

Human Right Risk Assessment

Equatorial Palm Oil's Palm Bay Plantation

Grand Bassa County, Liberia





Note on This Human Rights Risk Assessment

This Human Rights Risk Assessment (“HRRR”) has been prepared by Nomogaia. An HRRR is an assessment of risks to human rights caused by a business operation (see www.nomogaia.org). HRRRs are useful in a number of situations, including when a third party is interested in whether, and to what extent, a corporate operation respects human rights. The third party could be, for example, a bank determining whether to make a loan, a buyer certifying that its supply chain respects human rights, an acquiring corporation or a government ensuring that its contractors respect human rights. In addition, HRRR can be used as a first step in a company’s human rights due diligence on its own operations. This HRRR analysis and the parties and rightsholders discussed below are real. The analysis is based on Nomogaia’s site visits in the first half of 2016. Relevant follow up information was received through the third quarter of 2016. The third party to which this HRRR is addressed is hypothetical and is referred to as the “Investor.” Kuala Lumpur Kepong Berhad (“KLK”) should have performed a human rights assessment, at least as detailed as this one, when it first invested in, and when it took a controlling interest in, Equatorial Palm Oil (“EPO”). KLK should also do this kind of assessment to confirm that its Liberian plantations comply with human rights standards.

This HRRR not performed at the request of, or under contract to, EPO and KLK. Those companies are invited to use this HRRR to assist their own human rights due diligence on their operations, as required under the UN Guiding Principles on Business and Human Rights (“UNGPs”).



EXECUTIVE SUMMARY

Equatorial Palm Oil has failed to respect¹ several human rights pertinent to labor standards, livelihoods, health and property rights and is putting rights at risk in the future. A summary of human rights risks to rightsholders is presented in Table I.

Table I Human Rights Risks (Very High, High, Significant, Present)

		I M P A C T				
		Extreme	Very High	High	Medium	Variable
P R O B A B I L I T Y	Certain	Extreme	Just Remuneration,	Right to Collective Bargaining	Medium	Variable
	Highly Likely		Safe Working Conditions	High		
	Likely	High	High	Right to a Clean Environment, Right to Water, Housing (Camps)	Medium	Variable
	Uncertain	Variable	Right to Property	Freedom from Child Labor	Medium	Right to Clean Environment (Downstream Communities)

Risk is a resultant of *Impact* and *Probability*. *Impact* is determined by the number of rightsholders at risk and the degree to which their rights may be negatively affected and are rated **Extreme**, **Very High**, **High**, **Medium** or **Variable**. *Probability* is based on the analysis of the kind, quantity and quality of evidence supporting the likelihood that human rights will be negatively impacted. *Probability* is rated **Certain**, **Highly Likely**, **Likely** and **Uncertain**. For each affected right, the impacted rightsholders are identified. These are summarized in Table 2, below:

¹ Corporations have a responsibility to respect human rights. United Nations Guiding Principles on Business and Human Rights. See Section II.A. below.



Table 2 Human Rights Risk Components

Right	Risk	Probability	Impact	Rightsholders
Just Remuneration	Very High	Certain	Very High	Subcontractors and their dependents
Right to Collective Bargaining	High	Certain	High	Employees who are union members
Safe Working Conditions, Health	High	Highly Likely	Very High	Employees and Subcontractors
Clean Environment, Water, Health, Adequate Housing	Significant	Likely	High	Employees and their families in camps
Clean Environment, Water	Present	Uncertain	Variable	Communities downstream of plantation, Employees and families in camps
Property (Past Actions) ²	N/A	Certain	Very High	Communities with land claims
Property (Future Actions)	Present	Uncertain	Very High	Communities with land claims
Child Labor	Present	Uncertain	High	Working Children

The Liberian Context: Liberia is in the process of rebalancing its economy, leasing large tracts of land to foreign investors, with the promise of local employment and the economic boost of corporate investment. The government of Liberia, investing companies and many Liberian citizens support this basic trade-off. The land side of the equation has been hotly debated, including at Equatorial Palm Oil’s (EPO’s) Palm Bay Estate. The labor side of the equation has received less scrutiny.

EPO’s adverse human rights impacts range from Moderate to Very High. An investor in this project risks being complicit in EPOs negative impacts on human rights in the community.

Labor Rights: The relevant Labor Rights include the Right to a Living Wage, the Right to Safe Working Conditions, the Right to Unionize and the Right to Collective Bargaining. Rights-based

²This is a past event and so not a “risk.” It is shown as the basis for the Property (Future Actions) risk analysis



analysis of labor conditions considers whether a company treats its workforce (employees and subcontractors) with basic human dignity. Based on NomoGaia's on-site observations, multiple interviews, and data supplied by EPO, labor rights at the Palm Bay Estate are not respected.

A severe negative human rights impact results from the distinction between employees and subcontractors. EPO hires subcontractors as a lower cost alternative to the "employee" status, which confers benefits, such as holidays with pay, annual leave, medical care, housing, education for dependents, social group insurance. Two-thirds of EPO's workforce have the status of subcontractor, even though they are engaged year-round on work essential to the plantation's operations. Despite outsourcing the majority of its labor to subcontractors, EPO retains a corporate responsibility to respect the rights of its subcontractors.

Even for direct employees, working conditions are substandard, including lack of adequate personal protective equipment. Supplied company housing adversely impacts privacy rights, as two families are assigned to each small company house designed for a single family. Houses have no safe potable water. In some camps, borehole pumps were inoperable, so that the entire population had to draw water from an open stream also used for bathing and washing. There are camps with no toilets or latrines, and the stream is down gradient from the camp, generating water contamination risks that are obvious to employees. Neither stream nor borehole water is tested by the company.

**"THERE IS NO LABOR LAW HERE."
– EPO EMPLOYEE**

There is a noticeable high level of frustration among the employees and subcontractors at Palm Bay. This is a reflection of the multiple human rights infringements reported throughout this assessment,

including housing, drinking water at the camps and inadequate personal protective equipment. Employees are angry at these conditions, but jobs are scarce, so workers accept this degrading treatment. There is a risk that tensions will reach a boiling point, and some form of labor action or violence will ensue.

Land Rights: Equatorial Palm Oil's Palm Bay Estate has had significant negative human rights impacts on land rights, particularly between 2008 and 2014. Much of the attention on the dramatic recent expansion of the palm oil sector in Liberia has focused on land acquisition and related disputes with the local communities. This attention is justified, as the central government has granted long-term concessions to multinational palm oil companies to use and control vast tracts of land. These concessions were made without consent or input of the local communities, to whom the land is home as well as a fundamental economic and cultural asset. This has led to protracted land disputes as the plantation companies have cleared, planted and occupied forest and farm land.

EPO states that it is now trying to reverse past procedures and states it will henceforth only operate on land with prior community consent. It engaged in a joint mapping exercise with communities and opposition groups to identify the parcels which have, and which do not have,



community consent. It has stopped planned expansion of its plantation until the mapping is completed and has signed a Memorandum of Understanding with some communities, making these commitments in writing. It is too early to know if this effort will succeed, but, given the past history, the values at stake, the experience of other plantations, and the current sentiments of the company's opponents, there is good reason to expect at least some disputes to continue.



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Acronyms

CBA	Collective Bargaining Agreement
EPO	Equatorial Palm Oil Plc
FPIC	Free, Prior and Informed Consent
GAAWUL	General Agriculture and Allied Workers' Union of Liberia
HRRRA	Human Rights Risk Assessment
LIBINCO	LIBINC Palm Oil Inc.
KLK	Kuala Lumpur Kepong Berhad
PPE	Personal Protective Equipment
PPP	Purchasing Power Parity
RSPO	Roundtable on Sustainable Palm Oil
SDI	Sustainable Development Institute
UNGPs	United Nations Guiding Principles on Business and Human Rights
WB	World Bank



I. BUSINESS AND HUMAN RIGHTS

a. The Corporate Responsibility to Respect Human Rights

International law requires governments to respect, protect, and fulfill internationally recognized human rights.³ Companies have the responsibility to respect human rights. The United Nations Guiding Principles on Business and Human Rights, the universally endorsed standard for corporate human rights duties, clarified this role, and companies have broadly accepted it. UNGPs, Principle 13 states that business must: “(a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” The human rights which companies must respect include, at a minimum, those recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as the well as the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work (UNGPs, Principle 12). The human rights discussed in this assessment are described in those documents and their commentary.

An essential element of corporate respect for human rights is the requirement that companies conduct human rights due diligence on their own operations (UNGPs, Principles 15 and 17). Human rights due diligence should include “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communication how impacts are addressed” (UNGPs, Principle 17). Human rights due diligence should also be conducted before corporate mergers, combinations, acquisitions, investment and lending (UNGPs, Principle 17, Commentary). Human rights due diligence includes an analysis of “complicity.” “[B]usiness enterprises may be perceived as being ‘complicit’ in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party” (UNGPs, Principle 17, Commentary). This “other party” can include governments, state owned enterprise and other private companies.

Human rights due diligence should, in part, “gauge human rights risks” (UNGPs Principle 18). It should “identify and assess any actual and potential adverse human rights impacts” and the process should “(a) draw on internal and /or independent external human rights expertise; [and]

³ UNGPs, Principle 1, Commentary and sources referred to. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. The “Guiding Principles apply to all States and all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.” UNGPs, p. 1.



(b) involve meaningful consultation with potentially affected groups and other relevant stakeholders” (UNGPs, Principle 18).

b. Human Rights Risk Assessment: Definitions and Methods

This Human Rights Risk Assessment is a form of early phase human rights due diligence, performed in accordance with the UNGPs. An HRRRA considers the actual and potential adverse human rights impacts of an existing or proposed business operation. It determines whether those negative impacts constitute a lack of respect for human rights by the corporate operator. It contains an analysis of the breadth of corporate impact (i.e. how many rightsholders have rights which are not being respected) and an examination of the severity of the negative human rights impacts, alongside consideration of the likelihood of an adverse impact occurring or persisting. An HRRRA is a “snapshot” assessment, considering an operation at a particular point in time, while taking into account past actions and anticipating likely risks. It is designed to be particularly helpful for potential lenders, partners and equity investors doing their own human rights due diligence on a potential investment. It can also be useful to the operating company as an early stage form of human rights due diligence, used to plan further, more robust studies, such as a full Human Rights Impact Assessment.

Because an HRRRA is a relatively quick and inexpensive form of human rights due diligence, it is not designed to reach a final judgment on all human rights issues it uncovers. For some issues, it does identify and articulate clear human rights impacts. For others, either the existence of the impacts, their extent, or their connection with the business operation will be uncertain. For these issues, an HRRRA raises and articulates specific topics as risks that may need further investigation to reach conclusive, final determinations. Such issues are raised in the HRRRA along with a clear statement of the *degree of probability* that a specific human rights impact exists. Uncertainty is gauged through a review of evidence gathered by assessors, evaluated by triangulating dimensions of disagreement among claimants (e.g. management versus landholders, or policy statements versus laborers), reliable facts and information from the company. An impact found to be uncertain after its initial discovery may well turn out to be valid after further investigation. The number and type of such human rights risks can be useful in making a decision whether or not to invest in a particular operation.



II. PALM OIL

a. Uses and Production

Palm oil is a basic input into foods, cosmetics, and consumer products. It is used in a growing number of industrial processes and a wide variety of products including cooking oil, processed foods (including bread, margarine, chocolate, ice cream and other frozen foods), and consumer goods such as soap, detergents, cosmetics and pharmaceuticals. In the last 15 years the global demand for palm oil has more than doubled, overtaking soy and rapeseed (canola) oil in total worldwide production. More palm oil is produced than any other plant oil, with 10% of the world's cultivated land now producing palm oil.

The oil palm plant is native to West Africa and grows best in a wet, hot, equatorial environment. Over 90% of the world's palm oil is grown in Indonesia and Malaysia. Oil palms are planted as seedlings from a nursery and are fertilized as young plants. They are planted about three meters apart. The areas between the plants need to be weeded (in Liberia "slashed"), and herbicides and insecticides are applied by spray. The oil palm is extremely productive; the trees can produce oil in as few as three years and continue to produce multiple harvests per year for 30 years. The palm nut produces two types of oil: "palm fruit oil" from the outer fibrous portion of the fruit, and "palm kernel oil" from the hard inner kernel. The fruits ("fresh fruit bunches") are harvested and sent to the mill to be processed. The mill produces raw palm fruit and palm kernel oil that can be further refined.

b. Palm Oil in Liberia

Liberia remains an agricultural nation, with the lowest population density and highest quality remaining forests in West Africa. After the civil wars ended in the early 2000s, the administration of President Ellen Johnson Sirleaf pursued a pro-business development agenda that included signing concession agreements leasing large tracts of land to foreign corporations for multiple decades at very low cost. The rationale for these concessions was that the extreme need for formal economic activity outweighed the value of current, largely subsistence agriculture. An estimated 40% of the entire population of Liberia reside in these concessions. While the government claims the right to make these concessions, it does not own the land it has leased in any defensible legal sense. The land title situation in Liberia is extremely chaotic, a result of political non-recognition of traditional land rights, compounded by decades of civil war that dislocated entire populations, as well as an absence of reliable title records. The land subject to a concession is often claimed by local people living, and relying, on it. The concession agreements spawned the ongoing land disputes which now characterize large scale agriculture in Liberia.



Three large transnational palm oil companies, all based in South East Asia, have recently entered Liberia:

- **Sime Darby** has four estates in the North East
- **Golden Veroleum** is developing ten estates in the South
- **EPO** (controlled by the Malaysia-based **KLK**) is operating and expanding two estates, Palm Bay in Grand Bassa County and Butaw Estate in Sinoe County

Sime Darby, Golden Veroleum, and KLK are all multi-billion-dollar, multinational corporate conglomerates. They have sophisticated corporate social responsibility policies and reports and are members of the industry-leading Round Table on Sustainable Palm Oil (“RSPO”).

All three of the large palm oil companies have faced community resistance, including formal RSPO complaints filed by Liberian communities. Most notably, a violent demonstration against Golden Veroleum in Butaw in 2015 triggered a wave of arrests and an RSPO complaint, and a riot and arson at Sime Darby’s plantation in April 2016 caused millions of dollars in damage. The assessors interviewed numerous community representatives and NGO leaders who believe that community-company disputes remain unresolved and will continue in the future.

KLK ON WORKER HEALTH AND SAFETY

The OSH department at the Group’s Head Office ensures that OSH requirements are applied uniformly and consistently across all operating centres. We are guided by the KLK OSH Manual and Guidelines which contains all our standards, safe work procedures and standard documentation used. To ensure compliance, annual audits are done and corrective action taken where necessary.

III. EQUATORIAL PALM OIL

a. Ownership and Corporate Structure

Equatorial Palm Oil Plc (“EPO”) is technically headquartered in the United Kingdom and trades on the Alternative Investment Market of the London Stock Exchange. Its operating subsidiary for the Palm Bay Estate is LIBINC Palm Oil Inc. (“LIBINCO”). EPO is part of a joint-venture with KL-Kepong International Limited, a subsidiary of Kuala Lumpur Kepong Berhad (“KLK”), EPO’s parent and ultimate controlling entity. KLK first gained control of EPO in 2014 and now owns 62.8% of the company’s shares. KLK is a multinational company based in Malaysia with a market capitalization over US\$5 billion. It owns over 270,000 hectares of planted palm oil mostly in Malaysia and Indonesia. While KLK has not put its name on the EPO operations, it is the company which controls and is responsible for them.



b. Concession Agreements

The Concession Agreement “extension and assignment(s),” giving EPO the right to operate was ratified by the Liberian legislature and signed by the President in 2008. It has a term of 50 years. It gives EPO the right to occupy and use land for palm oil production in two areas: the Palm Bay Estate in Grand Bassa County, near the port city of Buchanan; and the Butaw Estate, in Sinoe County, near the port city of Greenville. The Palm Bay Estate is the subject of this HRRRA.

c. Palm Bay Estate

The Palm Bay Estate occupies 13,007 hectares of land as well as expansion areas totaling 20,234 hectares. Of the expansion land, half is set aside for future “out grower” programs in which local farmers are enabled and supported to produce palm oil fruit sold to and milled by EPO. Portions of the Estate are located in a former palm oil plantation that was originally developed in the 1960s, and was abandoned during the civil wars (1989-2003). Twelve hundred hectares of new plantings began in 2011, and these trees are just now coming into production (bearing harvestable fruit).

i. Mill

Development of the Palm Bay Estate included the building of a mill in 2011, which was used to process fresh fruit bunches from the aging trees of the old plantation. It is currently not operating, and no palm oil can be produced until it is returned to service or replaced. An oil mill at Palm Bay is due to be brought into operation in 2017 or 2018. The capacity of the mill is expected to be 60,000 metric tons of fresh fruit bunches per hour.

ii. Workforce

Over 1500 people, of which 40% are women, are currently employed, directly as employees or indirectly working for EPO subcontractors. While 98% of EPO employees are Liberian, some Malaysia nationals are employed as managers and trainers. Palm Bay Estate has 1058 employees and subcontractors; the Butaw Estate has 353. EPO reports that it paid wages of US\$1.6 million between October 2014 and May 2015. The mean salary during that time period was US\$ 143 a month, or approximately US\$ 6.50 a day. Under the Collective Bargaining Agreement, field workers with direct employment are entitled to a minimum gross salary of US\$5.48 a day.

d. Company Standards

A corporation’s human rights responsibilities are set by the UNGPs and are not limited by its own policies. However, policies and voluntary initiatives give further clarity as to the company’s own operating standards. EPO is a KLK company, and KLK has adopted a number of policies committing to and reinforcing its human rights responsibilities. In addition, KLK is a member of the RSPO and seeks to make its palm oil products certified as RSPO compliant.

e. Human Rights Due Diligence



Neither KLK or EPO have performed human rights due diligence on the Palm Bay Plantation. (Interview, CSR21 personnel). UNGPSA Human Rights Risk Assessment prior to that acquisition would have helped KLK understand contextual complications and human rights risks it was acquiring.

The existence of a system which results in human rights due diligence is a human rights “process indicator.” The lack of any human rights due diligence, as well as any company process that would produce one, is itself a human rights failing. It is also a warning that unreported, negative human rights impacts may be present.





IV. HUMAN RIGHTS RISKS AND ADVERSE IMPACTS AT EPO

a. Labor Rights

i. Employment Status

People who work for EPO are classified as “employees” or “subcontractors.”⁴ Employees are paid a wage per time worked, and are entitled to benefits such as housing for themselves and their families, sick days and paid holidays, annual leave, maternity leave, medical care, education for dependents, social group insurance, and death benefits. In addition, employees are members of a union and covered by a Collective Bargaining Agreement (“CBA”). Subcontractors, on the other hand, are considered casual, temporary labor and not employees. They are paid by a middleman who has a contact with EPO to perform a certain defined task (such as weeding a specified plot). Subcontractors receive no benefits, job security, or other standard protections. EPO has no mechanism for ensuring that subcontractors receive adequate wages.

Liberian Law precludes using contract workers in place of long-term full-time employees. Subcontractors may be used for short term needs or periodic work, but at Palm Bay they are used in place of employees. At the Palm Bay Plantation, two thirds of the workforce are subcontractors. Other large palm oil companies in Liberia use subcontractors as a small portion (less than 10%) of their workforce and indicate that they are not used in place of employees (Interviews, GVL and Sime Darby personnel). Union leaders validate that claim (Interviews, union representatives).

There are indications that EPO may be evading Liberia’s labor laws while adversely affecting labor rights. EPO may have sufficient control over the subcontractors’ work to be their legal employer, a result it rejects.⁵ Some workers report that subcontractors have been asked to give new, invented names for themselves every six months, to record themselves as “new” short-term hires and so lose the labor law’s mandated offer of permanent employment.⁶ (per Subcontractor interviews, confirmed by Employee interviews).

⁴ There are a small number (less than 30) direct contractors who have employment contracts with the company. They are not included in the discussion of “subcontractors” below.

⁵ See the factors listed in Section 1.5 d), subsections i) – vii) in Liberia Decent Work Act.

⁶ See Section 13.2, Decent Work Act.



ii. Right to a Just Remuneration—Subcontractors—Very High Risk

Right	Probability	Impact	Rightsholders
Just Remuneration	Certain	Very High	Subcontractors and their dependents

Subcontractors are not paid by EPO, but are paid by middlemen who hire them for “temporary” piece work. The tasks performed by subcontractors include circle weeding around individual plants, general weeding, planting, and spraying (insecticides, herbicides). The pay rate varies by task, contract and subcontractor, ranging from US\$2 to US\$4.25 a day.

The Universal Declaration of Human Rights guarantees all workers, “the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity . . .” (Article 23.3, UDHR; Article 11, UNCESCR).

Calculating a living wage requires consideration of real wages, dependents relying on a single worker’s income, and basic living expenses. No authoritative human rights-based living wage determination has been done which can be readily applied to the EPO’s subcontractors. The “Extreme Poverty” level, as defined by the World Bank, results in the “severe deprivation of basic human needs”⁷ and so a wage which subjects the workers and his or her dependents to such a condition is not a living wage. The World Bank’s threshold for Extreme Poverty is US\$1.90 per day at the 2011 Purchasing Power Parity Rate for the local currency.⁸ The Purchasing Power Parity (“PPP”) conversion rate for Liberia in 2011 is 0.5 (World Bank),⁹ making the Extreme Poverty rate US\$0.95 per day. Assuming subcontract workers receive US\$4.25 per day worked (the highest subcontractor rate) and a five-day work week with no other time off (no holidays, no sick days, no maternity leave, etc.) the income per day is US\$3.03. Over many interviews, employees and subcontractors stated that the average plantation worker supports at least seven dependents. However, household size in Liberia has been measured at 5.1 persons¹⁰. Using the more conservative assumption of 5.1 average family size along with the highest subcontract worker’s wage yields a per capita per day income of US\$0.59. This is well below the World Bank’s extreme poverty level of US\$0.95 per day. Because subcontractors receive no benefits, this is the total income. That is using the highest wage a subcontractor earns. Many subcontractors earn less and have more dependents. For a daily wage of US\$3.00 and seven dependents, the daily income is US\$0.27. By any measure, these are not living wages.

⁷ United Nations Report of the World Summit for Social Development, 1995.

⁸ Purchasing Power Parity takes into consideration the actual power of a set amount of exchange currency to acquire necessities in a particular place.

⁹ World Bank, <http://data.worldbank.org/indicator/NY.GNP.MKTP.PP.CD?locations=LR>

¹⁰ 2008 Population and Housing Census, Analytical Report on Population Size and Composition, Liberia Institute of Statistics and Geo-information Services (LISGIS), Monrovia, Liberia, September 2011.



Subcontractor income is not consistent with the Right to a Living Wage. This is a significant negative human rights outcome from EPO’s practices. The misuse of employment status by EPO to classify workers as subcontractors, combined with the unlivable wage scale (with no benefits) results in negative impacts on the Right to Just Remuneration for contract workers, which has compounding negative impacts on the Right to an Adequate Standard of Living for their dependents.

Subcontractor prevalence in the workforce and wages are uncontested, the analysis is conservative and so this analysis is rated **CERTAIN**. This impact directly affects several thousand people. EPO does not respect these rights, and the negative impact is **VERY HIGH**. The risk to the Right to Just Remuneration is **VERY HIGH**.

iii. Right to Safe Working Conditions, Right to Health-- High Risk

Right	Probability	Impact	Rightsholders
Safe Working Conditions, Health	Highly Likely	Very High	Employees and Subcontractors

The basic tasks of the agricultural laborers at a palm oil plantation are planting, weeding, spraying and harvesting. At Palm Bay, there were widespread complaints about deficiency in the personal protective equipment (“PPE”) provided or used. This claimed deficiency was consistent with the assessors’ observations. While a lack of sufficient PPE can be a risk with slashing (in which protective boots can protect against accidents) it is a more severe problem for workers spraying pesticides and herbicides. These include potentially toxic chemicals which are normally only sprayed with inhalation and other projection equipment. Chemicals used by EPO at Palm Bay are listed in Table 3.

Both employees and subcontractors complained of the lack of PPE. One ex-subcontractor said he quit rather than spray toxic chemicals with no or inadequate protection. Lack of PPE is expressed to be a major cause of employee dissatisfaction. All admitted that some PPE was used sometimes, and this was confirmed by assessors’ visual inspections.

ARTICLE XXXIV SAFETY EQUIPMENT

The company shall provide quality safety equipment to employees covered under this agreement depending on the nature of job done, and if the job exposes them to inclement weather and conditions.

Safety materials will be provided once every year according to their needs or areas of work.



Table 3 Chemicals Used at Palm Bay Estate

Chemical or Trade Name	Use	Toxicity	Protection needed:		
			Gloves/ protective clothing	Respiratory protection	Goggles/ face protection
Paraquat	Herbicide	Toxic to humans, toxic to aquatic organisms	Yes	Yes	Yes
Antracol	Fungicide	Hazardous substance, toxic to humans, toxic to aquatic organisms	Yes	Yes	Yes
Ally	Herbicide	Toxic to aquatic organisms	Yes	No	No
Garlon	Herbicide	Hazardous Substance, toxic to humans, very toxic to aquatic organisms	Yes	Yes	Yes
Cyper TC	Herbicide	Toxic to humans	Yes	No	Yes
Dipterex	Insecticide	Hazardous substance, Toxic to humans	Yes	No	Yes
Malathion	Insecticide	Hazardous substance, toxic to humans	Yes	No	Yes
Miracle S 240	Pesticide	Toxic to humans	Yes	Yes	Yes

In Response to these observations EPO responded: “We provide health and safety equipment to all employees who need it, as demonstrable through full records of issuance forms. We keep a rota for its use and return. EPO also undertakes ongoing training relating to safety practices in order to instil a complete understanding in our employees of these measures’ crucial importance.”¹¹ As stated, this makes no effort to justify the adequacy of PPE claimed to be supplied and applies only to EPO employees, not subcontractors.

Personal protective equipment is a fundamental health and safety requirement for plantation field work. While the particular kinds of equipment may depend on the local situation and specific work activities, a failure to provide complete and effective protective equipment is a clear violation of the Right to Safe Working Conditions. This situation is widely complained about and observable and so is considered **HIGHLY LIKELY**. This negative human rights impact applies to all subcontract laborers, however many EPO employees also claimed that they were not given adequate, or in some cases, any PPE. Personal observation showed cases of underequipped

¹¹ Letter from Sandy Barblett, General Manager- Commercial, EPO, October 7, 2016.



employees. Therefore, the group whose human rights are impacted include over one thousand employees and subcontractors. This persistent, widespread, ongoing negative human rights impact is **VERY HIGH**. The Risk to these rights is **HIGH**.

iv. Right to Collective Bargaining—High Risk

Right	Probability	Impact	Rightsholders
Right to Collective Bargaining	Certain	High	Employees who are union members

There is a union operating at the Palm Bay Estate (General Agriculture and Allied Workers’ Union of Liberia (GAAWUL) Local#10-LIBINCO). Its members include non-management

employees. Subcontractors are not unionized. The Union and company have entered into a collective bargaining agreement (CBA), effective January 1, 2015 and terminating December 31, 2017, and so at present the CBA is at approximately the middle of its term.

**EPO COMMITMENTS UNDER THE CBA:
 HOUSING**

ARTICLE XX: HOUSING & HEALTH RELATED FACILITIES

The company shall construct, rehabilitate and renovate employees housing in the estate to an acceptable standard.

1. The company agreed to assign each employee to an electrify apartment, in the absence of that, the company shall pay graduated housing allowance as follow:
 - a. Unskilled employee(s) \$13.00
 - b. Skilled employee(s) \$15.00
2. It is the sole responsibility of the company to supply all camps where workers live with safe drinking water and repair damaged pumps on a regular basis.
3. The company agreed to paint all company assigned houses once every two years.
4. The company shall provide hand pumps, toilets and bathrooms facilities to all of its employees at its factory, workshop, nursery and camps respectively. (emphasis added).

There were varying reports by employees on the effectiveness of the Union, with the overall consensus that on some issues the company had simply not lived up to its commitments. The Union has limited options on how to enforce the CBA, and a labor action of some kind is described as a possibility in the near future. The counterbalance is a fear of retaliation from the company for any kind of complaint. Assessors interviewed ex-employees who claimed to have been fired for complaining to the company, as well as current employees who claimed to know people who had been fired for complaining. Verifying these specific claims is beyond the scope of an HRRRA, however, the fear of complaining was palpable and overt. In many cases employees’ first words to assessors were an



expression of fear of retaliation for speaking openly.

As detailed below, the company has not met its commitments to supply adequate housing for workers (the underlined provisions in the text box on the previous page). The camp housing is in poor condition. Two families are assigned to each apartment, which were designed and intended for one family. There is no electricity in most of the houses and no running water. For many camp dwellers there are no working or available water pumps, and water is obtained from a creek downhill from the camp. There are often no sanitary facilities at all. There is no legitimate reading of the CBA document that indicates that the Union agreed to a shared-housing arrangement.

While there were numerous other complaints from employees and union officials (overcrowding at the school, no lab tests available at the clinic, a lack of timely transportation, no lunch break, etc.) the complaints listed above clearly violated the CBA. The company’s failure to uphold CBA commitments constitutes a failure to respect the Right to Collective Bargaining. The probability is **CERTAIN**. The failures are multiple and important and so the impact is **HIGH**. The risk to the Right to Collective Bargaining is **HIGH**.

v. Freedom from Child Labor—Risk Present

Right	Probability	Impact	Rightsholders
Child Labor	Uncertain	High	Working Children

There were repeated, credible accounts of child labor among the subcontractors. These were based on employees seeing people they knew, and whose ages they knew, working as subcontractors. As explained above, the company does not hire subcontractors directly. The assessors did not witness any obviously underage field workers, nor did they interview any that admitted to being underage. Substantiating these reports is beyond the scope of an HRRRA, but should be the focus of future assessments.

EPO has responded to the reports of child labor as follows: “EPO has numerous systems in place to prevent child labour and illegal employment, including the compulsory requirement for full provision of employee tax codes, the requirement that sub-contractors be accredited by the Ministry of Labor, and active supervision by our management teams to prevent these extremely serious issues ever occurring. . . . [T]hese are serious allegations and we can assure you that the matter will nonetheless be looked into thoroughly; . . .”¹²

¹² Letter from Sandy Barblett, General Manager- Commercial, EPO, October 7, 2016.



Under the International Labour Organization’s Convention 138 - Minimum Age Convention, (1973), “The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.” Field work at Palm Bay Estate clearly constitutes such work.

The probability level for impacts on this right is **UNCERTAIN**. The EPO claims to have procedures in place to prevent this problem, but describes them in vague terms and then expresses uncertainty about their effectiveness by noting that it plans to “look into” these reports. This is not sufficient to support a conclusion that there is no child labor at Palm Bay. On balance, there is sufficient evidence to conclude that a risk exists. If child labor exists, it is reported to be common, but neither widespread nor rare. The human rights impact is **HIGH**. The risk to Freedom from Children Labor is **PRESENT**.

b. Welfare Rights

**i. Right to Health, Right to Adequate Housing (Employee Camp)—
 Significant Risk**

Right	Probability	Impact	Rightsholders
Clean Environment, Water, Health, Adequate Housing	Likely	High	Employees and their families in camps

The company has committed to providing housing to employees. The plantation is large and the distances needed to travel to work make it advantageous to the company for the employees to live within the plantation. Housing on large plantations is considered normal and a necessary part of the functioning of the plantation. Corporate respect for the Right to Adequate Housing is evaluated against standards of adequacy. As defined by the UN, “housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal” (UN Habitat, Fact Sheet 21).¹³

The employee camp houses at Palm Bay were constructed by the prior plantation. The houses are constructed of durable materials and are large enough to house a single family. The housing provided has one medium sized room with two small rooms, one used for cooking and one for

¹³ See e.g. CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) Adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991. The Right to Adequate Housing, Fact Sheet 21. Rev. 1. Office of the United Nations High Commissioner for Human Rights (“. . . where accommodation is provided by the employer, the fundamental human rights of workers must be recognized . . .” p. 37).



bathing. The bathroom has a non-functioning toilet and no running water. The houses have no electricity.

In one camp visited there were no improved water or sanitation facilities.¹⁴ Open defecation was practiced up gradient from their drinking water source. The same stream is also used for bathing and washing clothes. Borehole pumps were present, but none were operating.¹⁵ Oral-fecal disease transmission in these circumstances is extremely likely, but not monitored by the company. In another camp, the one borehole was inadequate for the needs of the population and so a nearby stream was used as a water source.

In the worker camps, there are two families in apartments designed for one family, making them badly overcrowded.¹⁶ Placing two families, most with many children, into one living space was considered by all to be an invasion of privacy and an affront to their dignity. It also poses risks of disease transmission, as respiratory illnesses spread more readily in tight and cramped living spaces, while oral-fecal transmission occurs where inadequate sanitation affects drinking water sources. The indoor cooking fires of two families also is a stress on the respiratory system and may contribute further to respiratory impacts. The water is not tested and so its quality is not known. The health profile of the population is also not known.

Overcrowding of housing was often the first complaint made by employees, followed by fear over potential drinking water contamination.

The Concession Agreement lays out specific conditions for employee housing, and the housing supplied at the plantation does not satisfy these conditions or meet human rights standards. Taking into account both the known conditions in the camps and the absence of community health data, without which EPO cannot identify or manage health risks, the Probability level on the Right to Health is **LIKELY**. The number of employees given housing are a few hundred, their dependents who live in the houses make the number of impacted rightsholders several hundred. The impact is rated **HIGH**. The risks to these rights are **SIGNIFICANT**.

¹⁴ This despite the fact that the company has committed in the Concession Agreement to construction 50 latrines in the Concession area in the first two years alone. They are then to be increased taking into consideration “the population of the concession area.” EPO also commits to “practice modern public health in accordance with generally accepted health and sanitation procedures and Law.” (Section 7.1, Concession Agreement)

¹⁵ The Concession Agreement requires that EPO “ensure that all employee residential communities within the Concession area are being supplied on a regular basis with safe drinking water.” (Section 7.3, Concession Agreement). This has not occurred.

¹⁶ EPO is required to housing with “an acceptable standard of habitability for employees.” (Section 7.4, Concession Agreement). This has not been met.



ii. Right to Health, Right to a Clean Environment, Right to Water—Risks Present

Right	Probability	Impact	Rightsholders
Clean Environment, Water	Uncertain	Variable	Communities downstream of plantation

The intersecting Rights to Health, a Clean Environment, and Water and Sanitation apply to local communities as well as to employees. There are several villages around the periphery of the plantation with varying levels of access to improved water and sanitation sources. There is a concern voiced repeatedly that insecticide and herbicide spraying, along with erosion from plantation work, has affected local ground and surface water. There were complaints expressed by members of a community bordering the plantations about perceived increasing rates of unusual diseases since the plantation started operations. The company does not publicize water quality data in order to rebut, or confirm, these allegations. The water can be sampled and tested and the lack of test results give no comfort to a community that is legitimately worried about a potentially significant health concern.

The company’s Environmental Monitoring Reports to the EPA include only three surface water monitoring points, sampled only once a quarter, and no groundwater monitoring. They include no testing of pump water or water sources used for the camps. In addition, the parameters selected for testing are general environmental factors (such as pH, TSS and metals) and do not include public health parameters, such as fecal coliform levels. While the Environmental Monitoring reports for 2015 had only one parameter that showed levels of concern, the testing is minimal and does not answer the questions of whether the water used for drinking is detrimental to public health. The parameter which showed an exceedance of standards was fluoride (at 4.23 mg/L) which is likely indicative of influence from fertilizers, herbicides or pesticides. This one result is not conclusive of harmful effects, and the human health effects of the water quality remain largely untested and unexamined. With such inadequate water quality and health data, it is not possible to determine if there are problems and for which populations. The company’s decision not to monitor drinking water quality creates a significant gap in efforts to respect the Right to Health.

Lacking probative data (owing to a lack of testing by EPO), the Probability level is **UNCERTAIN**. This uncertainty also affects the ability to know the magnitude of the human rights impacts, so these are considered **VARIABLE**. The risks to these rights are **PRESENT**.



c. Land Rights

i. Right to Property, Right to Development, Right to a Standard of Living—Risks Present

Right	Probability	Impact	Rightsholders
Property (Past Actions)	Certain	Very High	Communities with land claims
Property (Future Actions)	Uncertain	Very High	Communities with continuing land claims

Land Tenure, Liberian Context: The land situation in Liberia complex. The administration of Ellen Johnson Sirleaf (2007-2017) has overseen the return of stability and peace to Liberia and has been characterized by the assignment of large land concessions to foreign investors. Concession Agreements for rubber, oil palm and forestry cover 25% of the entire area of Liberia.¹⁷ When extractive sector concessions are included, 40% of the country’s population live in areas covered by concession agreements.¹⁸ While many of these agreements are not likely to come to fruition, they document the extent to which the central government has promoted an exchange of land for economic activity.

Although the Government of Liberia claims ownership over all lands without formal title, the land conceded to corporations in the Concession Agreements is traditionally owned and used by local residents. Clear land titling has been undermined by outdated laws, poor record keeping, the absence of titling processes for communal lands, and the widespread displacement of Liberian during civil wars. As a result, when land rights under Concession Agreements have been exercised by the foreign companies, the result has frequently been community hostility, resentment, protests and violence. The government of Liberia has not actively managed this problem, largely leaving foreign investors to address it as they see fit. There is little security of title or rights, neither for a foreign investor whose entire enterprise is based on land use, nor for a traditional possessor and user who also depends on the land for his or her livelihood.

Concession Agreement Risks: The Palm Bay Estate was originally occupied in 1964. The then-concessionaire, with the backing of the Liberian government, took over the land, evicting local inhabitants, sometimes by force. The painful memories of houses being burned and ancestral lands being lost still persist in affected communities. The plantation was in operation until the civil wars of the 1990s, when it was abandoned and fell into disuse.

¹⁷ Liberia at a Crossroads: The Political Economy of Key Policy and Institutional Reforms in the Land Sector, Katelyn Baldwin, Michael Geerston and Ali Kaba, World Bank Conference on Land and Poverty, 2014.

¹⁸ Agnieszka Paczynska (2016): Liberia Rising? Foreign direct investment, persistent inequalities and political tensions, Peacebuilding, DOI: 10.1080/21647259.2016.1193938



The EPO Palm Bay Concession Agreement, signed in 2008, explicitly incorporates the prior Agreement from the 1960s and is an assignment of it. Legally, therefore, EPO steps into the shoes of the original concessionaire (Concession Agreement, p.1). EPO has formally inherited the legacy of its predecessor. If communities assert traditional land claims and deem violent forced eviction as a corporate wrong, they have a legal basis for linking EPO to those evictions.

When EPO cleared and replanted some of the land of the original plantation between 2008 and 2014, it did so, legally, without the consent of local communities. As a result of these actions, it became the subject of complaints by those communities, some of which escalated into claims of violent social unrest. A formal complaint with the RSPO followed in 2013.¹⁹ In 2015, the RSPO clearly ruled against EPO finding that it had acted without community consent.²⁰

Concession Agreement Opportunities: Local communities have responded to the Palm Bay Estate’s redevelopment with mixed reactions. Eagerness for employment opportunities blends with resentment at being ignored as rightful land users. There are many area inhabitants who support the plantation’s re-establishment and the resulting economic activity “as long as they treat us fairly” (Community Member, interview).

EPO and Community Consent: After the RSPO ruling, and after KLK acquired control, EPO has changed its approach. Its stated plan is to “only work where we are welcomed by communities” (Gov. Rel. Manager Wisseh-Weah Bestman, interview, reiterated in public statement). The company’s position on this point is commendable. In 2015 it went through a process of determining which communities contested its occupation and use of parts of the concession property. It identified five communities who were considered not to have given consent. It has since launched an effort to reach agreement with those communities and arrive at formal agreements. It stated that the NGOs that had assisted communities (including the well-known and respected Sustainable Development Institute) had first been considered pure opponents, but were now seen as partners attempting to reach real solutions. EPO is now attempting to work with them. In mid-2016, several communities signed a Memorandum of Understanding in which the company committed to proceed with expansion plans only if or when they obtain the free, prior and informed consent (“FPIC”) of the affected communities. This is a positive development, but there remains a risk

KLK FPIC POLICY

Any new plantation development will only take place after consulting with the communities living in the surrounding the area and obtaining their Free, Prior and Informed Consent (“FPIC”).

¹⁹See Community Complaint to the RSPO against Equatorial Palm Oil filed October 2, 2013 on behalf of affected communities by the Sustainable Development Institute.

²⁰ Letter from Ravin Krishnan Complaints Coordinator, RSPO Complaints Panel to EPO dated March 4, 2015. Final Decision on Complaint against Equatorial Palm Oil by Sustainable Development Institute of Liberia. June 14, 2015.



that consent will not be unambiguously obtained, disputes will continue and current community resentment and hostility will boil over in the future.

Corporate Complicity in State Human Rights Failings: Large tracts of land were taken through opaque government procedures in Monrovia, with no consultation or consent of the communities involved. The Liberian Government explicitly provides EPO “title to and possession of” the land and commits to “defend and protect those rights for the benefit of [EPO]” (Concession Agreement, Section 3.7). The government provides no such protections to its own people or to the company. As noted in previous sections, the Liberian Government has failed to enforce its Concession Agreement despite repeated and continuing breaches by EPO.

Potential Mitigating Factors: While entering into the Concession Agreement, in violation of traditional land rights and without community consent, was a human rights failing by EPO, its actions since entering into that agreement should also be considered. These actions fall into two distinct time periods: 2008-2014, and 2015-present. Between the 2008 signing of the Concession Agreement and the 2014 purchase of EPO by KLK, lands were replanted and operations were reestablished. Communities that resisted were brushed aside by the company. Violence against EPO, particularly as the company expanded was accompanied by a number of complaints, including a successful community complain to the RSPO. In 2015, the company changed course and agreed to suspend all new plantings in disputed areas and has begun a process of engaging with communities over land use. This process appears to have been, and continues to be, rights respectful and should be commended. However, it is still in progress and its success and fulfillment cannot yet be determined. The past actions by the company did violate human rights, the future actions are yet to be confirmed and their consequence are uncertain.

Potential Complicating Factors: Operations that generate large numbers of small grievances from communities have the potential to face large and destabilizing grievances if mitigation is not successful. Working standards, wage rates, and job instability are compounding factors when the communities have already made successful complaints against land tenure approaches and water quality concerns. If EPO’s engagement strategy is not accompanied by on-the-ground change, “lasting peace” is unlikely to result.

For the past actions, the company did not respect land rights. For the current and future actions, the company’s statements are positive, but their effects on the ground will depend on future events. These are therefore rated as probability **UNCERTAIN** and impacts **VERY HIGH**, and the risk to these rights are **PRESENT**.

V. FURTHER ACTIONS

The adverse human rights impacts of EPO’s operations generate risks for the Investor. Some of these risks can be managed and the human rights impacts mitigated. Currently, EPO and KLK have the responsibility under the UNGPS to avoid, mitigate and manage these risks and impacts.



While recommendations and proposed action items are beyond the scope of an HHRA, it is hoped that these initial findings and analyses will assist those efforts.



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- ii. Wisseh Weah Bestman- Government Liaison Manager
- iii. J. K. Flomo—Camp New York manager
- iv. Woloqueh T. Corporal Sec. General Camp
- v. J. Vacannaroy M. Payeconto. Vice Principle EPO Primary School
- vi. Julie—RN EPO Clinic
- vii. John Eastman—Human Resources Assistant Manager
- viii. Lawrence Reed—CSR21
- ix. Mark Nunn—CSR21
- x. Union President Jonathan Tukpah
- xi. Union Secretary General Stan Wisseh
- xii. Numerous inhabitants of nearby communities
- xiii. Tuesday Boyogaro – Disabled ex-employee
- xiv. Joshua Kporzon—Disabled ex-employee
- xv. Joseph Tobay—Disabled ex-employee
- xvi. Numerous employees
- xvii. Numerous subcontractors
- xviii. Numerous camp residents

ii. EPO Butaw

- xix. Kanesh Surwaraji Plantation Manager
- xx. Darius W. Boe, President, Liberia Forest Products Inc. Workers Union
- xxi. Baccus Wiah RSPO Documentation Officer
- xxii. John F. Scott, PA, Officer in Charge of the clinic
- xxiii. Fortee B. Nimely, Principle, plantation school

iii. Communities and Camps

- xxiv. Inhabitants of company camps on the Palm Bay Estate
- xxv. Inhabitants of company camps on the Butaw Estate
- xxvi. Inhabitants of local communities near the Palm Bay Estate
- xxvii. Inhabitants of local communities near the Butaw Estate
- xxviii. Squatters currently allowed to remain on the Butaw Estate



iv. Environment Protection Agency

- xxix. Jerry T. Toe—Manager Department of Compliance and Enforcement
- xxx. John K. Jallah Dr. Assistant Manager, Environmental Research and Standards Compliance and Enforcement Department

v. NGOs

- xxxi. Representatives of the Sustainable Development Institute
- xxxii. Silas Siakor, former Director of the Sustainable Development Institute
- xxxiii. Representatives of the International Senior Lawyers Project
- xxxiv. Other opposition groups and individuals

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