

Terms of Reference

Creation of the RSPO Labour Rights Task Force (*Labour TF*)

Background and rationale

Indonesia and Malaysia remain the leading producers of palm oil, capturing 85% of the global market, however, African and Latin American countries are emerging as important palm oil producers as well. World Bank [estimates](#) that by 2050 the demand for palm oil will double with the increased consumption of processed foods in emerging economies. This has translated to increased consumer vigilance and stakeholder action against what are deemed as unsustainable and unethical practices related to the production and trade of palm oil.

While corporations, governments, and investment boards have publicly recognized palm oil's environmental impacts, labour issues and their social impacts have been less recognized, until more recently. Various NGO and media reports have been highlighting troubling working conditions in palm plantations: excessive working hours, occupational safety and health hazards, and more seriously, child labour, forced labour and the trafficking of migrant workers. Irregular migration to some palm oil producing countries, as well as unethical and deceptive recruitment of migrant workers, have also been flagged as commonplace, exacerbating the vulnerability of labour migrants. The geographic remoteness of palm plantations further heightens workers' vulnerability. Palm oil (in Indonesia and Malaysia, as well as in Latin America and Africa) continues to be featured, not only in [NGO reports](#) or media articles (*See Annex B for links to relevant media reports*), but also in [government reports](#), as being produced with attendant labour risks, and RSPO has been cited for not having robust enough systems to screen out these issues from certified plantations. **There is a need to actively address these concerns, ensure that workers in plantations are protected, and RSPO members are supported in finding lasting solutions, to avoid being subject to possible investment or trade sanctions, or to further stakeholder action which can have reputational and economic repercussions.**

Current Challenges

1. Need to strengthen capacity of and institutional support/commitment to RSPO members to implement labor standards

While there are now stronger standards on labour in the current RSPO Principles and Criteria (P&C) which came into force in 2013, the effort to educate and raise the awareness of RSPO members on labour risks/issues and compliance measures have been largely left to the members themselves, the NGOs working within or outside the RSPO, and the certifying bodies (CBs) that have been using insufficient methodologies and approaches to assess growers and millers against these standards. Moreover, labour issues continue to be reported, grower companies continue to face implementation challenges, while brands sourcing from RSPO members are criticized, and certification bodies have been recent subjects of exposé and investigative reports revealing weaknesses in the system.

An assessment of the social aspect of the RSPO certification audit process, conducted by Verite and Oxfam in 2014, found that both auditors and auditees have a deep knowledge gap on the nature and complexity of labour issues, and the standards that are meant to address these issues. This gap results in the inability of members to properly implement policies and comply with standards, and in the inability of CBs/assessor to accurately recognize noncompliant practices, gaps, and risks when they are present in plantations and in supply chains.

In terms of issues concerning migrant workers, for instance, there is a failure to recognize that labour issues are dynamic, borders are porous, and that the nexus between refugee/irregular and trafficked workers make forced labour and child labour indicators “invisible”. **This is why even experienced auditors need re-skilling or re-training in auditing to improve ability to identify critical social issues.**

2. Need to respond to recent key legislations on modern slavery, which expose the limitations of the RSPO standards on forced and trafficked labor

There are two key legislations that came out in 2015 that present an urgent imperative to RSPO members to examine their labour supply chains:

- The **US Federal Acquisition Regulation** that took effect on 2 March 2015, with the objective to strengthen protections against trafficking in persons in Federal contracts. Essentially, it holds companies who sell goods and services to the US federal government directly accountable for the conduct of their subcontractors, suppliers and agents.ⁱ
- The other piece of legislation is the **UK Modern Slavery Act. Section 54 of the Law on Transparency in Supply Chains** which requires commercial organizations operating in the UK to prepare a slavery and human trafficking statement for each financial year, and it is a statement on the steps the company has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business, or that it has taken no such steps.ⁱⁱ

These legislations on forced labour and trafficking demand more than what the current RSPO P&C require, such that mere compliance with the P&C may be ineffectual to members who have to comply with the above. **There is a need for the labour standards in the P&C, and the protocols and methods by which these are screened, to be responsive to these legal requirements.**

3. Labor standards in the Free and Fair Labor Principles (adopted by POIG) and the RSPO NEXT provide higher benchmarks and P&C labor standards and assessments need to be strengthened to encourage sustained compliance and competitiveness

The Free and Fair Labor Principles (FFLP) and the RSPO Next set up much higher expectations than the current RSPO P&C labor standards. Much of these guidelines are based on the UN Guiding Principles on Human Rights and Business. There is a need to ensure that compliance to the P&C puts members in a position to readily comply with higher requirements. **There is a need for the RSPO system to make the current P&C standards more robust, in terms of content, and in terms of implementation and monitoring.** Guidelines may be developed to ensure that the P&C standards remain achievable for majority of the members, while remaining aligned with higher international labor standards.

Objective and Tasks of the Labor Task Force:

The overall objectives of the Labour Task Force (LTF) are to strengthen RSPO’s labour protection standards and processes, improve level of standards implementation and compliance among members, through a comprehensive program that addresses the current gaps in the existing systems, and the implementation challenges faced by the different stakeholders. The Task Force members shall oversee activities, closely monitor progress, and make joint decisions on matters pertaining to the objectives of the Labour Task Force. These are envisioned to be achieved through the following tasks:

1. Identification of common/recurring/urgent labor non compliances or issues

- Where necessary, flag issues, receive complaints and provide guidance on proper avenue for filing, participate in/observe data gathering activities
 - Provide input to the Assurance Task Force on matters concerning labour
2. Assessment of growers' and millers', and smallholders', current level of compliance to labour standards, or effectiveness of implementation, with a view to:
- Determine priority implementation challenges and gaps
 - provide input to the P&C Review process
 - Develop tools, materials that growers/millers, workers and other stakeholders, can use to improve working conditions and compliance to labour P&Cs
 - Provide input to the training/capacity building of growers/millers
3. Develop a labour-focused guidance document for reference in the upcoming P&C Review Process.
- Assess/review existing P&C, indicators, and guidance on labour to determine whether or not these result to decent working conditions; and have been responsive to the needs of companies and their shareholders and consumers; and to ensure alignment with recent legislation;
 - Formulate recommendations to guide the review process of the labor aspect of the P&C (including suggesting new or modified indicators and guidance).
4. Develop capacity-building program
- 4.1 Develop a labor implementation toolkit - guidance document, practical tools, learning materials, templates, benchmarks - referencing the results of the P& C Review, assessment (above stated) and existing RSPO Next, Free and Fair Labor Principles, national interpretation documents, and relevant field data from growers, NGOs, trade unions, CBs, retailers and other stakeholder groups
- Provide input on the required policy/legislative changes in terms of labor protection;
 - Formulate specific recommendations to RSPO on:
 - Options for representation of workers, and their inclusion in decision-making processes (including access to grievance mechanisms)
 - Options for addressing women's concerns
 - Alternative livelihoods, financial literacy, and other options for economic growth
 - Identify the expertise/resources needed to produce the toolkit¹
- 4.2 Develop a comprehensive learning agenda and relevant training courses
- Review and propose revisions to the existing training curriculum used by training providers to ensure common understanding and interpretation of the standards;

¹ For deliberation: Will it cover ALL the P&Cs or just address the gaps in the P&Cs? Will it address the other requirements – US FAR, UK MSA, etc

- Develop training modules, tools to facilitate better implementation of labor standards;
- Develop and conduct training courses; or identify appropriate training providers (i.e., UNACT, ILO, The Fair Hiring Initiative, etc.) and adopt/endorse existing training courses on understanding and addressing labor risks for
 - Auditors and CB accreditors
 - Growers and millers
 - Smallholders and medium landholders
 - Brands and consumer groups
 - Workers, Advocates, NGOS, and other civil society groups

4.3 Review and propose revisions to the existing criteria/qualifications of accredited *labour* auditors; and to current assessment/ certification methodology so that labor contractors are included within the scope, and interviews are conducted with all categories of workers employed on plantations, especially vulnerable workers (i.e. temporary migrant laborers, workers who have lost their land to palm companies, casual workers, contract workers, and “unofficial” workers, refugees/international migrants, etc.) through a sampling method.

5. Develop, within the RSPO Complaints Mechanism, and Dispute Settlement Facility, standard procedures for investigation and response (including complaints of labor violations lodged by external parties), guaranteeing safety and protection of workers, providing for anonymity and privacy, and ensuring non-reprisal.
6. Formulate recommendations to the BoG for more long-term enhanced RSPO structures, a strong and coherent monitoring system and oversight of labor-related concerns and developments.

Composition of the Task Force

The Labour Task Force (LTF) shall comprise individuals with demonstrated expertise in labour rights standards and labour compliance programs, and in addressing implementation challenges. Knowledge of the working conditions and the various recruitment and hiring systems used in the sector, is particularly important.

The LTF shall aim for a balanced representation of stakeholder groups, as much as possible. The LTF shall be led by labour rights standards experts, and may include representatives from external labour-focused organizations from various palm oil producing countries; representatives of the relevant RSPO stakeholder groups; and a representative of the RSPO Secretariat.

The LTF will endeavour to gain input from Southeast Asia, Latin America, and Africa experts, ensuring inclusivity and aiming to address a wide range of issues. The LTF will consult resource persons and seek the expert view of various groups working within and outside the RSPO system, which shall comprise the **Reference Panel**: i.e., the ILO (on global labor standards), UNACT (on labor trafficking),

The Fair Hiring Initiative (on ethical recruitment), ASI (on certification and audit protocols), and other independent organizations with the required subject matter expertise.²

The LTF can appoint consultants or service providers, as necessary. Decisions will be made by consensus, which is defined as an absence of a sustained objection. If consensus is not reached then the LTF will report the background of the issue to the BoG who will render a final decision.

The above-mentioned Reference Panel shall also be sought for advice as and when necessary. The Reference Panel shall be invited to sit in some meetings and to provide input on the ongoing work of the LTF. Whilst the panel may advise the LTF, decisions will be made by the Task Force members.

Planning and Budget

The TF will carry out the work in the period of two years. Below is an initial timetable

	TASKS	Proposed Budget
Year 1		
1 st – 2 nd Quarter	<ul style="list-style-type: none"> Assessment of growers' and millers', and smallholders' current level of compliance to Labor Standards, with a view to determining priority labor issues; Development of labor standards and protocols guidance document, with recommendations to guide the review process of the labor aspect of the P&C <i>(Completion of the draft guidance document will be targeted for March 2017, in time for the start of the P&C Review Process)</i> 	
3 rd –quarter	<ul style="list-style-type: none"> Development and adoption of the labor implementation guidance document, referencing the P&C, RSPO Next, Fair Labor Principles, POIG, national interpretation documents, and relevant field data from growers, NGOs, trade unions, CBs, retailers and other stakeholder groups; 	<ul style="list-style-type: none">

² The list of persons/organisations invited to constitute the LTF is provided in **Annex C**. Most of these nominated organizations and individuals have already been heavily involved or have proven expertise in labour in the palm oil sector, or in supply chain management.

	<ul style="list-style-type: none"> • Review and formulation of recommendations to the following: <ul style="list-style-type: none"> ○ existing training curriculum used by training providers to ensure common understanding and interpretation of the standards; ○ existing criteria/qualifications of accredited labor auditors; ○ current assessment/ certification methodology so that labor contractors are included within the scope, and interviews are conducted with all categories of workers employed on plantations, especially vulnerable workers (i.e. temporary migrant laborers, workers who have lost their land to palm companies, casual workers, contract workers, and “unofficial” workers, refugees/international migrants, etc.) through a sampling method. 	
4 th quarter	<ul style="list-style-type: none"> • Roll out initial round of training courses and capacity-building activities; adopt/endorse existing training courses on understanding and addressing labor risks 	<ul style="list-style-type: none"> •
Year 2		
1 st -2 nd Quarter	<ul style="list-style-type: none"> • Conduct of training courses and capacity-building activities; 	
3 rd Quarter	<ul style="list-style-type: none"> • Develop, within the RSPO Complaints Mechanism, and Dispute Settlement Facility, standard procedures for investigation and response (including complaints of labor violations lodged by external parties), guaranteeing safety and protection of workers, providing for anonymity and privacy, and ensuring non-reprisal. 	
4 th Quarter	<ul style="list-style-type: none"> • Formulate recommendations on: 	

	<ul style="list-style-type: none">○ Options for representation of workers, and their inclusion in decision-making processes○ Alternative livelihoods, financial literacy, and other options for economic growth● Formulate recommendations to the BoG for more long-term enhanced RSPO structures, a strong and coherent monitoring system and oversight of labor-related concerns and developments.	
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The Task Force will submit a detailed work plan and corresponding budget proposal to the CEO and BoG. The Task Force will need dedicated RSPO Secretariat support for the work.

Annex A – Risks and Non-conformances to the RSPO P&C Standards

South America

- Verité's research in *Guatemala*³ in 2013 identified violations pertaining to wages, benefits, harassment and abuse, and health and safety issues in plantations.
- Migrant workers, mostly from the Department of Alta Verapaz, and other areas of *Guatemala, Belize, El Salvador, Honduras, and Nicaragua* were found to be particularly vulnerable to exploitation. Most were recruited by labor contractors, who reportedly deceived workers about their work conditions, charged recruitment fees, and deducted up to 20 per cent (20%) of their earnings. Many of the interviewed workers were hired on a temporary basis, which made them ineligible for benefits.
- In a forthcoming report analyzing labor and human rights risks in the *Ecuador*⁴ palm oil industry (April 2016), workers interviewed by Verité experienced or were at risk of debt bondage, illegal deductions for food and accommodation, inhumane living conditions, and excessive working hours for little to no pay.
- A disproportionately high number of Colombian refugees are subject to forced labor indicators included the threat of exclusion from future employment, constant surveillance by heavily armed security guards, non-payment of wages, violence, and the threat of deportation.

Sub-Saharan Africa

- In Cameroon, workers hired by subcontractors⁵ – a category of workers found to be highly vulnerable to labor exploitation – worked long hours for low wages and lived in abysmal housing, leading to strikes and protests.⁶ One report found that among 4,000 workers on the Kieke Socoplam plantation in Cameroon, only 350 were employed by the plantation, with the remainder employed by subcontractors.⁷

Southeast Asia

- Recent investigative research report from Amnesty International on Indonesian plantations highlight issues on wages and benefits, work hours, risk indicators of forced labor and child labor⁸
- Various reports on Malaysia have focused on issues concerning migrant workers from Indonesia, the Philippines, Bangladesh and other countries: deceptive recruitment,

³ Currently, there are five (5) RSPO members in Guatemala.

⁴ There are eight (8) RSPO members in Ecuador.

⁵ Hoyle, David and Patrice Levang. *Oil Palm Development in Cameroon*. World Wildlife Fund. 2012. http://awsassets.panda.org/downloads/palmoildevelopmentcameroon_english.pdf.

⁶ Pigeaud, Fanny. "Les Camerounais exploités des palmeraies de Bolloré." *Libération*. March 11, 2008. <http://www.liberation.fr/economie/010176109-les-camerounais-exploites-despalmeraies-de-bollore>. As cited in Carrere, Ricardo. *Oil Palm in Africa: Past, present, and future scenarios*. World Rainforest Movement. 2013. http://wrm.org.uy/wp-content/uploads/2014/08/Oil_Palm_in_Africa_2013.pdf.

⁷ Roux, Adrian. *The Losers of the Game*. <http://www.modop.org/uploads/File/Adrien%20Roux.pdf>.

⁸ <https://www.amnesty.org/en/latest/news/2016/11/palm-oil-global-brands-profitting-from-child-and-forced-labour/>

overcharging of fees, withholding of passports, taking advantage of workers' undocumented or irregular status.⁹

- In Thailand, wherein palm oil production has been accelerating in recent years, a [study](#) by Jonas Dallinger, pointed to the following labor issues:
 - Harvesting teams are generally organized by middlemen or ramps
 - Contracts for laborers on smallholders' farmers are almost non-existent
 - In many cases, laborers are migrants from poorer parts of Thailand or from neighboring countries like Myanmar and Cambodia. Information on labor rights is rare among smallholdersⁱⁱⁱ

Annex B: List of relevant media reports

1. <http://www.bloomberg.com/news/articles/2013-07-18/indonesias-palm-oil-industry-rife-with-human-rights-abuses>
2. <http://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>
3. <http://www.theatlantic.com/international/archive/2013/04/palm-oil-for-the-west-exploitation-for-young-workers-in-malaysia/274769/>
4. <http://www.theguardian.com/environment/2013/nov/06/palm-oil-companies-ethical-report>

Annex C. - Proposed composition of the Labor Taskforce

Current HRWG-Labour Sub Group Lead	Daryll Delgado (BoG Alternate Member/Verite Southeast Asia)
Growers/Millers	Musim Mas FGV *Thai producer/smallholders group Oleana
Processors/Traders	Cargill Wilmar
Consumer Goods Manufacturers	Unilever P&G CGF representative
Retailers	M&S Mars
Banks/Investors	Rabo Bank HSBC
Social NGOs	Oxfam - Indonesia SEPA – Malaysia Verite – Latin America Sawit Watch OPPUK - Indonesia
Reference Group	ASI Other accreditation/certification schemes

⁹ <https://humanityunited.org/labor-exploitation-and-human-rights-abuses-within-the-palm-oil-sector/>

	Academic and investigative researchers ILO Certification Body UNDP
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Annex D. ILO Indicators on Forced Labor

Involuntariness indicators:

- Tradition, birth/ descent into slave or bonded status
- Coercive recruitment (abduction, confinement)
- Sale of the worker
- Recruitment linked to debt
- Deception about the nature of the work
- Forced overtime
- Forced to work on call (day and night)
- Limited freedom of movement and communication
- Degrading living conditions
- No freedom to resign in accordance with legal requirements
- Forced to work for indeterminate period in order to pay off outstanding debt or wage advance
- Forced to stay longer while waiting for wages due

- Reduced freedom to terminate labor contract after training paid by employer
- Deceptive recruitment
- Deceptive recruitment through promise of marriage
- Forced engagement in illicit activities
- Induced addiction to illegal substances
- Induced or inflated indebtedness (by falsification of accounts, inflated prices for goods/ services purchased, reduced value of goods/ services produced, etc)
- Multiple dependency on employer
- Pre-existence of a dependency relationship with employer
- Being under the influence of employer or people related to employer for non-work life

Indicators of menace of penalty:

- Denunciation to Authorities
- Confiscation of Identity Papers or Travel Documents
- Sexual Violence
- Physical Violence
- Threats against Family Members
- Other Forms of Punishment (deprivation of food, water, sleep)
- Removal of rights or privileges
- Religious retribution
- Withholding of assets
- Confiscation of mobile phones
- Imposition of Worse/Further Deterioration in Working Conditions

- Withholding of Wages
- Isolation
- Locked in Workplace or Living Quarters
- Constant Surveillance
- Exclusion from Future Employment or Overtime
- Exclusion from community and social life
- Financial Penalties
- Informing family, community or public about worker's current situation (blackmail)
- Dismissal

- Extra Work for Breaching Labor Discipline

ⁱ The 2015 amendments to [FAR Subpart 22.17](#) (paragraphs 4 to 9) include the following prohibited activities by contractors, subcontractors and their respective agents:

- Engaging in severe forms of trafficking in persons during the period of performance of the contract;
- Procuring commercial sex acts during the period of performance of the contract;
- Using forced labor in the performance of the contract;
- Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;
- Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- Charging employees recruitment fees;
- Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, for portions of contracts and subcontracts performed outside the United States; or
- Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee for portions of contracts and subcontracts performed inside the United States;
- Providing or arranging housing that fails to meet the host country housing and safety standards; or
- If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document in writing. Such written document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons. The contracting officer shall consider the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons, and the number of non-U.S. citizens expected to be employed, when deciding whether to require work documents in the contract;
- Require contractors and subcontractors to notify employees of the prohibited activities described in paragraph (a) of this section and the actions that may be taken against them for violations;

ⁱⁱ In defining 'modern slavery', the law referred to Article 4 of the Human Rights Convention, which talks about slavery and forced labor. Article 4, in turn, referenced ILO Convention No. 29, which defined forced labor 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". The ILO has since then identified forced labor indicators (Appendix B), in terms of indicators of involuntariness and indicators of menace of penalty

ⁱⁱⁱ According to Dr. Marcus Colchester, “This issue of exploitative labour relations on small and medium holdings needs much more attention. We (FPP) found the same problems on so-called smallholdings when we visited south Thailand in 2013. However the important point, which we have previously flagged but which has not been addressed, is that where land owners of small properties are producing palm fruits mainly through the employment of others and not mainly through the efforts of their own labour or that of their families, then *these operations are no longer smallholders by the RSPO’s definition*. So what are they? This gap also needs to be addressed by the Smallholder Working Group and RSPO P&C revisions group. Likewise, to my knowledge, RSPO *still* lacks a method for certifying medium growers (i.e., those with holding of over 50 ha. who are not tied to a particular mill), a matter raised repeatedly by the smallholder task force in the 2000s. It is likely that the labour exploitation on these small and medium land holdings is even less regulated and compliant than on larger holdings.”