indeed ensure that only palm oil produced in a sustainable

manner will benefit from tariff reductions. In the absence of clearly defined sustainability criteria, an effective control mechanism, and sanctions, the Federal Council is once again sacrificing its noble sustainability objectives on the altar of exporters' interests. The same would apply to an agreement with Malaysia.

Swiss consumers have shown a growing sensitivity to the issues surrounding palm oil and Swiss wholesalers and processors have reacted correspondingly, as shown, for example, by the increase in demand for domestic rapeseed oil²⁵. This trend change makes it unlikely for the free trade agreement between Switzerland and Indonesia to contribute to an increase in palm oil consumption in Switzerland. However, it is likely that the distribution of import shares from different producing country will change and that Indonesia's share - unlike Malaysia - will increase, from a mere 2% in recent years.

Furthermore, Switzerland is not only a physical importer of palm oil, but also the headquarters of many internationally active companies. Among the multinationals that make intensive use of this vegetable oil are Nestlé, which purchases and imports palm oil from the company that owns the Suluk plantations and from palm oil mills that source it from the Mojokuto plantation.²⁶





NESTLÉ AND PALM OIL

Nestlé is one of the world's largest palm oil-consuming companies. With a turnover of CHF 91.4 billion and a profit of CHF 10.2 billion, it is the world's leading agri-food company and the 42nd in all sectors²⁷. The Vevey multinational has more than 2000 brands, ranging from local products to „global icons“ such as Nespresso, Maggi or Cailler. Operating in 190 countries, it has 413 plants on 5 continents.

Palm oil is one of Nestlé's 14 main commodities²⁸, which together make up 95% of the raw material use of the company.²⁹ In 2016, Nestlé used 420,000 tons of palm oil in the manufacturing of its products, from frying fats, ready meals, sauces, margarines to confectionery³⁰. The multinational purchases and imports palm oil from several dozen suppliers. These include the giants of commodity trading such as Archer Daniels Midland (ADM) or Bunge, companies specializing in vegetable oils such as Sime Darby, a Singaporean agri-food company, or Wilmar³¹, the world's leading palm oil trader. These companies are responsible for the processing of palm oil from raw material to intermediate forms, which can be used in the last production steps before finished products can be sold to consumers. Many of these companies own or do business with hundreds of palm oil mills. Nestlé is thus linked, via its direct suppliers, to more than 15,000 mills around the world.³²

Through our investigation, we can demonstrate that the Mojokuto plantation delivers its harvest to two palm oil mills, both of which are on Nestlé's 2018 list of palm oil mills. All other mills in the vicinity of Mojokuto are also listed. Mojokuto palm oil ends up in Nestlé's supply chain with almost certainty. The owner of the Suluk plantation also supplies palm oil to Nestlé.

Malaysian palm oil is listed on the List of Goods Produced by Child Labor or Forced Labor published by the United States Department of Labor, which reports high-risk products for child labor and forced labor. Malaysia itself is also on the United States Department of State's Level 2 Watchlist on Trafficking in Human Beings.³³

Corporate social responsibility (CSR) that does not keep its promises

In recent years, following the many scandals that have affected it, Nestlé has adopted a series of commitments and tools in the field of corporate social responsibility (CSR). In the field of labour rights and respect for human rights, the company claims to respect several international conventions and initiatives, such as the UN Global Compact, the fundamental ILO conventions and the guidelines for multinational companies.³⁴

Nestlé's responsible sourcing policy is defined in its Responsible Sourcing Standard³⁵. According to the text, the firm is committed to sourcing its supplies „with care and respect for individuals, communities and the planet.“ Nestlé sees its responsibility as a pyramid-like trickle-down effect, imposing social standards on its direct suppliers. It is the latter who are in turn responsible for ensuring that social and environmental standards are applied to their own suppliers.³⁶

While these commitments on paper are an important first step in corporate social responsibility, they do not in fact guarantee that the company is acting responsibly. According to KnowTheChain, which assesses the practices of large companies in combating forced labour in their production chains, Nestlé scores 58 (out of 100) and ranks fifth behind Unilever, Kellogg, Coca-Cola and Tesco in the list of agri-food



Sustainable palm oil

Biodiversity loss and human rights violations are urgent problems in the palm oil industry. Grown in the tropics, in Malaysia and Indonesia mainly, palm oil leads to large-scale deforestation of tropical forests that are converted to agricultural land. This process leads to what are called „green deserts“, a name reflecting the huge loss of biodiversity involved of which the threat to the iconic orangutan is only the tip of the iceberg. In addition, the destruction of peat lands releases massive amounts of CO₂ into the atmosphere, contributing to the climate change catastrophe.

Deforestation leads to social conflicts as well. In most cases, it is the unrecognized land rights of the local population that are at stake. The land is sold without the consent of the people, who have often lived on and from the land for generations. Once established, palm oil plantations and factories continue to pollute and destroy the livelihoods of local communities through the use of pesticides and inadequate wastewater management. Serious violations of labour rights and a high likelihood of forced labour and child labour further contribute to the grim transformation.

Various labels are trying to guarantee the sustainability of palm oil production and consumption. The most important of these efforts is the Roundtable on Sustainable Palm Oil (RSPO). Yet, 16 years after its creation, it has not succeeded in ensuring environmental or social sustainability in palm oil production: the RSPO label effectively protects neither biodiversity nor human rights. There are many causes to this failures, but they can be divided into two main categories: first, the label's criteria are insufficient; second, their implementation is incomplete due to the lack of effective controls and sanction mechanisms.⁵¹

companies.³⁷ This mediocre score is in line with the results of the Corporate Benchmark study, which compares multinationals as a whole on their commitment to human rights violations. Nestlé obtained a score of 48.4 out of 100, again behind Unilever, Coca-Cola Company and Kellogg's.³⁸ These independent studies highlight the limits of the multinational's commitment to social responsibility.

Amnesty International has documented in 2016 the use of forced labour in oil palm plantations owned by Wilmar, one of Nestlé's major suppliers, in Indonesia³⁹. In April 2019, the New York Times⁴⁰ reported that Syrian workers were being exploited for the hazelnut harvest in Turkey which also produces for Nestlé. Furthermore, the Washington Post reported in June 2019 that industry representatives admit that the 2020 targets for eliminating child labour in the cocoa supply chain will once again be missed by large companies, including Nestlé.⁴¹ It is clear that the good practices put forward by Nestlé are far from being systematically translated into reality.

Analysis of the available documents shows that Nestlé has invested heavily in investigating human rights violations in its supply chains and has developed a roadmap for more responsible procurement in the future. However, the detailed results of the investigations on which these commitments are based and the measures possibly taken in the field - with a few exceptions - remain confidential. Despite a large number of documents available, it is thus impossible to have proof of the actual commitment implemented behind the company's many glossy publications. Nestlé is careful to maintain control over publicly available information on human and labour rights in its supply chain. Nestlé's understanding of transparency is deeply problematic because access to such information is a key aspect of due diligence. Once again, we see this reflected in the palm oil supply chain. While more than half of the supply chain is traceable to the plantation, according to Nestlé,⁴² publically available information only provides the list of direct suppliers and a list of palm oil mills, from which Nestlé



buys palm oil. A list of plantations is missing. Furthermore, the transparency of the palm oil mill list is relativized with its publication: „(...) [The list] should not be taken as fully exhaustive nor fully accurate as supply chain flows evolve on a daily basis.“⁴³ The giant from Vevey also did not respond to multiple requests for the reliability of specific parts of the list.

Nestlé's CSR for palm oil

According to the Nestlé Standard for Responsible Purchasing⁴⁴, the multinational expects suppliers to continuously improve their practices „by respecting and caring for their staff, animals, land, water and forests with which they work“.⁴⁵ This document sets out specific guidelines for farmers, whether they are small family structures or large plantations. It is thus specified:

„During harvest periods, a derogation from the working time limits shall be granted under the following conditions: Overtime is agreed in advance, is scheduled appropriately and is paid in cash (at a higher rate) or compensated by reducing subsequent working time. Working time does not endanger the health and safety of workers“⁴⁶ but also that the employer must: „provide the candidate with a copy of the original employment contract in a language he or she understands.“⁴⁷ Finally, Nestlé asks that suppliers refrain from „requiring workers to provide a „guarantee“ as a condition of access to employment (e.g. workers' passports or identity cards, work permits, bank books, bank cards or other personal documents), as workers are free to leave their employer after reasonable notice.“⁴⁸



However, it must be noted that there is a significant gap between Nestlé's commitments and reality on Malaysia's plantations. Overtime, endangering health, absence of contract, etc. Many of Nestlé's commitments are not being met in the Mojokuto and Suluk plantations. The problems discovered in these two plantations are, moreover, representative of a pervasive throughout the palm oil sector in Sabah.

Tools whose effectiveness has yet to be proven

Nestlé has put in place a mechanism to report potential cases of non-compliance with the Corporate Business Principles. All stakeholders can

thus report practices that violate the company's values. According to information provided by Nestlé, this mechanism was used 57 times in 2018 in the palm oil sector. Twelve cases concern Malaysia and 9% are in the Labor & Human Rights section.⁴⁹ However, there is not sufficient information to assess the number of Labor & Human Rights complaints concerning Malaysia. Neither does Nestlé provide information on the follow-up to complaints received or the decisions taken to remedy them.

While workers exploited in Mojokuto and Suluk could in theory use this system, a number of conditions are not met to make it possible in fact. First, employees must be aware of this

system. Second, they must have language skills and access to the Internet. Finally, they need to know that the fruit they harvest is being sold in the form of palm oil to Nestlé. These practical aspects make it highly unlikely that workers in Mojokuto and Suluk would ever be able to use the mechanism put in place by Nestlé.

Does Nestlé recognize the limitations of this system? It seems so since the company is in the process of setting up a second system in the form of a helpline specifically dedicated to workers in oil palm plantations in Malaysia. The helpline will allow workers to report human and labour rights violations. Developed in partnership with Sime Darby Plantation, one of the largest palm oil companies, it offers different channels (SMS, Facebook, telephone) to workers to communicate their grievances. This project is in a pilot stage and Nestlé does not currently provide information publicly on its performance or impacts.⁵⁰



What steps does Solidar Suisse take in Sabah and Switzerland?

In 2018/2019, Solidar Suisse started to support various Community Learning Centers (CLCs) in Sabah's palm oil growing areas while working on this study. Some of these CLCs are located outside the plantations and therefore receive no financial support from the operators. This means that the teachers have to take care of the financing themselves. Accordingly, there is hardly any equipment and learning material for the schools. Solidar Suisse has made it possible to equip the pupils with school bags, exercise books, pens and pencils. In some cases, funding for tools and renovation materials was provided so that the teachers could renovate the school buildings themselves. In one case, electricity was provided. It was particularly positive that these investments increased the willingness of parents to contribute to the operation of the CLCs. The motivation of the teachers also improved. Solidar Suisse wants to further expand support for the CLCs from 2020 on.

In Switzerland, Solidar Suisse, together with the WWF, has participated in an intensive exchange with major retailers since 2017 in order to make the procurement of palm oil for the Swiss market more sustainable. Our goal is to work with the industry to develop a nationwide approach that would go beyond the current requirements of the RSPO label in terms of both environmental protection requirements and compliance with workers' rights, especially with regard to monitoring implementation.

RECOMMENDATIONS FOR NESTLÉ

The palm oil industry benefits from a raw material that is far too cheap, because the world market price does not reflect the full costs for people and the environment. And it is the blatant and systematic exploitation of migrants and their children on plantations that is the decisive reason of the low cost of the labour intense raw material palm oil. Child labour and forced labour are intolerable and rank among the most serious human rights violations in supply chains under international law. Clear action and effective measures are needed to put a definitive end to their occurrence. Nestlé itself explicitly states this objective. Unfortunately, the reality is very different, as the examples of Mojokuto and Suluk show. As the world's largest agri-food company, Nestlé must make significant efforts and use its position to influence its trading partners and the authorities in Sabah province in order to eliminate child and forced labour from its trading relationships.

Forced labour

The root causes of forced labour are poverty, discrimination (denial of fundamental human rights and access to justice), precarious work and limited mobility of workers. To limit the occurrence of forced labour in Sabah plantations, Solidar Suisse recommends the following measures:

- Establishing permanent hiring of migrant workers and payment of living wage.
- Documentation of all employees: Legalization of all migrant workers through their proper registration by the plantation owners and the request to Sabah authorities to simplify the legal recruitment and formal hiring of migrant workers.
- Supporting for the democratic representation of workers so that they can assert their rights.

Child labour

Poverty is the most important factor underpinning the need for children to work. In poor households, the income a working child can be vital to the family's survival. Availability and quality of school education is one of the crucial factors in ensuring that children do not work. To reduce the occurrence of child labour, Solidar Suisse recommends the following measures:

- Improving the economic situation of parents so that children do not have to help as auxiliary workers. For this, a permanent commitment and the payment of a living wage.
- Improving children's access to education by strengthening and supporting Community Learning Centers. This entails funding and promoting the centers through the provision of infrastructure, materials, transport and teacher training.
- Legalizing of the parents' status so that children do not suffer the consequences of the illegal situation they inherit.

RECOMMENDATIONS TO THE GOVERNMENT OF SABAH

Although the palm oil industry depends on migrant workers, this need is not reflected in the migration regime of Sabah, which promotes illegal migration, the root cause of widespread forced and child labour in Sabah. Solidar Suisse therefore recommends:

- A reform of the current migration regime to facilitate the regular migration of labour and to eliminate all forms of discrimination against migrant workers and their families in accordance with international human rights law as set out in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 2003.

- Ensuring decent working conditions and the well-being of workers, as described in the International Declaration of Human Rights and Core Labour Standards of the International Labour Organization (ILO) and in all relevant ILO conventions and recommendations.
- Facilitating access to public education for all migrant children, documented in accordance with the human right to education enshrined in the Universal Declaration of Human Rights Article 26 and the International Covenant on Economic, Social and Cultural Rights (Articles 13 and 14).



CONCLUSION

The condition of migrant workers and their children on the palm oil plantations in Sabah is marked by social exclusion and illegality, which is perpetuated over generations. This illegal and precarious status leads to a complete dependence on the employers, who thereby gain enormous control over migrant workers. This situation is the breeding ground for the widespread forced labor and child labour in Sabah.

Employers - and ultimately sourcing companies such as Nestlé - are actively exploiting this situation of dependence and precariousness. Primarily they do so to keep wage levels as low as possible and, to ensure that their access to enough cheap labour now and in the future. They are therefore complicit in maintaining or perhaps even promoting the occurrence of forced labour, as well as child labour.

At the same time, the irregularity in the industry helps overcome the shortage of labour and rely on a cheap labour supply. Undocumented migrants on the plantations are the norm rather than the exception and despite the obvious discrepancy between the number of admitted migrant workers and the workers actually needed, the authorities focus their deportation

policy on the migrant workers and not the employers. This focus reveals that the situation is accepted by both plantation owners and policy, probably even wanted. The migration regime helps plantation owners secure low cost labor and increase profits.

Those who purchase palm oil from Sabah should know that find both forced and child labour in the supply chain is inevitable. Therefore, they are responsible for taking the specific measures to alleviate this situation. It is not enough to formulate claims and rules and to carry out standardized controls on a fragmented basis. A more thorough and genuine commitment is needed which is entails complete transparency. The commitment should also encompass selection of suppliers, who also commit themselves to improving the situation. The measures for improvement need to be clearly stated and financial incentives or appropriate contribution to additional costs is an essential part to play for the purchasing company. Last but not least, the formulation of procurement claims must be clearly made not only by suppliers but also by the appropriate authorities in Sabah, with the aim of changing the migration regime in the long term.

SOURCES

1 https://sehen-und-handeln.ch/content/uploads/2017/08/Bfa_Factsheets-Palm%C3%B6l_8-17_D_Verbrauch.pdf.
2 <http://bepi.mpob.gov.my/index.php/en/statistics/production/186-production-2018/850-production-of-crude-oil-palm-2018.html>.
3 <https://www.freemalaysiatoday.com/category/nation/2018/09/30/every-third-person-in-sabah-is-a-foreigner>.
4 Field research in January, July and December 2018.
5 Swiss import statistics, average of the last three years: <https://www.gate.ezv.admin.ch/swissimpex/public/bereiche/waren/query.xhtml>.
6 <https://www.nestle.com/csv>.
7 <http://bepi.mpob.gov.my/index.php/en/statistics/production/186-production-2018/850-production-of-crude-oil-palm-2018.html>.
8 https://ethz.ch/content/dam/ethz/special-interest/usys/ias/enhancing-resilience-dam/documents/TFT_palm_oil_report_a.pdf; MPOB http://bepi.mpob.gov.my/images/area/2018/Area_summary.pdf.
9 www.freemalaysiatoday.com/category/nation/2018/09/30/every-third-person-in-sabah-is-a-foreigner/ There are no reliable statistics on illegal labor in Malaysia: «While foreign labor management is a top policy priority in Malaysia, the number of foreign workers in the country is a perennial mystery.» cf. ISEAS, Lee Hwok-Aun and Khor Yu Leng, «Counting Migrant Workers in Malaysia: A needlessly Persisting Conundrum», 2018, p. 1.

10 www.freemalaysiatoday.com/category/nation/2018/09/30/every-third-person-in-sabah-is-a-foreigner.
11 In addition, work in oil palm nurseries – mainly carried out by women – and maintenance work.
12 Exchange rate for Ringgit (MYR) – Swiss Franc (CHF)=0,24.
13 <https://www.theborneopost.com/2019/01/02/rm1100-minimum-monthly-wage-comes-into-effect>.
14 <https://wageindicator.org/salary/living-wage/malaysia-living-wage-series-january-2018>. The range (CHF 249 to CHF 410) is due to the fact that there are different assumptions for defining the basket of goods and services on which to base the calculation of subsistence income (transport, housing costs, etc.)
15 https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm.
16 Convention n°29 on forced labor, 1930 and Protocol of 2014 on the forced labour Convention, 1930.
17 https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm.
18 <http://www.theborneopost.com/2018/06/02/ops-mega-3-0-to-flush-out-illegal-immigrants-will-commence-on-july-1/>; <http://www.dailyexpress.com.my/news.cfm?NewsID=127532>.
19 <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>.
20 <http://www.dailyexpress.com.my/news.cfm?NewsID=118979>.
21 Amnesty 2016: the great palm oil scandal, Fair Labor Association 2018: Assessing forced labor risks in the palm oil sector in Indonesia and Malaysia, UNICEF 2015: Mapping alternative learning approaches, programmes and stakeholders in Malaysia)
22 <http://www.palmoilanalytics.com/files/epos-final-59.pdf>.
23 India is the first importing country.
24 United States Department of Agriculture July 2019,<https://apps.fas.usda.gov/psdonline/circulars/oilseeds.pdf>.
25 <http://www.sgpv.ch/rapsanbau-erreicht-neue-hoechstwerte>.
26 <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/list-mills-february-2018.pdf>.
27 Forbes, <https://www.forbes.com/global2000>.
28 <https://www.nestle.com/csv/raw-materials>.
29 <https://www.nestle.com/media/pressreleases/allpressreleases/nestle-full-supply-chain-transparency>.
30 Nestlé Switzerland represents only 8,400 tons of these total needs.
31 <https://www.nestle.com/asset-library/documents/creating-shared-value/raw-materials/supply-chain-disclosure-palm-oil.pdf>.
32 373 pages with 15'000 mills <https://www.nestle.com/asset-library/documents/creating-shared-value/raw-materials/supply-chain-disclosure-palm-oil.pdf>.
33 <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.
34 These commitments are explained in "Nestlé's Corporate Business Principles". UN Global Compact. ILO Conventions 87, 138, 182. UN Convention of the Rights of the Child: Article 32. OECD Guidelines for Multinational Enterprises 2000. ILO Declaration on Multinational Enterprises 2006.
35 <https://www.nestle.com/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf> Other documents specifying the multinational's environmental and human rights commitments also define the terms and conditions of its procurement, including: <https://www.nestle.com/csv/impact> et <https://www.nestle.com/asset-library/documents/creating-shared-value/nestle-policy-commitments.pdf>.
36 «It is the responsibility of sub tier suppliers to disseminate, educate and exercise due diligence in implementing requirements equivalent or similar to the Standard».
37 <https://knowthefchain.org/resources/companies>.
38 <https://www.corporatebenchmark.org/agricultural-products-0>.
39 <https://www.amnesty.org/download/Documents/ASA2151842016ENGLISH.PDF>.
40 <https://www.nytimes.com/2019/04/29/business/syrian-refugees-turkey-hazelnut-farms.html>.
41 <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/?noredirect=on>.
42 Nestlé's website says its supply chain contains approximately 54 per cent traceable palm oil: <https://www.nestle.com/csv/raw-materials/palm-oil>.
43 <https://www.nestle.com/csv/raw-materials/palm-oil>.
44 <https://www.nestle.com/asset-library/documents/library/documents/suppliers/nestle-responsible-sourcing-standard-english.pdf>.
45 Ibid. p.4.
46 4.2.4 p. 17.
47 2.2.1 p. 7.
48 2.2.3 p. 8.
49 <https://www.nestle.com/csv/raw-materials/palm-oil/palm-oil-transparency-dashboard>.
50 <https://www.nestle.com/csv/impact/rural-livelihoods/responsible-sourcing#abuse-helpline> Nestlé has also developed another action plan against labour rights violations in the palm oil supply chain. It responds to Amnesty International's 2016 criticism that demonstrated the existence of child labour and forced labour in Indonesia. However, this action plan seems to concern only Indonesia. <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/palm-oil-action-plan-2018.pdf>.
51 In 2018, the criteria were revised and strengthened in several respects. However, the control and sanction mechanisms remain the same.



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