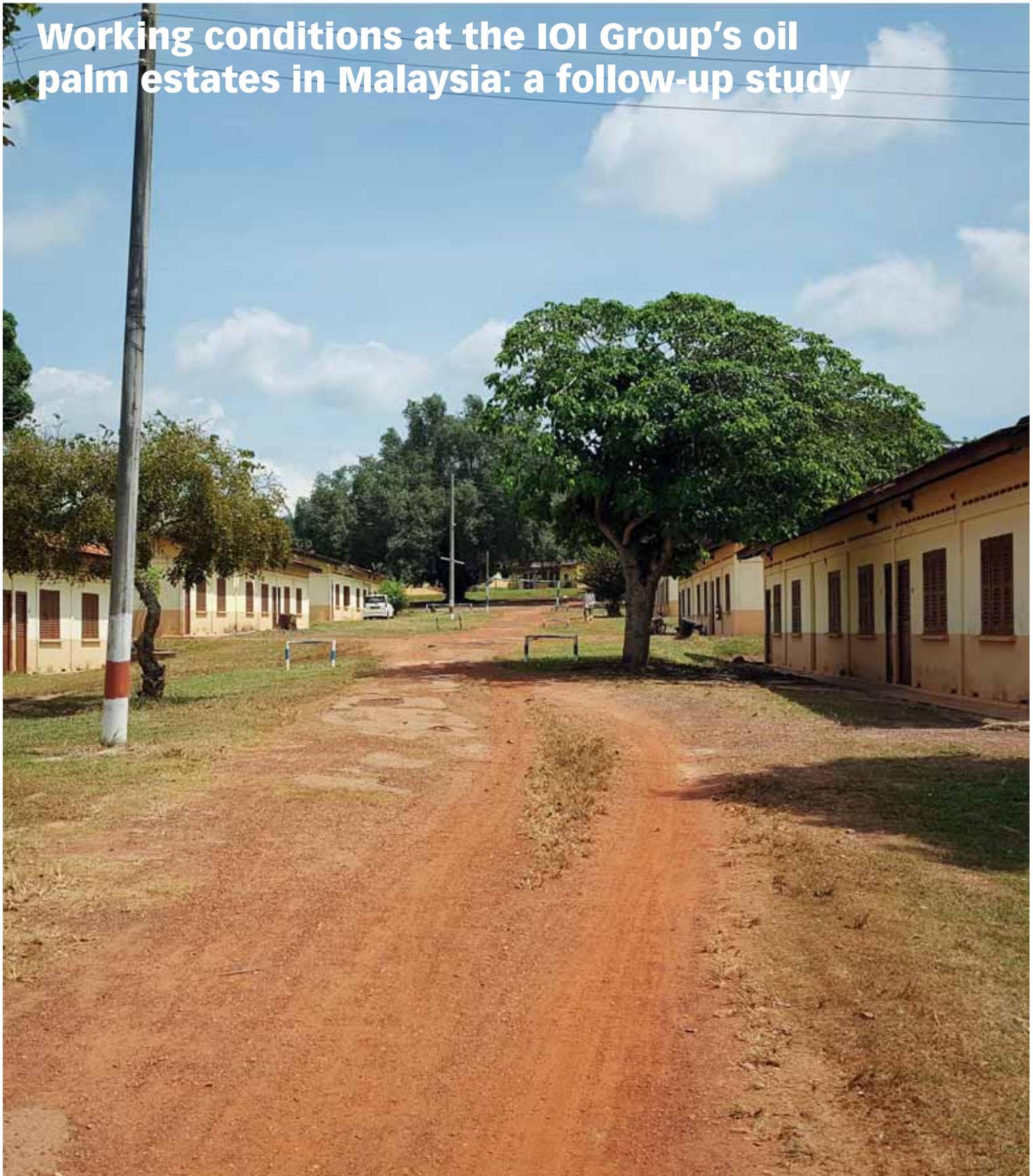


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## Working conditions at the IOI Group's oil palm estates in Malaysia: a follow-up study



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Author: Sonja Vartiala

Layout: Petri Clusius / Amfibi ky

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Cover photo: The workers' living quarters at the IOI Group's Regent estate.

Photos by Finnwatch / Si Siew Lim

# Contents

<b>1. INTRODUCTION</b> .....	4
<b>2. FOLLOW-UP STUDY AT THE IOI GROUP'S PALM OIL ESTATES IN MALAYSIA</b> .....	6
2.1 Problems still evident in recruitment .....	6
2.2 Still not all workers receive the minimum wage .....	9
2.3 Problems related to passports still reported .....	12
2.4 The right to organise and freedom of association are now respected in employment contracts and the corporation's policies .....	12
2.5 Agency workers in a risk group? .....	13
2.6 Discrimination in recruitment, romantic relationships forbidden .....	13
<b>3. MEASURES IMPLEMENTED BY NESTE TO ADDRESS PROBLEMS IN ITS SUPPLY CHAIN</b> 15	
<b>4. MEASURES IMPLEMENTED BY PAULIG GROUP TO ADDRESS PROBLEMS IN ITS SUPPLY CHAIN</b> .....	17
<b>5. CONCLUSIONS AND RECOMMENDATIONS</b> .....	18

# 1. Introduction

In 2014, Finnwatch published a report<sup>1</sup> detailing the working conditions at palm oil estates of IOI Group, one of the palm oil suppliers of Finnish corporations Neste (previously Neste Oil) and Paulig. The report found that Malaysian corporation IOI Group was paying its workers less than the statutory minimum wage, had retained the workers' passports and restricted freedom of association. Many of the IOI Group workers interviewed for the report did not understand the content of the employment contract they had signed, which was written in a language that was foreign to them. Workers were expected to work up to 10 - 12 hours a day. In spite of their long work days, numerous workers earned less than the Malaysian statutory minimum wage.

Nearly all the migrant workers interviewed for the Finnwatch report in 2014 had loaned money or had sold their belongings in order to access work in Malaysia. IOI deducted recruitment fees directly from workers' wages and paid a wage below the minimum wage for the duration of a worker's probationary period.

Many of the findings brought to light in the Finnwatch report pointed to the International Labour Organizations (ILO) indicators of forced labour and human trafficking.

All the estates investigated by Finnwatch in 2014 were certified by the Roundtable on Sustainable Palm Oil (RSPO) and the International Sustainability & Carbon Certification (ISCC), and Finnwatch criticised these leading palm oil certification schemes for the inadequate monitoring of working conditions. A follow-up report published by Finnwatch in



*For this report, Finnwatch conducted interviews with estate workers and estate management on the Malaysian peninsula in the states of Johor and Negeri Sembilan.*

2015, *The New Law of the Jungle?*<sup>2</sup> described the measures the RSPO and ISCC had implemented due to the findings in Finnwatch's initial report. Neste and Paulig also implemented measures in order to address and correct the shortcomings brought to light in the report. The corporations' measures are outlined in Chapters 3 and 4 of this report.

This report is a follow-up to the initial report published in 2014, and focuses specifically

<sup>1</sup> Finnwatch, 2014, *The Law of the Jungle – Corporate responsibility of Finnish palm oil purchases*, which can be read and downloaded at: <http://www.finnwatch.org/images/pdf/palmoil.pdf>

<sup>2</sup> Finnwatch, 2015, *The New Law of the Jungle - Responses by certification schemes and the IOI Group to Finnwatch's Law of the Jungle report*, which can be read and downloaded at: [http://www.finnwatch.org/images/pdf/Palmuljy\\_followup\\_FI\\_2015.pdf](http://www.finnwatch.org/images/pdf/Palmuljy_followup_FI_2015.pdf); the inadequate monitoring of labour rights issues during RSPO audits has also been examined in Finnwatch's 2016 report *Perspectives on the quality of social responsibility monitoring schemes*, which can be read and downloaded at: [http://www.finnwatch.org/images/pdf/PerspectivesOnVSS\\_forweb.pdf](http://www.finnwatch.org/images/pdf/PerspectivesOnVSS_forweb.pdf)

on working conditions at the IOI Group's estates on the Malaysian peninsula. The four inspected estates are the same as those that Finnwatch researchers visited in 2014. This report, which is based on interviews with workers and the review of IOI Group's internal and external policies, examines developments in working conditions at the estates in question. At the end of this report, recommendations are made on how to solve the problems brought to light in this follow-up study. These recommendations are aimed at both the IOI Group and its Finnish customers.

## 2. Follow-up study at the IOI Group's palm oil estates in Malaysia

For this report, Finnwatch conducted interviews with estate workers and estate management on the Malaysian peninsula in the states of Johor and Negeri Sembilan. Just as in 2014, the study examined working conditions at the IOI Group's Pamol Barat, Bukit Serampang, Bahau and Regent estates. IOI Group is one of the world's largest palm oil producers, and it owns 240,000 hectares of plantation land in Malaysia and Indonesia.

The research was carried out in collaboration with IOI Group, which allowed Finnwatch's locally hired researcher to visit the estates. Contrary to Finnwatch's general practice<sup>3</sup>, interviews were agreed to with the IOI Group in advance because the estates where workers live are private properties and cannot be accessed without express permission from the corporation. A total of 48 migrant workers (12 workers from each of the four estates) participated in interviews held in July 2016. In order to acquire further information, an additional visit was carried out in October 2016 at the Regent estate. During this visit 15 migrant workers were interviewed. The migrant workers had come to Malaysia from Indonesia, Nepal and Myanmar. Si Siew Lim, an expert from the NGO Grassroots, carried out interviews with workers based on an interview template provided by Finnwatch.

The workers were interviewed individually, with none of the estate's management or other staff present. Interviews were conducted in the worker's native language either in Malay<sup>4</sup>, Bengali or Hindi. An external interpreter was used in interviews carried out in Bengali and Hindi. All the interviews were recorded.

<sup>3</sup> Where possible, Finnwatch makes an effort to organise interviews with workers off-site away from estates or production plants in conditions where the worker can express his/her views as freely as possible.

<sup>4</sup> The Malay language was used in an interview with one worker from Myanmar, as there was no Burmese interpreter available. The worker's ability to communicate in Malay was limited, and this was taken into consideration when answers were analysed.

In addition to interviews with workers, the locally hired researcher interviewed estate management at each investigated estate and examined various documents such as employment contracts, other agreements that workers and the corporation had mutually entered into, the corporation's internal guidelines, its public policies, the minutes from worker committee and stakeholder group meetings and the official permits acquired by estates. The researcher also visited the workers' living area.

IOI Group acted in a very open manner during the research. The corporation's comments on the findings from the interviews with the workers, are presented in the following chapters.

### 2.1 PROBLEMS STILL EVIDENT IN RECRUITMENT

Migrant workers from Indonesia are offered fixed-term employment contracts for a period of two years, and migrant workers from other countries fixed-term contracts for a period of 3 years. The fixed-term contracts can be extended, if the worker and employer both want this. On average, the interviewed workers had worked in Malaysia for 3 years and 5 months. The interviewed workers had been employed by the IOI Group for periods ranging from 2 months to 13 years. As per Malaysian Immigration's policy, a foreign worker can only work up to a maximum of 10 years. Anything beyond the 10 years is probably because the worker had a break in between the years of working in Malaysia.

All the interviewed workers employed directly by the IOI Group had gained employment via a recruiter or government recruitment service (the latter only applies to migrant workers from Bangladesh). All the workers had also paid the recruiter for their job.

Payments were divided as follows: Indonesian workers had paid the recruiter around 5 million rupees (342 euros). IOI Group provided a separate break-down of the payments by the Indonesian workers, which is presented in Table 1. Bangladeshi workers had paid significantly more for their jobs than their Indonesian colleagues, 190,000 takas (2188 euros). The payments made by Indian workers varied between 9,000–90,000 Indian rupees (121–1206 euros). Workers, who had arrived from Nepal, paid 70,000–120,000 Nepalese rupees (588–1010 euros) and a worker from Myanmar said that the recruiter had charged 530,000 kyats (395 euros) for organising the job.

Table 1. Expenses paid by migrant workers coming from Indonesia to Malaysia

Service paid for	Indonesian rupees	Euros
Medical examination	300,000	21
Passport	500,000	34
Registration fee	500,000	34
Processing of documentation by the Ministry of Employment	50,000	3,4
Visa	1,100,000	75
Insurance	500,000	34
Transport in the workers' home country	250,000	17
Flights to Malaysia	1,450,000	99
Fee charged by recruitment agency	600,000	41
<b>TOTAL</b>	<b>5,250,000</b>	<b>358,4</b>

Just as in 2014, IOI deducts the debts resulting from recruitment fees directly from the workers' wages. Loan payments are only deducted from the wages of Indonesian workers. A sum of 150 ringgits (32,3 euros) is deducted from their wage each month for a period of ten months (the total sum of deductions thus being 1,500 ringgits, 323 euros, per worker). The deductions are marked in the payslips that Finnwatch has in its possession. The Malaysian authorities have given permission to make these deductions. According to IOI, the Indonesian workers could, if they so wished, get 500 ringgits as advance

allowance from IOI, which they need not pay back. However, for those workers who have no savings, this is not a feasible option as they need the full 1,500 ringgits in order to travel to Malaysia. According to IOI, the corporation does not recommend the workers take a loan but encourages them to use the allowance instead.

Of all the interviewed workers from all countries of origin, on average nearly half (48 per cent) said that they had acquired a loan in order to be able to take the job they had. IOI only provides loans (and an allowance) to the workers who are recruited through formally established channels from Indonesia. The workers from other countries had acquired loans from local loan sharks, and in some cases, these had grown to be enormous. One example is that of an Indian worker, who said that the interest rate on his loan was so high that he ended up paying back 150,000 rupees (2009 euros) for a 90,000 rupee loan (1206 euros).

In order to ensure that its migrant workers will not be burdened by enormous loans, IOI has introduced a clause in its letter of undertaking that requires evidence that the workers in the future do not have any outstanding loans due to their work application.

According to IOI, the corporation uses recruiters approved by Malaysian embassies in the country of departure, which according to IOI, reduces the risks related to exploitation of workers. Finnwatch believes that even official channels are often prone to corruption, and recruiters approved by authorities often use unapproved subcontractors to contact workers.<sup>5</sup>

Recruiters have made false promises concerning the work awaiting the workers in Malaysia. Some of the interviewed workers had thought that they would receive a higher wage and that their work would not be as physically strenuous. A fifth of interviewed workers said that their place of work did not

5 More information on labour migration and related problems in Southeast Asia available in Finnwatch report *Breaking the cycle of exploitation* (2016), available at: [http://www.finnwatch.org/images/pdf/cycle-of-exploitation\\_final.pdf](http://www.finnwatch.org/images/pdf/cycle-of-exploitation_final.pdf)

meet with the description they had received in their home country.

The estate managers interviewed for this report confirmed that there were problems in the recruitment process. According to the managers, they have received feedback from workers saying that the work at the estates does not correspond with what the workers had been promised at the time of recruitment. According to IOI, this applies primarily to the Bangladeshi workers who have been recruited through the G2G initiative between Malaysia and Bangladesh. The G2G initiative involves the registration of millions of migrant workers by the Bangladeshi government, of whom some 20,000 workers are allocated to plantation companies in Malaysia. According to IOI, these workers are selected by a system which does not take into account the workers' preferences.

Malaysian government prevented the recruitment of new migrant workers temporarily between February and July 2016. As of October 2016, migrant workers could still not be recruited from Bangladesh.

Many workers had also requested a transfer to other work tasks. For example, of the 14 Indonesian migrant workers who had arrived at Pamol Barat in the spring of 2016, four had already by July been assigned other duties, and the other ten had been transferred to another estates as per their request. According to IOI, the workers had requested the transfer because they had relatives in Bukit Serampang estate and that as of October 2016, they were still working there.

Management stated that as many as one-fifth of recruited migrant workers run away from the Bukit Serampang estate. Workers who leave the estate without discussing this separately with their employer often leave without their passport, and they are left undocumented in Malaysia, and for this reason, are very susceptible to labour exploitation.

When asked, IOI's headquarters also confirmed these problems to Finnwatch, especially in the case of the G2G migrant worker recruitment programme between the Malaysian and Bangladeshi governments through

which Bangladeshi workers come to work at IOI estates. According to IOI, Bangladeshi authorities only give workers very superficial information on jobs and working conditions in Malaysia. IOI has tried to address this problem by organising trainings and information briefings for workers upon their arrival to Malaysia. According to IOI, the trend of migrant workers escaping from their workplaces is a big problem in all industries that employ migrant workers in Malaysia. The corporation believes that numerous migrant workers are also attempting to travel through Malaysia to third countries. According to IOI, some workers who had not received employment in the sector that was their first choice, would still accept a job in the palm oil estates with a view to escaping to a new job when in Malaysia.

Finnwatch feels that workers should be given adequate information on terms of employment and working conditions before they make a decision to leave for Malaysia. Realistic expectations could help prevent workers from escaping their workplaces. An end to the practice of passport retention could help ensure that workers, who do run away from their workplace, do not become undocumented (see Chapter 2.3).

According to IOI, the recruiters share with the workers the following information before their arrival to Malaysia: their future job responsibilities, conditions of work, a sample employment contract (given by IOI to the recruiter) and details about the surrounding environment around estates. In addition, the recruiters show the potential workers videos of the working conditions. Recruiters record the familiarization process. After the workers arrive to Malaysia, they will undergo a induction course by the estate management. During the induction course, they are introduced to the Malaysian law, working conditions, types of work and corresponding pay rates, employment contracts, working hours and company's policies. The induction program for the foreign workers upon arrival was begun in October 2015.

In their response, IOI stresses that the company has no control at all over the



The workers at Regent estate grow edible plants in the dormitory garden.

selection and recruitment of Bangladeshi workers: they are recruited by Bangladeshi civil servants on behalf of the plantation companies in Malaysia.

## 2.2 STILL NOT ALL WORKERS RECEIVE THE MINIMUM WAGE

A third of interviewed workers received performance-based wages. Workers said that on average they earned approximately 1,200 Malaysian ringgits a month (263 euros). The monthly wages reported by workers varied from 550 to 2,000 ringgits (121–439 euros). The wages of workers, who were paid performance-based pay, were not at the level of the Malaysian peninsula's statutory minimum wage, which at the time of the research interviews was 900 Malaysian ringgits (198 euros) a month or 34.63 ringgits (7.6 euros) a day depending on whether the worker's salary was based on a monthly or daily wage<sup>6</sup>. Three workers interviewed for the Finnwatch report, who earned a daily wage, said that the wage they received was below the minimum wage.

<sup>6</sup> While the report was being written, the minimum wage on the Malaysian peninsula rose to 1,000 ringgits a month and 38.46 ringgits a day. The new minimum wage entered into force on 1 July 2016.

The IOI Group's employment contract states the following on the payment of salaries and wages (direct quote):

*Employee will be given piece-rated work where the wages shall be paid based on the Employee's ability, productivity, and quality of his work in compliance with Minimum Wage Order 2012 of Malaysia. Therefore the Employee is encouraged to achieve more than RM900.00 wages per month or above RM35.00 per day for the normal 8 hours work or a spread over period of 10 hours in one day. Should piece-rated work is unavailable, the Employer will provide daily rated work at RM34.62 per day.*

*The Employee will be provided piece-rated work. For the first three (3) months of arrival, should the piece-rated work earned by the Employee is less than RM34,62 per day, the Employer will pay RM 34,62 per day. However, the payment of RM34,62 per day will not be paid if:*

- i) the Employee intentionally refuse to work;*
- ii) the Employee work less than 8 hours per day;*
- iii) the Employee' task is incomplete on that particular day; or*
- iv) the Employee absent without any reason.*

The local estate managers interviewed for the study said that workers earned below the minimum wage especially outside of the oil palm harvesting season. In May 2016, as many as 17 workers<sup>7</sup> at Regent estate earned a wage that was below the minimum wage. The reasons stated for this included uncompleted work, leaving work too early or other absences.

The status and situation of workers, who earn below the minimum wage, is monitored and the estate's management holds "development talks" with workers, who have low performance. Notes from development talks that Finnwatch examined for this report indicated that workers had for the most part simply been advised to work every day and to make an effort to achieve a minimum wage.

During the second visit to the Regent estate, interviews were conducted with the workers who according to IOI statistics had either not arrived at work or had not completed their tasks. Altogether 15 workers were interviewed, all of whom had been paid below the statutory minimum wage. From the interviews it was clear, that the main reason for the unaccounted absences from work was sicknesses and other physical problems. The workers reported having suffered from muscle aches, flu, or injuries as a result of accidents, either at work or during spare time. The workers had not requested for sick leave because it was their experience that sick leave would not be granted, or they had been given sick leave but it had not been long enough and they needed more time to recuperate.

According to IOI, these workers did not visit the Medical Assistant to confirm their health issues. As for the workers allegations that medical leave will not be given even if they are sick, IOI suggest that the workers should report this in the Grievance book (also known as the Green Book).

The workers also said that during the low season there simply was not enough work for

<sup>7</sup> All in all, 22 workers had been paid less than 900 ringgits in wages for May 2016. However, 5 of these workers had been on holiday or had just arrived in Malaysia and started work on the estate after the middle of the month.

the whole day and that therefore, they sometimes returned early from work. According to IOI, alternative work is offered to the harvesters during the low season. However, sometimes harvesters choose not to do these other tasks as they only want to do harvesting work.

Pesticides are not applied in the rain, so on rainy days the workers are not paid. According to IOI, during the rainy season sprayers are given other tasks such as empty fruit bunch mulching work.

The majority of the workers felt that the daily quota set by the employer was reasonable and they faced no difficulties in meeting the targets. A few of the workers still complained that they did not have enough time to complete their tasks every day. Those tasked with applying fertilizers must apply 25 sacks of fertilizers per day, and those whose task it is to collect fresh fruit bunches, must collect 130 bunches per day.

In its response to Finnwatch, IOI presented an interesting interpretation of Malaysia's employment legislation. Malaysia's Employment Act 1995 defines wages as follows: 'wages' means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service. According to IOI, the aforementioned definition means that a worker who has failed to complete tasks given to them shall not be entitled to a minimum wage<sup>8</sup>. According to the company, this is the practice of all Malaysian plantation companies bound by the MAPA/NUPW Collective Agreements.

<sup>8</sup> In their response, IOI further explained that its interpretation is based on a precedent set by the Industrial Court as well as a Supreme Court's decision. According to IOI, the Industrial Court in their ruling on the case of National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia v. Mashyur Mutiara Sdn Bhd (Sheraton Langkawi Beach Resort) [2015] 1 ILR (Award No. 151 of 2015) at page 574 referred to the ruling on the case of Lee Fatt Seng v. Harper Gilfillan [1980] Sdn Bhd [1988] 1 CLJ (Rep) 156 where the Supreme Court Kuala Lumpur, at page 159, stated that: It seems that the words "work done" in the definition of "wages" are used so as to stress on the requirement that the remuneration must be for work done in respect of the contract of service of the concerned employee so that any payment made to him by the employer ex-gratia, i.e. not for work done or to be done, and not in connection with the contract of service, is not part of the wages.



*A worker's bedroom at Bahau estate.*

Finnwatch believes that paying the minimum wage should never be reliant on the completion of work tasks assigned by the employer, but rather all workers should be paid the minimum wage for eight hours of work.

In 2014, Finnwatch found that workers were paid a wage lower than the minimum wage during their probation period at IOI estates. This practice has now been eliminated.

Nearly all interviewed workers received monthly written payslips (with the exception of workers who were employed by recruiters) at the time they were paid. IOI Group has made an effort to make payslips easier to read. Workers at the Bahau and Pamol Barat estates had been provided training on reading their payslips and payslips had been translated into the workers' native languages. Workers at the Bahau and Regent estates also received separate, more detailed calculations on the number of fresh fruit bunches they had gathered and the bunch's price. Nevertheless, not all the workers understood the basics of wage payment and there had been conflicts concerning absences from work between workers and the estates' management.

There were many misunderstandings especially concerning compensation for annual leave. Not all the workers understood what annual leave is and how workers are

compensated for it. Instead of annual leave, the money received for this time was unofficially referred to at the estates as "bonus", which, according to IOI Group, is an easier concept for workers to understand. If a worker does not take holidays and his/her absences do not exceed a 10 per cent limit, the worker is paid a "bonus".

According to IOI, an effort has been made to rectify misunderstandings and ambiguities concerning wage payment by adding explanations to payslips and adopting a complaint system through which workers can submit questions and requests for rectification concerning the payment of wages. IOI stated that it makes an effort to process complaints swiftly, so that any possibly missing wages are paid to workers immediately or at the time the next wages are paid.

IOI's estates have been certified by international palm oil certification schemes such as the RSPO and ISCC. According to the corporation, its salary system is continuously supervised by international auditors and audit company controllers. Finnwatch believes that increasing the knowledge workers have of their own wages and how these are determined is paramount, as there is a great deal of evidence that palm oil certifications only

inspect the payment of wages very superficially or even defectively<sup>9</sup>.

### **2.3 PROBLEMS RELATED TO PASSPORTS STILL REPORTED**

Just as in 2014, the passports of all the interviewed workers were in the possession of the employer. The estate managers interviewed for this report stated that holding on to workers' passports is the IOI Group's practice and handing over of passports to the employer is mentioned separately in the employment contract signed by workers.

The IOI Group's employment contract states the following (direct quote): *"The Employee agrees and freely consents to permit the Employer to keep his passport for security reasons and safekeeping purposes only. The Employer agrees to return the Employee's passport upon the request of the Employee in writing and as per the company's documented procedures. The Employee has free access to his passport at anytime upon request during his employment with the Employer."*

According to IOI, the corporation tries to hold on to workers' passports so the corporation can renew workers' visas and handle any other processes required by Malaysia's legislation on behalf of workers. According to the corporation, passports are also kept for safety and security reasons: renewal of a lost, stolen or damaged passport is expensive and time consuming.

The majority of the interviewed workers had not requested their passport from their employer and believed that it would be handed over to them, if they asked for it. However, those workers who had requested that their passport be handed over had encountered problems: workers were only

given a separate letter signed by IOI Group verifying their identity or a photocopy of their passport, or the worker's request for their passport was dismissed on the grounds that a passport could only be returned to a worker for an especially important reason as determined by the employer.

### **2.4 THE RIGHT TO ORGANISE AND FREEDOM OF ASSOCIATION ARE NOW RESPECTED IN EMPLOYMENT CONTRACTS AND THE CORPORATION'S POLICIES**

In 2014, IOI Group was found to limit the freedom of association of its workers. The Malaysian National Union for Plantation Workers (NUPW), which was interviewed at that time for the study, reported that IOI had prevented the union from accessing its palm oil estates. Additionally, the workers' employment contracts prohibited them from planning or taking part in industrial action. At the time of compiling this follow-up report, Finnwatch contacted the NUPW again and asked for information on what developments if any there had been to the situation. The NUPW answered very briefly saying that the IOI Group had not signed an agreement proposed by the NUPW stating that it would commit to labour rights standards in the palm oil industry. According to the trade union, IOI also used recruiters as a way of limiting the unionisation rate of its workers.

However, changes have been made to other IOI practices that apply to freedom of association, which have improved the lawfulness of the corporation's activities. IOI Group has drafted a separate corporate policy on freedom of association, which guarantees workers freedom of association in accordance with what is laid down in Malaysian law. Employment contracts no longer include the clause forbidding workers from taking part in industrial action. Now, the prohibition mentioned in the employment contract applies to "illegal strikes and illegal industrial action", which may result in the termination of workers' work permits.

<sup>9</sup> The following reports published by Finnwatch provide examples on deficiencies observed in palm oil certification control: *The New Law of the Jungle* (2015), which can be read and downloaded at: [http://www.finnwatch.org/images/pdf/Palm\\_oil\\_followup\\_EN\\_2015.pdf](http://www.finnwatch.org/images/pdf/Palm_oil_followup_EN_2015.pdf) and *Perspectives on the quality of social responsibility monitoring schemes* (2016), which can be read and downloaded at: [http://www.finnwatch.org/images/pdf/PerspectivesOnVSS\\_forweb.pdf](http://www.finnwatch.org/images/pdf/PerspectivesOnVSS_forweb.pdf)



Mail from different countries is distributed to the workers' mailboxes. Migrant workers arriving in Malaysia often see their families only at the end of their temporary employment contracts after 2 to 3 years.

The workers interviewed for the current report stated that industrial action had taken place on two estates. In 2014 around the time the initial Finnwatch report was published, workers at the Regent estate had gone on strike and negotiated on wages at the IOI Group's headquarters in Putrajaya Malaysia. Workers at Bahau had also held a strike due to ambiguities in payment of wages. According to IOI, the strike at the Regent estate was unrelated to wages, but rather related to the charges workers had to pay for electricity and water at the estate.

## 2.5 AGENCY WORKERS IN A RISK GROUP?

Two of the estates examined for this report used the services of temporary labour brokers. Four Indonesian migrant workers employed in Malaysia through such recruiters were interviewed for this report. Three of these workers had been integrated directly into the IOI Group's own staff: their wages were paid through the IOI Group's salary system, and they received an official payslip from the corporation. However, one of the interviewed workers was paid his wage in cash bypassing the IOI salary system and he was not aware of the details related to this employment. His payslip was a handwritten note on a piece of cross-ruled paper, and he

was unable to say what elements his wage consisted of or if he received compensation for such things as overtime.

According to IOI, the situation concerning this contract worker had been rectified immediately after the company received information about the case from Finnwatch, and all the above mentioned migrant workers are now integrated directly into IOI Group's checkroll and their wages paid through IOI Group's salary system. They have also been briefed on the elements their salaries consist of.

On the basis of an interview with one worker, it is impossible to draw far-reaching conclusions on the conditions of workers who have been hired to work at the IOI Group's estates by temporary labour brokers. However, it can be stated that the use of labour recruiters increases the risk of violating workers' rights.

## 2.6 DISCRIMINATION IN RECRUITMENT, ROMANTIC RELATIONSHIPS FORBIDDEN

At the time of the field research the IOI Group's employment contract continues to forbid workers from engaging in what could be determined romantic relationships during their employment. The employment contract states the following (direct quote): *"The Employee is prohibited to bring his family*

Workers' share a kitchen in Serampang estate.



members, and also shall not engage any romance relationship and/or marry or intent to marry any Malaysian or any foreign worker during the period of his employment contract as per the Malaysian Immigration Laws.” The prohibition is a violation of international human rights standards, which guarantee men and women the right to a privacy without interference and marriage without any limitation due to e.g. nationality (Articles 12 and 16 of the UN Universal Declaration of Human Rights).

After Finnwatch’s field visit IOI updated its employment contract and removed the clause on romantic relationships. Contracts signed with workers that have arrived after July 2016 do no longer include this clause.

All the migrant workers on the four IOI Group estates were men, and IOI Group does not recruit women from abroad. According to the company in some exceptional cases they might recruit husband and wife from Indonesia at the special request of the estate.

The employment contract also demonstrates ageism, as people over the age of 40 cannot work for the company. Ageism is forbidden in the European Union with a separate anti-discrimination directive, which is pursuant to the European Convention on Human Rights.

According to IOI, around 15% of the company’s foreign workers are above the age 40. IOI prefers to recruit workers below the age of 40 because the company is concerned that older workers might not be able to handle the physically demanding job. However, if the worker is in good health and is physically fit, the company will proceed to hire the individual.

Furthermore, according to IOI, the employment contract clause is in accordance with the Malaysian immigration policies and/or rules and regulations which stipulate that foreign workers should not be aged under 18 and not over 45 at the time of application. Foreign workers are also prohibited to marry local or foreign citizens.

### 3. Measures implemented by Neste to address problems in its supply chain

Neste reacted to the problems in IOI Group's supply chain brought to light in Finnwatch's 2014 report by publishing a list of measures it would implement to address deficiencies observed in the realisation of labour rights in its supply chains. The measures included the following: Neste requested that IOI Group supply a report on the problems brought to light by Finnwatch and any measures implemented to rectify these; commissioned a third-party expert to carry out further enquiry into labour rights and development needs work; improved its due diligence related to labour rights and promised to work together with certification schemes to determine how

audits concerning labour rights issues have been conducted, and; announced it would launch a comprehensive enquiry into the working conditions and status of migrant workers as well as the realisation of labour rights in Neste's supply chains.

For this follow-up report, Finnwatch asked Neste what measures the corporation had actually implemented since 2014 to rectify the labour rights problems brought to light in Finnwatch's report and which of the aforementioned measures had been realised. Neste's response is included in full below.

#### **Neste's response**

Neste responded to the issues that Finnwatch in 2014 brought to light by initiating a chain of activities aimed at improving the labour rights situation in the supply chains of IOI Group, one of Neste's raw material suppliers, as well as in the overall palm oil sector.

Neste has since engaged with IOI Group to respond to Finnwatch's findings. Subsequently, IOI has devised a corrective action plan and partnered with Tenaganita (a Malaysia-based social NGO focusing on labour and human rights) to review the labour and working conditions in their operations and to follow up on their published corrective measures.

Neste also engaged with certification standard bodies that are active in the palm oil industry, ISCC (International Sustainability and Carbon Certification) and RSPO (Roundtable on Sustainable Palm Oil), to understand how audits regarding labour rights had been carried out, and to improve the social criteria in the current auditing schemes. Neste also reviewed the social and labour situation in palm oil industry, starting with a Malaysia-wide study related to labour issues in cooperation with BSR (Business for Social Responsibility, a non-profit organisation that helps businesses develop sustainable strategies and solutions). This study allowed Neste to better understand the social issues from a third party perspective. The findings were shared with Neste's suppliers in a workshop, as well as with the RSPO and ISCC.

In April this year, Neste froze all purchases from the IOI Group following the suspension of their RSPO certification due to non-compliance with RSPO principles and criteria that is primarily related to environmental issues. These non-compliance practices are also in breach of Neste's Sustainability

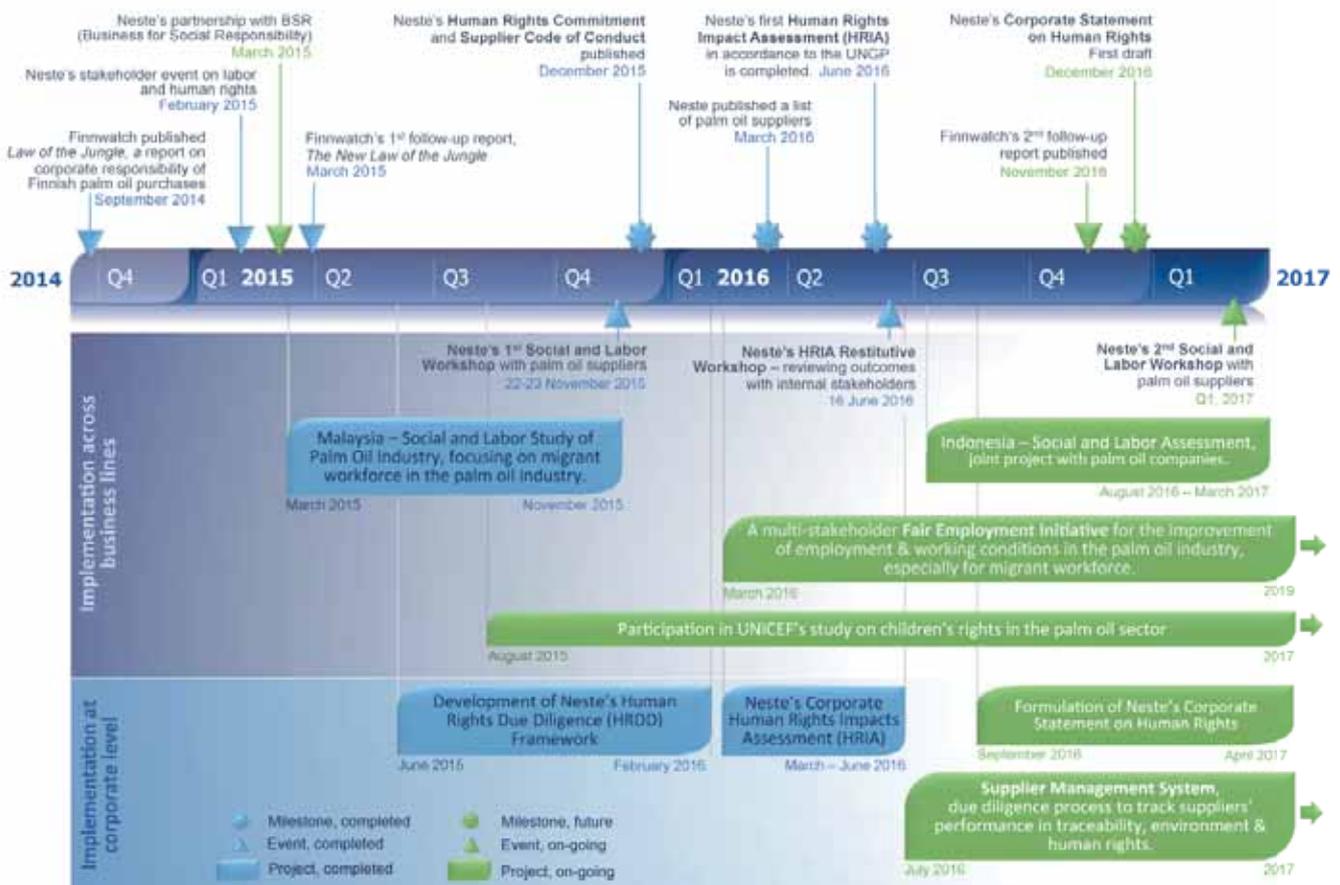
Principles for Biofuels and No-Deforestation and Responsible Sourcing Guidelines for Renewable Feedstock. Concerning this issue, Neste has continuously engaged with IOI and cooperated with RSPO, several NGOs, third party auditors, and other palm oil users to follow-up on IOI's work to redress the infringements related to the RSPO suspension. IOI has since regained its RSPO certification status from August 2016.

In addition to remediation on IOI Group's labour rights issues as highlighted by Finnwatch, Neste has conducted a corporate-wide human rights impact assessment and initiated development of programs to enhance the management of - social and human rights issues. Neste is planning, for example, to improve its supplier management system and build internal capacity and awareness on human rights. Neste will also conduct an in-depth social and labour survey in Indonesia to better understand the country-specific issues related to the palm oil industry.

Neste's comprehensive approach to social issues is presented in the timeline below.

## Neste's Human Rights Roadmap

Timeline of 2015-2016 activities and relevant events



## 4. Measures implemented by Paulig Group to address problems in its supply chain

Finnish food industry corporation Paulig Group, which operates internationally, uses palm oil in some of its Poco Loco products. At the time Finnwatch published the Law of the Jungle report in 2014, Paulig Group's Belgian division Snack Food (Poco Loco) used IOI Group as one of its palm oil suppliers.

After the report was published, the Paulig Group's Snack Food division requested that it be allowed to carry out the corporation's own audit, which focuses on social responsibility and environmental issues at the IOI's estates from which the division purchased palm oil. However, IOI did not agree to the audit in spite of numerous requests. For this reason, the Paulig Group's Snack Food division decided to terminate cooperation with IOI in autumn 2015.

In addition to working conditions at IOI estates, the Finnwatch report published in 2014 examined palm oil purchases by Finnish companies. At that time, Paulig Group announced that it would transition to using only certified palm oil and take steps to further transition to the use of other vegetable oils. In a response submitted for this report, the corporation said that it had progressed in the use of certified palm oil as planned. All the palm oil used in the production of Paulig Group's products is now RSPO certified. From January 2015 onward, the Snack Food division has used only certified palm oil in its own Poco Loco products. The palm oil for Poco Loco products is supplied either through the segregation or mass balance mechanism<sup>10</sup>. The aim of the Snack Food division is to reduce the use of palm oil so that by the end of 2017, 2/3 of the oil it uses is sunflower oil.

According to Paulig, the use of palm oil was terminated in its Santa Maria products in

2015, and from the beginning of 2016, all Santa Maria products have been produced using a mixture of rapeseed oil and sunflower oil. A RSPO Green Palm certificate was acquired for a small product batch, which was produced from uncertified palm oil at the end of the transitioning stage in spring 2016.<sup>11</sup>

<sup>10</sup> For more information on monitoring mechanisms for palm oil, please see pages 21–24 of The Law of the Jungle report published by Finnwatch in 2014. The report can be read and downloaded at: <http://www.finnwatch.org/images/pdf/palmoil.pdf>

<sup>11</sup> Paulig, Leena Miettinen, email 28 September 2016

## 5. Conclusions and recommendations

During Finnwatch's follow-up research and writing of this report, IOI acted in a highly open manner and actively took part in the discussion over the findings of the field research. The company implemented several corrective actions without a delay already after it received the first field research report for comments in summer of 2016.

The working conditions at the IOI Group have in some respects, been improved since the Finnwatch's 2014 report. Some of the most problematic clauses in the employment contracts have been removed, such as restrictions on industrial actions, and the company has invested in inductions to workers. However, problems were still found at the estates for example in relation to the recruitment process, minimum wages, retention of passports and discrimination in recruitment. These issues and possible solutions are discussed in greater detail below in recommendations to the IOI Group.

Both Paulig Group and Neste have also taken action following the publication of the Finnwatch's 2014 report.

Paulig Group has continued to increase the certification rate of the palm oil it uses and has also switched to use other vegetable oils instead of palm oil. Neste has initiated several projects aimed at improving the monitoring of the human rights situation in its supply chains. At the time of writing of this report, neither of the companies was sourcing palm oil from the IOI Group.

Finnwatch is not recommending companies to stop buying from the IOI Group. Instead of stopping purchases, companies should ensure that the IOI Group takes corrective action to rectify issues raised in this report. Stopping sourcing from the IOI Group is not justified also considering that similar problems are likely at all other Malaysian palm oil estates.

### RECOMMENDATIONS TO THE IOI GROUP

- IOI should cover the cost of recruitment to the workers, instead of the migrant workers paying recruitment related costs themselves. Zero recruitment fees policy should be supported by strengthened monitoring of the recruitment agencies that the IOI Group uses, and the agencies' subcontractors and labour brokers, with a view to ensuring that they do not charge recruitment fees to the workers either. IOI can strengthen the monitoring of the agencies for example by systematically interviewing the workers upon their arrival to Malaysia regarding the fees they have had to pay.
- In addition to elimination of the fees charged to the workers, IOI should seek to establish why some of the non-Bangladeshi migrant workers still receive incorrect information about the terms of employment in the sending country. All instances of incorrect information reported by the workers should be thoroughly clarified with the recruitment agency and where necessary, lead to sanctions to the agency.
- IOI should actively seek to cooperate with the governments of Malaysia and Bangladesh in order to solve the issues related to the G2G recruitment programme. It would be beneficial to all parties, if the workers recruited to work at the palm oil plantations did want to do plantation work and had the necessary skills for the job.
- The workers' understanding of their rights should be systematically strengthened. In particular, dissemination of information regarding annual leave and sick leave should be improved.

- After the migrant workers have been registered by the Malaysian authorities, they should be given an opportunity to have their passports and other personal documentation back without having to specifically ask for them. The workers could, for example, be given a safety deposit box or similar, for which only the worker should have a key, for storing their passports and other valuables.
- IOI should seek to reduce workers muscle pain and other physical symptoms by for example correcting workers' bad posture at work situations.
- In addition, estates should be given targets to significantly reduce the number of unaccounted absences from work.
- The management and supervisors at the estates should be given human rights training. The estates hire mostly workers who have very low levels of education and who often cannot even read or write and who are not familiar with the working culture in Malaysia. This can lead to various kinds of problems. More in-depth knowledge of workers' rights and their vulnerable position could help the estate management to solve the issues that come up.
- All workers should be given updated employment contracts from which the problematic clauses regarding industrial actions and romantic relationships have been removed.
- All gender and age based discrimination in recruitment should be eliminated as far as it is possible in light of the restrictions in national laws in Malaysia (see page 14 for information on age limits).
- IOI should map all estates which also use agency workers and individually examine all the agencies involved. All agency workers should be paid through the IOI payroll and be given the same rights, and their terms of employment should be the same as those of the other workers at the estates. In particular, it should be made certain that the agency does not charge any commission or any other kind of recruitment related fees to the workers.



Finnwatch ry  
Malminrinne 1B, 2.krs  
00180 Helsinki  
[info@finnwatch.org](mailto:info@finnwatch.org)  
[www.finnwatch.org](http://www.finnwatch.org)  
[@Finnwatch1](https://www.instagram.com/finnwatch1)