



February 24, 2016

### **Key Shortfalls in KLK's Response**

to RAN's 2015 Status Report and Customer Briefing *Conflict Palm Oil in Practice: Exposing KLK's Role in Rainforest Destruction, Land Grabbing and Child Labor*

On January 13, 2016, Kuala Lumpur Kepong (KLK) issued a response to RAN's 2015 Status Report and Customer Briefing titled *Conflict Palm Oil in Practice: Exposing KLK's Role in Rainforest Destruction, Land Grabbing and Child Labor*. KLK begins its response by stating that Rainforest Action Network (RAN) is "rehashing old issues." It is correct to state that the issues raised in the Status Report have been exposed before, as they relate to grievances in the palm oil company's operations that were profiled in RAN's original report released in 2014. However, in characterizing the report as a rehashing of 'old issues', KLK is implying that there has been resolution to the serious grievances raised, including ongoing rainforest destruction, land grabbing and labor violations in its global supply chain. This is not the case, and the following response outlines outstanding actions that must be taken for KLK to begin a credible process of addressing irresponsible practices in its own operations and global supply chain.

In summary, KLK has yet to agree to robust, measurable time-bound actions that would resolve the cases of land conflict in Papua New Guinea and Liberia and ongoing labor violations and deforestation risks in the company's global operations and supply chains. In our report, RAN specifically calls on KLK's customers and financiers to require that KLK take the following actions by June 2016:

1. Formally excise the customary lands of the Jogbahn communities in Liberia that have not consented to palm oil expansion by KLK's majority-owned Equatorial Palm Oil (EPO);
2. Publicly announce KKL's exit from the Collingwood Bay region in Papua New Guinea;
3. Publicly release the full labor audit that was conducted by an external party on KKL's East Kalimantan operations and publish a plan for bringing its global operations into compliance with fundamental labor rights; and
4. Take the most rigorous approach to implementation of its No Deforestation commitment through the ongoing application of the High Carbon Stock Approach (HCSA) and improved participatory land claim mapping and land use planning processes to accommodate local communities' livelihoods and aspirations and respect their right to give or withhold their Free, Prior and Informed Consent (FPIC) to proposed developments that may affect their lands.

### **RAN awaits welcoming KKL's public commitments and actions in line with the above.**

Until KKL publicly announces that it is moving forward with these concrete actions that aim to resolve the grievances that RAN and other stakeholders have raised, RAN will continue to hold KKL and its customers and financiers accountable for the impacts of their operations or business partnerships.

## **Upholding Human Rights by Beginning with a Better Understanding of Free, Prior, and Informed Consent**

Over the past years of engagement with KLK, RAN has made clear that the company, beginning with its senior management, must enhance its understanding of the principles of Free, Prior and Informed Consent (FPIC) and improve practices at a company group level to ensure that Free, Prior and Informed Consent (FPIC) is obtained from local communities for any development on their lands. Through its membership in the Roundtable on Sustainable Palm Oil, its own voluntary Sustainability Policy, and many of its statements, KLK has committed to upholding the principles of FPIC on paper. However, its expansion into new areas in Papua New Guinea and Liberia prove that KLK is not practicing FPIC as it is defined by the RSPO or international law. Specifically, KLK has failed to demonstrate an understanding or practice of the following concepts of FPIC:

1. The duty to respect FPIC rests with the company, not the community or civil society. It is the company's responsibility to prove that it has been given the community's Free, Prior and Informed Consent through a balanced, open, transparent, legitimate process before commencing operations. It is not the responsibility of Indigenous Peoples, local communities or NGOs to prove that the company does not have consent.
2. A proper FPIC process must be controlled by the community and adhere to decision making institutions and processes of the community's choosing. The right to determine both how decisions are made and the outcome of those decisions is up to the community without interference of the company.
3. If the community says no to oil palm development, that answer must be respected. No further persuasion, coercion, bribery, etc. can be used to attempt to influence the community or certain members of the community to change their decision.
4. A divided community cannot give its consent. FPIC is a collective right, so if the community is divided by the company's actions to the extent that it is no longer able to come to a collective decision, then it is no longer *possible* to obtain FPIC from that collective. The company must walk away from that community until a FPIC compliant decision would be possible.
5. Where proper FPIC (through a legitimate process) was never given, the company must stop operations until it negotiates FPIC with the communities on whose lands it operates.

RAN encourages KLK to commit to uphold the above principles of FPIC along with the principles of FPIC outlined in the *UN Declaration on the Rights of Indigenous Peoples* and the RSPO's new *Free, Prior and Informed Consent Guide for RSPO Members (2015)*, and to work with experts and local communities to implement them in the company's global operations, providing redress to communities where FPIC processes were lacking or inadequate. KLK's customers and financiers must require KLK to demonstrate the above principles are being put into practice by requiring the resolution of the outstanding land conflicts in Liberia and Papua New Guinea.

## **KLK Fails to Respect Liberian Communities Right To Say “No” to Oil Palm Expansion On Their Customary Lands Via Its Subsidiary Equatorial Palm Oil (EPO)**

At the end of 2012 and continuing into 2013, Equatorial Palm Oil (EPO), a UK-based palm oil company which is majority-owned by KLK, began clearing the customary lands of several local Jogbahn communities in Grand Bassa County, Liberia without their Free, Prior and Informed Consent (FPIC). Through a formal RSPO complaint, engagement with government, and direct engagement with EPO, the communities have demanded that EPO and KLK respect their right to say no to palm oil development on their customary lands and formally excise their land claims from the company's palm oil plantation concession.

In EPO's November 2015 sustainability report it states that “where communities decide that they do not want oil palm development, EPO will not develop its estates near those communities, leaving buffer zones in areas agreed amicably with those communities.” This is an encouraging paper pledge that EPO must now put into action. The eleven Jogbahn communities party to the November 2013 RSPO complaint have made their position clear for multiple years - they do not invite oil palm development onto their lands. EPO must now engage in a mutually agreed process to map and excise these areas from their concession without further delay.

Customers and financiers must demand the following outcomes as demonstration of EPO's willingness to resolve this ongoing conflict in a mutually agreed manner: (1) the publication of a mutually agreed map by EPO, KLK and Liberian NGO Sustainable Development Institute showing the non-consenting communities' customary lands that EPO will not develop; and (2) a public commitment by KLK and EPO to respect the agreed boundaries.

## **No Way Forward for KLK in Collingwood Bay without Deforestation and Violation of the Rights of Communities**

In December 2012 KLK acquired a majority interest in Collingwood Plantations Pte Ltd (CPPL), a company claiming to have user rights over three lots covering more than 40,000 hectares in the Collingwood Bay region of Papua New Guinea. The densely forested Collingwood Bay watershed is home to nine Indigenous tribes, who have constitutionally protected rights to decide if, how and where development can occur within the communities' ancestral lands. The communities have a long standing public position of opposing logging and palm oil development on their lands, and when the communities learned of KLK's claims in Collingwood Bay, a RSPO complaint was filed and lawsuit initiated. Through the lawsuit, the National Court of Papua New Guinea declared two of three land development leases claimed by KLK null and void and ordered cancellation of the title deeds (for Portions 113C and 143C) in May 2014. Since that time, KLK has refused to walk away from its one 5,582 hectare lease in Collingwood Bay, State Lot 5, despite the fact that it is covered in primary forest and only accessible through the customary lands of communities that have said they do not want palm oil.

In its response KLK states, “if all affected communities in Portions 113C and 143C (in Maisin and Wanigela areas) are united in rejecting sustainable oil palm development in Collingwood

Bay, KLK will respect their cohesive decision. KLK will make the relevant arrangements to remove [their machineries] from Collingwood Bay within three (3) months from the notification date.”

It is firstly critical to point out that KLK has absolutely no rights over Portions 113C and 143C, and even if KLK had rights to operate in these areas, it would not be the communities’ responsibility to prove that KLK is not invited into Collingwood Bay, but rather KLK’s responsibility to prove that the company HAS consent to be in the region. Given that the communities have never given KLK their consent through their own chosen decision-making institutions and representatives, and KLK has no rights over Portions 113C and 143C, KLK must remove its machinery from the area immediately.

In order to legitimately acquire rights to develop oil palm on customary lands in Collingwood Bay, KLK would have to obtain the collective consent from landowners in Collingwood Bay via the communities’ self determined and chosen decision making institutions and processes. Given the Collingwood Bay communities’ long record of publicly opposing logging, palm oil and predatory resource extraction on their lands, and their standing position against the development of oil palm in Collingwood Bay, KLK will almost certainly never secure such consent. KLK has failed since the beginning to accept that the Collingwood Bay communities, through their own community led process, have already said no to oil palm development on their lands. It is time for KLK to practice the FPIC it has committed to on paper and withdraw from Collingwood Bay.

KLK’s presence of machinery and unwillingness to leave Collingwood Bay will continue to be viewed by the local communities and civil society as a fundamental failure to uphold human rights and respect FPIC. Customers and financiers of KLK must require that KLK withdraw from the region without further delay.

### **Continued Risks of Labor Rights Violations in KLK’s Global Operations**

In 2010, RAN and our partner Sawit Watch reported on workers who were trafficked by a third party contractor named Handoyo and forced to work without pay at KLK plantation PT 198 located in East Kalimantan, Indonesia. Since that time, Sawit Watch has done several follow-up investigations, finding that Handoyo is still recruiting workers for KLK operations, children are working on KLK plantations, and other egregious working conditions persist. KLK has responded by stating it has policies against child labor and forced labor. RAN does not contest KLK’s policies, but we maintain that such policies are inadequate as these labor violations persist.

In its response, KLK also contests that there is child labor on KLK plantations, but the photographs in RAN’s report are photographs of children working on KLK’s plantations. The faces and identities of the children have been hidden for their protection but there is significantly more unreleased, photographic evidence of child laborers. Rather than contest such data, KLK should ensure production quotas are not so high and wages so low that workers must bring their

children to work to earn enough income, as well as ensure access to education in its own operations, and the operations of its suppliers.

Customers and financiers must call on KLK to publicly release the full labor audit report that was conducted by an external party on KLK's East Kalimantan operations. Releasing the observations of labor conditions from an external party would be an initial act of good faith showing a willingness and desire to address labor problems present on KLK plantations. Following from disclosure on current conditions, customers and financiers must require that KLK work with external stakeholders to create and publish a plan for bringing its global operations into compliance with fundamental labor rights as outlined by the ILO.

### **Continued Risks of Deforestation in KLK's Global Operations**

As a major palm oil grower and trader, KLK is exposed to deforestation in its global operations. As a member of the Sustainable Palm Oil Manifesto (SPOM), KLK's policies on addressing deforestation are weaker than its peers that have committed to halting deforestation in their entire global operations by implementing the High Carbon Stock Approach. Instead of committing to implement the field trialed and tested High Carbon Stock Approach across its operations, KLK and others in the SPOM funded their own High Carbon Stock study. Until the release of the final High Carbon Stock Study report in December 2015, KLK had committed to an interim moratorium on deforestation using the High Carbon Stock Approach to determine any forest areas for protection. Its position now is significantly weaker, as KLK states that it intends to field trial the SPOM HCS+ methodology and has made no commitment to continue the implementation of the High Carbon Stock Approach in its global operations.

The "High Carbon Stock+" model proposed in the December 2015 report will allow further clearance of forests and peatlands and includes a dangerous loophole that allows companies to offset ongoing deforestation in palm oil concession areas through setting aside forests in other landholdings. Its proposal to use 'offsets' and a 'carbon neutral approach' in the implementation of No Deforestation commitments has been criticized by many NGOs since the release of the draft study in September 2015.

The expansion of the large-scale concession palm oil model recommended in the study also fails to set adequate safeguards to secure equitable and sustainable livelihoods or land rights for Indigenous Peoples and local communities, nor does it outline how it will address the exploitation of workers, especially migrant workers, which is rife in the sector. If this model is replicated in new regions, such as in remote parts of Indonesia, Papua New Guinea and Central and West Africa, it will lead to further deforestation and corporate take-over of community-owned lands, instead of supporting rights and community based models of truly responsible development.

Customers and financiers must continue to call on KLK to implement the High Carbon Stock (HCS) Approach, which has been developed and field tested by leading companies and NGOs as an efficient and ecologically justified field methodology for distinguishing between forested

and non-forested areas in concession areas. It is critical that KLK continue to implement the HCS Approach and adopt improved participatory land claim mapping and land use planning processes that accommodate local communities' livelihoods and aspirations, and respect the rights of indigenous peoples and local communities to give or withhold their Free, Prior and Informed Consent (FPIC) to proposed developments that may affect their lands.

## **Conclusion**

KLK's response to date fails to resolve the Conflict Palm Oil cases raised in RAN's 2014 report titled *Conflict Palm Oil in Practice: Exposing KLK's Role in Rainforest Destruction, Land Grabbing and Child Labor*. RAN calls on KLK to work with stakeholders to resolve the outstanding Conflict Palm Oil cases by taking the concrete actions outlined in the 2015 Status Report and Customer Briefing and this response.

Customers and financiers, including Unilever, Cargill, California Oils, Fuji Oils, Procter & Gamble, Wilmar, Mitsubishi, BASF, HSBC, OCBC Bank, CIMB Bank, and Maybank must require resolution of these issues by June 2016 as conditionality for their continued business. Further delays in addressing these serious, ongoing non-compliances in their business partner's operations are no longer acceptable.