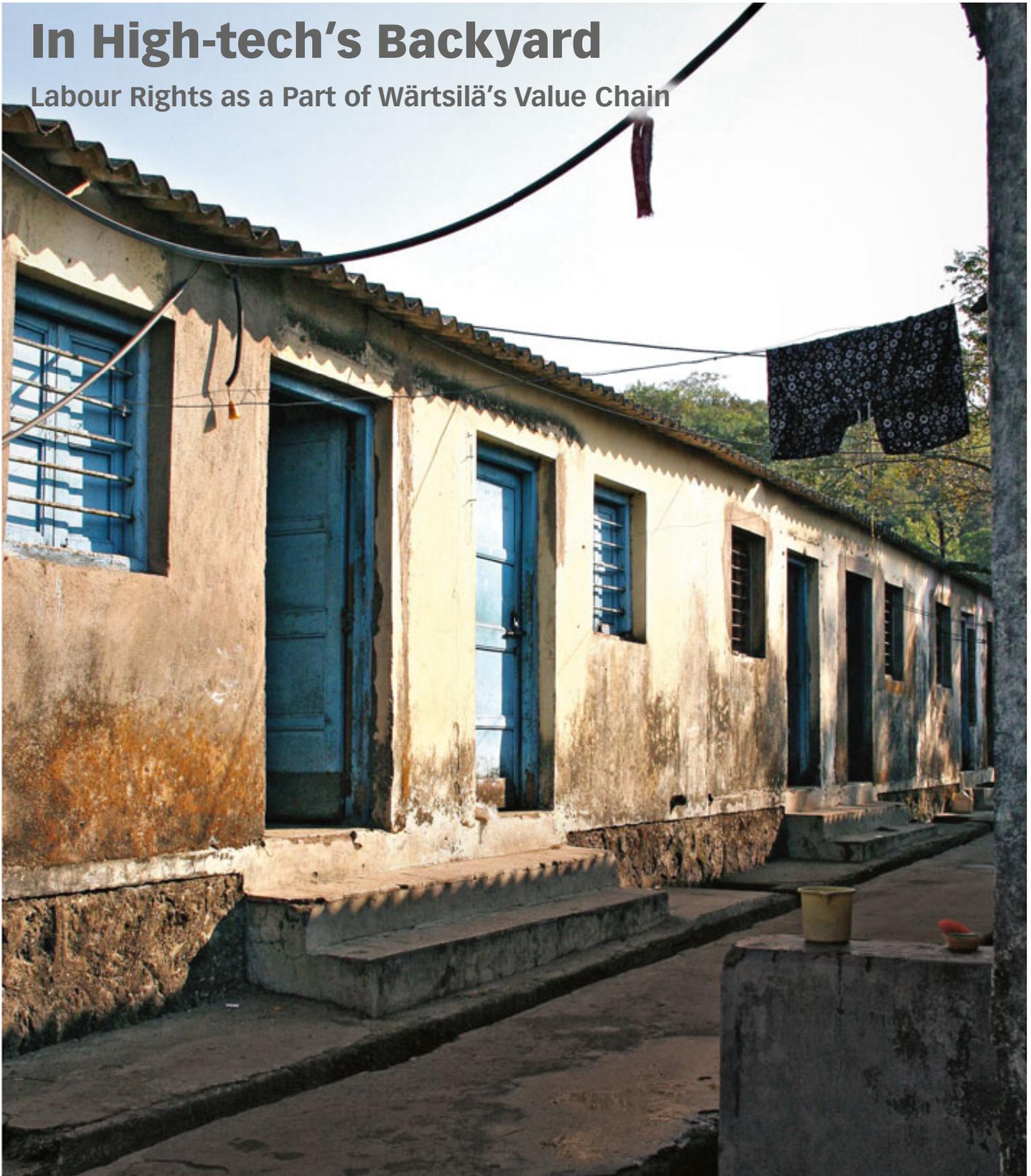


2/2015

 Finnwatch

In High-tech's Backyard

Labour Rights as a Part of Wärtsilä's Value Chain



THIS IS AN UNOFFICIAL TRANSLATION. THE ORIGINAL REPORT HAS BEEN PUBLISHED IN FINNISH AND IS AVAILABLE AT: www.finnwatch.org.

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

Author: Sonja Vartiala and Sanna Ristimäki, Chapter 3: Minna Havunen

Layout: Petri Clusius/Amfibi Ky

Publication date: March 2015

Cover Photo: Finnwatch/Sonja Vartiala

Contents

1. INTRODUCTION	4
2. WÄRTSILÄ AND CORPORATE RESPONSIBILITY	5
2.1 Wärtsilä's personnel practices	5
2.2 Occupational health and safety at Wärtsilä's workplaces	6
2.3 Wärtsilä's subcontractors and other cooperation partners	7
2.4 Implementation and monitoring mechanisms	9
3. ASSESSMENT OF HUMAN RIGHTS RISKS: LABOUR RIGHTS IN INDIA	10
3.1 Limited freedom of association and the right to strike	12
3.2 Use of child labour	13
3.3 Salaries not sufficient to cover living costs	13
3.4 Caste system leads to discrimination	14
3.5 Discrimination of women in the workplace very common	16
3.6 India's internal migrants face adversity	16
3.7 Ineffective or lacking occupational safety	17
4. WÄRTSILÄ IN INDIA – LABOUR RIGHTS AT WÄRTSILÄ'S FACTORY IN KHOPOLI	18
4.1 Lowest wages paid by factory not sufficient to cover living costs	19
4.2 Living wage in Khopoli	20
4.2 Workers not satisfied with the factory's unofficial trade union	22
4.3 Contract workers given consecutive short employment contracts	22
4.4 More attention required for prevention of discrimination?	24
4.5 Occupational safety and health of permanent workers well-organised	24
5. WÄRTSILÄ IN INDIA – WORKING CONDITIONS AT A FACTORY RUN BY WÄRTSILÄ SUBCONTRACTOR ECHJAY FORGINGS	25
5.1 Factory embroiled in court battle with trade union	25
5.2 Contract workers work at the factory with no official employment contracts	27
5.3 Migrant workers do not receive sick leave compensation and have no annual leave	29
5.4 Payslips not provided, meagre salaries and no compensation for overtime	29
5.5 Worker accommodations in very poor condition	30
5.6 Workers dissatisfied with occupational safety at the factory	31
6. HUMAN RIGHTS RISK ASSESSMENTS – LABOUR RIGHTS IN MOZAMBIQUE	32
6.1 Labour legislation ensures the rights of trade unions, implementation and monitoring of legislation ineffective	33
6.2 Employment in informal economy commonplace, employment contracts rare	34
6.3 Salaries often lower than minimum wage dictates	34
6.4 Underemployment and illegally long workdays	35
6.5 Inadequate occupational health and safety	35
6.6 Use of child labour commonplace	35
6.7 Gender discrimination a common phenomena	36
6.8 Migrant workers at risk of being victims of forced labour	36
6.9 Foreign expertise at the expense of the locals	37
7. WÄRTSILÄ IN MOZAMBIQUE – LABOUR RIGHTS AT THE CENTRAL TERMICA DE RESSANO GARCIA GAS PLANT CONSTRUCTION SITE	38
7.1 Wages not sufficient to cover living costs	38
7.2 Ambiguities in overtime compensation and deductions from salaries	40
7.3 Strikes and unrest have resulted in dismissals, trade union not considered trustworthy	41
7.4 Occupational safety at an adequate level, but heat causes problems	42
7.5 Experts from abroad, builders from Mozambique	44
7.6 Working conditions of security guards the site's worst	44
8. SUMMARY	46
9. RECOMMENDATIONS	49

1. Introduction

Wärtsilä, a provider of power solutions for the marine and energy markets, is one of Finland's largest listed companies¹. The international corporation has over 200 places of business in nearly 70 countries, and has supplied power plants to over 169 countries².

Although Wärtsilä conducts business in many countries that are classified as high-risk with regard to human rights, its activities have received very little attention in Finland.

The purpose of this Finnwatch report has been to examine Wärtsilä's corporate responsibility policies and the monitoring thereof. The report presents three example cases

of Wärtsilä's different activities in high-risk countries. One of the field studies examines the construction of a Wärtsilä-supplied gas-fuelled power plant in Mozambique, the second concerns Wärtsilä's own factory in India and the third Wärtsilä's direct subcontractor in India. The field research focuses on examining Wärtsilä's accountability with an emphasis on labour rights.

The report was funded by the Trade Union Solidarity Centre of Finland SASK, the Finnish Metalworkers' Union, Trade Union Pro and the Union of Professional Engineers in Finland.

1 Largest companies, according to turnover, Finland <http://www.largestcompanies.fi/toplistat/suomi/suurimmat-yritykset-liikevaihdon-mukaan-ilman-tytaryhtiota> (viewed on 18.2.2015)

2 Wärtsilä, Annual Report, 2013: <http://www.wartsilareports.com/fi-FI/2013/ar/liiketoiminta/pikakatsaus/>

Wärtsilä's factory in Vaasa.



2. Wärtsilä and corporate responsibility

Wärtsilä is an international corporation that supplies marine and energy-market power solutions. The Group's headquarters is located in Finland. Wärtsilä Corporation is listed on the NASDAQ OMX Helsinki, Finland, and it has 200 points of business around the world.³ In 2014, Wärtsilä's turnover was EUR 4,8 billion.⁴

Wärtsilä's business activities are in three key areas the marine and power plant sectors and service provision. In the power plant sector, Wärtsilä manufactures technology that will secure general power production, the functionality of the grid, industry's own power production and the needs of the oil and gas industries. In addition to this, Wärtsilä supplies power plants that use different fuels as their source of energy.

Wärtsilä's activities in the marine technology sector include the manufacture of ship machinery and engines, aggregates, automation and power transfer systems used in shipping, as well as providing solutions that will help manage and cut technology-related emissions.⁵

In 2013, Wärtsilä employed approximately 18,700 people. In addition to the corporation's own employees, Wärtsilä's factories and units employed contract workers from outside the corporation for a total of 2,813 man hours.⁶

Wärtsilä divides corporate responsibility into three areas: financial, social and environmental. This report examines Wärtsilä's corporate social responsibility with an emphasis on labour rights.

An effective Code of Conduct, which steers all of Wärtsilä's activities, and dialogue with stakeholders form the basis for Wärtsilä's corporate responsibility policies. The Code of Conduct commits to honouring the UN

Declaration of Human Rights, national laws, the ten principles listed in the UN Global Compact initiative, as well as the ILO's Core Conventions.⁷

Wärtsilä's Code of Conduct states that the corporation strives to maintain the highest legal and ethical standards in all its business practices.⁸ The points in the Code of Conduct that focus on workers' rights highlight respect for human rights and labour rights, fostering of equality, freedom from any type of discrimination and the right to a safe work environment.

In addition to its Code of Conduct, Wärtsilä has published corporate responsibility policies regarding employee practices, and these are applied throughout the corporation⁹. The policies are examined in more detail in the following chapter (2.1). The corporation's occupational health and safety principles are outlined in Wärtsilä's policies relating to Quality, Occupational Health and Safety and the Environment (see Chapter 2.2). Wärtsilä also has a public Supplier Handbook, which touches on issues of responsibility (see Chapter 2.3).

2.1 WÄRTSILÄ'S PERSONNEL PRACTICES

Wärtsilä's internal corporate policies regarding personnel practices emphasise equal opportunities for all workers, fairness of benefits and salaries, compliance with legislation and collective agreements, development of the personnel's expertise, as well as cooperation and communication between personnel and management.

Wärtsilä promises to ensure fair salaries, equality in recruitment, as well as freedom of association and the right to collective bargaining. Wärtsilä prohibits all types of

3 Ibid.

4 Ibid.

5 Wärtsilä, mission and vision, <http://www.wartsila.com/fi/about/yhtio-johto/strategia/MissionVision> (viewed on 13.8.2014)

6 Wärtsilä, Annual Report, 2013: <http://www.wartsilareports.com/en-US/2013/ar/sustainability/personnel-and-social-performance/personnel/>

7 Wärtsilä, Code of Conduct: [tp://www.wartsila.com/en/sustainability/approach/Ourcommitment/CodeofConduct](http://www.wartsila.com/en/sustainability/approach/Ourcommitment/CodeofConduct)

8 Wärtsilä, Code of Conduct "(...) company strives to maintain the highest legal and ethical standards in all its business practices."

9 Wärtsilä, Employee practices: [tp://www.wartsila.com/fi/kestava-kehitys/Socialresponsibility/Employeepractices](http://www.wartsila.com/fi/kestava-kehitys/Socialresponsibility/Employeepractices)

Wärtsilä strives to offer all its workers a safe workplace.

FINWATCH / SONJA VARTIALA



discrimination. The corporation's fundamental principle on salaries is that the corporation pays the same salary for the same work and same performance. Salaries must be fair, decent and motivating. These objectives are achieved by using a job's level of demand as the determining factor for its salary.

According to Wärtsilä, differences in competence, experience and performance are noted by paying different people – not e.g. different genders – different salaries. Salaries are reviewed annually, and they must be on par with at least the local minimum wage. According to Wärtsilä's corporate guidelines, no illegal or unauthorised deductions may be made from salaries.

According to Wärtsilä, part-time workers are given the same benefits as personnel in other types of employment relationships. In cases of dismissal, Wärtsilä says it honours local collective agreements and labour legislation. Wärtsilä applies EU Directives, local laws, collective agreements, as well as all similar provisions on hearing of employees and collective bargaining.¹⁰

Wärtsilä's Code of Conduct also emphasises the importance of freedom of association and the principles of cooperation. In

instances wherein a country's national laws prevent freedom of association and the right to collective bargaining, Wärtsilä has committed to providing an alternative way in which workers' can express their opinions and worries.¹¹

2.2 OCCUPATIONAL HEALTH AND SAFETY AT WÄRTSILÄ'S WORKPLACES

Wärtsilä stated that it strives to offer all its workers a safe workplace by complying with high standards of occupational health and safety. Wärtsilä's principles on occupational health and safety are specified in the corporation's Code of Conduct and QEHS policies¹². The corporation has also drafted occupational health and safety guidelines, which it uses to promote occupational health and safety in its global activities. Wärtsilä's subsidiaries are required to have a management system in place that supports the aforementioned policies. At the end of 2013, 48 Wärtsilä subsidiaries had a certified OHSAS (OHSAS¹³ 18001) in place.

¹⁰ Ibid.

¹¹ Wärtsilä, Annual Report 2013: <http://www.wartsilareports.com/fi-FI/2013/ar/kestava-kehitys/henkilosto-ja-sosiaalinen-vastuu/ihmis-ja-tyoelaman-oikeudet/>

¹² Abbreviation for Quality, Environment, Health and Safety

¹³ Abbreviation for Occupational, Health and Safety Management Systems

Table 1: Number of accidents and absences at Wärtsilä's workplaces.¹⁴

Accident	2013	2012	2011	2010	2009
Total number of accidents	730	742	987	971	1,169
Accidents that lead to lost time injuries	199	238	267	333	470
Accident frequency / million hours	4.4	5.5	6.3	7.8	12.9

In 2013, over 80 per cent of Wärtsilä's places of business had an occupational health and safety committee. These committees work together with each company's management and personnel representatives to develop the company's occupational health and safety programmes and ensure that these are in line with national laws and Wärtsilä's policies.¹⁵

Wärtsilä stated that it regularly evaluates the corporation's occupational health and safety. The indicators used to evaluate occupational health and safety performance include the number of accidents, the number of absences due to sick leave and the frequency of accidents.

Wärtsilä has set a corporate target of achieving a zero lost time injury rate. The corporation has adopted the Zero Injury training programme to help achieve this target. The programme comprises four hours of e-learning and four hours of practical exercises. The training is intended for all the corporation's workers, in factories, workshops and other work points. In addition to this, the Board of Management monitors the safety performance of each company by reviewing their accident and absence reports on a monthly basis.

In 2012, Wärtsilä initiated safety walks. The Board of Management, division management teams and the managing directors of Wärtsilä subsidiaries carry out periodic visits to Wärtsilä's workplaces and speak with employees about topics related occupational safety¹⁶.

14 Wärtsilä, Annual Report, 2013, <http://www.wartsilareports.com/en-US/2013/ar/sustainability/our-figures/social-data/>

15 Wärtsilä, Occupational Health and Safety, <http://www.wartsila.com/fi/kestava-kehitys/Socialresponsibility/Occupationalhealthandsafety> (viewed on 28.8.2014)

16 Wärtsilä, Occupational health and safety, <http://www.wartsila.com/fi/kestava-kehitys/Socialresponsibility/Occupationalhealthandsafety> (viewed on 28.8.2014)

2.3 WÄRTSILÄ'S SUBCONTRACTORS AND OTHER COOPERATION PARTNERS

Wärtsilä expects its suppliers and subcontractors to commit to the corporation's Code of Conduct. In 2012, Wärtsilä drew up the Wärtsilä Supplier Handbook, which provides instructions for Wärtsilä's suppliers on matters such as corporate social responsibility requirements.

The handbook states that suppliers must commit to occupational health and safety practices, to fostering equality in the workplace and to pre-emption of all discrimination. Workers shall be afforded freedom of association. In instances wherein a country's national laws prevent freedom of association and the right to collective bargaining, the supplier shall commit to giving its workers an alternative route for making their opinions and views heard. Suppliers shall pay their workers a salary that is equal to at least the national minimum wage. Overtime pay shall be paid in accordance with local laws, and no illegal or unauthorised deductions shall be made from salaries. Use of forced labour and child labour are strictly and unconditionally forbidden.¹⁷

Although the Supplier Handbook covers labour rights, its focus is on the quality of products and other manufacture requirements. The handbook does not, for example, touch upon the procedures that will result from violation of labour rights.¹⁸

Wärtsilä states that it monitors its suppliers' compliance with Wärtsilä's corporate responsibility policies by conducting regular audits and performance reviews. Wärtsilä rates its subcontractors and suppliers according to

17 Ibid.

18 Wärtsilä, Supplier Handbook, 2012: <http://www.wartsila.fi/fi/about/suppliers/supplier-handbook>

the results of its audits and performance reviews; based on these, a supplier can be approved, be approved with certain limitations and remarks, or be banned.¹⁹

Wärtsilä also expects new cooperation partners to comply with the corporation's Code of Conduct and to respect human rights. A company shall demonstrate compliance with Wärtsilä's corporate responsibility policies before they can be approved as a supplier. However, this does not apply to individual purchases or subcontractors that provide smaller services.²⁰

Wärtsilä does not expect its suppliers to require responsibility certifications from third parties or to conduct audits, nor does Wärtsilä use high-risk country lists or other similar ways to prioritise which suppliers must be in the scope of responsibility audits. Wärtsilä states that its supplier audits "are based on business activities".

In 2013, Wärtsilä rated a total of 209 suppliers for the first time, and 239 suppliers were re-evaluated and rated. By the end of the same year, Wärtsilä had rated a total of 793 major suppliers, which cover 95 per cent of the corporation's total value of subcontracting. In 2013, only one supplier was banned due to non-compliance.²¹ In 2014, only 657 major suppliers were rated (the corporation has a total of 1,219 suppliers), but according to Wärtsilä, this still accounted for over 95 per cent of the corporation's total purchases.²²

The number of audits included in Wärtsilä's rating process is massive. Let us use Kesko, which is considered a pioneer in corporate responsibility (listed in the Helsinki stock exchange, turnover EUR 9.3 billion in 2014), as a point of reference. In 2013, Kesko conducted a total of 81 full subcontractor audits and 25 re-audits. At the beginning of

2014, 254 (2012: 209) of Kesko's factories or estates located in high-risk countries were BSCI audited.²³

According to Wärtsilä, its audits cannot be compared to those conducted by Kesko, as the "approaches, requirements and tools used are company-specific". Finnwatch believes that the comparison is justified; in its annual report Wärtsilä states (as does Kesko) that it uses audits to monitor the responsibility of its subcontractors²⁴.

Wärtsilä explained that the number specified in its annual report is the supplier's rating, "which is not an audit, but a number of points awarded to each subcontractor". This rating is compiled by utilising various data sources and systems. According to the corporation, "a supplier's rating may also lead to a broader supplier audit, at which time possible procedures and timetables can be agreed on" and that "different types of 'audits' are carried out for a supplier at different times, which will vary in scope and content according to what is required"²⁵. However, Wärtsilä clearly states in its annual report, as well as on its website that supplier ratings²⁶ are based on pre-assessments and completed audits".

Finnwatch was especially interested in the content, quantity and quality of audits specified in Wärtsilä's annual report, as Finnwatch observed serious problems in the working conditions of a factory run by Wärtsilä's Indian supplier, which Finnwatch examined for this report. Finnwatch discovered that the

19 Wärtsilä, Annual Report, 2013: <http://www.wartsilareports.com/fi-FI/2013/ar/kestava-kehitys/henkilosto-ja-sosiaalinen-vastuu/toimitusketjun-kehitys-ja-arviointi/>

20 Wärtsilä, Supplier handbook, 2012: <http://www.wartsila.fi/fi/about/suppliers/supplier-handbook>

21 Wärtsilä, Annual report 2013: <http://www.wartsilareports.com/en-US/2013/ar/sustainability/personnel-and-social-performance/supplier-development-and-performance/>

22 Wärtsilä, Marko Vainikka, email 19.2.2015

23 Kesko, Corporate Responsibility Report 2013: <http://yhteiskuntavastuu2013.kesko.fi/gri/tunnusluvut/sosiaaliset-vaikutukset/ihmisoikeudet>

24 The definition for audit has been further specified by ISO: "Audit [is] systematic, independent, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements [...] are fulfilled." ISO17000: <https://www.iso.org/obp/ui/#iso:std:iso-iec:17000:ed-1:v1:en>

25 Wärtsilä, Marko Vainikka, email 5.2.2015

26 Supplier rating, Annual Report 2013: "Wärtsilä has implemented measures to regularly track its suppliers' performance. As part of the supplier evaluation, Wärtsilä conducts a rating based upon Wärtsilä's supplier requirements. This rating includes an evaluation of compliance with Wärtsilä's sustainability requirements related to legal compliance, environmental, occupational health and safety management and social performance. This rating is a result of pre-qualification questionnaires and conducted audits."

Indian supplier Finnwatch investigated had never been audited, even though it had been rated and marked as approved in Wärtsilä's supplier database (see Chapter 5).

Wärtsilä responded to Finnwatch's supplementary questions by stating that "the corporation's general practice is that Wärtsilä is responsible for its own activities and suppliers for their own". Wärtsilä stated that it promotes responsibility of business activities by including the key requirements specified in the Wärtsilä Supplier Handbook into the agreements Wärtsilä enters into with suppliers.²⁷

Wärtsilä's annual report gives the impression that the corporation conducts systematic, long-term responsibility monitoring based on open criteria (e.g. Supplier Handbook) and ratings (including pre-assessment and completed audits), and this applies to 95 per cent of the corporation's total value of subcontracting. However, there is a clear inconsistency between the information given in Wärtsilä's official annual report and information the corporation submitted to Finnwatch. Based on Wärtsilä's responses, it is unclear which Wärtsilä suppliers have been audited and what these audits entail. Providing erroneous or misleading information in a listed company's annual report is a violation of Finland's Securities Markets Act (2012/746), and this type of information must be corrected or supplemented immediately in an adequate manner.²⁸

2.4 IMPLEMENTATION AND MONITORING MECHANISMS

Wärtsilä told Finnwatch that, if a subcontractor's working conditions do not meet with Wärtsilä's policies, the corporation and subcontractor work together to draw up an action plan to correct these issues. If a subcontractor does not comply with the action plan or it does not have the capacity to correct observed issues, Wärtsilä terminates cooperation.

Wärtsilä stated that it had committed to continuous and open dialogue between company management and workers' representatives. Wärtsilä promotes the implementation of its Code of Conduct by actively distributing information on its corporate responsibility policies to its workers and by monitoring compliance with policies.

According to Wärtsilä, its objective is to ensure that each worker, as well as other actors are aware of the content of the corporation's responsibility policies. Wärtsilä actively trains its workers and reported that, in 2013, a total of 91 per cent of its workers had completed a course that dealt with the corporation's Code of Conduct.

The corporation's management, as well as management of subcontractor companies are responsible for ensuring compliance with national laws and Wärtsilä's own responsibility policies at each place of business.

Ultimately, responsibility for monitoring the realisation of corporate responsibility falls on the Wärtsilä Corporation Board of Management, which periodically assesses the viability of Wärtsilä's responsibility policies and, when necessary, makes decisions on needed changes or interpretations. The Board of Management also monitors implementation of the policies.²⁹

27 Wärtsilä, Marko Vainikka, 16.2.2015

28 Securities Markets Act, Chapter 1, Section 3: <https://www.finlex.fi/fi/laki/ajantasa/2012/20120746>

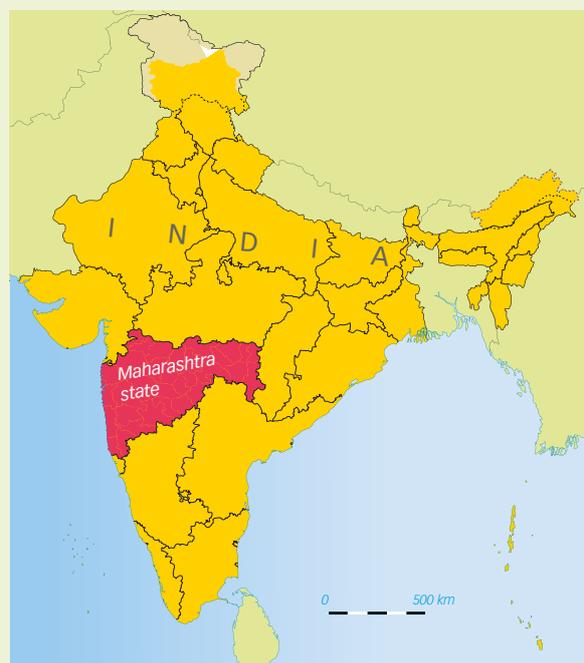
29 Wärtsilä Annual Report, 2013, page. 55: <http://www.wartsilareports.com/fi-FI/2013/ar/hallinnointi/johtokunta/>

3. Assessment of human rights risks: Labour rights in India

India is far ahead of many other Asian countries in the realisation of numerous human rights. India is a democratic republic. The country's media is allowed freedom of speech relatively well, and its civil society is strong, although in recent years the government has obstructed the activities of organizations that criticise the government by limiting the amount of foreign funding they may receive. However, the wealth and rights of India's 1 billion residents are distributed very unevenly. Corruption, impunity and poor implementation and monitoring of laws are extremely damaging to India's human rights situation.³⁰

India's economy has experienced a significant boost during the past decade, and it is the world's third largest economy in terms of purchasing power after the United States and China.³¹ However, India's economic growth has slowed noticeably from 2011, when the global recession began to also affect India. A slump in the service sector's and industry's growth, as well as a drop in investments have had an adverse effect on India's economic growth. Strong inflation has also posed problems. However, the economy is expected to recover somewhat in 2014–2015.³²

Nonetheless, economic growth has not eliminated inequality or poverty, and economic disparity has grown in both cities and the countryside. Due to the unequal distribution of income, economic growth has not been able to reduce poverty to the extent that was predicted. Although India has managed to successfully curtail the share of its population living in extreme poverty (less than \$1.25/day) over the past two decades, in 2010, 32.7 per cent of Indians



still lived in extreme poverty. In 2010, a third of the world's 1.2 billion people living in extreme poverty lived in India.³³

The majority of India's labour force works in the informal sector: in 2009–2010 the share of people, who worked in the informal economy, was approximately 84 per cent and, in 2011–2012, approximately 82 per cent. The share of workers in the informal economy has declined to some extent in recent years, but, at the same time, the majority of jobs that

30 Freedom House, Freedom of the Press 2014, India, <https://freedomhouse.org/report/freedom-press/2014/india#.VIXP03uQm-TU> (viewed on 8.12.2014); Human Rights Watch Report 2014, India, <http://www.hrw.org/world-report/2014/country-chapters/india?page=2> (viewed on 8.12.2014); Human Rights Watch, India, <http://www.hrw.org/asia/india> (viewed on 8.12.2014).

31 World Bank, GDP Ranking, PPP based, 2013, http://data-bank.worldbank.org/data/download/GDP_PPP.pdf (viewed on 8.12.2014).

32 India budget, Macroeconomical Framework Statement 2014–2015, <http://indiabudget.nic.in/ub2014-15/frbm/frbm1.pdf> (viewed on 8.12.2014); ILO, Global Employment Trends 2014, page 59, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf (viewed on 8.12.2014); IMF, World Economic Outlook, Oct 2014, pages 54 and 188, <http://www.imf.org/external/pubs/ft/weo/2014/02/pdf/text.pdf> (viewed on 8.12.2014).

33 UNESCAP, Statistical Yearbook for Asia and Pacific 2013, Income Poverty and Inequality, pages 109–111 and 115, <http://www.unescap.org/sites/default/files/D.1-Income-poverty-and-inequality.pdf> (viewed on 8.12.2014); Belsler Patrick, Rani Uma, Extending the coverage of minimum wages in India: Simulations from household data, ILO 2010, page 1, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--travail/documents/publication/wcms_145336.pdf (viewed on 8.12.2014); The UN Millennium Development Goals Report 2014, s.9, <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (viewed on 8.12.2014).

have been created in India's formal economy have been informal in nature. This means e.g. that workers do not receive in-kind benefits or social security.³⁴ When we take into account this type of work in the formal sector, as well as work in the informal sector, 92 per cent of the entire labour force was in the scope of informal employment in 2009–2010.³⁵

The use of contract workers has been highlighted as one of the background factors for the informalisation of the formal economy and informal employment. For example, while new jobs are created in registered companies, these jobs do not often entail permanent employment or benefits, due to the increased use of contract workers.³⁶ In India, contract workers are often in a very vulnerable position. They do not necessarily receive the minimum wage or may receive less pay than permanent workers. Although, they might have the right to social security, the practical implementation of this has been ineffective.³⁷

Ineffective legislation, insufficient implementation of legislation and the poor collective bargaining rights of the labour force in India increase the human rights risks of corporate activities. Various traditional

customs and beliefs, as well as discrimination based on caste also increase human rights risks.³⁸

The ineffective realisation of labour rights has now received more attention than previously in India. In 2011, trade unions worked together to organise an extensive demonstration in Delhi³⁹, and at the beginning of 2012, India's eleven largest trade unions organised a 24-hour-long general strike to demand better labour rights and protest rising prices.⁴⁰ In February 2013, the general strike was repeated, this time for a period of two days.⁴¹

The following section gives an overview of India's human rights situation with the objective of compiling a rough human rights risk assessment for factory activities in the state of Maharashtra. The risk assessment, which is based on written sources, focuses specifically on labour rights. Other important issues that must be taken into account in the Indian operating environment include the risk of corruption, the rights of indigenous people, as well as environment and tax-related matters. However, these points are not examined in this report.

Maharashtra is India's second most populous state, with 112 million residents. Urbanisation has been rapid in Maharashtra. In 2011, 45.3 per cent of the

34 India Labour Market Update, Dec 2013, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232565.pdf (viewed on 9.12.2014); ILO, Global Employment Trends 2014, page 61, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf (viewed on 9.12.2014); Papola, Trilok Singh, Role of Labour Regulation and Reforms in India, ILO 2013, s.8-9, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_232497.pdf (viewed on 9.12.2014).

35 Papola, Trilok Singh, Role of Labour Regulation and Reforms in India, ILO 2013, s.8-9, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_232497.pdf (viewed on 9.12.2014); India, Decent Work Country Programme 2013-2017, ILO, page 8, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232655.pdf (viewed on 9.12.2014).

36 ILO, Global Employment Trends 2014, page 61, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf (viewed on 9.12.2014); India, Decent Work Country Programme 2013-2017, ILO, pages 8–15, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232655.pdf (viewed on 9.12.2014). Papola, Trilok Singh, Role of Labour Regulation and Reforms in India, ILO 2013, pages 8–9, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_232497.pdf; ILO, India Labour Market Update, Dec 2013, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232565.pdf (viewed on 9.12.2014).

37 Shyam Sundar K.R, Non-regular workers in India: Social dialogue and organizational and bargaining strategies and practices, ILO 2011, page 16-17, http://www.labour-rights-india.eu/documents/WP-30_India_full.pdf (viewed on 16.12.); Papola, Trilok Singh, Role of Labour Regulation and Reforms in India, ILO 2013, pages 15 and 23, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_232497.pdf; Rajeev Mee-nakshi, Contract Labour Act in India: A Pragmatic View, IGIDR Proceedings/Project Reports Series, 2009, <http://www.igidr.ac.in/pdf/publication/PP-062-33.pdf> (viewed on 15.12.2014).

38 Franciscans International, Modern Slavery in India – Cases of Bonded Labour, 2012, page 8, http://franciscansinternational.org/fileadmin/docs/Contemporary_Forms_of_Slavery/Modern_Slavery_in_India__Bonded_Labour_Cases_FINAL_17_Sept_2012.pdf (viewed on 23.11.2014).

39 Bhowmik Sharik, India: Nation-wide Strike on 20-21 February 2013, Global Labour Column, <http://column.global-labour-university.org/2013/02/india-nation-wide-strike-on-20-21.html#more> (viewed on 23.11.2014).

40 AlJazeera, Millions of Indian Workers Strike for Rights, 2012, <http://www.aljazeera.com/news/asia/2012/02/201222842550702681.html> (viewed on 23.11.2014).

41 AlJazeera, Millions Strike in India Over High Prices, 2013, <http://www.aljazeera.com/news/asia/2013/02/201322016857755633.html> (viewed on 23.11.2014).

state's population lived in urban areas. Maharashtra is India's most industrialised state, and its capital Mumbai is the centre of India's economic activity. Maharashtra's gross domestic product accounts for 14 per cent of India's total gross domestic product. Even so, the state is home to a large number of poor people, and, in 2011, 23.3 per cent of the state's city-dwelling population lived in slums.⁴²

3.1 LIMITED FREEDOM OF ASSOCIATION AND THE RIGHT TO STRIKE

India has only ratified four of the International Labour Organization's (ILO) eight Core Conventions. It has yet to ratify Core Conventions 87 and 98, which cover freedom of association, as well as the right to organise and collective bargaining.⁴³ In 2011, India's Minister of Labour and Employment Mallikarjun Kharge noted that India does not intend to ratify Core Conventions 87 and 98. According to Minister Kharge, freedom of association is already secured by Indian legislation and the right to organise is not dependent on the ILO Core Conventions. India has also stated that the conventions have not been ratified, because they would ensure government employees freedom of association, and according to India, the politicised trade unions could this way sway the impartiality of workers.⁴⁴

India's national legislation does not contain a provision on recognition of trade unions, which hinders

collective bargaining in practice. Many employers bypass trade unions and negotiate instead with employer-established trade unions or individual workers. Similarly, legislation in many of India's states does include provisions on recognition of trade unions. Maharashtra, however, is one of the exceptions: the state's laws include provisions on recognition of trade unions and on the rights and obligations of these unions.⁴⁵

The government also has the right to limit the right to strike. For example, the right to strike of workers in public services that are deemed of public interest is restricted in different ways, and services in both the public and private sectors involving very varied activities can be considered of public interest. Different states also have laws that allow the administration to completely prevent strikes in fields they consider important.⁴⁶ Maharashtra has a law like this, which allows state administration to prohibit strikes in fields that are considered important with regard to society's safety and provision of necessary societal services. Violation of this prohibition can result in a prison sentence of up to one year or fines. The law gives state administration free rein to determine which fields are important or necessary to society.⁴⁷

Unionization rate in India is low. Trade unions predominantly represent formal economy workers, and trade unions are very rare among the majority of workers i.e. those who work in the informal economy.⁴⁸ In addition to the low rate of unionization and ineffective or lacking legislation, the fragmented

42 Economic Survey of Maharashtra 2013-2014, https://mahades.maharashtra.gov.in/files/publication/esm_2013-14_eng.pdf (viewed on 8.12.2014).

43 ILO, Ratifications for India, 2014, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691 (viewed on 23.11.2014).

44 ITUC, Annual Survey of Violations of Trade Union Rights – India 2012, <http://survey.ituc-csi.org/India.html?edition=336#tabs-1> (viewed on 23.11.2014); Business Standard, Government to Say Off to Core ILO Conventions, 2011, http://www.business-standard.com/article/economy-policy/govt-to-stay-off-core-ilo-conventions-111031100019_1.html (viewed on 23.11.2014); ILO, Challenges, Prospects and Opportunities of Ratifying ILO Conventions Nos. 87 and 98 in India, 2011, pages 47–50, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_165765.pdf (viewed on 23.11.2014).

45 ILO, Challenges, Prospects and Opportunities of Ratifying ILO Conventions Nos. 87 and 98 in India, 2011, pages 25–26, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_165765.pdf (viewed on 23.11.2014); The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, <http://bombayhighcourt.nic.in/libweb/acts/1972.01.pdf> (viewed on 23.11.2014).

46 ILO, Challenges, Prospects and Opportunities of Ratifying ILO Conventions Nos. 87 and 98 in India, 2011, pages 21–24 and 40, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_165765.pdf (viewed on 9.12.2014).

47 Maharashtra Essential Services Maintenance Act, 2011, <http://bombayhighcourt.nic.in/libweb/acts/2012.12.pdf>; Business Standard, Essential Services Maintenance Act Comes Into Force in Maharashtra, 2012, http://www.business-standard.com/article/pti-stories/essential-services-maintenance-act-comes-into-force-in-maha-112080300577_1.html (viewed on 9.12.2014); ITUC, <http://survey.ituc-csi.org/Union-busting.htm> (viewed on 3.4.2014)

48 Papola, Trilok Singh, Role of Labour Regulation and Reforms in India, ILO 2013, page 14, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_232497.pdf (viewed on 9.12.2014); Sen Ratna, Organizing the Unorganized Workers: The Indian Scene, The Indian Journal of Industrial Relations, Jan 2013, http://wiego.org/sites/wiego.org/files/publications/files/Jhabvala_Unorganized_Workers_IJIR.pdf (viewed on 9.12.2014).

nature of India's trade union movement, disputes within the movement and political variance have been considered problematic with regard to freedom of association.⁴⁹

3.2 USE OF CHILD LABOUR

India has not ratified ILO Core Conventions 138 and 182, which apply to child labour.⁵⁰ Use of child labour is widespread throughout the country, and children work in many different sectors. Estimates on the number of child labourers vary. According to India's national statistics, child labour decreased between 2001 and 2011. According to the last official census in 2011, there were just over 4.4 million child labourers between the ages of 5 and 14, whereas according to the 2001 census there were 12.6 million. If children, who work for 3 to 6 months a year, are included the total number of child labourers is approximately 8 million according to the 2011 census.⁵¹ According to unofficial estimates, the number of child labourers is closer to 50 million.⁵²

Use of child labour is related to crime and human trafficking.⁵³ According to information published in the Guardian newspaper, up to 100,000 children are taken from their homes each year to work in different parts of India. Only a fraction of these cases are included in statistics, and impunity is common.⁵⁴

In August 2012, India's government, drafted a bill according to which children under the age of 14 could no longer be employed in fulltime jobs, and young people between the ages of 14 and 18 would no longer be allowed to work in dangerous jobs. The previous law only prohibited employment of children

under the age of 14 in dangerous jobs. In autumn 2014, India's parliament had yet to approve the law, but according to press reports, the bill, which has been further worked on by the new government will be heard by parliament in the near future.⁵⁵

The use of child labour has decreased in Maharashtra during the past few decades, but, according to its 2011 census, the state still has approximately half a million child labourers. Children usually work in urban-based factories, carry out domestic work and work in the agriculture sector, e.g. harvesting cotton.⁵⁶

The use of child labour is also linked to India's caste system, which will be further examined in Chapter 3.4.

3.3 SALARIES NOT SUFFICIENT TO COVER LIVING COSTS

Data on India's wage development varies according to the research materials used. According to India's official wage statistics, although the country's gross domestic product has grown, its real wages and the purchasing power of workers have declined rather than increased in recent years. Personnel costs of industrial workers are already lower in India than in China. The drop in purchasing power has caused unrest throughout India, and trade unions have protested rising prices.

49 Bhowmik Sharik, India: Nation-wide Strike on 20-21 February 2013, Global Labour Column, <http://column.global-labour-university.org/2013/02/india-nation-wide-strike-on-20-21.html#more> (viewed on 9.12.2014); Papola, Trilok

50 ILO, Ratifications for India, 2014, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691 (viewed on 23.11.2014).

51 State wise details of working children in the age group of 5-14 years as per Census 2011 and 2001, <http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Census-2001%262011.pdf> (viewed on 10.12.2014); National Commission for Protection of Child Rights, 2014, <http://ncpcr.gov.in/showfile.php?lid=930> (viewed on 10.12.2014); Ministry of Labour and Employment, About Child Labour, <http://labour.gov.in/content/division/child-labour.php> (viewed on 10.12.2014);

52 Guardian, Rescues Fear India Will Drop New Law Banning Child Labour, 2013, <http://www.guardian.co.uk/law/2013/feb/23/india-law-child-labour> (viewed on 10.12.2014).

53 US Department of Labour, Findings of the Worst Forms of Child Labour 2013, India, <http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/india.pdf> (viewed on 10.12.2014).

54 Guardian, Rescues Fear India Will Drop New Law Banning Child Labour, 2013, <http://www.guardian.co.uk/law/2013/feb/23/india-law-child-labour> (viewed on 10.12.2014). <http://www.savethechildren.in/images/wingsreportpdf.pdf>

55 Human Rights Watch, World Report 2013, India, <http://www.hrw.org/world-report/2013/country-chapters/india?page=2> (viewed on 10.12.2014); ILO, Natlex, 2014, India, http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IND&p_classification=04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (viewed on 10.12.2014); The Economic Times, Final Law for Complete Ban Child Labour, 2014, <http://economictimes.indiatimes.com/news/economy/policy/final-law-for-complete-ban-child-labour-soon/articleshow/45442534.cms> (viewed on 10.12.2014); Business Standard, Shri Bandaru Dattatreya Chairs National Consultation on Child Domestic Work & Trafficking, 2014, http://www.business-standard.com/article/government-press-release/shri-bandaru-dattatreya-chairs-national-consultation-on-child-domestic-work-trafficking-114120901286_1.html (viewed on 10.12.2014).

56 State wise details of working children in the age group of 5-14 years as per Census 2011 and 2001, <http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Census-2001%262011.pdf> (viewed on 10.12.2014); National Commission for Protection of Child Rights, 2014, <http://ncpcr.gov.in/showfile.php?lid=930> (viewed on 10.12.2014); UNICEF, Maharashtra, 2012: http://www.unicef.org/india/overview_4294.htm

On the other hand, alternate studies show that the income of workers has grown in recent years.⁵⁷ The real income of households (i.e. income from work, capital gain, received transfer payments) seems to have grown between 1999 and 2011. However, economic disparity has grown in India, both between the richest and poorest tenth and within the middle class.⁵⁸

India's minimum wage legislation is based on a minimum wage law enacted in 1948, the purpose of which is to prevent the exploitation of workers. The manner of determining a minimum wage is very complex in India. Minimum wages are legislated by both the national and state governments. Factors that impact the way in which a minimum wage is determined include the field, professional group and expertise of the worker, as well as the location of his/her workplace. As a consequence of this complex system, there are over 1,200 different minimum wages in India, and there may be numerous different minimum wages for the same work in different parts of India.⁵⁹

However, minimum wages do not apply to all workers, and India does not have a single statutory minimum wage that applies to all fields and areas. India's national minimum wage floor is only indicative. Extending the statutory minimum wage so that it applies to the entire labour force has been deemed important, as the majority of the Indian labour force is not within the scope of social security coverage. The development of a comprehensive and effectively implemented minimum wage system has been seen as an important step in improving social fairness and reducing inequality. It is also thought that the implementation of more comprehensive minimum wages will reduce the wage gap between men and women.⁶⁰

As early as in 1982, the Supreme Court of India took a strong stand on compliance with minimum wages, when it defined forced labour as work for which workers are paid less than the minimum wage⁶¹. The use of forced labour is further examined in the following chapter.

India's minimum wage system has been criticised for being far too complex and ineffective. The trade union movement feels that, in practice, the system is difficult or impossible to monitor. The minimum wage system has also been criticised because it does not ensure a minimum subsistence for workers and their families. India's trade union movement has demanded that the minimum wage be increased.⁶²

In 2009–2010, 29.3 per cent of India's labour force lived on less than \$1.25/day, and 66.3 per cent of the labour force lived on less than two dollars/day.⁶³

3.4 CASTE SYSTEM LEADS TO DISCRIMINATION

India's Constitution prohibits caste-based discrimination. However, due to deep-rooted practices, ineffective implementation of legislation and impunity, caste-based discrimination is commonplace. The caste system is a form of social and economic hierarchy rooted in culture and Hindu tradition. It divides people into social classes or castes, in which a person's position in society is based on their ancestry and cannot be altered. The system is maintained by different social, cultural and economic structures. A caste determines a person's course in life from work to marriage, and makes upward social mobility difficult or impossible. The Dalit, who are believed to be below the caste system, as well as indigenous peoples are in an especially weak position.⁶⁴

57 ILO, Global Wage Report 2012/13, pages 10 and 23 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_194843.pdf; AlJazeera, Millions Strike in India Over High Prices, 2013, <http://www.aljazeera.com/news/asia/2013/02/201322016857755633.html> (viewed on 23.11.2014).

58 ILO, Global Wage Report 2012/13, page. 23 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_194843.pdf (viewed on 10.12.2014); ILO, Global Wage Report 2014-2015, pages 20-27, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_324678.pdf (viewed on 10.12.2014).

59 Paycheck, FAQs on Minimum Wages in India, <http://www.paycheck.in/main/salary/minimumwages/minfaqfolder/minimum-wages-in-india#inf1> (viewed on 10.12.2014); Minimum Wage Comparison: Asian Countries, WageIndicator Minimum Wage Report Series 01, 2012, http://www.wageindicator.org/documents/publicationslist/publications-2012/120627Minimum%20Wage%20Comparison_Asian%20Countries_Representation.pdf (viewed on 10.12.2014).

60 Belser Patrick, Rani Uma, Extending the coverage of minimum wages in India: Simulations from household data, ILO 2010, pages 1-2, 7, 9 and 19, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_145336.pdf (viewed on 10.12.2014).

61 ILO, A Global Alliance Against Forced Labour, Report I, 2005, <http://www.ilo.org/public/english/standards/reim/ilc/ilc93/pdf/rep-i-b.pdf>

62 SASK, Ihmeellinen Intia: uusi talous, vanhat ongelmat, 2009, pages. 33–34, http://issuu.com/akava/docs/ihmeellinen_intia_-_uusi_talous_vanhat_ongelmat; India, Decent Work Country Programme 2013-2017, ILO, page 14 (footnote), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232655.pdf (viewed on 9.12.2014); The Times of India, Trade unions' 10-point wishlist for new government, 2014, <http://timesofindia.indiatimes.com/business/india-business/Trade-unions-10-point-wishlist-for-new-government/articleshow/34508139.cms> (viewed on 10.12.2014).

63 ILO, India Labour Market Update, Dec 2013, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232565.pdf (viewed on 9.12.2014).

64 The Constitution of India, Part III, <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm> (viewed on 10.12.2014); Dalit Solidarity Network, <http://dalit.fi/kastisyrjinta/> (viewed on 10.12.2014); Embassy of Finland, Delhi, Maatiedosto Intia, <http://www.finland.org.in/Public/default.aspx?nodeid=43332&culture=fi-FI&contentlan=1&displayall=1> (viewed on 10.12.2014).

Discrimination based on caste also manifests as violence. In 2014, numerous acts of violence targeting the Dalit were reported.⁶⁵

According to the International Labour Organization (ILO), there is a clear connection between the long-term institutional discrimination of population groups, such as the caste system, and the common use of forced labour. The most common form of forced labour in India is bonded labour. An overwhelming majority of its victims are believed to be Dalits or indigenous people.⁶⁶ Some of the Dalits forced into bonded labour are children. It is common for bonded labour to be passed on within a family, when the role of the person required to complete bonded labour is passed on to a younger sibling or other family member.⁶⁷

The use of bonded labour was prohibited in India with a separate law in 1976. India's Constitution also forbids forced labour. However, poor implementation of legislation has led to mediocre results.⁶⁸

In the professional and work world, caste-based discrimination can mean that a person of a lower caste is less likely to be employed in certain types of jobs, earns a smaller salary than persons of other castes, receives fewer benefits and must work in dangerous working conditions.⁶⁹ It has been determined that

Dalits are employed in temporary jobs far more often than the population on average and often end up in menial jobs.⁷⁰

An effort has been made to improve the rights of Dalits by providing preferential treatment and e.g. a certain quota of tenures at government agencies and educational institutions have been reserved.⁷¹ The idea that preferential special treatment should also be extended as a mandatory practice in the private sector has also been highlighted. For example, the National Commission for Scheduled Castes has proposed, most recently in October 2014, that Dalits should have reserved quotas in the private sector.⁷² Some companies have already voluntarily initiated procedures that will improve the position of Dalits. For example, global business group Tata Group, one of India's largest corporations, supports the education and employment of Dalits, also in management positions.⁷³

In addition to Dalits and indigenous peoples, India's Muslims are vulnerable and targets of discrimination. Muslims experience discrimination with regard to employment, and they can find it difficult to find housing or acquire bank loans. Some Muslims may even claim to be Hindu in order to get a job more easily.⁷⁴ Muslims are in a weak position education-wise and economically: poverty is prevalent among

65 National Campaign for Dalit Human Rights, Where is state protection as violence against Dalits rise in Maharashtra, asks NCDHR, 2014 <http://www.ncdhr.org.in/media-library/press-release/where-is-state-protection-as-violence-against-dalits-rise-in-maharashtra-asks-ncdhr/> (viewed on 10.12.2014); The Hindu, Triple Murder of Dalit Family Rocks Maharashtra, 2014, <http://www.thehindu.com/news/national/triple-murder-of-dalit-family-rocks-maharashtra/article6527697.ece> (viewed on 10.12.2014).

66 ILO, A Global Alliance Against Forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005, pages 30-31, <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf> (viewed on 10.12.2014); Center for Human Rights and Global Justice & Human Rights Watch, Caste Discrimination Against Dalits Or So Called Untouchables in India, 2007, <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/chrjg-hrw.pdf> (viewed on 10.12.2014).

67 Franciscans International, Modern Slavery in India – Cases of Bonded Labour, 2012, page 12, http://franciscansinternational.org/fileadmin/docs/Contemporary_Forms_of_Slavery/Modern_Slavery_in_India__Bonded_Labour_Cases_FINAL_17_Sept_2012.pdf (viewed on 10.12.2014).

68 Franciscans International, Modern Slavery in India – Cases of Bonded Labour, 2012, pages 13–14; http://franciscansinternational.org/fileadmin/docs/Contemporary_Forms_of_Slavery/Modern_Slavery_in_India__Bonded_Labour_Cases_FINAL_17_Sept_2012.pdf (viewed on 10.12.2014); Intian perustuslaki, http://india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf (viewed on 10.12.2014); Bonded Labour System Abolition Act 1976; http://pblabour.gov.in/pdf/forms_procedures/procedure01_bonded_labour_system_abolition_act_1976.pdf (viewed on 10.12.2014).

69 ILO, Equality at Work, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2011, page. 43, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_154779.pdf (viewed on 10.12.2014); International Dalit Solidarity Network, Caste Discrimination in Business Operations, <http://idsn.org/business-csr/> (viewed on 10.12.2014).

70 World Bank, Perspectives on Poverty in India, 2011, pages 231-232, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/05/05/000356161_20110505044659/Rendered/PDF/574280PUB0Pers1351B0Extop0ID0186890.pdf (viewed on 10.12.2014).

71 Intian perustuslaki, osa III, <http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss%286%29.pdf> (viewed on 10.12.2014); IDSN, Dalits' Access to Education, http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Education/DALIT_EDUCATION_IDSNbriefingpaper.pdf (viewed on 10.12.2014).

72 Business Standard, Consider Job Reservation for SCs in Private Sector: Panel, 2014, http://www.business-standard.com/article/pti-stories/consider-job-reservation-for-scs-in-private-sector-panel-114103001411_1.html (viewed on 10.12.2014).

73 Further information: <http://www.tata.com/ourcommitment/articles/inside.aspx?artid=HchoeNSAZOM=>

74 New York Times, For India's Persecuted Muslim Minority, Caution Follows Hindu Party's Victory, 2014 http://www.nytimes.com/2014/05/17/world/asia/india-muslims-modi.html?_r=2 (viewed on 10.12.2014); Al Jazeera, Muslims Masquerade as Hindus for India Jobs, 2013, <http://www.aljazeera.com/indepth/features/2013/12/muslims-masquerade-as-hindus-india-jobs-2013129134443863250.html> (viewed on 10.12.2014).

the Muslim population, especially in cities, and a large number of Muslims live in areas where poor infrastructure hampers access to educational institutions and health care services. Only a small portion of Muslims participate in regular wage-earning work, and are generally subjected to poor terms of employment.⁷⁵

3.5 DISCRIMINATION OF WOMEN IN THE WORKPLACE VERY COMMON

India's Constitution prohibits all types of gender-based discrimination. However, women are not considered equals with men in India, and discrimination is prevalent in all areas of life. Women from groups that already experience discrimination, such as the Dalits and Muslims, are especially vulnerable. Selective gender-based abortions are common in India, as is impunity for sexual crimes against women.⁷⁶ In 2013, the number of crimes targeting women rose by 47 per cent from the previous year in Maharashtra.⁷⁷

Work and employment opportunities are unequal for men and women in South Asia. Women earn less and are over-represented in unpaid domestic work.⁷⁸ The wage gap between men and women in India is massive, and similar work experience does not ensure the same salary for a man and a woman.⁷⁹

Only a small share of women participate in the labour force: in 2011–2012 only around 22.5 per cent of women were part of the labour force. The participation of women in the work world has increased a bit in cities, but it has continued to decline in the countryside.⁸⁰ It is far more difficult for Muslim women to find employment in India than it is for

Hindu women.⁸¹ Women are still often employed in traditional “women’s professions”, as maids, cooks, seamstresses, nurses, teachers and cleaners, and many women work in the informal economy.⁸²

Sexual harassment is common in the workplace, and, in 2013, the government intervened by enacting a law to counteract this. According to the law, workplaces are required to establish separate committees for intervening in sexual harassment experienced by women. The head of the committee, as well as at least half its members must be women. However there is still much to do before the law can be implemented in the workplace.⁸³

3.6 INDIA'S INTERNAL MIGRANTS FACE ADVERSITY

Estimates on the number of internal migrants in India vary according to the method of calculation. According to data from official censuses, there are over 300 million internal migrants in India. Work and marriage are the most common reasons for migration, and migration can entail settling for a longer period of time in a new location or short-term moves for seasonal work. The majority of seasonal migrants are poor and have little education. Specifically the number of people moving from the countryside to cities for work is on the rise. Internal migrants already make up approximately one-third of India's urban population.⁸⁴

The contribution of internal migrants in the labour market is an important resource for India's economy. However, migrant issues have not gained prominence on the administration's agenda, and the country's legislation has failed to offer security to migrants, who are often very vulnerable. Migrants often work

75 Prime Minister's High Level Committee, Social, Economic and Educational Status of the Muslim Community of India, pages 106, 150 and 157-161, http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf (viewed on 10.12.2014).

76 Muun muassa: National Alliance of Women India, 4th and 5th NGO Alternative Report on CEDAW, <http://nirantar.net/website/INDIA%204&5%20ALT%20CEDAW.pdf> (viewed on 10.12.2014).

77 Crime in Maharashtra 2013, Chapter 5 Crime Against Women, <http://mahacid.com/13Chapter-5%28127-142%29.pdf> (viewed on 10.12.2014).

78 ILO, Global Employment Trends 2014, page 61: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_233953.pdf (viewed on 10.12.2014);

79 Paycheck.in, Gender Pay Gap in India, <http://www.paycheck.in/main/world-map-gender-pay-gap/gender-pay-gap-in-india-1> (viewed on 10.12.2014).

80 ILO, Labour Market Update, India, 2014, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232565.pdf

81 World Bank, Exclusion and Discrimination in the Labor Market, 2013, page. 5, http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013_bp_Exclusion_and_Discrimination_Das.pdf (viewed on 10.12.2014).

82 Rustagi Preet, Employment Trends for Women in India, 2010, ILO, page 27, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_146129.pdf (viewed on 10.12.2014).

83 The Sexual Harassment of Women at Workplace (prevention, prohibition and redressal) Act 2013, <http://wcd.nic.in/wcdact/womenactsex.pdf> (viewed on 10.12.2014); The Times of India, Sexual Harassment at Workplace Law Gets Tepid Response, 2014, <http://timesofindia.indiatimes.com/business/india-business/Sexual-harassment-at-workplace-law-gets-tepid-response/article-show/34450315.cms> (viewed on 10.12.2014).

84 Unesco, Internal Migration in India Initiative – For a Better Inclusion of Internal Migrants in India, http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/New_Delhi/pdf/Policy_briefs_full_low_02.pdf (viewed on 10.12.2014); UNDP, Migration and Human Development in India, 2009, pages 1-15, http://hdr.undp.org/sites/default/files/hdrp_2009_13.pdf (viewed on 10.12.2014).

in the informal economy in poor working conditions without social security or other security provided by law. Their salaries are often low, and payment of salaries is uncertain. It is often difficult for migrants to find housing with clean drinking water and proper sanitation, and their access to public services such as education and health care is limited. Also, more often than not, internal migrants have no way of influencing government or policies. As they are dispersed around cities and the countryside, it is difficult for migrants to get organised in a way that would allow them to promote their own interests.⁸⁵

The state of Maharashtra is one of the most popular destinations for Indian migrants. Migrants from both within the state and from other states consider Mumbai an especially attractive destination. Migrants from other states are subjected to discrimination that sometimes escalates to violence, and often hear accusations that they have stolen local workers' jobs. In 2008, attacks targeting migrants from northern India in Mumbai and other cities led to an exodus of migrants from the state.⁸⁶

3.7 INEFFECTIVE OR LACKING OCCUPATIONAL SAFETY

India has ratified only 5 of the ILO's 18 conventions on occupational health and safety. India has not ratified e.g. the ILO's convention concerning occupational safety and health and the working environment (No 155).⁸⁷ However, India's Constitution emphasises the safety and health of workers. Additionally,

the country's government has enacted more specific provisions concerning occupational safety and health in four sectors: factory work, mining, construction and harbour work. India also has a national policy programme for occupational safety and health.⁸⁸

However, ineffective implementation of legislation and monitoring of compliance are a problem. Additionally, workers working in the informal sector are not protected by the law and industrial accidents are rarely reported. Awareness of occupational safety is often meagre, and due to shortage of work, workers are willing to work in potentially dangerous conditions. An increase in different employment types, such as contract work has also made it more difficult to include all workers in the scope of occupational safety.⁸⁹

In 2003, the ILO estimated that 403,000 people died annually for work-related reasons in India, and that 356,000 suffered from occupational illnesses. This means that, over 1,000 people died each day for work-related reasons.⁹⁰ Over the past ten years, the number of industrial accidents, such as those at factories, has declined.⁹¹

85 Unesco, Internal Migration in India Initiative – For a Better Inclusion of Internal Migrants in India, http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/New_Delhi/pdf/Policy_briefs_full_low_02.pdf (viewed on 10.12.2014); UNDP, Migration and Human Development in India, 2009, pages 28, 39-40, http://hdr.undp.org/sites/default/files/hdrp_2009_13.pdf (viewed on 10.12.2014); Abbas Rameez & Varma Divya, Internal Labor Migration in India Raises Integration Challenges for Migrants, Migration Information Source, 2014, <http://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants> (viewed on 7.12.2014).

86 Abbas Rameez & Varma Divya, Internal Labor Migration in India Raises Integration Challenges for Migrants, Migration Information Source, 2014, <http://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants> (viewed on 7.12.2014).

87 ILO, Ratifications for India, 2014, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_INSTRUMENT_SORT,P11200_COUNTRY_ID:2,102691#Occupational_safety_and_health (viewed on 10.12.2014).

88 ILO, Occupational Safety and Health, India 2013, http://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_YEAR:IND,2013:NO (viewed on 10.12.2014); Business.Gov.In, Occupational Health and Safety, http://business.gov.in/legal_aspects/occupational.php (viewed on 10.12.2014); National Policy on Safety, Health, Environment at Work Place, 2009, <http://labour.gov.in/upload/uploadfiles/files/Policies/SafetyHealthEnvironmentatWorkPlace.pdf> (viewed on 10.12.2014).

89 India, Decent Work Country Programme 2013-2017, ILO, pages 13-14, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232655.pdf (viewed on 10.12.2014); Pandita, Sanjiv, Status of Occupational Safety and Health in India, InfoChange2009, <http://infochangeindia.org/agenda/occupational-safety-and-health/status-of-occupational-safety-and-health-in-india.html>; Gurumurthy Ramachandran Panneer Sigamani Occupational Health and Safety in India, Economic & Political Weekly, 2014, <http://www.epw.in/commentary/occupational-health-and-safety-india.html> (viewed on 10.12.2014).

90 Al-Tuwaijri, Sameera, Beyond Death and Injuries: The ILO's Role in Promoting Safe and Healthy Jobs, ILO 2008, s.23, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_094524.pdf (viewed on 10.12.2014); Pandita, Sanjiv, Status of Occupational Safety and Health in India, InfoChange2009, <http://infochangeindia.org/agenda/occupational-safety-and-health/status-of-occupational-safety-and-health-in-india.html> (viewed on 10.12.2014).

91 Government of India, Report of the Working Group on Occupational Safety and Health, page 80: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_211795.pdf

4. Wärtsilä in India – Labour rights at Wärtsilä’s factory in Khopoli

Wärtsilä has conducted business in India for nearly 30 years, and it has over 1,200 employees in the country. The corporation’s activities in India include the manufacture of modules for engines and power plants, supply of power plant solutions and the provision of various product-related support services. Wärtsilä justified the transfer of its manufacture plants to India with improved cost-effectiveness.⁹² According to Wärtsilä, its market in India is growing, and it is thus important to develop business locally.⁹³

In this report, Finnwatch inspected working conditions at a Wärtsilä-owned factory in the city of Khopoli, Maharashtra, India. The factory manufactures modules that will be linked to engines and power plants, as well as pipe modules, which are supplied to Wärtsilä’s clients and construction sites around the world. Wärtsilä’s Land and Sea Academy is also housed in the premises of the Khopoli factory. In addition to the factory in Khopoli, Wärtsilä has a customer service point in Visakhapatnam, in the state of Andhra Pradesh, and offices around India.⁹⁴

Around 100 workers with permanent employment contracts (60 shop-floor workers and 40 office workers), a varying number of agency workers (approximately 100–120 workers on the shop-floor) and 40 contract workers permanently employed through recruitment agencies (including security guards and gardeners) work at the Khopoli factory. According to Wärtsilä, the number of contract workers employed varies according to the factory’s production status.

Cividep is an Indian human rights organization based in Bangalore. Finnwatch

92 Wärtsilä, Wärtsilä in India, http://www.wartsila.com/en_IN/about-us/wartsila-in-india (visited on 28.4.2014); DNA India, <http://www.dnaindia.com/money/report-wartsila-sees-khopoli-unit-as-global-hub-1184228> (visited on 28.4.2014)

93 Wärtsilä, Marko Vainikka, email 4.2.2015

94 Wärtsilä, Wärtsilä in India, http://www.wartsila.com/en_IN/about-us/wartsila-in-india (visited on 28.4.2014)

commissioned the organization, which is specialised in labour rights, to conduct off-site interviews with Wärtsilä’s Khopoli factory workers.

A total of 15 workers took part in the interviews, which were carried out from January to April 2014. Our interviewers met some of these workers several times, and, in January 2015, Finnwatch’s Finnish researcher took part in additional interviews carried out in order to verify information received in initial interviews. Of the interviewed workers, 11 were presently working at Wärtsilä’s Khopoli-based factory. Four of the interviewed workers were former contract workers at the factory. The former workers were interviewed in order to gather information on the realisation of labour rights of the factory’s contract workers.

The interviews were carried out off-site individually with each interviewee, at the workers’ homes or at cafes. The interviews were conducted in Hindi.

All the interviews are written down in detail in interview notes. Some of the interviewed parties refused to allow interviewers to record an audio of the interview and only some were willing to show our researchers their employment contracts or payslips. According to the workers, they were not allowed to give the factory’s documents to third parties.

To support the workers’ interviews, researchers also collected information by interviewing workers of the Land and Sea Academy and local authorities. Finnwatch’s Finnish researcher and Cividep India also visited the Khopoli factory together with Wärtsilä’s representative.

As per Finnwatch’s research ethics, Wärtsilä was given the opportunity to comment on the findings of the field research before this report was published. Finnwatch and the corporation held detailed dialogue on the findings of the report between June 2014

and January 2015. Wärtsilä's responses and views on the findings of the report have been included in the following sections.

4.1 LOWEST WAGES PAID BY FACTORY NOT SUFFICIENT TO COVER LIVING COSTS

The minimum wage for the technology industry in Maharashtra state varies depending on the worker's level of competence. A minimum wage determines the basic pay a worker receives before deduction of taxes and pension premiums.

The salary of all the Khopoli factory workers interviewed by Finnwatch at the beginning of 2014 varied from 8,500 to 32,000 rupees (105–395 euros). According to the salary data Wärtsilä has given to Finnwatch, the salaries of the factory's own workers varied at the beginning of 2014 (January – April) from 13,558 to 43,640 rupees (167–539 euros), and the median salary was 28,599 rupees (353 euros) a month. The monthly salary of the factory's experienced contract workers varied during the same time period from 8,500 to 14,000 rupees (median salary 11,250 rupees, 139 euros), whereas the salaries of workers such as cleaners and security guards, who were employed through recruitment agencies, varied from 6,645 to 7,585 rupees (median salary 6,807 rupees, 84 euros). All the salaries paid by Wärtsilä exceed or are equal to the minimum wage. Salaries are reviewed every six months⁹⁵.

According to Wärtsilä, its policy, with regard to salaries in India, is to provide the factory's permanent in-house workers a progressively growing salary, which is competitive and comparative with the general wage level in the city of Khopoli. On the other hand, the wages of contract workers are based on the local minimum wage.

⁹⁵ The salary data given in the report is from the beginning of 2014. Wärtsilä has informed Finnwatch that it has raised salaries after Finnwatch's field research as a result of the state's new minimum wage provisions. India's state-specific minimum wages are reviewed once every six months.

A worker's gross salary is made up of many different parts. In addition to the basic portion of the salary, Wärtsilä's permanent in-house workers also receive other monetary benefits that are included in their net income. These benefits include a healthcare supplement, a house rent allowance or an allowance for paying the interest on a home loan, as well as compensation for work-related transport expenses. Additionally, permanent workers also have extensive health insurance coverage, which also covers their families. The reason for these benefits being paid in addition to basic pay is most likely that these benefits can be paid tax-free, in which case the factory and its workers need not pay taxes on anything by the basic pay.

Statutory income taxes and pension payments (Provident Fund, 12 per cent of basic pay) are deducted from every worker's salary. If a worker eats lunch or other meals in the factory's cafeteria, Wärtsilä deducts meal costs determined by the cafeteria price list from the worker's salary. Workers may also take out loans from banks and credit unions that work in cooperation with the corporation. Interest payments related to these loans are deducted directly from the worker's salary.

The factory's contract workers are not entitled to monetary benefits in addition to their basic pay except a house rent allowance. Additionally, according to Wärtsilä, workers have a group life insurance policy, which, however, does not cover workers' family members. The workers interviewed for Finnwatch's report were not aware of this insurance.

The majority of the workers interviewed by Finnwatch felt that their salary was very low and insufficient to cover basic needs. The interviewed workers estimated that a monthly net salary of approximately 20,000 rupees (approx. 247 euros) would be sufficient to cover living costs⁹⁶. Nearly all workers working on the shop-floor earned less than this sum at the time the research took place. According to interviewed workers,

⁹⁶ Finnwatch's estimate on a living wage will be examined in the following section "Living wage in Khopoli".

only those workers, who had worked at the factory for more than 8–16 years could earn a monthly net salary of over 20,000 rupees. In spite of this, working at the factory for a long period of time was not always enough to guarantee a decent salary. One of the interviewed workers had worked at the factory for eight years (two years of this time as a trainee), but, at the beginning of 2014, his monthly net salary was only 13,000 rupees (160 euros).

The factory's workers were not satisfied with a wage agreement negotiated by General Kamgar Union, the trade union active at the factory (see Chapter 4.2.). This agreement includes an annual pay rise of 8 to 10 per cent. The size of the annual increase depends on the profit made by the factory.

According Wärtsilä, it has entered into a unique agreement with General Kamgar Union already at the beginning of the 1990s. The corporation stated that it had contacted the union and commissioned it to act at the factory. All the workers at the factory automatically become union members and, according to Wärtsilä, this was done to avoid periodic renegotiation of pay. Therefore the factory does not have a collective agreement that is updated and reviewed every 3 to 4 years.

The workers felt that the income gap between management and the factory's shop-floor workers were significant, and they estimated that a wage model based on percentile pay rises would only see this gap grow.

4.2 LIVING WAGE IN KHOPOLI

At Finnwatch's request, Cividep collected information on the workers' monthly food and housing costs, as well as other expenses. The following table gives an estimate on the costs for the basic needs of a family of three.

The rents for residential housing in Khopoli are very high. Rents for residences in the city's unofficial residential areas or villages in the countryside are around 3,000 rupees

Table 2.

Food expenses	Price in rupees	Price in euros
20 kilos of rice (45 rupees/kg)	900	11,1
5 kilos of lentils (85 rupees/kg)	425	5,2
15 litters of milk (32 rupees/litre)	480	5,9
3 litres of cooking oil (100 rupees/litre)	300	3,7
Vegetables (50 rupees/day)	1500	18,5
Animal protein (eggs, fish, meat)	1000	12,3
Coffee/tea (125 rupees/week)	500	6,2
Fruits (150 rupees/week)	600	7,4
Total food expenses	5705	70,4
Other expenses		
Rent	4000	49,4
Water and electricity	400	4,9
Firewood, fuel oil, gas	900	11,1
School payments, tuition, transport	1500	18,5
Medicines and other health care	750	9,3
Clothing	1000	12,3
Traditional festivals and weddings	500	6,2
Commute to and from work (50 rupees/day)	1500	18,5
Other expenses in total	10550	130,2
All expenses in total	16,255 rupees	200,6 euros

a month (37 euros). Rents for residences located reasonably close to the city are around 4,500–6,000 rupees a month (55,5–74 euros).

Wärtsilä offers factory-owned housing to the factory's top management and a few workers, who must be close to the factory in case of e.g. disruptions or faults in the manufacture process. There is also housing available on the factory grounds for Finnish employees posted at the factory. Wärtsilä's Khopoli factory has a total of 20 residences.

Shop-floor workers receive a house rent allowance from Wärtsilä. In addition to providing an allowance for rent, the factory pays 90 per cent of its employees' home loan interest payments, if the worker wants a home of their own. Wärtsilä stated that the allowance for interest payments was one method for encouraging workers to commit to a job at Wärtsilä's Khopoli factory.



Wärtsilä's Land and Sea Academy is housed in the premises of the Khopoli factory.

Shop-floor workers interviewed by Finnwatch complained that the allowance for interest payments really only benefitted those workers, who already earned higher wages. One of the interviewed workers, who had worked at the factory for over eight years, had saved up money to build a house, but he could not get a loan from his bank due to his meagre monthly salary. According to Wärtsilä, this was an isolated incident, and the corporation stated that when workers request it, the corporation provides proof of a worker's employment at the factory to their bank.

Cividep's assessment on a living wage also takes into account culturally important festivals. In addition to weddings, the interviewed workers participated in seven to eight festivals each year. The local wedding season runs from January to May, and during this time workers spend more money on wedding gifts than at other times. Additionally, important festivals and holidays take place throughout the year. In Khopoli, such festivals include Diwali (festival of lights), Gudhi Pawda (new year), Pola (a bull-worshipping festival celebrated by farmers) and Gokul Ashtami (Krishna's birthday). During these festivals, participants dress in their best clothing, serve food to their friends and relatives and make religious offerings.

Unmarried workers are expected to send money to their parents and other family members. Unmarried men are also expected to participate in covering their siblings' wedding expenses.

During their interviews, some workers said that they sometimes loaned money in order to cover living costs. Two interviewed workers earned additional income from a second job or their own company. The workers said that holding down two jobs was extremely stressful. Wärtsilä reminded Finnwatch that holding down two jobs at once without permission from one's employer is illegal in India.

According to the above calculation, a living wage for a family of three with one provider in Khopoli is approximately 16,000 rupees a month.⁹⁷ The calculation does not take into account monthly savings or financial aid to relatives outside of the nuclear family. It is essential for workers in India to have savings to cover illnesses or other unexpected expenses, as the government does not provide sufficient social security. A family's children are also expected to take care of their grandparents, as well as any other relatives outside of the nuclear family, who need help. For the aforementioned reasons, Finnwatch feels the calculation included in this report is moderate. The calculation corresponds with e.g. the salaries and a living wage in India assessment updated by the Asia Floor Wage Alliance's in 2013. The AFWA's estimate on a living wage in India

⁹⁷ The calculation presented in this report was compiled during field research in 2014. Finnwatch published its own Model for Calculation a Living Wage on 13.2.2015, and Finnwatch will use this calculation as a point of reference in all its future research. Calculation model: <http://www.finnwatch.org/images/palkkalaskelmataulukko.pdf>

was 16,240 rupees⁹⁸. As noted above, the workers interviewed by Finnwatch believed that a monthly salary of 20,000 rupees was a living wage.

Wärtsilä did not want to give further comment on the calculation of a living wage given in this report, but saw that living costs varied greatly depending on the consumer habits and preferences of individual workers.

4.2 WORKERS NOT SATISFIED WITH THE FACTORY'S UNOFFICIAL TRADE UNION

No official trade union acted at the Wärtsilä Khopoli factory during the duration of the field research. Instead, an internal trade union, which was not registered as a trade union, acted at the factory. However, the internal trade union is affiliated with the General Kamgar Union, and renewed its registration to the external trade union in early 2014.

Management at the Wärtsilä Khopoli factory told Finnwatch that it had commissioned the General Kamgar Union, which has its headquarters in Mumbai, to act as the factory's internal union. Wärtsilä states that this was done in order to avoid difficulties and conflicts with trade unions that strive to pursue different political objectives. The corporation told Finnwatch that it feels that collective bargaining every 3 to 4 years is unnecessary. All of the permanent workers at Wärtsilä's Khopoli factory automatically become members of the internal union when employed by the factory.

Many of the workers interviewed by Finnwatch also confirmed that the internal trade union had been formed in order to keep other trade unions away from the factory. The former chairman of the workers' committee said that external trade unions predominantly pursued their own political interests instead of the interests of the workers.

However, the workers interviewed for this report were not satisfied with the efforts

and pursuits of the internal trade union. Workers felt that the internal trade union was undemocratic and did not intervene in or take a stand on issues that were important to workers. The workers were especially dissatisfied that the unofficial trade union did not allow shop-floor workers to participate in negotiations concerning salaries and working conditions, and because the union had been unsuccessful in wage negotiations with management.

Wärtsilä explained that it had entered into a unique agreement with General Kamgar Union already in the 1990s, and according to this agreement all workers received an 8 to 10 per cent pay rise each year. Due to the agreement, no collective bargaining ever takes place at the factory. All negotiations on salaries are conducted individually between the worker and foreman during development talks. General Kamgar Union's representatives visit the factory once a year to maintain the business relationship.

Workers, who had been employed by the factory numerous times consecutively for temporary periods (see next section, Chapter 4.3) had asked the union for help, but had been told that the factory's internal unofficial union could do nothing for them. Both Wärtsilä and a representative of the factory's internal unofficial union, who Finnwatch interviewed, confirmed this point of criticism and stated that the union does not oversee the terms of employment of contract workers.

New representatives were appointed to the factory's internal unofficial trade union during the field research in March 2014. The different units at the Wärtsilä Khopoli factory appointed the trade union committee's new members unanimously without elections.

4.3 CONTRACT WORKERS GIVEN CONSECUTIVE SHORT EMPLOYMENT CONTRACTS

Wärtsilä's Khopoli factory uses the services of two agencies for employment of contract workers. The labour contracting agencies are

⁹⁸ CCC, Asia Floor Wage in local currency, <http://www.cleanclothes.org/livingwage/asia-floor-wage-in-local-currency> (viewed on 22.1.2015)

Kedari Labour Service and Kamala Labour Service. Kedari Labour Service, which is responsible for employment of shop-floor contract workers, has its office at the Wärtsilä facility, and one person, who is employed by Wärtsilä, is responsible for relaying contract workers.

When Finnwatch initiated its field research in January 2014, the contract workers employed through the Kamala Labour Service worked as security guards, cleaners and gardeners. Later, in April 2014, Wärtsilä employed tens of workers at its Khopoli-based factory through Kedari Labour Service. At the factory, contract workers weld, carry out electric work, and act as mechanics. According to Wärtsilä, the factory employs contract workers during production peaks.

According to interviewed workers, contract workers are often offered numerous consecutive short-term employment contracts. Their contracts often only last for six months at a time. During the field research, Finnwatch researchers met with four former contract workers, who had worked at Wärtsilä's Khopoli factory for many years in short, temporary periods. Their employment had been terminated every six months for a few weeks after which they had again been employed.

Wärtsilä told Finnwatch that it employed contract workers according to the FIFO principle (first in, first out).

According to the interviewed workers, contract workers had complained that the temp agency intermittently paid them lower overtime wages than was the standard. They noted that these lower overtime wages had been paid to workers, who had come from India's other states. The workers assumed that this was because migrant workers may not be aware of the local minimum wage requirements.

Salaries are paid to contract workers once a month in the Wärtsilä factory cafeteria. Normal monthly salaries are paid to workers with a cheque but overtime is paid in cash. Overtime work is marked with a pen on payslips with no mention of the hours on which

overtime wages are based. Deductions for cafeteria purchases by contract workers are also marked on their payslips with a pen. The practice is very likely to cause confusion and misunderstandings with regard to payment of salaries.

During busy periods, workers work a notable amount of overtime. For example, in July 2014, both the factory's contract workers and permanent workers worked four hours of overtime nearly daily on the shop-floor. Workers do not work overtime year-round. Overtime work is usually required during production peaks related to the delivery of orders.

The factory's former contract workers, who were interviewed by Finnwatch, did not have written employment contracts. Wärtsilä denied this information and stated that all workers are given a written employment contract. In January 2015, Finnwatch contacted the previously interviewed contract workers to verify Wärtsilä's response. The workers stood by their initial answers. According to the workers, they had been called into work by telephone, and no official contracts had been drawn up.

The factory's contract workers were in a weaker position than then its permanent workers. Contract workers could be dismissed from their jobs at any time, if there was no longer need for their contribution. They are not permitted to be members of the factory's unofficial trade union (see Chapter 4.2), and the health insurance policy and other benefits they are offered are not nearly as good as those the factory's permanent workers receive.

Contract workers also have little if any chance of making their voice heard, and they can only turn to the labour service that recruited them. The former contract workers interviewed by Finnwatch said that they had asked the factory's unofficial trade union for assistance in attaining permanent employment contracts, but the trade union said it could not help them.

4.4 MORE ATTENTION REQUIRED FOR PREVENTION OF DISCRIMINATION?

Only a few women and Dalits, a group outside the caste system, work at Wärtsilä's Khopoli-based factory. According to the workers less than ten of the factory's 200 workers are Dalits and even fewer are women. Some of the interviewees mentioned that the Dalits were subjected to discrimination at times. An example situation mentioned by some was an instance in which after a traineeship a Dalit was not given a permanent contract, and it had been given to a less competent worker of a higher caste instead. The workers also said that Muslim workers were sometimes bullied.

Maharashtra's Dalit population is growing and, at present, they make up over ten per cent of the state's population. However, Wärtsilä's factory has too few workers to draw any broad-scoped conclusions on the distribution of labour force at Wärtsilä. The instances of bullying and discrimination reported during our interviews were also very probably isolated incidents.

Although, strong conclusions cannot be drawn, it is clear that in the Indian context special attention must be given to prevention of discrimination and active corrective measures. Wärtsilä's corporate responsibility policies forbid any type of discrimination, but the corporation does not have a separate policy to help improve treatment of groups that experience discrimination. During Finnwatch's investigation, Wärtsilä did however state that the corporation intended to add diversity promoting indicators to the performance targets of its India-based personnel managers.

4.5 OCCUPATIONAL SAFETY AND HEALTH OF PERMANENT WORKERS WELL-ORGANISED

The workers interviewed for this report estimated that occupational safety was well-organised and managed at the factory, although, due to the nature of the work, it involved safety hazards. For example, workers who completed work at great heights used appropriate protective equipment, such as harnesses and ropes. Workers were provided gloves, work clothing, a helmet, protective footwear, as well as ear protectors and protective masks free of charge.

Most recently, a larger accident had taken place at the factory in 2009. The factory's health care clinic treats workers and local residents free-of-charge two days a week. Permanent workers and their family members are covered by an extensive health insurance policy. Contract workers are covered by a more modest group insurance policy, which does not extend to their family members. According to Wärtsilä, the comprehensive insurance policy is a benefit the factory only wants to provide for its permanent workers.

Every worker at the factor takes part in monthly occupational safety training. If there are changes to manufacture practices or new machinery is installed separate safety training is provided in addition to the monthly training. In addition to this, the factory supplies information on health-related matters including HIV/AIDS, as well as provides first aid training. Workers said that the factory also organises regular health checks for its workers.

Wärtsilä's Khopoli factory has adopted the 5S workplace and process organisation method⁹⁹. The method can also have a positive impact on occupational safety. A visit to the factory by a Finnwatch researcher confirmed the worker's account that the factory was clean and the worker's jobs were organised appropriately. The aforementioned points also have a positive impact on occupational safety.

⁹⁹ Wärtsilä India's own video on the 5S method: <https://www.youtube.com/watch?v=eJASAA-6ERI>

5. Wärtsilä in India – Working conditions at a factory run by Wärtsilä subcontractor Echjay Forgings

Research for this report included a field study at the premises of Pushpaman Forgings a unit owned by Echjay Forgings, one of Wärtsilä's suppliers. The company was established in 1960, and its headquarters is located in Mumbai. The Echjay Forgings factory is located in Honad Village, Khopoli, in the state of Maharashtra.¹⁰⁰

Echjay Forgings supplies flanges, which are used to connect pipes to one another. Wärtsilä rated Echjay Forgings (see Chapter 2.3) in 2014, and the company was approved as a supplier and registered in Wärtsilä's global supplier database. Suppliers registered in the database are permitted to supply products to all Wärtsilä units. Wärtsilä told Finnwatch that "... the assessment method has been applied to Echjay Forgings where applicable. A pre-assessment and supplier rating have been carried out at Echjay Forging¹⁰¹. These included matters related to labour rights. Wärtsilä is also in the process of conducting a supplier audit for this supplier, the results of which are as of yet unavailable,"

In April and November 2014, at Finnwatch's request, Cividep, an NGO specialised in labour rights, interviewed Echjay Forgings' workers. The worker interviews were conducted off-site. Additionally, in January 2015, Finnwatch's own researcher visited the factory dorm in the village of Honad and met with workers. A total of 50 workers were interviewed for this research.

Interview participants included the factory's permanent workers, contract workers, migrant workers, as well as three former employees. The interviewed workers were between the ages of 25 and 53. Half of the interviewed workers were married, and they had an average of 4–5 dependents. Unmarried workers also had numerous family

members, who were dependent on their income.

The workers interviewed during the field research were involved in shop-floor work. Typical work tasks included moving of steel bars, heating of steel in the factory's furnace, forging, operating CNC machines, as well as loading and unloading.

In order to protect their privacy, the workers names are not mentioned in this report. In addition to the workers, Kamgar Congress Union, which acts at the Echjay Forgings factory, provided information to Finnwatch.

As per Finnwatch's ethical code of conduct, Echjay Forgings was given the opportunity to comment on the report's findings. In its reply Echjay Forgings strongly urged Finnwatch to forgo publishing the report. According to the company, the report was "highly objectionable and vague, as well as highly prejudicial to our interests". The company also implied that the report had "ulterior motives".

Echjay Forgings' views and comments to the report are presented below. Additionally, the company was given the opportunity to publish a statement that would be attached to the Finnwatch report. This statement can be found on page 31.

Finnwatch takes all threats of legal action very seriously, and sees them as an attempt to restrict freedom of speech and limit the ability of civil society to shine a light on labour rights violations.

5.1 FACTORY EMBROILED IN COURT BATTLE WITH TRADE UNION

According to the interviewed former employees, the factory actively restricts the workers' freedom of association. In 2010, a conflict arose between Kamgar Congress Union and the factory, when a majority of the factory's workers joined the trade union. Before Kamgar Congress Union arrived,

¹⁰⁰ Echjay Forgingsin website, <http://www.echjay.com/>

¹⁰¹ Supplier ratings. According to Wärtsilä's Annual Report "This rating is a result of pre-qualification questionnaires and conducted audits."

an internal trade union Maharashtra Rajya Rashtriya Kamgar Sangh Union acted at the factory, but according to workers, the internal union did not promote better terms of employment, nor did it intervene in or take a stand on problems at the factory.

After the workers changed unions in 2010, the new union Kamgar Congress Union approached Echjay Forgings management and presented demands for improvement of working conditions. The long list of demands included a raise to wages, to match the statutory minimum wage, as well as that the factory provide protective clothing and equipment to workers at the factory's expense.

The factory's response to these demands was to shut down operations temporarily. Some of the factory's workers were later asked to return, but a total of 287 lost their jobs. Currently a group of 35 workers is seeking justice in a court case that the trade union brought against the factory.

Workers interviewed by Finnwatch, who lost their jobs at the time of the lockout, never received written confirmation that their employment had been terminated. One of the interviewed workers said that he had arrived for work at the beginning of his shift, but at the gate he was told that he could not enter. He had been promised that he would be called back in to work later, but the call never came, although the worker was in contact with his employer numerous times. Kamgar Congress Union has time and again demanded the reemployment of the workers, who lost their jobs.¹⁰²

According to the former workers, after the beginning of this conflict with the trade union, the factory has employed more and more migrant workers from other Indian states (see Chapter 5.2).

Echjay Forgings has a very different view of the aforementioned events. According to Echjay Forgings, the factory's contract with Rajya Rashtriya Kamgar Sangh Union was valid from 28 July 2008 to 31 March 2011.

¹⁰² Kamgar Congress Union, letter to Echjay Forgings on 21.7.2010 and 14.12.2010. Copies of these letters were provided to Finnwatch.

Therefore, the factory saw that Kamgar Congress Union did not have any legal right to demand changes to terms of employment during the contract period in 2010. Echjay Forgings emphasised in its commentary to Finnwatch that while a collective agreement is in force, it is illegal for either party to participate in new negotiations.

Echjay Forgings felt that all statements issued by the Kamgar Congress were completely false. According to the company, Kamgar Congress Union has attempted to blackmail Echjay Forgings by instructing workers to drastically reduce production and to damage expensive machinery. According to Echjay Forgings, it has put up various notices, requesting that its workers refrain from such illegal activities. Copies of these notices were given to Finnwatch.

According to the company, every worker, who lost their job, was offered statutory compensation. Echjay Forgings also told Finnwatch that 287 was an exaggeration of the number of workers, who had been dismissed. Finnwatch asked for information on the correct number, but Echjay Forgings did not wish to continue this dialogue.

Echjay Forgings confirmed to Finnwatch that the factory's lockout began in March 2010. According to the company the reason for the lockout was that workers continued to reduce the rate of production and to damage machinery.

The workers, who participated in the field interviews, said that several workers, who had demanded better working conditions, had been threatened with dismissal and that some, who had issued complaints, had been dismissed. Threats and dismissals have caused fear among workers. Workers felt that these measures were implemented in order to limit workers' participation in the trade union's activities.

Echjay Forgings denied claims that the factory restricted freedom of association. According to the company, the current internal trade union Pushpaman Forging Kamgar Sabha has a long-term collective agreement with the factory. According to Echjay



The Echjay Forgings factory is located in Honad Village, Khopoli.

Forgings, the company's workers had noticed that Kamgar Congress Union was not promoting their interests, and had for this reason left the union and established their own trade union at the factory. According to the factory, it has a new collective agreement in place that has been reached through collective bargaining with the trade union and spans from 24 September 2012 to 31 March 2016. Finnwatch asked for a copy of the new collective agreement, but Echjay Forgings did not want to answer any further questions.

5.2 CONTRACT WORKERS WORK AT THE FACTORY WITH NO OFFICIAL EMPLOYMENT CONTRACTS

The permanent workers, who participated in the field research, had written employment contracts. The employment contracts listed the worker's name, a job description, guidelines and instructions for work (workers must always comply with these) and restrictions concerning illegal strikes. Employment contracts are written in English and, according to workers, the details within had not been explained in or translated into the local language. Many interviewed workers did not understand the content of their employment contract.

Echjay Forgings confirmed that its permanent workers had written employment

contracts that were drawn up in English, and the company gave Finnwatch a copy of this contract. According to the company, the terms of employment were explained to all workers at the start of their employment. The company denied that numerous workers did not understand the content of the contract. According to the factory, the trade union selected by the workers also signed each contract and explained the contract's content to the worker before the worker signed the document.

The workers, who participated in the field research, told interviewers that around 70 permanent workers worked at the factory at that time. The majority of the factory's workers were contract workers.

According to the interviewed contract workers, they had no written employment contract. Some of the interviewed contract workers had a yellow "job card" in their possession, on which completed work days and hours were marked. The job cards do not mention Echjay Forgings in any way, and the name of the agency, through which the workers are contracted, is only mentioned on some cards. Those workers, who did not even have a job card said that the employer maintained a record of completed work hours. In practice, workers did not have any official document confirming their employment, which meant that they were exceptionally vulnerable.

Many workers do not have any official document confirming their employment.

EMPLOYMENT CARD Form X (See Rule 57)

Name and address of Contractor _____

Name and location of work _____

Name and address of establishment in/under which contract is carried on _____

Name and Address of Principal Employer _____

In its response, Echjay Forgings confirmed that the factory employed 77 permanent workers, but did not wish to tell Finnwatch the number of contract workers working at the factory. When asked to confirm that contract workers did not receive a written employment contract, Echjay Forgings did not reply at all.

According to the company, it has the permits and licenses for the employment of contract workers required by labour officials in the state of Maharashtra. The factory's terms of employment are determined in a contract that workers enter into with the agency they are employed through, as well as India's labour legislation. According to Echjay Forgings, contract workers are not in a weaker position, because they all have job cards on which the name of their agency is printed. This claim does not seem to hold true according to Finnwatch's findings.

According to India's labour law, factories may not employ contract workers or day-workers for employment of a permanent nature. When an employee has worked for a company for a total of 240 days, he must receive a permanent employment contract. Many of the interviewed workers had worked back-to-back for numerous years as contract workers without receiving permanent employment.

It seems that the factory's management is gradually withdrawing its liability for workers by converting all workers to the contract

system, and by employing new contract workers from other states.

According to former workers, the factory forced workers to sign Provident Fund Withdrawal forms, which workers normally sign when they resign from their job, and has informed workers that they were no longer employees of the factory but of a contract labour agency. Both trade union representatives and former workers believed that the main motive behind this procedure was to ensure workers would not be as likely to demand their rights through the Kamgar Congress Union.

Labour service agencies always hold legal liability for the contract labour system, and for this reason workers cannot sue the factory's management. This is also evident in practice in the letter sent by Echjay Forgings to Kamgar Congress Union, in which the factory states that it was not responsible for the dismissal of 287 workers in March 2010, as the labour service agency was the workers' actual employer not the factory¹⁰³. According to the company, the factory's payroll only had 104 workers on it.¹⁰⁴

¹⁰³ Pushpaman Forgings, letter to Kamgar Congress Union on 6.1.2011.

¹⁰⁴ Pushpaman Forgings, letter to Kamgar Congress Union on 26.6.2010.

5.3 MIGRANT WORKERS DO NOT RECEIVE SICK LEAVE COMPENSATION AND HAVE NO ANNUAL LEAVE

The factory operates in three eight-hour shifts, six days a week. This applies to both permanent workers and local contract workers.

However, migrant contract workers work 12 hours a day six days a week. Some workers said that overtime work was mandatory, whereas others said they worked overtime out of a sense of duty. A few of the interviewed workers stated that they did not have anything else to do other than to work. Because salaries were very small, workers wanted to work overtime, so that they would have money to send back to their families, who lived in other states.

Permanent workers were entitled to 7 days of casual leave and 7 days of sick leave. Workers earn one day of paid leave for every 20 days at work. All other leaves will be considered unauthorised.

Migrant workers do not have the right to paid leave. Migrant workers are paid a daily wage, so they are, in practice daily workers, who are not paid at all, if they are ill or absent for any other reason.

Echjay Forgings stated that all the employment contracts entered into with factory workers comply with the collective agreement between the factory and its internal trade union, as well as with India's Factory Act. According to the factory, it is possible that some workers occasionally work overtime, but in these cases they are paid overtime compensation that is pursuant to legislation. According to Echjay Forgings, the factory offers certain benefits that have been agreed to in the collective agreement, including annual leave.

Echjay Forgings also explained that the company employs its workers to "complete orders". Finnwatch asked for further information on this practice, but the factory did not respond to any supplementary questions.

The factory added that it categorically denies "all that you have observed and reported".

5.4 PAYSLIPS NOT PROVIDED, MEAGRE SALARIES AND NO COMPENSATION FOR OVERTIME

After the factory's lockout in March 2010 and the implementation of a new collective agreement salaries have been increased from time to time. The monthly salaries of both permanent and contract worker varied between 10,000 and 12,000 rupees (EUR 123.4–246.8). The monthly salaries of migrant contract workers varied between 6,500 and 9,100 rupees (EUR 80.2–112.3). All the interviewed contract workers said that they were paid their normal hourly wage for overtime work with no additional overtime compensation.

According to Echjay Forgings, all workers were paid in accordance with agreements and contracts and that employees were entitled to statutory bonuses that are reviewed every six months. The company emphasised that all workers were paid a minimum wage as stipulated in labour laws. Finnwatch asked Echjay Forgings for additional information on salaries, but the company was not willing to continue this dialogue.

Many of the interviewed workers were not satisfied with the salary they received, and they said they needed at least 20,000 rupees a month to live a decent life and be able to put money aside for savings.

Migrant workers from the states of Haryana, Uttar Pradesh, Madhya Pradesh, Jammu and Kashmir, Assam, Arunachal Pradesh, Uttarakhand, Uttar Pradesh, Bihar, and Jharkhand had to send money back home to their families. The migrant workers, who took part in interviews, told Finnwatch that they tried to send 4,000–6,000 rupees (EUR 49.4–74) to their family each month.

Echjay Forgings did not wish to comment on the dissatisfaction of its workers with regard to salaries.

According to interviewed worker, pension contributions are deducted directly from the salaries of both permanent and contract workers. The factory does not send or give contract workers payslips, so they have no proof of what they are paid. According to

The dormitory only has six toilets, which are not maintained or cleaned.

FINNWATCH / SONIA VARTIALA



workers, the factory does not deduct other statutory payments, such as social security, from their salaries. Workers said that they had not been told about any possible health insurance policy and that they were not given any documents related to this.

Echjay Forgings confirmed that all permanent workers are covered by the company's pension policy and that workers are covered by the company's "workers' compensation policy".

5.5 WORKER ACCOMMODATIONS IN VERY POOR CONDITION

Factory-provided accommodation for migrant workers is located right next to the Echjay Forgings factory. The workers live in small 12–20 m² rooms, which have electricity, a metal roof and a concrete floor. The rooms have one window opening, which can be covered with shutters. Some workers pay 300 rupees a month for the accommodation while others live there free-of-charge.

Each room houses 3–4 workers. The rooms do not have beds, and the workers sleep on thin mattresses. Rooms do not have air conditioning, heating, running water or a toilet.

There is only a single water point in the accommodation area in the form of a pump well. The same water is used for drinking, bathing and for toilet use. Cooking and

bathing waters are run into open sewers outside the rooms and through them into the ground.

The factory has not arranged any type of waste management for the dormitory, and the factory's own landfill is situated next to the workers' accommodation. On hot summer days the area smells especially bad.

The dormitory only has six toilets, which are not maintained or cleaned. Many workers favour a nearby thicket instead of braving the toilets.

According to Echjay Forgings, it has done its best to offer some workers housing and the rest are paid a house rent allowance in accordance with Maharashtra's legislation. Echjay Forgings emphasised to Finnwatch that the factory is located in the village of Honad, which does not have any municipal services and no water connection, and that, at the moment, the company was providing these.

According to Echjay Forgings, the dormitory is intended as temporary accommodation for migrant workers, and workers are expected to find their own residence for which the company then pays its workers the state's statutory house rent allowance, Echjay Forgings said that it was sorry that not all workers were willing to find their own home, and had instead decided to stay permanently in the dormitory. According to the company,

it is the responsibility of the workers living in the dormitory to see that it is cleaned, maintained and waste is managed, just as it would be their responsibility in their own home.

5.6 WORKERS DISSATISFIED WITH OCCUPATIONAL SAFETY AT THE FACTORY

According to the interviewed workers, accidents are common at the factory. The most dangerous work points are near the furnace where steel is melted and near the die hammers. Some of the workers are exposed to hot steel, and they use heavy machinery and dangerous tools. In spite of this, workers have only been given unofficial instructions on health and safety.

According to workers, the factory does not implement adequate corrective procedures after accidents. The workers added that many workers had incurred head, finger and chest injuries. Small accidents were everyday occurrences at the factory, and large accidents occurred a few times a year. According to the workers, the factory provided first aid for injuries and health insurance (only for permanent workers). When an accident occurs or someone falls ill the factory sends the worker to a clinic or hospital of its choice. The factory does not have its own health care facilities, doctors or nurses.

In 2005, a worker lost all his fingers and his hand in an industrial accident. The accident took place when the worker's foot accidentally hit the start pedal on the floor and the machinery's hammer crushed the man's hand. There was no safety box on the machinery. After the accident, the factory moved the start pedal from the floor to the wall, but did not add a safety box. The worker received 300,000 rupees in compensation.

The factory does not provide adequate protective clothing to its workers. Some workers only had protective gloves. The workers do not have helmets, gloves and safety shoes.

Statement by Echjay Forgings Pvt. Ltd., dated: 16 January 2015

Echjay Forgings Pvt. Ltd (Echjay) replied to Finnwatch's initial communication, with preliminary comments. Thereafter, upon legal advice, Echjay has opted not to respond to further queries, as the legal process is still pending

Furthermore, Echjay has explicitly denied Finnwatch, or any of its associates, permission to publish any sub-judice matters in any public forum, in electronic or print form.

Many of those interviewed said that helmets were handed out to workers, when auditors arrived at the factory. When an audit ended, the helmets were collected. When auditors arrived at the factory, some workers are asked to stay home and some were hidden outside of the shop-floor. According to the interviewed workers, there are not enough helmets for everyone.

Echjay Forgings, on the other hand, said that its workers receive all the necessary safety equipment and clothing. The factory denied all allegations that the safety equipment is only given to workers during inspections and that the factory hides its workers during audits.

According to the company, all its workers are insured in accordance with labour laws. Echjay Forgings also said that the factory pays for a group health insurance policy that covers permanent workers and their families (the insurance covers four people per family). According to the factory it was impossible that any foreman could have promised to install a safety box around the die hammer. This would have prevented use the die hammer completely.

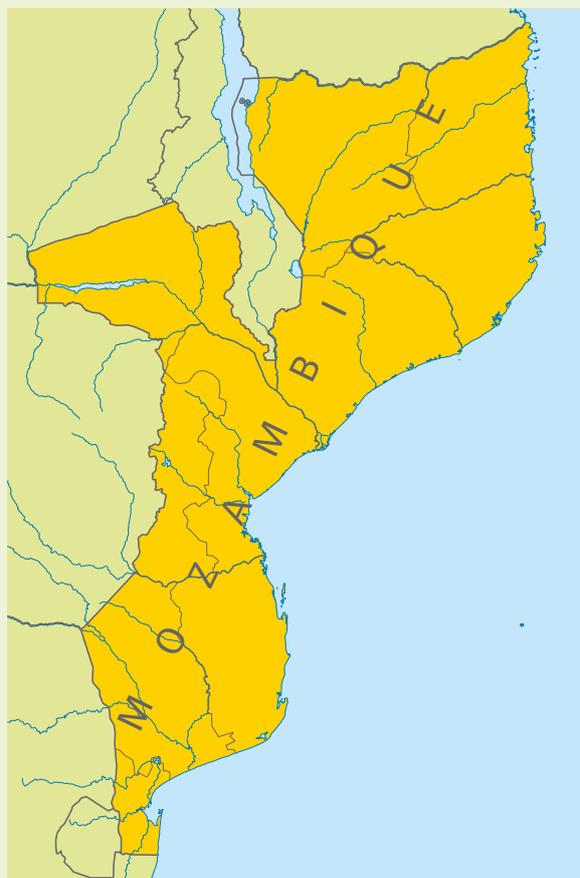
6. Human rights risk assessments – Labour rights in Mozambique

Mozambique is a country in south-east Africa rich in natural resources. Portugal's colonial policy, the War of Independence which lasted for countless years and the following 16-year-long civil war have left Mozambique one of the world's poorest countries – After the end of the civil war in 1992, more than 80 per cent of Mozambicans lived in poverty, and Mozambique was classified as the world's poorest country. Mozambique's infrastructure was completely destroyed during the wars, public health care was non-existent and the national debt was nearly 200 per cent of the gross domestic product.¹⁰⁵

However, due to increased foreign investments related to its natural resources, and international development cooperation, Mozambique's economy has started to recover, and during the last ten years the country's economic growth has been the fastest in southern Africa.

However, even an average annual economic growth of seven per cent has not been enough to eliminate the country's poverty, and Mozambique is still classified one of the world's poorest countries¹⁰⁶. According to the UN Multidimensional Poverty Index 2014, an estimated 70 per cent of Mozambicans lived in poverty; approximately 44 per cent of Mozambicans live in extreme poverty.¹⁰⁷ Over half the country's population still lives below the poverty line measured in terms of purchasing power, and, in 2010, over 40 per cent of the government's budget was dependent on foreign development aid funds¹⁰⁸.

Nearly 80 per cent of Mozambicans earn their livelihood from agriculture and family-owned farming plots. The country's population is very vulnerable as climate change escalates. Drought and then again floods have caused more and more harm to food security¹⁰⁹. Employment opportunities in sectors other than in agriculture, and labour rights issues



CC BY-SA 3.0 NORDNORDWEST/WIKIPEDIA

are of key importance in strengthening Mozambique society.

In 2007, Mozambique's government enacted a new Labour Law and ratified eight of the ILO's Core Conventions and ten of its conventions.¹¹⁰ In addition to the new Labour Law and international agreements, Mozambique's newest poverty reduction strategy the PARP¹¹¹ includes administrative objectives related to employment. One of the PARP's three key objectives is to promote employment.¹¹²

105 Republic of Mozambique, 2010, Report on the Millennium Development Goals, pages 6-7: http://www.mz.undp.org/content/dam/mozambique/docs/Millennium_Development_Goals/UNDP_MOZ_MDG_%20%202010_Report_.pdf

106 Ibid.; African Development Fund, 2013, Mozambique: Technical Assistance to Enable Large Scale Gas and Power Investments in Mozambique, page iv.: <http://www.afdb.org/en/documents>

107 UNDP, 2014, Human Development Report 2014, page 180: <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>

108 UNICEF, 2011, Child Poverty and Disparities in Mozambique 2010, pages 3-8: <http://www.unicef.org/mz/cpd/documents/CPD-Summary.pdf>

109 Maailmanpankki, 2014, Program document for the tenth poverty reduction support development policy financing, page 10: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/11/13/000470435_20141113101213/Rendered/PDF/902990PGD0P146010Box385366B000U0090.pdf

110 ILO, Ratifications for Mozambique, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNT-RY_ID:102964 (viewed on 20.10.2014); and ILO, 2011, Mozambique Decent Work Country Programme 2011-2015, pages 3-4: <http://www.ilo.org/public/english/bureau/program/dwcp/download/mozambique.pdf>

111 Plano de Acção para Redução da Pobreza, Poverty Reduction Strategy Paper

112 IMF, 2011, Republic of Mozambique: Poverty Reduction Strategy Paper 2011-2014, page 18: <http://www.imf.org/external/pubs/ft/scr/2011/cr11132.pdf>

With regard to legislation, the rights of workers have been secured relatively well, but implementation of legislation is a problem in Mozambique. Poverty, weak administrative capacity and wide-spread corruption have impaired implementation and monitoring of the Labour Law¹¹³.

Starting in the 2000s, direct investments into Mozambique have increased notably. Mozambique's forest industry and coal and natural gas discoveries have been an incentive for foreign companies. However, investments have not always improved the employment of locals or the realisation of labour rights in the desired manner.¹¹⁴

Mozambique's human rights situation is detailed in the following sections. The objective is to compile a rough human rights risk assessment for corporate activities in the country. The risk assessment, which is based on written sources, focuses specifically on labour rights. Other important issues that should be taken into account in Mozambique's operating environment include taxes and land rights, the impacts of HIV/AIDS and the escalation of violence between opposition party Renamo and the government.

6.1 LABOUR LEGISLATION ENSURES THE RIGHTS OF TRADE UNIONS, IMPLEMENTATION AND MONITORING OF LEGISLATION INEFFECTIVE

The Constitution of the Republic of Mozambique and Mozambique's Labour Law ensure the freedom of association and the right to collective bargaining. The Labour Law ensures the right to join a trade union and prohibits any type of discrimination toward members of trade unions. Workers have the right to collective bargaining, the right to industrial action and the right to strike.¹¹⁵ However, the law does restrict the public sector's right to organise. Public sector workers were only given the right to organise

in June 2014, and the trade union for public fields was recognised officially at this same time. Yet, the law does not apply to all fields including the police, and the right to strike does not apply at all to the public sector.¹¹⁶

Additionally, freedom of association and the right to collective bargaining, which are secured by the law, are rarely realised in practice. The main reason for this is that only a small share of Mozambique's labour force holds trade union membership. According to estimates, only approximately 2.5 per cent are members. An estimated 20 per cent of those, who receive a formal salary, are within the scope of collective agreements, and less than two per cent of the entire labour force is within the scope of a collective agreement¹¹⁷. Generally speaking, in addition to professional organisation, civil society is only just taking shape in Mozambique.

In 2013, there were more than 23 active trade unions and two trade union confederations in Mozambique¹¹⁸. A total of 16 trade unions and one association that represented workers in the informal sector were affiliated with the OTM-CS. In 2014, the trade unions affiliated with the OTM-CS had an estimated 130,000 members.¹¹⁹ Four trade unions with a membership of approximately 106,000 in 2013 were affiliated with a national federation by the name of CONSILMO.¹²⁰

According to the International Trade Union Confederation (ITUC), the rights of trade unions are not monitored in an adequate manner in Mozambique. The confederation noted that only a fraction of employers have signed a collective agreement with workers or a trade union that represents them. The ITUC has also criticised Mozambique, because its officials do not implement necessary procedures to ensure that employers must comply with labour legislation. According to the confederation, the right

113 IMF, 2011, Republic of Mozambique: Poverty Reduction Strategy Paper 2011-2014, pages 9-13: <http://www.imf.org/external/pubs/ft/scr/2011/cr11132.pdf>

114 African Development Fund, 2013, Mozambique: Technical Assistance to Enable Large Scale Gas and Power Investments in Mozambique, pages 2-4: <http://www.afdb.org/en/documents>

115 The Government of Mozambique, 2007, Labour Law 2007, page 64: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

116 AllAfrica, 2014, Assembly grants union rights to state workers 2014, <http://allafrica.com/stories/201406270295.html> (viewed on 29.9.2014); AllAfrica, 2014, Mozambique: Law on service trade unions rights launched, <http://allafrica.com/stories/201411180265.html> (viewed on 12.1.2015); and SASK Työmaana maailma, 2014, Mosambikin hallitus pelkää lakko-oikeutta, <http://www.sask.fi/kaikki-2/12-artikkeli/506-mosambikin-hallitus-pelkaa-lakko-oikeutta> (viewed on 15.12.2014)

117 Ulandssekretariatet, 2014, Mozambique – Labour Market Profile 2014, page 4: http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/Imp_mozambique_2014_final_version.pdf

118 Ibid.

119 These numbers do not include public sector workers. OTM-Central Sindical, 2014, Boletim semestral: Trabalhador, http://www.otm.org.mz/images/Bolentim_informativo/Biletim%20OTM-CS%202014.pdf

120 ITUC, Trade Union Development Projects Director, <http://projects.ituc-csi.org/consilmo> (viewed on 15.1.2015)

to strike and collective bargaining are often withheld, and the ITUC has reported cases in which trade union members have been threatened and illegally dismissed.¹²¹

In addition to this, the OTM-CS is believed to be strongly linked to the country's ruling party Frelimo, although the law forbids trade unions from participating in party policy. The OTM-CS has been criticised for being too pro-government and for pursuing the party's interests more than the interests of workers.¹²²

Despite ineffective monitoring by the government, in 2013, the inspection agency responsible for monitoring the Labour Law learned of numerous cases in which the right to collective bargaining had been withheld from workers. According to the inspection agency, trade union activities had been completely forbidden in some companies.¹²³

6.2 EMPLOYMENT IN INFORMAL ECONOMY COMMONPLACE, EMPLOYMENT CONTRACTS RARE

There are an estimated 11.8 million people of working age in Mozambique. Depending on the source, 80 to 90 per cent of these people work in the informal economy¹²⁴. Agriculture is the most significant form of livelihood in Mozambique, and a majority earn their livelihood from family-owned farming plots.¹²⁵ According to an assessment by the World Bank, only around nine per cent of the labour force is formally employed. Regionally speaking, these figures are very commonplace, as up to 80 per cent of people in sub-Saharan Africa work in the informal economy¹²⁶.

Just as is the case amongst agriculture workers, city-dwelling workers working outside of the formal economy rarely have an employment contract, or if

a written contract has been signed, it only specifies the job's working hours and location. Other matters related to workers' rights, such as annual leave, maternity leave and insurance cover are often left outside the scope of the employment contract¹²⁷. Roughly only half of the country's employed have an employment contract. Companies favour temporary employment contracts, as they do not bind an employer to perform statutory payments and other obligations.¹²⁸

6.3 SALARIES OFTEN LOWER THAN MINIMUM WAGE DICTATES

Mozambique's minimum wage varies from one industry to another, and the government publishes new minimum wage numbers each year. Minimum wages are divided into 15 different categories according to profession. In 2014, the lowest minimum wage was 2,857 meticaís, i.e. approx. 71 euros, and the highest minimum wage was 7,465 meticaís i.e. approx. 184 euros a month. The lowest minimum wages are paid in agriculture and the public sector, and the highest in the finance sector. In 2014, the minimum wage for the construction industry, which is the field specifically examined in this report (see Chapter 7), was 3,953 meticaís i.e. approx. 98 euros.¹²⁹

According to Mozambique's Labour Law, workers shall be paid 50 per cent more for overtime completed before 8.00 pm than for normal work hours and twice their normal wage for overtime night work, as well as for work during official holidays. Workers should be paid 25 per cent more than their general wage for normal night shifts.¹³⁰

It has been determined that the majority of workers in Mozambique's private sector earn less than the minimum wage for their work, whereas in the public sector salaries more often than not correspond with statutory requirements. Especially the employees of

121 ITUC, 2009, Internationally Recognised Core Labour Standards in Mozambique, page 3: http://www.ituc-csi.org/IMG/pdf/Mozambique_report-final__2_.pdf

122 Ulandssekretariatet, 2013, Mozambique – Labour Market Profile 2013: http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/mozambique_2013_final_web.pdf

123 AllAfrica.com, Mozambique: Labour Inspectorate Warns of Violations of Workers' Rights, <http://allafrica.com/stories/201402260214.html> (viewed on 10.3.2014)

124 ILO, Key indicators of the labour market database, http://www.ilo.org/empelm/what/WCMS_114240/lang-en/index.htm

125 World Bank, 2013, World development report 2014, page 307: <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/EXTNWDR2013/0,,contentMDK:23459971~pagePK:8261309~piPK:8258028~theSitePK:8258025,00.html>

126 World Bank, 2013, World Development Report – Jobs, page 50: http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1322665883147/WDR_2013_Report.pdf

127 ILO, 2011, Mozambique Decent Work Country Programme 2011-2015, pages 1-4: <http://www.ilo.org/public/english/bureau/program/dwcp/download/mozambique.pdf>

128 Eurofound, 2012, Working Conditions in Mozambique: <http://www.eurofound.europa.eu/publications/htmlfiles/ef1094.htm>

129 Wageindicator.org, Minimum Wage Mozambique: <http://www.wageindicator.org/main/salary/minimum-wage/mozambique> (viewed on 18.8.2014)

130 The Government of Mozambique, 2007, Labour Law 2007, page 64: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

small companies often earn illegally small salaries. The majority of Mozambique's formal sector is made up of small companies and their workers earn very little.¹³¹

6.4 UNDEREMPLOYMENT AND ILLEGALLY LONG WORKDAYS

Mozambique's labour law specifies that a worker's normal working hours shall comprise at most 8 hours a day and 48 hours a week. Workers shall work no more than four hours of overtime a day, 8 hours a week and 200 hours a year. Workers shall have one rest interval of at least 30 minutes each workday. A worker shall also be entitled to a rest interval of 30 minutes before overtime work. A week shall include one whole rest day, in addition to which the Labour Law specifies annual leave depending on the duration of a worker's employment.¹³²

Mozambique's employment options are divided as follows: workers are unemployed, underemployed, meaning workers only work a few hours a week, or they work for a larger number of hours than the Labour Law allows. It is estimated that the majority of formally employed workers work long days, exceeding the number of work hours allowed for by the Labour Law. In 2012, Eurofound reported that approximately 60 per cent of workers in the formal economy worked over 50 hours a week. The report found that performance targets were very demanding in many private sector workplaces, and employees were under an immense amount of pressure. According to the report, workdays were long especially in the tourism sector, where 12 hour work shifts without leave meant employees worked 72 hours a week.¹³³

6.5 INADEQUATE OCCUPATIONAL HEALTH AND SAFETY

Mozambique has not ratified the ILO's Core Conventions on occupational health and safety. The only conventions it has ratified deal with a worker's right to compensation in the instance of personal injury due to industrial accidents or occupational diseases (conventions C17 and C18).¹³⁴

According to an ILO report on the realisation of labour rights, few employers in Mozambique implement national statutory provisions on occupational health and safety. Inadequate occupational safety practices are especially prevalent in informal economy workplaces, where workers lack any social security and their occupational health and safety are not monitored in any way¹³⁵.

A significant share of Mozambique's labour force work in industries classified as dangerous or physically strenuous. Work on commercial plantations and in the agriculture sector is physically demanding, in general and can without access to appropriate tools be dangerous. Sexual harassment, which is also prevalent in workplaces, negatively impacts the occupational safety of women in particular. Cases of sexual harassment targeting women are reported in both the private and public sectors.¹³⁶

6.6 USE OF CHILD LABOUR COMMONPLACE

People under the age of 18 may not work in full time jobs in Mozambique. Young people between the ages of 15 and 18 can work 38 hours a week and 7 hours per day at most. Each employer is responsible for ensuring the education, health, as well as moral and physical development of young workers. People under the age of 18 may not work in dangerous and physically demanding jobs at all. People under the age of 18 may only be employed after passing a health check during which the child's ability to carry out the work in question is assessed. Children must be paid at least the statutory minimum wage.¹³⁷

131 Newenham-kahindi et al., 2013, Effective People Management in Africa, pages 72-75

132 The Government of Mozambique, 2007, Labour Law 2007, pages 51-55: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

133 Eurofound, 2012, Working Conditions in Mozambique: <http://www.eurofound.europa.eu/publications/htmlfiles/ef1094.htm>

134 ILO, Up to date conventions not ratified by Mozambique, http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0:NO:11210:P11210_COUNTRY_ID:102964 (viewed on 15.1.2015)

135 ILO, 2011, Mozambique Decent Work Country Programme 2011-2015, page 6: <http://www.ilo.org/public/english/bureau/program/dwcp/download/mozambique.pdf>; and Eurofound, 2012, Working Conditions in Mozambique: <http://www.eurofound.europa.eu/publications/htmlfiles/ef1094.htm>

136 United States Department of State, 2012, Mozambique 2012 Human Rights Report: <http://www.state.gov/documents/organization/204358.pdf>

137 The Government of Mozambique, 2007, Labour Law 2007, pages 19-21: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

Mozambique has ratified the ILO's Minimum Age Convention and the Worst Forms of Child Labour Convention¹³⁸. In 2008, in addition to the country's Labour Law, the government drafted an additional provision concerning children. The purpose of this was to abolish the use of child labour. The provision, overturned a clause in the 2007 Labour Law, which stated that companies were allowed to employ children between the ages of 12–15, if the government supplied the company with a special diploma¹³⁹.

Despite this legislation, child labour is commonplace in Mozambique, especially in the informal economy. Due to the absence of official statistics, it is difficult to estimate the actual number of child labourers, but the prevalence of child labour in Mozambique is evident in numerous reports published in the country. According to the World Bank's newest estimate in 2008, 28 per cent of girls and 27 per cent of boys worked at least one hour per a week.¹⁴⁰

As a consequence of the economic slump, it is very common for children, especially those in the countryside, to work. Children work on plantations, especially during harvesting, in the forest industry and as domestic workers. Children are also at risk of being exploited as sex workers. In the countryside, children also often work on their family's own farming plots. Especially girls participate in housekeeping work and caring for their family's farming plot. On commercial plantations, children are often paid a piecework rate, instead of an hourly wage.¹⁴¹ Instead of a monetary wage, children may receive other compensation such as school supplies¹⁴².

It has been reported in Northern Mozambique that parents, who work at commercial plantations take their children to work with them in order to receive additional wages¹⁴³. Some cases have also been observed in which children have worked without a salary in order to pay back their parents' debts, and

they have been thus bonded to forced labour by debt¹⁴⁴. In cities, children mostly work in the informal economy, e.g. as street vendors, litter collectors, car guards and domestic workers¹⁴⁵.

6.7 GENDER DISCRIMINATION A COMMON PHENOMENA

Mozambique's Labour Law forbids all gender-based discrimination. In spite of this, women are very vulnerable, and gender-based discrimination happens in both the public and private sectors.¹⁴⁶

Although the overall employment of women is even slightly higher than that of men, only a fraction of women are employed in the formal economy. In addition to this, women often receive a smaller salary than men for the same work. Women are also employed less often than men in high salary jobs.¹⁴⁷

Sexual harassment in the workplace is common in Mozambique. Women are also at greater risk than men of not being provided social security. In 2014, Mozambique's Ministry of Labor reported that especially pregnant women are often illegally dismissed from their jobs, as employers do not want to pay compensation for maternity leave¹⁴⁸.

6.8 MIGRANT WORKERS AT RISK OF BEING VICTIMS OF FORCED LABOUR

Forced labour is completely forbidden in Mozambique. Numerous additional provisions applying to forced labour have been enacted in addition to the Constitution. Mozambique's administration has also launched provincial campaigns to spread information on procedures that will counter and pre-empt forced labour. In 2012, this type of campaign event was

138 ILO, 2011, Mozambique Decent Work Country Programme 2011-2015, pages 8: <http://www.ilo.org/public/english/bureau/program/dwcp/download/mozambique.pdf>

139 UNICEF, 2011, Child Poverty and Disparities in Mozambique 2010, page 23: <http://www.unicef.org/mz/cpd/documents/CPD-Summary.pdf>

140 World Bank, World Development Indicators: <http://databank.worldbank.org> (viewed on 12.3.2014)

141 United States Department of State, 2012, Mozambique 2012 Human Rights Report: <http://www.state.gov/documents/organization/204358.pdf>; and United States Department of Labor's Bureau of International Labor Affairs, 2012, Findings on the Worst Form of Child Labor: <http://www.dol.gov/ilab/reports/child-labor/mozambique.htm>

142 ILO, 2011, Mozambique Decent Work Country Programme 2011-2015, page 8: <http://www.ilo.org/public/english/bureau/program/dwcp/download/mozambique.pdf>

143 United States Department of State, 2012, Mozambique 2012 Human Rights Report: <http://www.state.gov/documents/organization/204358.pdf>

144 United States Department of Labor's Bureau of International Labor Affairs, 2012, Findings on the Worst Form of Child Labor, <http://www.dol.gov/ilab/reports/child-labor/mozambique.html>

145 ILO, 2011, Mozambique Decent Work Country Programme 2011-2015, pages 29-30: <http://www.ilo.org/public/english/bureau/program/dwcp/download/mozambique.pdf>

146 ITUC, 2009, Internationally Recognised Core Labour Standards in Mozambique, http://www.ituc-csi.org/IMG/pdf/Mozambique_report-final__2_.pdf

147 World economic forum, 2014, The global gender gap report 2014, page 276: <http://www.weforum.org/reports/global-gender-gap-report-2014>; and United States Department of State, 2014, Mozambique 2013 Human Rights Report, page 23: <http://www.state.gov/documents/organization/220351.pdf>

148 AllAfrica.com, Mozambique: Labour Inspectorate Warns of Violations of Workers' Rights. <http://allafrica.com/stories/201402260214.html> (Viewed on 10.3.2014); and United States Department of State, 2014, Mozambique 2013 Human Rights Report, page 22: <http://www.state.gov/documents/organization/220351.pdf>

organised in the village of Ressano Garcia, where the construction site examined in this report is located.¹⁴⁹

Despite efforts by the government, the use of forced labour is prominent especially in domestic work and in the countryside. Women and especially girls, who have come to Mozambique from its neighbouring countries Zimbabwe and Malawi are at the greatest risk of being victims of forced labour. Women and children from the countryside may be deceived into moving to the city with promises of work and an education. When in the city, they are nearly always forced into unpaid domestic work or prostitution.¹⁵⁰

6.9 FOREIGN EXPERTISE AT THE EXPENSE OF THE LOCALS

Mozambique's average level of education is one of the world's poorest, which means that there is a shortage of workers with expertise. As a result, foreign labour force is often brought in for demanding jobs that require an education.¹⁵¹ Foreign companies that are based in the country often employ foreign work force for jobs that require specific professional competence.

Mozambique's government has made it a priority to secure the right of its citizens to employment, by setting limitations for the maximum number of foreign workers. According to the Labour Law, an employer is also obligated to first and foremost employ a Mozambican to a position that requires an education or has a high salary. In addition to this, the Labour Law stipulates that salaries shall be the same for a foreign and local worker.¹⁵²

According to the Mozambique Inspector-General of Labor, provisions that apply to foreign labour force are violated continuously in the country. According

to the ministry, there is a notable number of undocumented migrant workers in the country, and foreign workers are often paid a higher salary than Mozambican workers for the same work. In February 2014, the Ministry of Labor announced that it would improve the monitoring of foreign labour, as well as investing in the training and education of the local labour force.¹⁵³

Direct investments and the growing presence of foreign companies in Mozambique have also caused other challenges related to labour rights. Foreign companies have often been criticised for their poor treatment of local workers, violating the Labour Law and generally poor working conditions¹⁵⁴. Inspections of foreign companies by the Ministry of Labor have uncovered abysmal conditions in which local workers work, illegally low salaries, long work shifts and continuous illegal threats of dismissal.¹⁵⁵

Arbitration agencies have been established specifically to resolve disputes between foreign employers and local workers. In 2012, an arbitration agency was established in each of Mozambique's provinces, the purpose of these agencies was to resolve industrial disputes before they reached the court room¹⁵⁶.

149 United States Department of State, 2012, Mozambique 2012 Human Rights Report, page 27: <http://www.state.gov/documents/organization/204358.pdf>

150 UNICEF, 2011, Child Poverty and Disparities in Mozambique 2010, page 24: <http://www.unicef.org/mz/cpd/documents/CPD-Summary.pdf>; and United States Department of State, 2012, Mozambique 2012 Human Rights Report: <http://www.state.gov/documents/organization/204358.pdf>

151 Ulandssekretariatet, 2012, Mozambique – Labour Market Profile 2013: http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/mozambique_2013_final_web.pdf

152 The Government of Mozambique, 2007, Labour Law 2007, page 24: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

153 AllAfrica.com, Mozambique: Labour Inspectorate Warns of Violations of Workers' Rights. <http://allafrica.com/stories/201402260214.html> (viewed on 10.3.2014)

154 Ulandssekretariatet, 2013, Mozambique – Labour Market Profile 2013: http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/mozambique_2013_final_web.pdf

155 AllAfrica.com, Mozambique: Labour Inspectorate Warns of Violations of Workers' Rights, <http://allafrica.com/stories/201402260214.html> (viewed on 10.3.2014)

156 Ulandssekretariatet, 2013, Mozambique – Labour Market Profile 2013: http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/mozambique_2013_final_web.pdf

7. Wärtsilä in Mozambique – Labour rights at the Central Termica de Ressano Garcia gas plant construction site

In 2012, Wärtsilä entered into an agreement with Mozambican state power utility Electricidade de Moçambique and South African energy company Sasol New Energy on the construction of a gas plant. According to the agreement, Wärtsilä build a natural gas plant by the name of Central Termica de Ressano Garcia, a pipe system and a transformer. Wärtsilä supplied a total of 18 engines that run on natural gas for the plant. The plant was completed in November 2014.

The plant, located in the Mozambican village of Ressano Garcia, will be the country's largest and Africa's second largest gas-fuelled power plant.¹⁵⁷ The plant is located in a small village¹⁵⁸ in Moamba District in Maputo Province near the South African boarder.

A small core group of Wärtsilä's own personnel worked at the Ressano Garcia construction site mainly in the position of project management. Wärtsilä has out-sourced the majority of the Ressano Garcia construction sites activities to subcontractors. Subcontractors were responsible for providing construction, security and food services and for running the occupational healthcare clinic. Wärtsilä has purchased services from a total of approximately ten subcontractors during the different stages of the project. Depending on the stage of the project between 50 and 800 workers have worked on the construction site.

The purpose of Finnwatch's field research was to assess the realisation of the labour rights of workers at the gas plant construction site. A total of 17 workers working at the gas plant's construction site were

interviewed for the field research. The interviewed workers represented different professions, including building inspectors, mechanics, builders and builders responsible for the gas pipe system. Security guards responsible for monitoring the construction site also participated in the field research.

Interviews were conducted off-site e.g. during commutes, in the nearby village and at cafes. The interviews were conducted in Portuguese. The field research was carried out between March and June 2014.

Detailed notes were kept on each interview for documentation. Some of the interviews have been recorded on tape, but not all interviewees agreed to this. A number of workers had been dismissed from the construction site just before our field research began, and the interviewed workers were reluctant to share their personal details. To support interview findings, Finnwatch also examined employment contracts and the worker's identity cards, which verified that the interviewees worked at the Wärtsilä construction site¹⁵⁹.

7.1 WAGES NOT SUFFICIENT TO COVER LIVING COSTS

The salaries of the workers interviewed by Finnwatch were in line with Mozambique's statutory minimum wage. In 2014, the minimum wage for the construction industry was 3,953 meticaís a month, i.e. approx. 93 euros.¹⁶⁰

The monthly salary of the interviewed workers was at lowest 5,000 meticaís (118 euros) and at most 16,000 meticaís

¹⁵⁷ Wärtsilä, press release 2012, <http://www.wartsila.com/en/press-releases/wartsila-to-supply-major-power-plant-to-mozambique-biggest-gas-fuelled-plant-ever-to-be-installed-in-the-country> (viewed on 22.9.2014)

¹⁵⁸ At the time of its previous census in 2007, there were approx. 9,000 resident in Ressano Garcia. National institute of statistics Mozambique, <http://www.ine.gov.mz/en> (viewed on 23.9.2014)

¹⁵⁹ Other gas plant are being built in the Ressano Garcia area as well. and for this reason it was important for Finnwatch to verify that the interviewed workers worked specially at the Wärtsilä construction site.

¹⁶⁰ Wageindicator.org, Minimum Wage Mozambique, <http://www.wageindicator.org/main/salary/minimum-wage/mozambique> (viewed on 18.8.2014)

(378 euros). The median salary of all workers was 8,000 meticaïs (189 euros). Although the interviewed workers received salaries that clearly exceeded the minimum wage, many said that they had to have secondary employment to cover their family's food, housing and other monthly costs.

It is very common that in addition to salaried employment, a family maintains a small farming plot or carries out other work in the informal economy to make ends meet. One worker said that his salary combined with his spouse's income was not enough to provide for their 3-child family. In addition to the parents' jobs, the family farms their farming plot and receives help from the interviewed worker's mother, who sells home-baked bread in the local village.

Finnwatch's researcher compiled a list of monthly costs for people living in the village of Ressano Garcia. The list included the month's food and housing costs for a family of five. Based on the costs calculation, a family of five living in the Ressano area needs roughly 15,000 meticaïs (354 euros) a month to cover living costs¹⁶¹. The families of the interviewed workers were on average made up of 7 persons, and for this reason Finnwatch's example calculation can be considered quite modest. The calculation does not take into account expenses that families incur from weddings, which can rise into the tens of thousands.

table 3.

Food costs	Price in meticaïs	Price in euros
20 kg of rice	750	17,5
5 kg of lentils	200	4,7
5 litres of milk	450	10,5
3 litres of cooking oil	350	8
vegetables for a month	500	11,7
Animal proteins (eggs, fish, meat)	1500	35
Coffee/tea	200	4,7
Fruits	500	11,7
Nuts	250	5,8
Coconut	200	4,7
Total food costs	4900	114,7
Other costs		
Rent	5000	117
Water and electricity	700	16,4
Firewood, fuel oil, gas	850	19,9
School payments, study materials and transport fees	1000	23,4
Medicines, other healthcare costs	500	11,7
Traditional festivals, xitique ¹⁶²	1500	35
Transport to work	500	11,7
TOTAL COSTS	14950	349

According to Finnwatch's calculation, the average salary of construction workers and guards is only enough to cover half of a month's costs and is therefore not a living wage.

Finnwatch asked the workers to estimate how much money their families would need each month to cover all food, housing education, healthcare and other expenses. According to the interviewees, a family in the Ressano Garcia area needs roughly 20,000 meticaïs (473 euros) a month, which is three times more than the smallest salaries earned by the interviewed workers.

According to Wärtsilä, wages comply with the agreement entered into with the client and local trade unions.

161 The calculation presented in this report was compiled during field research in 2014. Finnwatch published its own Model for Calculation a Living Wage on 13.2.2015, and Finnwatch will use this calculation as a point of reference in all its future research. Calculation model: <http://www.finnwatch.org/images/palkkalaskelmataulukko.pdf>

162 Xitique is an informal Mozambican saving and credit arrangement based on mutual trust. Money loaned is used on festivals, home repairs and for buying cattle. Further information e.g. FAO, Mutual Assistance Institutions in Mozambique, <http://www.fao.org/docrep/006/y5083e/y5083e0d.htm> (viewed on 1.10.2014)



*Wärtsilä's construction site
in Ressano Garcia.*

FINNWATCH

7.2 AMBIGUITIES IN OVERTIME COMPENSATION AND DEDUCTIONS FROM SALARIES

Most of the construction workers employed by Wärtsilä told us that they worked ten hours a day, six days a week. Work shifts include a total of two hours in rest intervals, which workers are not paid for. According to Wärtsilä, the worksite's worktime is 8.00 am to 5.00 pm, and workers work three Saturdays each month. According to Mozambique's Labour Law, normal working hours shall not exceed 8 hours a day, 48 hours a week. This means that the working hours of the construction workers comply with the maximum limit for working hours determined in Mozambique's Labour Law.

However, a notable number of workers interviewed for Finnwatch's research reported that they worked overtime. It was unclear to workers how overtime work was calculated and how much compensation they received for it. Numerous workers believed that they did not receive the remuneration stipulated in the Labour Law for overtime work.

It is difficult to prove claims by workers, as Finnwatch was unable to get hold of any of the workers' payslips. According to the interviewed workers, persons working at the Wärtsilä construction site did not receive payslips. The workers said that payslips are not delivered to the construction site, and workers must retrieve them personally from the company's offices, which are located in the capital city of Maputo several hundred kilometres away. Instead of travelling to

Maputo to retrieve their payslip, the workers said they check their bank account to see how much they have been paid.

According to Wärtsilä, the payslips for employees directly employed by the corporation are sent to the construction site or in the case of foreign workers to their home country. However, Wärtsilä did confirm that its subcontractors do not necessarily deliver payslips to the construction site and may indeed deliver them to the subcontractor's offices. Wärtsilä has outsourced the payment of its own employees' salaries, and a local company in Mozambique manages the payroll. Subcontractors in turn take care of their own payroll.

The interviews made it clear that terms of employment had not been explained to the workers adequately. Many workers did not know, for example, that rest intervals are not considered working time. For this reason, they thought they worked overtime, although in practice their working hours did not exceed normal working hours, when rest intervals were not included. Wärtsilä also stated that its working hours statistics demonstrate that a notable share of workers do not work overtime.

Finnwatch learned that another cause for misunderstandings is that workers had not been given the Project Labour Agreement (PLA) document, which includes the terms of employment for the specific project, nor had they received a project calendar. Finnwatch was also unable to get hold of the document from the construction site trade union

SINTICIM, regardless of numerous requests. Wärtsilä would not give the documents to Finnwatch claiming that they were attachments to the agreement entered into with the client and marked as confidential.

Finnwatch believes that employees should be aware of all the attachments included in their employment contracts, and this would prevent unnecessary misunderstandings. According to Wärtsilä, it has provided information on the PLA to its workers on a regular basis, but will, as a result of the Finnwatch report, pay more attention than previously to information flow.

When responding to the Finnwatch report, Wärtsilä stated that the corporation has observed obvious differences in work culture between locals and Europeans, and work and agreements are understood in quite a different way by Mozambicans than they are by Europeans. According to Wärtsilä, the work-site has a resource, the purpose of which is, to support workers. The corporation stated that it will in future pay even closer attention to ensuring that its local workers understand what is expected of them and what has been agreed to.

All those who participated in Finnwatch's interviews stated that in addition to legal social security payments, other deductions were made monthly from salaries. According to the workers, the deductions were justified and the reasons given for these deductions included tardiness and mistakes made by the worker at work.

Mozambique's Labour Law stipulates that deductions from salaries must be agreed upon in advance and in writing. A verbal agreement on deductions is not sufficient according to the law. The total sum of deductions may not be greater than one-third of a monthly salary.¹⁶³

According to Wärtsilä, neither Wärtsilä nor its subcontractors make deductions based on tardiness or errors. However, the salary of a worker who works on an hourly wage is smaller, if the worker has arrived at work later than has been agreed.

163 Mozambique Labour Law, 2007, pages 63-64: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

The SINTICIM is the only construction industry trade union in Mozambique. It is influential, but has also been criticised for non-transparency and close ties with employers. According to the interviewed workers, the trade union is only visible at the worksite, when it is there to collect membership fees.

Mozambique's trade unions have been accused of being generally corrupt and for pursuing the interests of companies at the expense of the workers. According to the Labour Law, trade unions shall be politically unaffiliated, but for historical reasons, trade unions act in close cooperation with Mozambique's ruling party, Frelimo.¹⁶⁴

Distrust in trade unions has meant that strikes and demonstrations by workers are often organised independently by workers with no support from the trade union. This in turn means that the strikes have been illegal and often very poorly organised. As no one acts as official head of the strikes and there are no predetermined objectives or approaches, strikes can easily get out of hand and turn violent¹⁶⁵.

7.3 STRIKES AND UNREST HAVE RESULTED IN DISMISSALS, TRADE UNION NOT CONSIDERED TRUSTWORTHY

The interviewed workers revealed that a large number of construction workers and guards had been dismissed by Wärtsilä's subcontractor in early 2014. According to interviewees the dismissals were due to salary disputes and demands by the workers that they be given written employment contracts. Finnwatch was unable to get a hold of the dismissed workers, so they could have participated in this research.

Wärtsilä told Finnwatch that the dismissals had been carried out in accordance with agreements, and the workers had been given a statutory term of notice and the required

164 Ulandssekretariatet, 2012, Mozambique – Labour Market Profile 2013, http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/mozambique_2013_final_web.pdf

165 Simião Simbine, SASK, interview with Finnwatch 1.10.2014



compensation. According to Wärtsilä, the dismissals were related to the use of alcohol and to stealing. Wärtsilä also told Finnwatch that over the course of the project, changes had to be made to scheduled work times, and as a result the workers' weekly working hours had increased. This in turn had led to strikes at the worksite. According to Wärtsilä, the dismissed workers had acted violently during the strikes. According to the corporation, only a few workers had been dismissed, and these workers had been paid statutory compensation for their dismissal.

SINTICIM, the Mozambican Construction, Wood and Mine Workers Union¹⁶⁶ operates at Wärtsilä's gas power plant construction site. The union's headquarters is located in the country's capital, Maputo. According to interviewed workers a large share of the construction site's builders are members of the trade union. However, the workers were wary of the trade union and the union was not considered effective or trustworthy, for example, in the arbitration of cases in which workers were dismissed.

SINTICIM had negotiated a Project Labour Agreement (PLA) for the Wärtsilä project, and the employment contracts of every Wärtsilä subcontractor were to be drawn up on the basis of this agreement. As was stated in the previous chapter, Finnwatch was unable to get a copy of this agreement. Wärtsilä claimed that the PLA was an attachment in a contract and considered in the scope of trade secrecy. The corporation was therefore

not at liberty to redistribute this document. Finnwatch was also unable to reach SINTICIM when trying to get a copy of the agreement. It would seem that the agreement applying to the workers' terms of employment is in practice secret. The PLA also includes the project calendar, which determines e.g. the workers' work shifts, working hours and paydays.

7.4 OCCUPATIONAL SAFETY AT AN ADEQUATE LEVEL, BUT HEAT CAUSES PROBLEMS

Of all the work at the construction site, surfacing and welding work are considered especially high-risk. Workers are also exposed to cement dust.

The sun's heat also causes hazards at the Ressano Garcia gas plant construction site, as workers work up to six hours outdoors in one go. The climate in the area the construction site is located in is very dry and hot; temperatures may rise to +45 degrees Celsius. Workers stated that they can rest in the shade at times, but according to the interviews there was nothing to provide proper shade, e.g. trees or a shelter, at the worksite.

Workers are given work clothes, gloves, protective masks and goggles. Workers, who carried out welding work, had adequate welding masks. The workers said that they also used protective masks when handling building materials. The workers' employment contracts also verify what the workers have

¹⁶⁶ Sindicato Nacional dos Trabalhadores da Industria de Construcao Civil, Madeira e Minas de Mocambique

told. The contract states that a worker will be prohibited from entering the construction site, if he is not dressed in appropriate protective clothing. Nearly all the workers Finnwatch interviewed said that they had received occupational safety training.

Despite training and protective clothing, the workers working on the buildings said that they often suffered from coughs, colds and headaches related to breathing problems. The workers felt the symptoms were linked to dust and heat at the worksite.

The construction site contains a small first aid clinic, where work-related and other injuries are treated. Wärtsilä told Finnwatch that workers had been very pleased about the presence of the first aid clinic, as regionally

access to health care clinics at the workplace is not a given.

According to Wärtsilä, the clinic treats an average of 180 patients each month; 45 patients a week. According to Wärtsilä, there have only been a few industrial accidents, and more often than not, the clinic treats colds, muscle cramps, stomach symptoms and malaria. The clinic treats an average of two cases of malaria each month.

According to the interviewed workers, use of the occupational healthcare clinic has been completely prohibited for security guards, who monitor the construction site. Wärtsilä denied this information, and said that every person working at the worksite had the right to use the services offered by the clinic.

THE WORKING CONDITIONS of security guards have been highlighted previously as well. In 2012, OPais newspaper published a report according to which only a minority of companies that provide private security services complied with Mozambique's Labour Law. The report found very similar problems to those experienced by security guards at the Wärtsilä construction site. Salaries are meagre, and illegal deductions are made from them, shifts are long and security guards are not paid extra compensation for overtime. Occupational safety is not monitored or ensured, workers do not have written employment contracts, and it is difficult to find contact information for the companies' offices.¹⁶⁷

Security industry workers have periodically held demonstrations demanding improved working conditions. In September 2013, the employees of a private security services company held a demonstration in the capital city Maputo. Workers, who took part in the strike, said that their employer had deducted 100 meticaís (2,5 euros) from each salary for the past three

years.¹⁶⁸In 2011, the employees of another security service company demanded overtime compensation and that ambiguous sums deducted from salaries be returned to workers. The strike ended badly, when the police used violence to subdue the demonstrators.¹⁶⁹

The security industry is the only industry in Mozambique that has two trade unions to represent workers. The larger of the two unions is the SINTESP, and the employees of an international security company established the second union, the SINTESPRIMO, because they were dissatisfied with the SINTESP, which had previously represented them. According to information gathered by Finnwatch, trade confederations and other trade unions have advised the unions to unite, as Mozambique's trade union movement has held the official policy of "one trade union for each profession" for years. The two security industry unions are often seen as one another's competitors. The resources of both unions have been used up in the power battle instead for the express purpose of helping workers.

167 AllAfrica, Mozambique: Private Security Workers in Inhuman Conditions, <http://allafrica.com/stories/201207061134.html> (viewed on 4.8.2014)

168 AllAfrica, Mozambique: Security Guards On Strike, <http://allafrica.com/stories/201309120839.html> (viewed on 4.8.2014)

169 Global voices, Mozambique: Police Attack Protesting Workers, <http://globalvoicesonline.org/2011/04/13/mozambique-police-attack-protesting-workers/> (viewed on 4.8.2014)



Ressano Garcia village.

7.5 EXPERTS FROM ABROAD, BUILDERS FROM MOZAMBIQUE

The persons appointed to management posts and other positions requiring expertise are primarily foreign. According to Wärtsilä, adoption of the solutions it supplies requires expertise, which is Wärtsilä's core business. This expertise is utilised in all of Wärtsilä's projects in the same way. Wärtsilä strives to employ local labour force in other positions where possible.

During the final stage of the project, Wärtsilä brought 10–20 per cent of the construction site's workers from outside of Mozambique. Wärtsilä has a use and maintenance agreement with the gas plant that will remain in force, and Wärtsilä will continue to train local labour in the use of the gas plant even after construction. Wärtsilä stated that this is one way in which it can support local expertise and the level of education.

7.6 WORKING CONDITIONS OF SECURITY GUARDS THE SITE'S WORST

Wärtsilä has outsourced the construction site's security services, and purchased them from South African company FUSEG-Fusiladores. Of all the interviewed workers, the working conditions of the security guards were by far the worst.

Wärtsilä told Finnwatch that, at the beginning of the project, security had been handled by a subcontractor by the name of MUCOQUE, which also carried out other work at the construction site. As the project progressed to a stage where there were more workers on the site, a different company, focused solely on security was hired.

The interviewed guards had been hired in spring 2013, at which time MUCOQUE was still their employer. After a few months, the workers were informed that their employer would be changing. According to the workers, the new employer, FUSEG-Fusiladores does not have an office in Ressano Garcia, and the workers do not have contact details for their employer nor do they know the names of their supervisors. The security guards were under the impression that they were currently employed by Wärtsilä.

The security guards interviewed by Finnwatch said that they had no employment contract that the employer had signed. The interviewed workers said that their employer had refused to sign the contract they had received upon employment. This allegation was confirmed as the contract supplied to Finnwatch was only signed by the worker. According to Wärtsilä, the security service provider keeps employment contracts at its place of business as part of its personnel archives and, according to information the

corporation has been given, all workers have received a signed employment contract.

The employment contract of the security guards working at the Wärtsilä power plant construction site requires that workers are "flexible". According to the employment contract, security guards must work overtime at short notice, and the worker commits to not turning down overtime work, if informed about it within a reasonable time. The employment contract does not offer the worker any form of security; according to the contract, the worker's employment can be terminated at any time, when their services are no longer needed.

According to Wärtsilä, the employment contract used by the security services supplier complies with "local agreements and guidelines that are determined by local authorities".

In early 2014, several security guards were dismissed for ambiguous reasons. According to the workers, in January 2014 tens of security guards were dismissed when they demanded written employment contracts that were also signed by the employer. The same thing happened again in February 2014, when workers were dismissed due to salary disputes. According to the workers, in April 2014 tens of workers were yet again dismissed, but the interviewees were did not know the reason for these dismissals. The dismissed security guards, Finnwatch was able to contact, said that they had been informed that there was no longer enough work for everyone, but two days after their dismissal new employees started in the same tasks.

According to the workers, working conditions differ notably from those described in the contract. The security guards interviewed by Finnwatch said that they worked 75 hours a week on average. Shifts were divided into day and night shifts. A security guard's day shift is 10 hours and night shift is 14 hours. Sometimes security guards must work for 24 hour shifts, if there is no one available to take the next shift.

According to their employment contracts, a security guard's normal work week comprises 48 working hours after which they must be paid overtime compensation. According to Mozambique's legislation, workers shall also be paid extra compensation for night work, which is 25 per cent of their normal wages.¹⁷⁰

The security guards told Finnwatch's researcher that they did not get sufficient compensation for overtime. They also did not have any say on the length of their work time; if no one arrived to cover the shift after theirs, a security guard was required to remain at work until a replacement arrived.

According to their employment contract, a security guard's daily wage is 166 meticaais, in which case their notional monthly salary for 8 hour workdays is 4,316 meticaais. Interviewed security guards stated that they received roughly 5,000 meticaais a month (115 euros), from which the employer sometimes made deductions for tardiness or work-related mistakes. The guard's overtime and night shift compensation for a month totalled to just under 700 meticaais.

The Wärtsilä-built gas plant is located about five kilometres from the village of Ressano Garcia, where local workers live. The security guard's employment contract includes a clause according to which the employer will organise transport to the worksite. However, transport has never been provided, and the security guards must walk to work. In addition to the length of the trip and the heat, the walk is strenuous due to the area's very hilly terrain. The security guards felt the trip was exhausting, as in addition to a ten hour workday they must walk a total of ten kilometres in high temperatures.

170 Mozambique Labour Law, 2007, page 64: <http://www.mcli.co.za/mcli-web/news/2007/2007-373/LabourLaw2007finalversioneng.pdf>

8. Summary

Wärtsilä acted relatively openly over the course of Finnwatch's research. The corporation's representatives met with Finnwatch researchers in Helsinki and allowed Finnwatch researchers to also visit their factory in India, as well as to meet the management of the factory and look around the factory area. Finnwatch's researchers were also allowed to take photographs in the factory area after asking for separate permission. Wärtsilä also commented on the findings of the Finnwatch report. Wärtsilä supplied statistical data to Finnwatch on salaries and other matters that were covered in the research.

However, Finnwatch had problems attaining information on the corporate responsibility monitoring of its subcontractors. Wärtsilä's responses were confusing, and Finnwatch was unable to make any sense of them even after sending the corporation supplementary questions. Finnwatch was not permitted to see the audit reports compiled in connection with Echay Forgings' supplier rating (it was later discovered that no audit had been conducted), and Finnwatch was unable to meet with the employee responsible for Wärtsilä's audits. Wärtsilä claimed scheduling problems due to holidays and compilation of their annual report. However, Wärtsilä was given several weeks to respond, and Finnwatch sent reminders repeatedly. Monitoring of its suppliers seems to be a key area in which Wärtsilä must develop its activities.

The following sections give summaries on the results of Finnwatch's research and the conclusions drawn from these. When possible these results are compared to Wärtsilä's corporate responsibility policies, which have been published.

SUMMARY OF CORPORATE RESPONSIBILITY POLICIES

Wärtsilä's corporate responsibility policies cover important labour rights. Especially, the corporation's occupational health and safety

policies and their implementation seem to be very ambitious. The ambitious standard of the policies was also evident in practice: industrial accidents at Wärtsilä have declined significantly in the last five years. The emphasis on occupational safety was also visible in a positive manner at the locations Finnwatch inspected during its field study in India and Mozambique.

Non-discrimination and the right to equal employment opportunities and salaries for everyone regardless of their ethnic background, gender or religion are all taken into account in the corporation's personnel policy. However, a living wage is not mentioned in policies that apply to salaries. According to the policies, salaries must be "fair" and "motivating", but the policies do not specify what fair means. The policies can be interpreted to mean e.g. the national minimum wage, which is often not equal to a living wage. It is noteworthy that the Wärtsilä Supplier Handbook does not mention the terms "fair" or "motivating" in relation to salaries, and only requires that suppliers comply with the national minimum wage.¹⁷¹

Wärtsilä's annual report implies that the corporate responsibility of the corporation's suppliers is monitored systematically and in the long-term, and that this monitoring is based on open criteria (e.g. Wärtsilä's Supplier Handbook, which is open to the public) and covers 95 per cent of the corporation's total value of subcontracting. However, there is a clear inconsistency between the information given in Wärtsilä's official annual report and information the corporation submitted to Finnwatch. Based on Wärtsilä's responses, it is unclear which Wärtsilä suppliers have been audited and what these audits entail. The corporation does not use different types of high-risk country classifications as a tool for prioritising the monitoring of its supplier chain.

¹⁷¹ Wärtsilä, *Supplier Handbook*, 2012: <http://www.wartsila.fi/fi/about/suppliers/supplier-handbook>

Wärtsilä also does not compile a human rights risk assessment when it initiates a new construction project in a high-risk country. For this reason, the corporation might overlook important issues that may have a direct impact on the realisation of labour rights for both Wärtsilä's own employees and those of subcontractors.

SUMMARY ON WORKING CONDITIONS AT WÄRTSILÄ'S FACTORY IN INDIA

Wärtsilä's factory located in Khopoli was clean and well-maintained, and the factory's workers confirmed that the factory placed an emphasis on occupational safety. Occupational safety seemed to be organised and managed in accordance with Wärtsilä's corporate responsibility policies.

Apart from this, there were other areas that required correction with regard to working conditions. Many of the factory's workers only earned the minimum wage, which according to workers and Finnwatch's calculation was not a living wage. The lowest salaries earned by workers were only half of what is estimated as the local living wage.

Dissatisfaction with the wages is related to the factory's problematic trade union relations. The management of Wärtsilä's factory in India had independently commissioned a trade union to act at the factory, and entered into an agreement with this trade union on salaries. The management stated that this was a way to "avoid" periodic collective bargaining. Many workers were dissatisfied with the actions of the trade union, and it did not represent the factory's contract workers at all. Wärtsilä's corporate responsibility policies emphasise freedom to association and the corporation's close cooperation with the trade union can be seen as contradicting the spirit of these policies.

Wärtsilä uses a significant number of contract workers at its factory. Only 60 of the factory's shop-floor workers are permanent workers, while the number of contract workers employed varies between 100 and 120. Some of the workers interviewed by Finnwatch said that contract workers received back-to-back

short-term contracts over the course of numerous years. The salaries and in-kind-benefits of contract workers were not at the same level as those of permanent workers. Wärtsilä justified its use of contract workers with the changes in the factory's production status. However, Finnwatch feels that it is dubious to transfer the risks of seasonal changes so completely to the workers.

SUMMARY OF WORKING CONDITIONS AT THE FACTORY OF WÄRTSILÄ'S INDIAN SUBCONTRACTOR ECHJAY FORGINGS

Workers, who work at a factory owned by Wärtsilä's Indian subcontractor Echjay Forgings, reported serious defects in working conditions at the factory. The migrants the factory had employed as contract workers earned very low daily wages, and they did not have adequate documentation on their employment at the factory. Workers did not receive the statutory compensation for overtime, nor were they given any type of payslip. Migrant workers account for a large share of the factory's labour force.

The living conditions in a factory-owned dorm were subpar. The dorm area had no waste management, insufficient sanitation and no running water. The dorm's small rooms housed numerous workers. According to the factory, the workers are responsible for the upkeep of the dorm area, and management stated that workers did not have to live in these living quarters, which were intended for temporary stays.

Interviewed factory workers stated that there were problems with occupational safety at the factory. Serious industrial accidents had taken place at the factory, and the workers felt that the factory was indifferent and ineffective in this regard: the employer does not provide adequate protective clothing or safety training for the factory's workers. Workers reported that the factory cheats during audits.

According to the factory's former employees and trade union representatives, the factory takes aggressive measures to limit its workers' freedom of association. A conflict,

which started in 2010, has escalated to a workers' strike, a lockout running for months on end initiated by the factory and finally a court case. Echjay Forgings is accusing the local trade union of blackmailing the factory and urging workers to reduce their work rate.

Echjay Forgings acted aggressively during the course of Finnwatch's research: the company threatened to sue Finnwatch for publishing the report, and implied that there were "ulterior motives" for the report. The company refused to answer Finnwatch's supplementary questions and stated that this was because some of the matters covered in this report apply to the company's relationship with the trade union, and these are currently being resolved via court proceedings.

SUMMARY OF WORKING CONDITIONS AT WÄRTSILÄ'S POWER PLANT CONSTRUCTION SITE IN MOZAMBIQUE

Labour rights are realised relatively well, at Wärtsilä's construction site in Mozambique. The key problem areas encountered by construction workers were related to wages that were not sufficient to cover living costs, ambiguities with regard to overtime compensation and deductions from salaries, as well as ineffective trade union work. Observed problems with the right to organise were not Wärtsilä's fault, but lead to a situation in which Wärtsilä should be expected to be especially vigilant with regard to the realisation of labour rights.

The circumstances of the construction site's security guards caused the greatest alarm. Security guards were dissatisfied with their working conditions, and they did not have any tenable avenue for making their concerns known by the employer and finding a resolution for these.

Problems encountered by security guards working at the Wärtsilä construction site were related to the overall poor working conditions within Mozambique's security service industry.

A large share of the problem points observed in the working conditions of construction

workers were due to the workers not being aware of matters or misunderstanding these. Conducted interviews made it clear that workers frequently did not understand their terms of employment or had simply not heard of them. For instance, the contradicting information concerning working hours and overtime compensation from the employer and workers were most likely due to workers not being aware of how working hours were counted.

Wärtsilä told Finnwatch that the corporation has set up a resource at the worksite to support workers, and that this resource provides information on the workers' terms of employment and working conditions. Nonetheless, workers did not always understand what was required of them and what had been agreed to. Wärtsilä told Finnwatch that, in future, it would pay closer attention to this matter.

The local level of education also reflects on comprehension of terms of employment. The majority of the interviewed workers had only attended comprehensive school, which played a part in their awareness of labour rights and their ability to impact on the realisation of labour rights.

The realisation of labour rights in Mozambique is further hindered by the ineffectiveness of trade unions. The trade union that represents the construction workers is not effective in pursuing the workers interests. Therefore, workers do not have a tenable option for impacting on problem points, or a manner in which to receive support from the trade union in matters related to labour rights. The trade union movement as a whole is a relatively new concept in Mozambique, and the poor reputation of the unions and the corruption allegations aimed at them are telling of why trade unions have difficulties in pursuing the interests of workers.

9. Recommendations

WÄRTSILÄ

- Wärtsilä must commit to the UN Guiding Principles on Business and Human Rights both publically and in practice.
- Wärtsilä's corporate responsibility policies must include a requirement for a living wage ¹⁷².
- Wärtsilä must adopt human rights risk assessments for its own factories, construction projects in different countries and its subcontractors. Monitoring of the labour rights of existing subcontractors must be effectively prioritised, e.g. by utilising high-risk country lists.
- Responsibility audits and certifications implemented by third parties must be utilised in the monitoring of the accountability of subcontractors. Special attention must be paid to the quality of audits.
- We recommend that Wärtsilä's own manufacture units obtain responsibility certificates verified by a third party, such as the SA8000.
- Wärtsilä must provide correct and truthful information on the human rights risks related to its activities in its annual report. The information currently given in the annual report on supplier ratings and audits related to these can be considered misleading.
- Wärtsilä must not terminate its supplier relationship with Echjay Forgings; instead, Wärtsilä must initiate dialogue to find and correct the problem points that came to light in Finnwatch's research.

DECISION MAKERS

- The UN Guiding Principles on Business and Human Rights must be implemented aggressively and determinedly. Companies must be obligated by law to commit to human rights due diligence.
- Finland must ensure that the services provided by the Team Finland network take into account the human rights risks involved in business activities. Companies must be given information on realisation of human rights obligations.

¹⁷² Finnwatch's own Model for Calculation a Living Wage can be found in: <http://finnwatch.org/images/Living-wagemodel.pdf>



Finnwatch ry
Pääskylänrinne 7 B 62
00550 Helsinki
info@finnwatch.org
www.finnwatch.org