

3/2015

# The New Law of the Jungle?

Responses by certification schemes and the IOI Group to Finnwatch's Law of the Jungle report



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The report was produced as part of Finnwatch's Decent Work programme supported by:



Finnwatch is a Finnish non-profit organisation that studies the responsibility of global business.

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Publication date: March 2015

## 1. Finnwatch report revealed problems with working conditions

Neste Oil, in which Finland's government holds majority ownership, uses 1 to 2 per cent of all the world's palm oil in the production of biofuel, and uses the world's largest amount of certified palm oil. As ensuring the responsibility of Neste Oil's palm oil purchases is important both in Finland and globally, in 2014 Finnwatch inspected the realisation of labour rights at estates owned by IOI Group, Neste Oil's supplier in Malaysia.

The Law of the Jungle report published by Finnwatch in 2014 found serious violations of labour rights at the IOI Group's plantations. Workers had signed an employment contract they did not understand, some workers earned a salary that was below the statutory minimum wage, workers were not compensated appropriately for overtime work, and IOI restricted the workers' freedom of association in numerous ways. Gender

discrimination was systematic during recruitment and workers were forced to take out enormous loans in order to be able to get the jobs. The company held possession of the workers' personal documentation, and the workers could not independently make decisions on the use of their passport. Many of the observed problems are considered indicators of forced labour by the International Labour Organization (ILO).

This follow-up report examines responses to the Finnwatch report by the IOI Group and international certification schemes ISCC and RSPO. Neste Oil has yet to publish its own detailed action plan for ensuring the realisation of labour rights in its supply chain. Finnwatch will later compile a separate follow-up report on Neste Oil's procedures and the development of working conditions on IOI's estates in Malaysia.

## 2. Certification schemes respond to Finnwatch Report

The Law of the Jungle report published by Finnwatch in 2014 brought to light that all the plantations inspected for the report that had poor working conditions had been certified by International Sustainability and Carbon Certification (ISCC), which was established by the biofuel industry and has the approval of German authorities, as well as by Roundtable on Sustainable Palm Oil (RSPO), which was established by civil society, supplier organisations and companies. Finnwatch criticised the certification schemes for insufficient monitoring of labour rights, as well as for outright ignoring their own criteria during audits.

Based on the findings of the Finnwatch report, it was noted that the RSPO's and ISCC's audits were insufficient instruments for ensuring the social responsibility of palm oil production. Finnwatch felt that, because all of the most serious problems were due to internal policies and practices of the IOI Group, it was clear that the same practices are prevalent at all IOI Group plantations. Nearly all plantations owned by the IOI Group were RSPO and ISCC audited at the time of the inspections.

The Finnwatch report criticised the certification schemes for not taking the weak standing of migrant workers into account. The RSPO's criteria made it possible for workers to be treated in a manner that was the opposite of what the criteria required: e.g. employers have the right to hold on to their workers' passports, if they have written consent from the worker<sup>1</sup>. Other shortcomings were also found in the criteria: both the RSPO's and ISCC's criteria state that workers must be paid a living wage. However, neither certification scheme has any tool for determining what a sufficient living wage is. In light of the report's findings, it can be said that the certification schemes found it difficult to even monitor the statutory wage

level of workers who were paid a performance-based piece rate wage.

Finnwatch recommended that the certification schemes ensure that their criteria take the weak standing of migrant workers in palm oil production countries into account. Finnwatch advised the certification schemes to also monitor that all their criteria is realised and to pay close attention to the quality of their audits. Additionally, Finnwatch demanded that the ISCC be more transparent in publishing its audit reports.

After the Finnwatch report was published, the ISCC and RSPO both published their own press releases and promised to launch investigations into the problems brought forth in the report<sup>2</sup>. At the end of 2014, both schemes published new press releases, in which they listed the results of the investigations they had launched after the Finnwatch report. The investigations by these auditing systems will be detailed in the following sections.

### 2.1 ISCC INVESTIGATION FOUND NO REAL SHORTCOMINGS AT PLANTATIONS

On 2 December 2014, the ISCC published the results of an investigation it had launched on the basis of the Finnwatch report<sup>3</sup>. In September and October 2014, the ISCC's auditors visited plantations that Finnwatch had inspected<sup>4</sup>. During these visits the auditors interviewed plantation workers and management, and examined different types of

<sup>1</sup> In IOI's case, the worker who signed a document giving written consent, did not understand the content of the document they were signing.

<sup>2</sup> RSPO press release 17 September 2014, can be read at: <http://www.iscc-system.org/en/news-press/press-releases/september-16-2014-iscc-statement-on-the-finnwatch-report-on-suspected-labour-rights-violations-on-ioi-palm-plantations-in-malaysia/>

<sup>3</sup> ISCC statement is available at <http://www.iscc-system.org/en/news-press/press-releases/december-02-2014-second-iscc-statement-on-the-report-of-the-ngo-finnwatch/>

<sup>4</sup> ISCC visited also Regent estate, which Finnwatch had not been able to access (for this estate Finnwatch conducted worker interviews off-site).

documents. ISCC also spoke with two local trade union secretaries<sup>5</sup>.

In its statement the ISCC concluded that based on its investigation, they found no shortcomings or violations with regard to compliance with Malaysian law and the ISCC's criteria at these plantations. The ISCC did however note that the IOI's practices were just barely within the limits of acceptability. According to the certification scheme, not all the challenges brought to light could be single-handedly solved by IOI. The ISCC specifically highlighted the problem of holding onto workers' passports: according to the ISCC this is a consequence of Malaysian law and general practice. The objective of this law is to prevent illegal employment<sup>6</sup>. According to the ISCC, no other certification scheme intervenes in this issue either.

Finnwatch sees that Malaysian law does not require employers or give them the right to hold on to their workers' passports without consent from the worker. When a worker arrives in Malaysia, Malaysian authorities process the worker's passport during his registration process for a period of three months. After this, the passport and all other travel documentation that belong to the worker should be returned to him.

Contrary to claims by the ISCC, numerous certification schemes take steps to prevent confiscation of workers' travel documentation or other personal documents: e.g. SA8000 forbids the confiscation of documentation<sup>7</sup>. Confiscation of documentation is also forbidden in the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>8</sup>.

Workers, who come to Malaysia from other countries, are in an extremely vulnerable position. Confiscation of passports by employers is therefore problematic, even if the employee has seemingly given their approval<sup>9</sup> for the practice. The power balance between a Malaysian employer or foreman and a migrant worker is not equal from the get go, and the IOI should actively avoid situations that can lead to the misuse of power.

With the exception of the passport issue, the results published by the ISCC barely touched upon how the other problems highlighted in the Finnwatch report were investigated, and did not give any reasons for why no shortcomings were observed or why they were found to be insignificant. For this reason, Finnwatch sent the ISCC follow-up questions. These dealt with how the auditing system investigated the company's records on working hours for workers, who gather palm oil bunches, the legality of their overtime pay and the appropriateness of IOI's recruitment policies. Finnwatch also inquired as to how the ISCC had determined that IOI does not limit its workers' freedom of association.

In its response to Finnwatch ISCC stated that it did not mean to say that any of Finnwatch findings would be insignificant. However, according to ISCC, the issues raised by Finnwatch are rather complex. ISCC does not feel that these issues could be adequately dealt with in statements since there are no simple answers. Therefore, ISCC has proposed to work together with all parties concerned to tackle the issues raised by Finnwatch. According to ISCC, the companies involved have already agreed to join the respective working group in the framework of the ISCC Technical Committee South East Asia.<sup>10</sup>

Although the ISCC noted in its published statement that it had not found shortcomings at plantations, in its answer to Finnwatch the ISCC admitted that it found it problematic

5 ISCC, Juliane Pohl, email on 17.2.2015

6 According to ISCC the estates are held responsible by Malaysian authorities if a foreign worker disappears from the estate and takes on illegal employment somewhere else.

7 SA8000, Criteria 2.2, [http://sa-intl.org/\\_data/n\\_0001/resources/live/SA8000%20Standard%202014.pdf](http://sa-intl.org/_data/n_0001/resources/live/SA8000%20Standard%202014.pdf)

8 UN, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, can be read at: <0} <https://treaties.un.org/doc/Publication/UNTS/Volume%202220/v2220.pdf>

9 IOI's practice is that it obtains consent at the time the worker signs the employment contract. Employment contracts have not been written in the workers' native language and they do not understand the terms of employment.

10 ISCC, Juliane Pohl, email on 17.2.2015

that workers did not understand the terms of employment, due to the fact that their employment contracts were in a foreign language, as well as due to other recruitment practices. ISCC also stressed that it had already declared in the statement from 2 December 2014 that ISCC does see a need for action to address the issues mentioned in the Finnwatch report.

The ISCC's investigation had also looked into freedom of association. According to the ISCC, migrant workers did not want to join labour unions, because they could never hold an office in a labour union due to Malaysian law. Furthermore, according to ISCC, the foreign workers stated that they preferred to be represented through their own workers' representatives in the management workers panel at IOI.<sup>11</sup>

It is Finnwatch's view that the willingness of workers to join a union is insignificant with regard to assessing whether IOI restricts freedom of association. The view of the workers reported by the ISCC can also be seen as exceptional: normally workers, who join unions, are not pursuing union management positions, but seeking security when problems arise. Finnwatch feels that the ISCC has met very exceptional migrant workers in other respects as well; regardless of their limited ability to understand Malaysian language (some workers are even illiterate), they have had very detailed knowledge of the Malaysian laws for union management. The migrant workers that Finnwatch interviewed at IOI's plantations had not heard of Malaysian unions or did not even know the purpose of trade unions.

The ISCC also states that it interviewed a union representative at two of the IOI plantations, and the representatives had not brought up any problems in the estate's working conditions and had told interviewers that previous problems had been dealt with. Finnwatch feels that it is clear that a single union member working on a plantation could not have openly spoken about problems on the estate. The head office of the National

Union for Plantation Workers (NUPW), which operates on the Malaysian Peninsula, confirmed to Finnwatch that the ISCC, RSPO or IOI had not been in contact with the union after Finnwatch published its report<sup>12</sup>.

The ISCC confirmed in its answer that IOI plantations kept no records of the working hours and overtime work for workers, who collect palm oil (harvesters and cutters). According to the ISCC, it examined the pay slips of workers, who earned under the minimum wage, and found that in these instances workers had been absent from work, they were on their probationary period or had not collected a sufficient amount of palm oil bunches. According to the ISCC, payment practices had been agreed upon in the employment contracts.

Although the aforementioned finding by the ISCC on the lack of working hour and overtime records confirms the findings of the Finnwatch report, the ISCC's conclusions are in stark opposition to Finnwatch's. Payment of the statutory minimum wage cannot be determined separately from the number of hours a worker has worked. The ISCC's report has considered these points separately. A worker must earn a minimum wage for eight hour workdays. Workers must receive statutory overtime pay for any overtime work. The ISCC argued that the payment practice was agreed upon in the workers' employment contracts. However, the ISCC has itself verified that migrant workers do not understand the terms of employment, as they are written in a foreign language.

The ISCC stated that it will continue to review the findings of the Finnwatch report. The ISCC has invited a representative of Finnwatch to give a presentation on the report to the ISCC's technical committee in Bangkok in March 2015. One of the meeting's purposes is to discuss the corrective measures that must be implemented on the basis of Finnwatch's report. Finnwatch's representative will join the meeting.

<sup>12</sup> NUPW, Navamukundan Achuthan Nair, email on 5.2.2015

<sup>11</sup> Ibid.

## 2.2 RSPO: IOI GROUP HAS NOT VIOLATED THE RSPO'S CRITERIA

The RSPO published the conclusions of its own investigation on 15 December 2014<sup>13</sup>. The RSPO also sent its own auditors to the estates Finnwatch had inspected. According to the RSPO, its auditors visited the plantations on 12 September and 26 September 2014. The RSPO's statement also notes that it found no proof at the estates that Malaysian law or the RSPO's criteria had been violated.

The RSPO is more forthcoming in its short statement than the ISCC on the themes investigated during its investigation: wages, living conditions of workers, recruitment of workers and confiscation of passports.

With regard to wages, the RSPO states that estate workers were paid hourly wages that were in accordance with Malaysian law. However, the RSPO said it had found workers at Regent estate that had monthly salaries lower than the minimum monthly salary required by Malaysian Law (900 Ringgit). According to the RSPO, the problem was that these workers were not offered enough work. The certification scheme would like to see the IOI give workers more work so that they could earn at least a monthly salary that reached the minimum wage. The RSPO's findings contradict with the findings of Finnwatch's original report and the findings of the ISCC (see Chapter 2.1.)

With regard to the workers' living conditions, the RSPO notes that it had found violations at Regent estate that the IOI had not corrected in spite of complaints by workers. The RSPO says that it has advised the IOI to quickly correct the shortcomings found in living conditions.

With regard to the workers' employment contracts, the RSPO notes that "there is a risk that migrant workers may have been required to accept terms of employment while still in their home country, and that they have not been given sufficient explanations on terms

and not been given an employment contract in their mother tongue." The RSPO says that the aforementioned point requires further investigation, and notes that IOI should have clear policies for the use of external recruitment agencies and their workers' employment contracts.

The RSPO notes that the company holds on to the passports of migrant workers for security reasons. The certification scheme states that it also interviewed estate workers, who wanted their employer to store their passport<sup>14</sup>. According to the RSPO, workers can get their passports back whenever they so wish, but noted that the IOI's internal guidelines do not state this clearly enough. The RSPO recommends that the IOI update its internal guidelines.

With regard to monitoring of societal criteria, at the end of its statement the RSPO advises auditors to be more vigilant during annual audits.

Finnwatch was in contact with the RSPO during its investigation and requested more information on e.g. how the RSPO had inspected payment of legal salaries during its special audit. The RSPO sent Finnwatch copies of the documents it had reviewed during the audit. The documents included workers' attendance records (a table with worker attendance marked with a line for each day) payslips of workers who had carried out sundry jobs (this refers to work other than collecting palm oil bunches<sup>15</sup>), which included overtime work, and a table detailing the number of palm oil bunches collected by workers, who received performance-based pay. According to provided documents, the example workers, whose payslips had been selected, were paid a salary that was lower than the statutory

<sup>13</sup> RSPO statement is available at <http://www.rspo.org/news-and-events/news/statement-finnwatch-report-update-summary-of-rspo-secretariat-findings-and-recommendations>

<sup>14</sup> Finnwatch also interviewed workers on the confiscation and surrendering of passports. Numerous workers said that passports were not given back to workers when the workers requested their return. Workers believed that the company held on to their passports to prevent workers from escaping from the estates.

<sup>15</sup> The Finnwatch report did not focus on the working conditions of workers who performed sundry jobs, but specifically on those who gathered palm oil bunches.

minimum wage most likely because they were still on their probationary period.

Finnwatch's conclusions on the documents submitted by the RSPO differ completely from the RSPO's interpretation. Finnwatch feels that the documents submitted by the RSPO confirm the findings of the Finnwatch report: no records are kept of the working hours of workers, who gather palm oil bunches and the workers are not paid a proper compensation for overtime work. As stated above, the ISCC's audit report also confirms this practice.

The RSPO did not respond to follow-up questions Finnwatch submitted on the documents. Although dialogue between the RSPO and Finnwatch on the RSPO's findings was still ongoing, the RSPO published its own investigative report, in which it stated that IOI acted according to Malaysian laws and the RSPO's criteria.

Although, dialogue had halted, Finnwatch requested that the RSPO answer its follow-up questions, so that these could be examined in this follow-up report. The RSPO responded that it was unable to answer the questions claiming scheduling problems and failure to obtain sufficient information from Malaysia. Finnwatch noted that the RSPO had been given a period of 1.5 months to answer the questions. It is Finnwatch's view that, had the RSPO's auditor done his/her job thoroughly and investigated the key problem points related to salaries brought to light in the Finnwatch report, he/she should have been able to answer the follow-up questions sent by Finnwatch.



### 3. Responses by the IOI Group to the Finnwatch report

The IOI Group submitted comments for Finnwatch’s original report, and these were published in a separate table in Chapter 13 of the report. Law of the Jungle report is available at <http://www.finnwatch.org/images/pdf/palmoil.pdf>. In addition to this, in December 2014 as a result of discussions inside IOI and dialogue between the company and its customers, IOI published a detailed action plan on procedures to be carried out due to the Finnwatch report.

The IOI Group’s action plan comprises six sections in which the company examines the problems brought to light in the Finnwatch report. Additionally, IOI appended a flow chart of their workers’ recruitment process, recruitment payments and confiscation of passports to its action plan.

We have published a copy of the IOI’s action plan below<sup>17</sup>. We have supplemented the table with comments by Finnwatch for each part of the action plan.

| IOI Group Action Plans Re: Finnwatch Report (December 2014) <sup>16</sup> |  |   |   |            |  |
|---|--|---|---|------------|--|
| Observations  | Current status   | Plans   | Actions   | Time-bound | Comments by Finnwatch  |
| 1. Passport   | Voluntary surrendering to Employer for safekeeping. The Employee has unrestricted documented access to his passport – anytime upon request during his employment at the estate. Passport Movement: About 6 months’ availability to foreign workers. (Annex: 1) | a) Exercise to re-formalise voluntary safekeeping of foreign worker’s passport. | a) Direct meeting with foreign workers to explain the updated employment contract in the foreign worker’s native language, particularly about the voluntary safekeeping of passports by employer. Appoint either in-house interpreter or recruitment agents to explain in foreign worker’s native language. To enhance the current procedure for foreign worker’s safekeeping of passports, and to ensure the foreign worker’s unrestricted documented access to their passports without the need for due justification, and regardless of any outstanding debts. | 31.3.2015  | IOI must update its employment contract to clarify that IOI does not require its workers to surrender their passports to their employer for storage. The IOI’s internal guidelines on storage of migrant worker passports should also be updated in a similar way. If IOI wants to ensure the safekeeping of passports, it can supply a top-quality locker for storage of personal documents and money. There is an imbalance of power between the IOI management and migrant workers that is difficult to fix, and IOI must actively strive to avoid situations in which local management can misuse their power. |

16 Original document available at: [http://www.ioigroup.com/Content/NEWS/pdf/Action%20Plans%20Re%20FinnWatch%20with%20annex%20Final%20Draft\\_DL.pdf](http://www.ioigroup.com/Content/NEWS/pdf/Action%20Plans%20Re%20FinnWatch%20with%20annex%20Final%20Draft_DL.pdf)

17 The original version of the action plan published by the IOI can be read at: [http://www.ioigroup.com/Content/NEWS/pdf/Action%20Plans%20Re%20FinnWatch%20with%20annex%20Final%20Draft\\_DL.pdf](http://www.ioigroup.com/Content/NEWS/pdf/Action%20Plans%20Re%20FinnWatch%20with%20annex%20Final%20Draft_DL.pdf)

| Observations                                    | Current status  | Plans  | Actions  | Time-bound | Comments by Finnwatch  |
|---|---|--|--|------------|--|
| <b>2. Recruitment Fees</b>                      | <p>Fees absorbed by IOI per recruited foreign worker:</p> <p>1. Levy: RM590/-</p> <p>2. Charges Paid At Malaysian Immigration: RM205/-</p> <p>3. Medical Screening (FOMEMA): RM180/-</p> <p>4. Agency Fee: RM350/- Total: RM1,325/-</p> <p>Foreign workers (Bangladeshis and Indians) on inter-governmental recruitment process have no incidental expenses to recover.</p> <p>Incidental expenses at the source countries (Nepal/Indonesia) which are in the range of RM1500 to RM2000 are legally sanctioned and recoverable.</p> | <p>a) Examine current monetary charges incurred by foreign workers at source countries other than the fees absorbed by IOI.</p> <p>b) Conduct meetings to explain to all foreign workers the recruitment procedures and the details of charges or incidental expenses incurred at source countries and fees absorbed by IOI.</p> | <p>a) Detailing all charges incurred by foreign workers at source countries. Review the monthly balance of salary after recovery for such charges incurred at source countries, with due consideration given to ensure that the foreign workers receive sufficient earnings or a “decent wage”.</p> <p>Explore possibility of hiring only from country of origin with inter-governmental policies or foreign workers with no recovery of incidental expenses at source countries.</p> <p>b) Induction courses for new recruits to be conducted in the foreign worker’s respective native language, and to be documented with photographic and/or video recordings.</p> <p>Playback of video recording captured in source countries as evidence of “Free, Prior, Informed Consent” to the terms and conditions of employment.</p> | 31.3.2015  | IOI must find out the processes of the recruitment agencies they employ in the source country. It is important for instance, to find out whether they use contractors and how they monitor the actions of their contractors. IOI must forbid non-statutory recruitment fees that migrant workers are required to pay <sup>18</sup> .   |
| <b>3. Employment Contract (Migrant Workers)</b> | Employment Contract is in English and Bahasa Malaysia as approved by relevant Embassies.  | <p>a) Review of current employment contracts.</p> <p>b) New recruits-induction courses to be also conducted in foreign worker’s native language using local translators.</p>   | <p>a) A copy of signed employment contract in the foreign worker’s native language is to be given to the respective foreign worker.</p> <p>b) During the induction courses conducted when new foreign workers arrive at the estates, the acknowledgement of the upgraded employment contract is to be captured in digital image and archived in CD-ROM format, or printed in legible sizes in addition to the usual acknowledgement using signatures or thumbprints.</p>   | Immediate  | IOI must ensure that migrant workers are given an employment contract in their native language while they are still in their home country and before they have accepted a job with IOI. Workers must be given the opportunity take a copy of the employment contract with them before they sign the contract. If workers are illiterate, the content of the contract must be explained to them verbally. |

18 This is in line with Article 7 of the International Labour Organization’s (ILO) C181 - Private Employment Agencies Convention, 1997 (No. 181), this can be read at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100_INSTRUMENT_ID:312326)

| Observations                 | Current status  | Plans   | Actions   | Time-bound | Comments by Finnwatch  |
|------------------------------|---|---|---|------------|--|
| <b>4. Minimum Wage</b>       | <p>20 % of foreign workers earning below minimum wage due to incomplete tasks or below stipulated hours worked and absenteeism.</p> <p>80% of foreign workers' average earnings are in the range of RM1,100 to RM1,300 which well exceed the minimum wage of RM900 per month.</p> <p>Probationary period (sanctioned in the "Minimum Wage Order 2012") with 30% lower wages than stipulated has been abolished by IOI. No probationary period is needed for all new recruits.</p> | <p>a) Awareness programme of "Minimum Wage Order 2012" to be conducted through interpreters for the foreign worker's respective native language.</p> <p>b) Unproductive workers and malingerers to be repatriated.</p>  | <p>a) Induction course for new recruits to include explanation of the "Minimum Wage Order 2012" in the upgraded employment contract.</p> <p>Monthly monitoring of each worker's earning, which is less than the stipulated figure, needs to be documented with reasons and actions taken, inclusive of counseling, and must be submitted to the top management for comments and necessary actions.</p> <p>b) Documented re-training, re-counseling and monitoring of such category of workers must be carried out before necessary action is taken.</p> | Immediate  | <p>All workers must be paid at least the minimum wage every month. If IOI wants to encourage its workers to gather more palm oil bunches during normal working hours, IOI can pay separate bonuses on top of a monthly salary and performance-based incentives. Workers shall be paid a proper wage for overtime work in accordance with Malaysian law. Workers cannot be paid a salary below the statutory minimum wage because the worker has not completed the complete number of tasks required by IOI. Workers, who act inappropriately or are absent from work without permission should be fired or transferred to other tasks after a responsibly carried out and well documented warning and retraining process.</p> <p>Finnwatch views the IOI's decision to discontinue the use of its probationary period practice very welcome.</p> |
| <b>5. Recruitment Policy</b> | Flowchart for recruitment of foreign workers – Annex 2a/b/c   | <p>a) The simplified version of the policy is to be posted on the notice board of every operating unit.</p> <p>b) Video recordings from source countries of foreign workers having viewed oil palm operations, and agreed to the employment contract in presence of recruiting/government agents.</p> | <p>a) The flowchart to be explained to the foreign workers before posting on notice boards for awareness and feedbacks.</p> <p>b) Playback of 'source country video recording' to foreign workers at the induction meeting in the estates. Video evidence serves as acknowledgement of 'Free, Prior, Informed Consent' to employment in the estates in addition to the documentary requirements.</p>  | Immediate  | Finnwatch emphasises that migrant workers must be able to familiarise themselves with the terms of employment before they accept a job. The employment contract the worker signs must be in the worker's native language, and the worker must be given the opportunity to take the contract home with them before signing. The terms of employment must be explained verbally to illiterate workers.   |

| Observations                     | Current status  | Plans  | Actions   | Time-bound | Comments by Finnwatch   |
|----------------------------------|---|--|---|------------|---|
| <b>6. Freedom of Association</b> | <p>Local Union has free access to foreign workers as long as prior approval is obtained from the management.</p> <p>Every estate/mill has its own ECC (Estate Consultative Committee) favored by foreign workers in resolving disputes and complaints.</p> <p>ECC members comprise 2 representatives from each nationality.</p> | a) Increase representatives per nationality to 4 for broader views and representation at the ECC meeting | <p>a) Balloting of representatives documented.</p> <p>Valid complaints should be entered into the Estate/Mill Complaints Book ("Green-Book") for actions in addition to the minutes of the meeting.</p> <p>Complaints such as earnings below the minimum wage, rest day work, discrepancies in bunches harvested and, living conditions are filed, and resolved through the ECC mechanism</p> | Immediate  | <p>IOI must be in active contact with the local union NUPW, and find out the problems in access to unions which have been observed at individual estates. IOI must commit to deducting the membership fees of migrant workers, who join labour unions, from the worker's salary and paying it to the union. IOI must enter into a collective labour agreement with the NUPW.</p> <p>A workers' committee cannot fulfil the role of a union at estates, and the structure of the workers' committee shall be discussed separately from freedom of association. Workers have the right to hold elections in which they select their representatives for the workers' committee.</p> |

Finnwatch discussed IOI Group's action plan with IOI Loders Croklaan and asked to get more detailed information about the implementation of IOI's action plan. IOI informed that the action plan, as available on the IOI website, is sufficient guidance for IOI's implementation.

According to IOI Loders Croklaan it will continue to monitor the progress IOI is making with regard to IOI's action plan, especially on the comments that Finnwatch has raised during the dialogue with IOI Loders Croklaan.<sup>19</sup>

<sup>19</sup> IOI Loders Croklaan, Ben Vreeburg, email on 4.3.2015

## 4. Summary and recommendations

The IOI Group has initiated measures to make amends to some of the problems brought to light in Finnwatch’s report. However the measures are not yet sufficient for correcting the situation. IOI must ensure that all its workers are paid at least the minimum wage each month for eight hour workdays, pay proper overtime compensation and ensure that a responsible recruitment policy applies to all recruitment agencies used by the IOI and their possible contractors.

The additional clarifications supplied by the RSPO and the ISCC do not inspire confidence in the ability of certification schemes to monitor the realisation of labour rights. Investigations by the certification schemes

brought to light e.g. that there are workers on the estates that earn salaries below the minimum wage and that, due to the IOI’s recruitment practices, migrant workers at the plantations have not understood the terms of their employment. Still, both certification schemes have noted in their conclusions that the IOI Group has complied with Malaysian laws and the criteria of the certification schemes. It is Finnwatch’s view that the certification schemes have not been logical in their interpretation of the evidence collected on living conditions at the estates during audits. The conclusions the RSPO drew from its audit contain clear errors (see e.g. Table 2).

*Table 2: Example of contradictions in statements given by certification schemes and lacking interpretation of findings*

| Finnwatch report findings   | Response by IOI Group  | Response by ISCC   | Response by RSPO   | Comments by Finnwatch  |
|---|--|--|--|--|
| The salaries of migrant workers, who gather oil palm bunches, are not at the statutory level. Some workers receive a salary that is below the minimum wage, no record is kept for working hours of workers who gather palm oil and employers do not pay a proper compensation for overtime. Workers told us that they worked 10-12 hours each day. The written employment contract also encourages workers to work 10-12 hours a day. | 20% of migrant workers earn a salary that is below the minimum wage due to their insufficient performance in their work tasks, working for a smaller number of hours than the statutory number of working hours or absences from work.<br><br>80% of migrant workers earn a median wage that is over the minimum wage and varies between 1,100 and 1,300 Ringgits a month. | No real shortcomings in compliance with Malaysian law and the ISCC’s criteria were observed at the estates. According to the ISCC, IOI’s practices are just barely within the limits of acceptableness.<br><br>IOI plantations kept no records of the working hours and overtime work of workers who collect palm oil (harvesters and cutters) at its estates. The ISCC examined the payslips of workers, who earned under the minimum wage, and found that in these instances workers had been absent from work, they were on their probationary period or had not collected a sufficient amount of palm oil bunches. | Estate workers are paid hourly wages that were in accordance with Malaysian law. The RSPO found workers at Regent estate, who had monthly salaries lower than the minimum monthly salary required by Malaysia (900 Ringgit, 223 Euros). Workers should be given a sufficient amount of work, so they can earn at least a monthly salary that is equal to the minimum wage. | Maintaining records on working hours is a key part of determining the payment of the statutory minimum wage. It is impossible to determine whether a salary is within the legal limits without inspecting working hours. The ISCC confirms that the estates did not keep a record of working hours or overtime work, but still maintained it did not observe any shortcomings in compliance with Malaysian law and the ISCC’s criteria. Finnwatch notes that IOI’s employment contract advises workers to work 10-12 hours daily.<br><br>The RSPO claims that workers receive a statutory hourly wage. Based on Finnwatch’s findings and responses given by the ISCC, as well as the material submitted to Finnwatch by the RSPO that they based their audit on, this information is completely incorrect. |

The standing of migrant workers working in Malaysia is extremely poor, and Malaysia has dropped into the lowest category in the US government's TIP report on human trafficking. Although it is difficult to ensure the realisation of labour rights in Malaysia, certification schemes must be consistent and resolute in their use of international human rights standards as their reference.

The ISCC and RSPO must commit to promoting compliance with international labour rights, such as the International Labour Organization's core conventions and the guidelines related to these. The skills and capacity of the certification schemes for preventing and identifying labour rights violations must be improved. Certification scheme auditors must also be given more training on matters of labour rights and social responsibility.

Finnwatch expects Neste Oil to compile a concrete plan on how it will intervene in labour rights violations in its supply chain and how it will improve its own monitoring of labour rights. International palm oil-focused auditing systems ISCC and RSPO are not at present sufficient instruments for monitoring the realisation of labour rights.





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