

6/2021

Migrant workers' rights in oil palm estates in Malaysia

CASE: IOI Group, Mekassar



Supported by the Finnwatch Decent Work Research Programme:



Translated from Finnish report. In the event of interpretation disputes the Finnish text applies. The original is available at www.finnwatch.org.

Finnwatch is a non-profit organisation that investigates the global impacts of Finnish business enterprises. Finnwatch is supported by 11 development, environmental and consumer organisations and trade unions: The International Solidarity Foundation ISF, Finnish Development NGOs – Fingo, The Finnish Evangelical Lutheran Mission Felm, Pro Ethical Trade Finland, The Trade Union Solidarity Centre of Finland SASK, Attac, Finn Church Aid, The Dalit Solidarity Network in Finland, Friends of the Earth Finland, KIOS Foundation and The Consumers' Union of Finland.

Publication date: June 2021

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1. Introduction

Finnwatch has been monitoring the Malaysian palm oil company IOI Group and its working conditions since 2014, when Finnwatch published a report on human rights violations in the production of palm oil imported to Finland. The report examined the IOI Group's palm oil estates in Peninsular Malaysia. It revealed that the IOI Group, which supplied partly state-owned Finnish company Neste with palm oil, among other things paid wages below the legal minimum wage, confiscated employees' passports and restricted freedom of association. The employees interviewed for the report had paid large recruitment fees to employment agencies to get their jobs.¹

Following a lengthy dialogue, IOI responded slowly to the Finnwatch report. First, in 2015, the company removed a restriction on the right to strike from its employment contracts and offered migrant workers employment contracts in their own language. It also abolis-

hed the unjustified probationary period policy criticised by Finnwatch, as a result of which the starting salary of migrant workers increased by about 30 per cent.²

Finnwatch called for further action, and in 2017 IOI unveiled a series of new ambitious human rights policies that were expected to raise standards throughout the palm oil industry. The policies promised an end to charging workers recruitment fees, a new respect for freedom of association and an intention to provide workers with a living wage in the future. The IOI also undertook to pay workers a fixed monthly wage equal to the minimum wage, on top of which productivity-based incentives would be paid.³

¹ Finnwatch, 2014, *The Law of the Jungle*, available at: <https://finnwatch.org/images/pdf/palmoil.pdf>

² Finnwatch, 13.3.2015, *Neste Oilin alihankkija parantaa työoloja*, available at: <https://finnwatch.org/fi/uutiset/291-neste-oilin-alihankkija-parantaa-tyoeoloja>

³ Finnwatch, 31.10.2017, *Major Malaysian Palm Oil Company Announces Groundbreaking Labor Policies*, available at: <https://finnwatch.org/en/news/495-major-malaysian-palm-oil-company-announces-groundbreaking-labor-policies>



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In 2018, Finnwatch prepared the last monitoring report thus far on the IOI Group. Finnwatch's researcher interviewed 30 IOI Group workers in Sabah, Malaysia, visited the workers' residential areas, reviewed the company's internal documents, and interviewed both local management and representatives from the group's headquarters. Although problems were found on the visited estates, working conditions were generally found to be at a satisfactory level. However, Finnwatch called for caution in drawing conclusions, as IOI itself selected the estates that Finnwatch's local researcher was allowed to visit because according to IOI, some of the estates were having certification audits at the same time. Had estates been selected at random, the situation could have been different.

In the same year, 2018, the international palm oil certification system RSPO, which had been heavily criticised by Finnwatch during 2014–2017, renewed its standard. Many of the criteria recommended by Finnwatch were added to the standard, such as a ban on recruitment fees. Neste also drew up new human rights guidelines and launched workshops for its subcontractors, especially highlighting the rights of migrant workers.⁴ Following the changes in the operations of the IOI Group, the certification system providing it with assurance of responsible conduct and a major buyer, Finnwatch ceased to actively monitor the IOI Group.

However, in 2020 Finnwatch was again notified of serious problems at one of IOI's oil palm estates. As such, Finnwatch launched a new investigation into IOI's working conditions and a dialogue process with the company. This report summarizes the findings made during the process. At the time of writing this report the IOI Group was, according to publicly available information, supplying oil

palm-based raw materials to both Neste⁵ and Nestlé⁶.

4 Neste, Nesteen ihmisoikeusohjelma alkanut vaikuttaa työelämän vastuullisuuskysymyksiin palmuöljyteollisuudessa, <https://www.neste.com/fi/tiedotteet-ja-uutiset/sustainability/nesteen-ihmisoikeusohjelma-alkanut-tyoelaman-vastuullisuuskysymyksiin> (visited on 17.5.2021)

5 Neste, PFAD Dashboard, available at: <https://www.neste.com/corporate-info/sustainability/sustainable-supply-chain/traceability-dashboard/pfad-dashboard>

6 Nestlé, Nestlé supply chain disclosure: palm oil, available at: <https://www.nestle.com/sites/default/files/2019-08/supply-chain-disclosure-palm-oil.pdf>

2. Methodology

In August 2020, Finnwatch was contacted by a relative of an Indian migrant worker working in Peninsular Malaysia at the IOI Group's Mekassar estate, who reported problems with living conditions and compliance with agreed working conditions. Prior to contacting Finnwatch, the relative had contacted the IOI Group several times and also complained to the RSPO, which had certified the estate in question.⁷ However, the problems had not been fixed. The complainant had found Finnwatch on the internet, as Finnwatch's previous reports on the IOI Group were also available in English and appear in Google searches.

To substantiate the complaint, Finnwatch requested various documents, such as pictures of the estate's living conditions and salary slips. When the complaint was found to be justified and several documents could be submitted in support of it, Finnwatch contacted the IOI Group. A Finnwatch researcher met the IOI Group numerous times during August 2020 – April 2021. Finnwatch took part in one meeting with IOI together with the person who had made the original complaint on behalf of his relative, an IOI worker.

Finnwatch also interviewed Indian migrant workers at the Mekassar estate twice via video link. In total, seven workers were interviewed. Finnwatch met with some of the workers twice. Video interviews were conducted in workers' apartments using a mobile phone connection. Interviews were translated by the complainant, who contacted Finnwatch about the problems in IOI's working conditions in the first place. Interviews were recorded and the quality of the translation was checked by an independent third party. In addition to interviews and meetings, Finnwatch has photographs of employees' living conditions, salary receipts and documents sent by the IOI, such as employment contracts and various company policies.

⁷ RSPO, Complaint, <https://askrspo.force.com/Complaint/s/case/5000o000034tDnYAAU/detail>

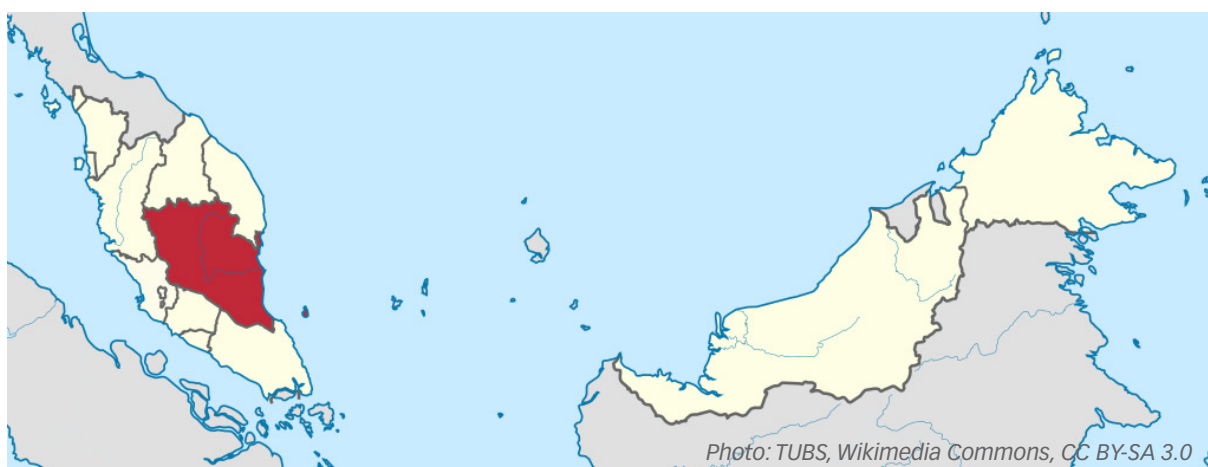


Photo: TUBS, Wikimedia Commons, CC BY-SA 3.0

Report looks into Mekassar estate which is located in Pahang State, in Peninsular Malaysia.

3. Labour rights on the IOI Group's Mekassar estate

Mekassar estate is located in Pahang State, in Peninsular Malaysia. The estate is RSPO certified and belongs to the Bukit Leelau certification unit. In the RSPO system, the certification unit consists of a palm oil mill and surrounding oil palm estates. Bukit Leelau certification unit includes the Bukit Leelau palm oil mill and six oil palm estates (Bukit Leelau, Detas, Merchong, Mekassar, Leepang and Laukin).

The Mekassar estate covers more than 1,100 hectares of oil palm fields and produces about 33,000 tons of palm oil fruits annually.⁸

The estate mainly employs migrant workers from Indonesia, Bangladesh and India. The Indian workers interviewed for the study are mainly from Uttar Pradesh, one of the poorest states in India.

3.1 WORKERS' LIVING CONDITIONS ON THE ESTATE

The workers live on the estate in houses which 2–3 people share. Workers reported poor living conditions to Finnwatch. There was mould on the walls of the houses, the toilets and kitchen areas were in poor condition

and some of the workers slept on the floor without beds and mattresses. Malaysian law dictates living conditions on oil palm estates, and it is the employer's responsibility to provide workers with housing in good condition⁹. According to IOI, the workers were given a decent house on the estate, but the houses were deteriorating because of a lack of cleanliness by the workers. In order to prove this, IOI sent Finnwatch pictures of the workers' dirty laundry and dishes that were lying on the floor.

After Finnwatch complained about the living conditions to the IOI Group, all employees who didn't have beds were given beds. Some workers also received mattresses, but they were initially only given to workers who complained about working conditions, as well as to workers who were leaders of the migrant workers' groups. According to workers, a mattress was also given to one worker who had complained of back pain. Finnwatch's continued dialogue with IOI eventually resulted in mattresses being provided for all workers. IOI forwarded Finnwatch an order

⁸ RSPO Re-certification audit, Bukit Leelau certification unit, 2020, available at: <https://rspo.org/certification/search-for-certified-growers>

⁹ Employees' minimum standards of housing, accommodations and amenities act 1990, available at: [http://jtksm.mohr.gov.my/images/kluster-warnawarni/akta-borang/akta-peraturan/SENARAI%20AKTA_2020/Akta%20Standard%20Minimum%20Perumahan%20dan%20Kemudahan%20Pekerja%20\(Pindaan\)%202019%20\(Akta%201604\)/Akta%20446_Feb2021.pdf](http://jtksm.mohr.gov.my/images/kluster-warnawarni/akta-borang/akta-peraturan/SENARAI%20AKTA_2020/Akta%20Standard%20Minimum%20Perumahan%20dan%20Kemudahan%20Pekerja%20(Pindaan)%202019%20(Akta%201604)/Akta%20446_Feb2021.pdf)



Some of the houses in the estate were in poor condition. After Finnwatch's complaint IOI started renovations.



issued in December 2020, instructing each estate to provide workers with mattresses and beds, as well as a cabinet, adequate lighting and a gas stove with two burners for each house. According to the workers, most of the workers at the Mekassar estate received a thin foam mattress whereas the worker who had complained and his friends were offered thicker mattresses. In a response provided to Finnwatch, IOI claimed that mattresses had to be purchased in phases because of the procurement practices and that the estate management had bought several types of mattresses in order to identify the most suitable mattress to be provided for all the workers. Later IOI also introduced guidance to its estates in order to make sure that the estates provide to all workers a mattress at least four inches thick (approximately 10 centimeters).

Finnwatch's complaint also triggered repairs to the living quarters. Toilets and kitchens were renovated, but not in all houses. During the process, IOI claimed several times that all repairs had been made, but according to the interviewed workers numerous houses were still in need of repair. In its last response to Finnwatch, IOI said that the estate has a plan to complete all the houses in phases and that in the future, repair and renovation work will be done continuously, as and when needed.

3.2 WORKERS ARE NOT IN POSSESSION OF THEIR WRITTEN EMPLOYMENT CONTRACTS, PROBLEMATIC WORDING IN EMPLOYMENT CONTRACTS

Workers are not in possession of their written employment contracts. Workers had signed employment contracts in English, which they did not understand at a recruitment company office in their home country India. They were not given a copy of this contract. Most of the estate's Indian workers do not understand English at all. According to the International Labour Organization (ILO), migrant workers should be offered written contracts in a language they understand well in advance of departure so that the worker can understand the terms and conditions of employment they have agreed to¹⁰.

After Finnwatch complained about the matter, IOI reported that it had translated employment contracts into Hindi. Later IOI also claimed that the workers had signed a contract in their own language already in India. To prove this, IOI sent Finnwatch a copy of the complainant's brother's signed Hindi language contract. However, the contract was signed on 14th of June 2019, two days after the worker in question had left India to work in Malaysia. Finnwatch is in possession of the worker's flight schedule which clearly shows the departure date. After Finnwatch pointed

¹⁰ ILO, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf

this out, IOI sent yet another signed contract, this time without date, claiming that it was the contract that had been signed in India.

The workers confirmed that they had been asked to sign an employment contract in Hindi but only after they had arrived in Malaysia and that they were not given time to read it. They had also signed another Hindi language contract after Finnwatch's complaint, but they still had not been given a copy of it. In December, IOI forwarded Finnwatch a copy of an order given to all palm oil estates to provide workers copies of their employment contracts. Still, in April 2021, the workers interviewed were not in possession of their employment contracts. According to IOI, sample contracts have been posted on the estates' notice boards since December 2020. Finnwatch's position is that all workers need to have a copy of their own contract in a language that they understand and which they have signed. Contracts need to be signed before departure and the workers will have to have enough time to familiarise themselves with the contracts' contents and terms of work before signing.

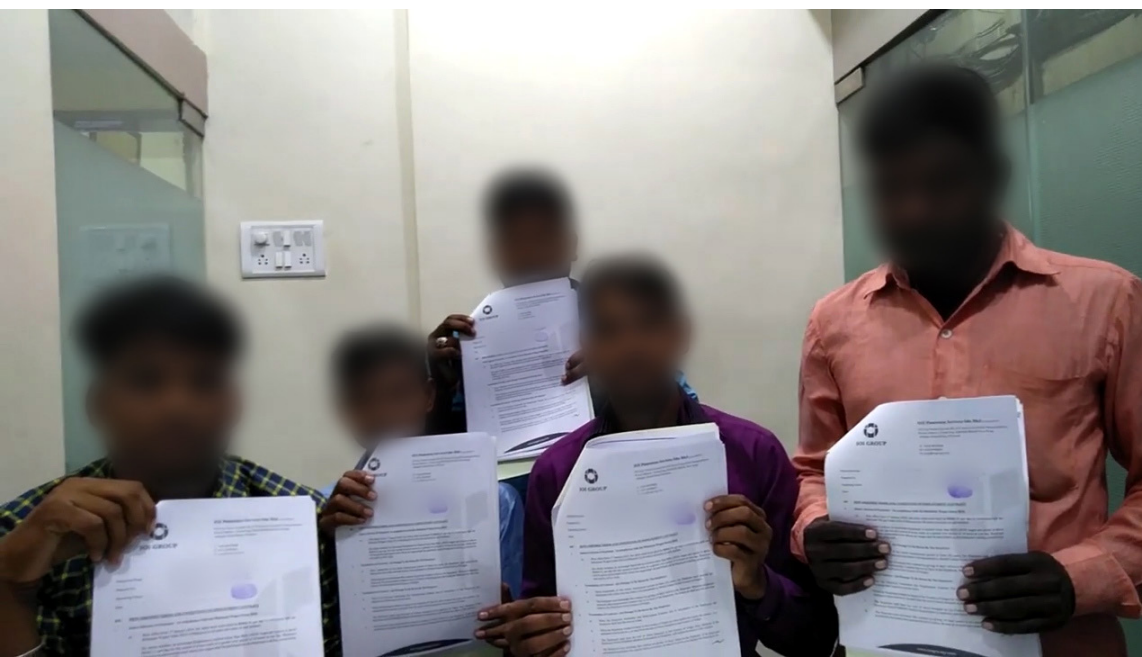
3.3 UNCLEAR WORKING HOURS AND WAGES

According to the employment contract, the length of a working day is 8 hours, spread over 10 hours. According to IOI, this means that a worker can have breaks for two hours

during the 10-hour working period. According to the company, even longer breaks can be taken if the worker is able to achieve the target set by the employer more quickly. According to IOI, workers can also return home from work earlier if they have finished their tasks. If the worker does not reach the target set by the employer during the working day, he will be paid a minimum daily wage, which is set for an 8-hour working day. The minimum wage in Malaysia is 46.15 ringgit.

In practice, therefore, the remuneration of workers is based on a form of contract work in which workers are required to reach the target set by the employer. For example, workers applying fertilizer must apply 30 bags of fertilizer per day. They are paid a performance-based salary. For the unloading and application of one sack of fertilizer, the pay was initially 2.2 ringgit, which was the piece rate for application alone. After Finnwatch contacted IOI, the estate's workers began to also be paid for unloading the sacks, which increased the performance-based pay to 2.5 ringgit per one sack. Later, however, the pay was lowered to 2.45 ringgit. According to the workers, IOI has unilaterally changed the pay rates. According to IOI, the change was made after a meeting with regional management to standardise the rate of piece rated work in all estates including Mekassar. The revised rate has been displayed on the estate notice board which is accessible to everyone.

According to the workers, fertilising is an easy job, and they usually reach their target



Recruited migrant workers appear in a video filmed by a recruitment company with English-language IOI contracts in their hands. Employees have signed the contract with their thumb print, which may indicate that they are illiterate. The Indian workers interviewed by Finnwatch are literate, but they had not understood the contract they had signed in English, a language they don't speak.

during normal working hours and one hour of overtime. They are now paid 73.5 ringgit for about nine hours of work, which is more than just the minimum wage and one hour of overtime pay for similar work would be (46.15 ringgit + 8.66 ringgit = 54.82 ringgit).

However, pay is not the same in all jobs. For example, workers applying pesticides are required to work much longer hours than the group applying fertilizers. The piece rate for workers applying pesticides is 8 ringgit per hectare. The work is heavy because the pesticide has to be sprayed at the bottom of every palm oil tree in the area. The daily target is 6 hectares. Workers who apply pesticides are paid only 48 ringgit per day, although they may work up to 10 to 11 hours. The company therefore pays them less than the minimum wage.

In its response to Finnwatch, IOI explained that the pay rate for each job has been determined on the basis of a motion study. According to the company, workers can easily achieve the minimum target of 6 hectares within 7 hours working time. IOI says that it is only because workers work slowly that they have to work extended hours to achieve the minimum productivity target.

The complex set up for calculating pay and working hours is further confused by the fact that no records are kept of the hours worked. Wages are tied to achieving the targets set by the employer, and workers may be paid a minimum wage which has been set for an 8-hour working day even if they have worked for much longer. According to the workers, in certain tasks, it actually takes up to 10–11 hours a day for them to reach their target. Contrary to what IOI suggests, according to the workers it is not possible for them to have breaks for two hours during the working day, but usually only one 30-minute lunch break. In its response to Finnwatch, IOI explained that workers may manage their breaks in between the work “as long as they achieve the target set for the particular task on a daily basis”.

As a result of the dialogue with Finnwatch, IOI issued the Workers’ Work Verification Guideline that has been distributed to all its operating units in May 2021. According to the company, the new system will enable workers to verify their hours.

All workers interviewed for this report said they would prefer a monthly/daily wage that was promised to them before accepting the job. Workers’ introduction sessions in India have been filmed by the recruitment agency (see paragraph 3.4) and the workers’ side of the story can be confirmed from the videos. Why workers would think that they should be paid a daily wage is evident also in the model employment contract which IOI submitted to Finnwatch, which talks about pay based on the daily minimum wage. In addition, the contract states that the performance-based pay is offered as an incentive to provide additional earnings. However, the contract also states that workers will not be paid the minimum wage if they do not meet the target set by the employer. This is not in line with IOI’s minimum wage policy that was introduced in 2017 after IOI’s dialogue with Finnwatch and the Rainforest Action Network¹¹. In its response to Finnwatch for this report, IOI said that if a worker does not complete their task within the required time, they will still be paid the minimum wage but there will be an investigation to understand the root cause of such poor performance. To Finnwatch it seems that written working contracts and practises on the ground are not in line with IOI’s communication to external audiences (also see the section on the collective bargaining agreement below).

Salary slips are confusing, and workers say there are often errors in payroll due to wages being calculated on the basis of workers’ performance. Because the hours worked are not monitored, it is impossible to verify the legality of the payment of wages from written

11 IOI, Minimum wages & leave pay policies in Malaysia, available at: <https://www.ioigroup.com/Content/S/PDF/Minimum%20Wage%20Policy.pdf>

sources alone. IOI stresses that workers' salaries are paid via the company's new process management system SAP which is controlled automatically from the IOI Group's headquarters. However, the SAP system doesn't help if the information entered into the system is not correct.

According to IOI, its remuneration practices have been agreed with the National Union for Plantation Workers NUPW, the trade union representing palm oil estate workers in Malaysia. IOI provided Finnwatch a copy of the collective agreement concluded in 2020. The collective agreement (Article 8 (iii)) allows for the employer to pay the worker a wage below the minimum wage for the days on which he has not completed the target prescribed by the employer. Finnwatch considers the clause to be problematic in terms of workers' rights.

The workers interviewed for this report are not union members and had never met with a union representative.

In 2017, after extensive dialogue with Finnwatch and the Rainforest Action Network, IOI issued its "Minimum wages and leave pay policies in Malaysia"¹² In the policy IOI promised to conduct a fair and decent wage assessment of its workers based on a credible methodology with the goal of providing workers a fair and decent wage. The assessment was expected to begin in Q1 2019. Finnwatch asked that IOI provide them a copy of the assessment. IOI has not conducted the assessment, instead it referred to a study published by Monash University in Australia. The study did not focus on IOI (although some IOI estates were visited during the study), nor was it commissioned or paid by the company.

3.4 EMPLOYEES HAVE PAID LARGE RECRUITMENT FEES

All the Indian migrant workers interviewed by Finnwatch had entered the country through

the same recruitment company. The recruitment company has an office in Mumbai, but the recruiter used by the company recruits workers from all over India.

Almost all workers interviewed for this report said they had paid recruitment fees at the recruitment company's premises. The recruitment fee charged to the workers is 45,000 Indian rupees, or about 500 euro. The amount is equivalent to a two month salary in Malaysia. Two of the interviewees had paid the recruitment fee twice as they were working for IOI for the second time. The interviewed workers have collected money for the recruitment fee from relatives or other acquaintances from their home village. "45,000 rupees is a huge amount of money for me," confirms one of the workers interviewed.

A relative of the complainant to Finnwatch and his friends had paid only 28,000 rupees for the recruitment by a bank transfer as they had known that the Indian authorities allowed workers to be charged a maximum of 30 000 rupees.¹³

However, the recruitment company should not charge any fees from IOI workers, as IOI has already paid for the recruitment of the workers and has forbidden charging of recruitment fees. However, workers were not aware of this or did not understand the IOI's ban on recruitment fees at the time. They only found out about IOI's policy after Finnwatch told them of it.

Recruitment fees are paid in cash at the office of the recruitment company. No receipt is given. The interviewed workers told Finnwatch the names of the two people who received the money from them. Some of the interviewees say that they have signed a document in India, which they have been told states that they have not paid recruitment fees. The document was in English, and they did not understand exactly what it said, and they also do not have copies of the said document. On the other hand, other workers have been asked to confirm in a separately filmed video

¹² IOI, available at: <https://www.ioigroup.com/Content/S/PDF/Minimum%20Wage%20Policy.pdf>

that they have not paid recruitment fees. One of the interviewees said he asked why he had to lie on the video, but the only response he was given was an angry reminder to mind his own business.

IOI refers to various documents and video evidence in an attempt to discredit the workers' complaint about recruitment fees. According to the company, workers sign a separate English language declaration document to prove that they have not paid recruitment fees. The recruitment company in India has arranged a Court Officer to interpret and explain the Declaration document in Hindi to the workers. Document states that no recruitment fees have been paid, and then a Government Officer/Notary attests to the said Declaration. This document is executed on stamp paper to endorse its authenticity, and to ensure that the Declaration is legitimate and legally enforceable. IOI stresses that the workers have committed an offence if they have made a false declaration in the presence of the Court Officer and Government Officer. Furthermore, the estate conducts an induction training for workers upon arrival. During this session, the estate again asks if they paid any recruitment fees. The workers will also be read their declaration and if the workers agree with the declaration, they will tick on the 'yes' column but if they do not agree, they will tick on the 'no' column.

Finnwatch is not convinced about this process with a complex set of legal documents and different tick-box exercises. Workers in a vulnerable position will most likely not speak against the recruitment company nor the estate management who are gatekeepers to the jobs the workers have been promised in Malaysia. In addition workers don't understand technical terminology, do not know how to read complex legal documents and many times don't know English language. The

process appears to have been designed to silence workers and make filing grievances difficult instead of controlling the recruitment channels and finding out whether or not workers have paid recruitment fees.

From the interviews with the workers it can be concluded that recruitment fees have been charged at least between 2015 and 2019. With the coronavirus pandemic, the recruitment of migrant workers from India to Malaysia has been suspended. The recruitment agency in question is IOI's long-term partner in recruitment. It also recruits migrant workers for numerous other big palm oil companies in Malaysia.

Workers' training videos have been uploaded to a public YouTube channel maintained by an employee of the recruitment agency. The YouTube channel features the faces and names of hundreds of workers, as well as the numbers of their passports. IOI is aware of the channel and sent links to the videos on the channel to Finnwatch during the dialogue. IOI explained that according to the company process, the appointed recruitment company will brief the workers on their job requirements, the contents of their employment contracts in their language, IOI's No Recruitment Fee policy, and the declaration, and show the company video to the workers. These briefings are recorded on video and uploaded on YouTube. According to the company, these recordings can be "viewed from YouTube from all over the world by keying-in the workers' passport number". Finnwatch considers sharing passport numbers as a possible violation of workers' privacy and will not refer to the YouTube channel in this report.

As stated above, according to IOI's policy on prohibition of recruitment fees, IOI is responsible for workers recruitment fees, and it has prohibited recruitment agencies from charging workers. IOI's policy also states that if recruitment fees are nonetheless charged from the workers, recruitment agencies are required to reimburse workers for the fees. IOI

13 For recruitment fees in India see for example Times of India, <https://timesofindia.indiatimes.com/city/hyderabad/recruitment-fee-by-agencies-should-not-be-collected-for-foreign-jobs-says-immigration-rights-activist/articleshow/70170382.cms>

also requires recruitment agencies to oversee the conduct of their own subcontractors who may be involved in the recruitment process in the sending countries.¹⁴

IOI argued that Finnwatch could not prove to whom the workers had paid recruitment fees. According to IOI, because the recruitment agency in question denies that its employees had charged the fees from workers, the issue is for the workers and the Indian authorities to solve. IOI has told Finnwatch that it does not intend to reimburse workers for the recruitment fees that have been charged to them. IOI has suspended the recruitment company in question and ceased recruitment from India.

Finnwatch considers the workers' reports to be consistent and the evidence of the connection between the persons who collected the recruitment fees and the recruitment agency strong. Regardless of who collected the fees, the IOI Group has to conduct human rights due diligence in order to ensure that its recruitment processes are appropriate. According to the International Labour Organization (ILO), recruitment fees should not be charged from workers. The ILO also emphasises the need for companies to exercise due diligence in the recruitment of workers and to address the adverse human rights implications to which they are party.¹⁵ The collection of recruitment fees, leading to debt, is one indicator of forced labour.¹⁶ Finnwatch considers the IOI Group to be responsible for reimbursing recruitment fees to its workers who are in a position of vulnerability. Breach of the agreement between IOI and the recruitment agency is a separate issue that IOI may seek to resolve through courts and other official channels.

14 IOI Group, available at: <https://www.ioigroup.com/Content/S/PDF/Foreign%20Workers%20Recruitment%20Guideline%20Procedure.pdf>

15 ILO, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf

16 ILO, Forced labour indicators, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

After the previous round of dialogue between Finnwatch and IOI in 2017, IOI issued a recruitment fee policy (see above) in June 2017. In the policy, IOI committed to making ex-gratia payments to workers who had been charged recruitment fees before the no-recruitment fee policy was introduced. During the dialogue process conducted for this report it became clear that IOI had not enforced the 2017 policy and the ex-gratia payments had not been paid to all eligible workers. IOI continued making these payments in 2021. IOI explained to Finnwatch that although the recruitment guidelines and policy commitments were introduced in 2017, implementation had to be carried out in stages and that the company also has to identify which workers would be eligible for the ex-gratia which according to IOI is a rather complicated process. Finnwatch does not find this explanation credible. It has taken IOI four years to reimburse workers despite making a commitment to do so in 2017.

3.5 AN ESTATE STAFF MEMBER GUILTY OF MISCONDUCT WAS DISMISSED, PROBLEMS IN HANDLING GRIEVANCES

The worker's relative said that he had tried to resolve numerous problems concerning working conditions directly with IOI's headquarters and the estate management prior to contacting Finnwatch. However, several discussions and a separate meeting in Malaysia did not lead to changes. A complaint was also lodged with RSPO, but it did not lead to improvements (see Chapter 3.7).

During the dialogue process between IOI and Finnwatch, IOI tried to discredit the complainant as a person. For example, IOI sent Finnwatch a link to an ambiguous news story published in non-mainstream Indian media Hello Mumbai claiming that the complainant himself was a fraudulent recruitment agent. The news story had very little or no relevance to the case in question in this report.

According to the interviewed workers, the

attitude of the estate managers towards the workers is bad. One of the assistant managers on the Mekassar estate had slapped workers and another member of the staff forged workers' signatures on documents. The forged documents were documents intended to confirm that the workers had not completed the task assigned to them and that they could therefore be paid a lower salary. After Finnwatch contacted the IOI headquarters, the staff member who had forged the signatures resigned and one of the managers who had slapped workers was transferred to another position in IOI and faced also other sanctions. According to IOI he later left the company.

As required by the RSPO criteria, an Employees Consultative Council (ECC) should be in place at the Mekassar estate with the aim of assessing and acting upon any issues. However, according to the workers, the management of the estate had not listened to the issues raised by the workers within the framework of the ECC either. There seems to be issues also in the administrative processes of the ECC. According to the workers, no memos or minutes of the ECC meetings are prepared for workers to see and approve. Signatures are collected from workers only to a list of participants. In its response to Finnwatch, IOI said that the minutes of ECC meetings are available at the estate.

3.6 WORKERS FACE PROBLEMS RETURNING HOME DURING THE CORONAVIRUS PANDEMIC

Finnwatch's interviews with workers at the Mekassar estate revealed that there were four Indian workers on the estate whose fixed-term employment contracts, which had lasted for three years, had already expired several months ago and the workers wanted to go home. One of the workers interviewed was very anxious about the situation and said his wife was ill, which made returning home even more important. The worker's three-year

fixed-term employment period had already ended in August, but he was still working on the estate in October. According to the workers, the management of the estate had delayed arranging return flights, citing the coronavirus epidemic. The workers had not been provided with information on the travel arrangements or any explanation as to why the return date was constantly postponed. Workers suspected the delays were due to the management wanting to keep workers in employment longer to make up for the labour shortage caused by the coronavirus.

After Finnwatch's complaint, two out of four workers were informed of a departure date, but it was again postponed for weeks at the last minute. Eventually, all four workers were not allowed to return to India until the end of December 2020. In its response to Finnwatch, IOI stressed that flight cancellations and postponements are out of the estate's control especially due to the Covid-19 resulting in lower availability of flights.

Similar problems have been reported elsewhere in Malaysia during the coronavirus pandemic. Human rights organisations reported to the media in December 2020 that they had received similar complaints from several oil palm estate workers. Workers have been promised that they can return home, but the return date has been repeatedly postponed without explanation and attempts had been made to persuade them to stay to work in Malaysia.¹⁷

Due to the coronavirus pandemic, the entry of migrant workers to Malaysia has become significantly more difficult, and according to the workers interviewed, the IOI estate is also suffering from labour shortages. Workers are now being sent from one estate to another, and Mekassar employs migrant workers from other nearby IOI estates. According to IOI, this is a common practice especially during

¹⁷ Reuters, Malaysia palm oil workers discouraged from going home, rights groups say, <https://www.reuters.com/article/uk-malaysia-palmoil-labour-idUSKBN28L0KM>

high crop season when workers from one estate are regularly sent to another estate in an attempt to increase their earnings and also to fulfil the company's need for enough manpower for its operations. For this report, Finnwatch has not looked into the terms and conditions of workers who are being sent from one estate to another, or situations in which work might be offered also on workers' rest days.¹⁸

3.7 THE RSPO AUDIT REPORT IGNORED CONCERNS RAISED BY WORKERS

The Bukit Leelau certification unit and its Mekassar estate have been re-certified in autumn 2020. According to an audit report in the RSPO database¹⁹, the auditors visited the estate on 30 September 2020. The audit visit included an interview with a workers' representative from the ECC. The migrant worker interviewed by Finnwatch, who represents the workers in the ECC, confirms that he met the RSPO auditor during the audit. According to the worker, he had told the auditor about the problems and also said that the problems had been reported in writing to the RSPO and IOI even before the audit.

Nevertheless, the audit report (approved on 13th of January 2021) states that the audit did not find any of the problems that workers have sought to bring to the attention of IOI and the RSPO. Finnwatch sent a complaint to IOI on 27 August 2020, but it was entered into IOI's public list of grievances only in October 2020. The original complaint made by the complainant was registered in the RSPO system on 5 October 2020.

According to the audit report, no evidence of charging recruitment fees from workers has been found on the estate (cf. Chapter 3.4) and workers have written employment contracts in their own language (cf. Chapter 3.2). According to the audit report, there is no evidence of violence or other harassment of the estate's workers (cf. Chapter 3.5). The report claims that the estate handles complaints from workers and other parties effectively (cf. Chapter 3.5). Finnwatch believes that the audit seriously misrepresents the situation on the estate being audited and completely ignores the legitimate concerns expressed by workers both during and before the audit.

The complaint by the worker's relative to the RSPO has been updated in the public system on 24th February 2021. The update states that all the issues have been corrected "except for one thing that happened in the past". According to the complainant, he was not aware of the RSPO's interpretation and had not informed the RSPO that the problems had been resolved. The complainant sent Finnwatch his latest correspondence with the RSPO, which at least partly confirms the complainant's view.²⁰

¹⁸ In the Finnwatch report published in 2014, issues were found also in relation to migrant workers who were offered work on their rest days in other estates than the estate where they normally worked in. See Finnwatch, 2014, *The Law of the Jungle*, available at: <https://finnwatch.org/images/pdf/palmoil.pdf>

¹⁹ Re-certification audit, Bukit Leelau certification unit, 2020, available at: <https://rspo.org/certification/search-for-certified-growers>

²⁰ The complainant has reported to the RSPO that the situation regarding living conditions has improved for an individual worker, which may have been interpreted as a remedy for the matter complained of. With regard to the other issues complained of, it has not been possible to obtain such an understanding on the basis of the correspondence seen by Finnwatch.

4. Summary

This report deals with the IOI Group, which at the time of writing this report supplied oil palm-based raw materials to Neste and Nestlé, among others. The impetus for the report was a complaint received by Finnwatch. The person who contacted Finnwatch, a relative of an IOI worker working on the Mekassar estate, had previously tried to solve their complaint directly with the IOI without success. The complainant found Finnwatch through an internet search as Finnwatch has previously published reports on IOI's working conditions. Finnwatch has sought to verify the information provided by the complainant by interviewing the estate's workers (through a videolink), through document review, and by engaging in dialogue with the IOI for almost a year.

Workers interviewed are dissatisfied with the estate's wage policies and practises. Instead of the daily/monthly wage promised to the employees at the time of accepting the job, workers are paid a performance-based salary that varies from job to job and is calculated in a complex way. No records are kept of working hours. According to the employment contract and the collective bargaining agreement signed with the trade union, the workers also do not need to be paid the statutory minimum wage if they do not reach performance targets set by the employer. Finnwatch already reported similar problems in 2014, which the IOI promised to fix in 2017, but the same issues persist to date. According to the IOI the reason why workers are paid less than the minimum wage is that they work too slowly and therefore do not reach their target. However, the company promised to intervene in the recording of hours worked.

The confusing and complex wage policy is prone to errors and abuse. In one case, a staff member of the Mekassar estate had falsified workers signatures in documents that were trying to prove workers' failure to achieve the

targets set by the employer and thus justifying the payment of a wage below the minimum wage. After Finnwatch raised this case with the IOI, the staff member in question resigned. In addition, one of the managers in the estate was reassigned to another position when it emerged that he had slapped workers.

Interviewed migrant workers have also been dissatisfied with the living conditions on the estate. According to Malaysian law, the employer must provide adequate living conditions for workers, but the Mekassar estate has had deficiencies in both furnishing and condition of the housing. After Finnwatch started dialogue with the IOI, workers received beds and mattresses, and renovations were begun.

In 2014, Finnwatch reported on recruitment fees paid by the workers. The IOI promised at the time to address the problem. In 2017, the company issued a zero recruitment fee policy. Nevertheless, all workers interviewed by Finnwatch for this report stated that they had paid recruitment fees to a recruitment company in their home country. Although the workers' testimonies are consistent, the IOI claimed that it could not verify the payments workers had made. The company considers the investigation to be the responsibility of the authorities in the workers' home country and refuses to reimburse workers. It also became clear that the IOI had still not implemented its promise made in 2017 to provide an ex-gratia payment to all those workers who had paid recruitment fees prior to the issuance of the zero recruitment fee policy that came into effect in 2017.

Proactive identification of human rights risks and the maintenance of effective grievance mechanisms is a key part of companies' human rights due diligence. In IOI, these mechanisms do not appear to work properly. During the dialogue with Finnwatch, the IOI also sought to bring the complainant's person into a bad light on grounds of issues

unrelated to the problems at the Mekassar estate. During the dialogue, almost all of the problems raised by the complainant proved to be justified and, as described above, after Finnwatch's intervention, they led to some corrective actions.

Although some of the issues raised by the complainants were addressed following the dialogue between Finnwatch and IOI, the case also brought into light serious, persisting gaps in the IOI Group's wider recruitment and wage policies, and commitment to respect for human rights. Finnwatch has been monitoring the working conditions in the operations of the Malaysian palm oil company IOI Group since 2014. Over the years, the company has issued several new policies and promised to correct many problems. However, it appears that the policies and promises have not been fully adhered to. The IOI also does not appear to have effective grievance mechanisms or processes for handling complaints. The IOI also seems to continue to have difficulties in internalising a human rights based approach and does not know how to, or does not want to, look at the functioning and impacts of its processes and practices from the perspective of vulnerable migrant workers and protection of their rights.



After Finnwatch's intervention some corrective actions were made. Migrant workers were for example provided mattresses.

5. Recommendations

TO THE IOI GROUP

- The IOI should gain a greater understanding of human rights and human rights education should also be provided to the estate management. The entire organisation should understand that migrant workers who do heavy physical work are people with the same needs and rights as other IOI workers, and should not be seen just through their instrumental value.
- The IOI should shift the focus of its monitoring of its recruitment process from mechanistic and bureaucratic document checks to qualitative monitoring. To monitor the recruitment process, migrant workers should be interviewed carefully in a safe environment. The aim of the monitoring process should not be to show that there are no problems, but to identify potential problems. The IOI needs to understand exactly how the recruitment agencies it uses recruit migrant workers and what kind of intermediaries are involved in the process. Recruitment agencies must be tendered on a regular basis.
- The IOI must reimburse recruitment fees to all employees who have paid recruitment fees.²¹ If the case is that the recruitment agency has been charging fees from workers in violation of the contract between the agency and IOI, and more than Indian authorities allow, the IOI should report the issue to the authorities in India and consider initiating legal proceedings against the agency.
- The IOI should simplify its pay system and align it with its minimum wage policy published in 2017. All employees must be paid a minimum wage for eight hours of work. Various, for example, performance-based incentives can be paid on top of the minimum wage. Records must be kept of the hours worked by the workers.
- The IOI must investigate why complaints about its terms and conditions of employment were not taken seriously before Finnwatch intervened. Processes for handling complaints, responsible persons, and the recording of complaints in a public register must be reviewed throughout the organisation and the company must ensure that complaints are properly handled in the future.
- During the preparation of this Finnwatch's report, it became clear on several occasions that there are problems in the implementation of the recruitment and minimum wage policies published by the IOI in 2017. The IOI should investigate the reasons for this.

²¹ Emerging good practices for repayment of recruitment fees have been described in different human rights guidances, see for example IHRB, 2017, Responsible Recruitment: Remediating Worker-Paid Recruitment Fees, available at: https://www.ihrb.org/uploads/reports/IHRB,_Remediating_Worker-Paid_Recruitment_Fees,_Nov_2017.pdf; Impactt, 2021, Principles and guidelines for the repayment of migrant worker recruitment fees and related costs, available at: https://impacttlimited.com/wp-content/uploads/2021/04/Final_Impactt-Repayment-Standards_Revised_22.4.21.pdf

TO THE RSPO

- More attention needs to be paid to the quality of RSPO audits. If the audit reports take a position on, for example, recruitment fees paid by employees, this should be based on a proper investigation.
- The RSPO should clarify how the adequacy of wages paid is monitored in situations where workers' hours are not recorded and payroll depends on a complex performance-based system. The RSPO should require monitoring of working hours and the payment of at least the minimum wage for eight-hour work.

FOR THE DECISION MAKERS IN FINLAND

- Finland must actively promote ambitious human rights due diligence legislation in the European Union based on the UN Guiding Principles. If the human rights due diligence initiative currently being prepared by the Commission does not progress, or is not sufficiently aligned with the UN Guiding Principles, Finland must proceed at national level.



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