

**Written submission by Black Market Watch**

Black Market Watch is a non-governmental organization based in Geneva which aims to promote better understanding and awareness about illicit trade through research and investigative projects, dissemination of information and facilitation of dialogue among relevant stakeholders in view of finding sustainable solutions to the problem.

The Guidelines on Business and Human Rights and the processes which emerged in pursuance of their implementation could pay more attention to human rights violations linked to the illicit economy. Black Market Watch would like to draw attention of the 2013 United Nations Forum on Business and Human Rights to potential complicity of business and governments in the violations of human rights in this area.

Illicit markets can be defined as cross-border economic activities that are not authorized by the sending and/or receiving parties.[[1]](#footnote-2) Illicit trade and illicit markets can also be defined in broader terms beyond the prohibitions put in place by the states: “Illicit trade involves money, goods or value gained from illegal and otherwise unethical activity. It encompasses a variety of illegal trading activities, including human trafficking, environmental crime, illegal trade in natural resources, intellectual property infringements, trade in certain substances that cause health or safety risks, smuggling of excisable goods, trade in illegal drugs, and a variety of illicit financial flows”.[[2]](#footnote-3)

Illicit trade and illicit markets have become increasingly interconnected with their legal counterparts. Experience shows that currently there are no certification, due diligence, fair trade, digital identification or other solutions which can guarantee an entirely illicit trade-free supply chain. In addition, there are many gray areas created by patchy international regulation, different national standards and levels of regulation and enforcement, and diverse levels of tolerance for illicit trade in different cultures. It is also difficult to deal with illicit trade because often it is not a clear-cut “black and white” matter.

Clandestine activities provide for a living for millions of individuals who are constrained to engage in illicit trade because of the absence of other opportunities or chose to do so because of higher returns from illicit trade than from legal activities. While some argue that “deviant globalization … has improved their [hundreds of millions of people] material lot more than the mainstream development and philanthropic projects in which Westerners invest hopes, dollars, time and good intentions”[[3]](#footnote-4), Black Market Watch believes that the long-term negative impact of illicit trade overweighs any positive dimensions.

The illicit economy deviates vital resources which could be used for development and for the provision of public services, and it weakens democratic processes, destabilizes states and compromises their long-term development into stable democracies. Major violations of human rights take place in the illicit economy and in the grey area between licit and illicit activities.

Companies are increasingly required to avoid complicity in human rights violations in their supply chain by applying due diligence measures screening and monitoring their suppliers, contractors and other partners. The complexities of supply chain with the merger between licit and illicit and the absence of coherent international and national norms and processes referred to above pose challenges to the companies which are committed to avoid complicity in the violation of human rights.

The levels of corporate complicity can range from involuntary ignorance to active facilitation of illicit trade. Companies can facilitate illicit trade in a number of ways:

- by allowing traffickers to use their infrastructure, for example, trade containers transport illicit and illegal goods along with legal goods, internet shops sell counterfeit goods and medicines, banks accept laundered money, airlines, railways and postal services transport protected species, counterfeit cigarettes or drugs;

- sourcing raw materials and goods which were produced with the violation of human rights, for example, cocoa beans and tea produced with the use of child labour, minerals coming from conflict zones or goods or their elements produced in the underground illicit workshops; or

- not bearing responsibility for the environmental, social or economic negative side effects of their activities, for example illicit disposal of toxic or other waste produced by them in the informal recycling sector.

More collaborative efforts are needed to improve the performance of the existing tools (such as certification, due diligence processes or digital identification) and devise the new ones which would allow business, governments and civil society to become more effective in dealing with the adverse effects of illicit trade.

Black Market Watch calls on the 2013 United Nations Forum on Business and Human Rights to

* consider a wider array of issues related to the illicit economy beyond the issue of human trafficking which is currently on the agenda of the Forum
* review and update due diligence processes for companies and sectors which can be potentially complicit in the facilitation of illicit trade
* support the G8 and OECD efforts on tax evasion through automatic exchange of information and disclosure of beneficial ownership of shell companies
* build capacity in the emerging economies and low-income countries to respond to illicit trade challenges.

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1. Peter Andreas, “Illicit International Political Economy: The Clandestine Side of Globalization,” *Review of International Political Economy*, 11 (3), 2004, pp. 641–652. [↑](#footnote-ref-2)
2. World Economic Forum, Global Agenda Council on Illicit Trade, 2011-2012 Report, <http://reports.weforum.org/global-agenda-council-2012/councils/illicit-trade/>. [↑](#footnote-ref-3)
3. Nils Gilman, Jesse Goldhammer, Steven Weber (eds) *Deviant Globalization: Black Market Economy in the 21st Century*, 2011, p. 5. [↑](#footnote-ref-4)