

BWI Mega Sports Briefing

Trade union rights in the Tokyo 2020 supply chain



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On paper, the Tokyo Organising Committee of the Olympic and Paralympic Games (TOCOG) has made strong commitments to embedding human rights norms throughout all stages of Tokyo 2020's implementation. However environmental and human rights complaints are already being levelled at companies involved in the construction of Olympic infrastructure, regarding their timber supply chains. Between Japan's weak rules on importing illegal timber, the Sourcing Code on Timber and an opaque Grievance Mechanism system proposal, it is suggested that violations will continue. The BWI believes an independent supply chain investigation would be valuable for TOCOG to address alleged labour rights violations raised by the Timber Industry Employees Union of Sarawak (TIEUS) and prevent further controversy.

Summary

- Considering Japan's weak existing legal framework on illegal timber imports, the BWI has already expressed concern regarding the weak labour standards set in the Tokyo 2020 Sustainable Sourcing Code for Timber, which relies too heavily on existing certification mechanisms.
- BWI has also made suggestions regarding the proposed Grievance Mechanism. We are particularly concerned that there is no intention to submit the proposed mechanism to public consultation, and that there are plans to contract out the operation of the mechanism.
- A BWI affiliated union (TIEUS) has made credible allegations of workers' rights violations regarding a Sarawak-based timber company (Shin Yang) that is supplying timber for the construction of the New National Stadium for Tokyo 2020. Certification audits have proved insufficient to have the matter remedied, however the fact that other alleged labour violations with Shin Yang have recently come to light means there is ongoing cause for ongoing concern.

Supply chain monitoring

The Tokyo 2020 Summer Olympic and Paralympic Games will require the construction or refurbishment of over 35 Olympic sporting facilities, as well as a raft of infrastructure, accommodation and other related projects. Many of these contracts have now been awarded, including the New National Stadium currently under construction in Shinjuku, which was won by Taisei Corporation, one of Japan's most established

construction companies that also built the National Stadium for the 1964 Tokyo Olympics on the same site. The supply chains that feed this construction effort are immense, and TOCOG will have to be particularly diligent in addressing concerns that arise through this process.

With Asia-Pacific countries increasingly winning host contracts for mega sports events like the Olympics, it's critical that Tokyo 2020 sets a high bar on issues of



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trade union engagement, health and safety and supply chain transparency to uphold worker and human rights. Alongside the BWI-Japanese Affiliate Council and RENGO-JTUC, the BWI has already worked closely with TOCOG, including proposals to strengthen occupational safety and health systems and protect workers' rights in the Sustainable Sourcing Code. Sadly, we note that this intended approach sits below the level of consultation and protection reached in the 2012 London Olympic Games, which has now become the de facto international benchmark for these matters.

In December 2016 the BWI submitted a proposal to establish a fast and effective Grievance Mechanism. It is understood that a Working Group (with JTUC-RENGO representation) is currently considering how to structure the Grievance Mechanism. From what we understand, there is no current plan to submit the proposed Grievance Mechanism to public consultation, and that its operation will be contracted out to a third party through a public tender process. We take issue with both the lack of consultation and the private nature of the proposed mechanism. Furthermore, we believe it is critical that unions are an integral part of the implementation, monitoring and verification process. With alleged labour violations already being leveled by BWI affiliates, now is the time to test the efficacy of these mechanisms and address their shortcomings. The Timber Industry Employees Union of Sarawak (TIEUS) is currently fighting a legal battle to have a union organiser reinstated, however the court process is slow. They have also sought justice through the timber mill's certification scheme, but have been unable to make progress in having their right freedom of association recognised. In light of this prolonged restriction, it is unclear how Japanese construction companies that are awarded Olympic contracts can ensure worker and human rights in their supply chains are protected.

Sarawak-Japan timber trade

The Sarawak-Japan timber trade is significant: Japan is the fourth-largest consumer of wood-based products, after China, the European Union and the United States. It imported around 70 million m³ of wood-based products in 2013, and in 2010 it was the largest importer of wood chips and plywood in the world (Momii 2014:4).

A 2010 Chatham House study estimated that approximately nine per cent of all wood-based products imported into Japan in 2008 was at high risk of illegality (Lawson and MacFaul 2010:106) and 15 per cent of illegal imports were timber products in 2014 (see Table 1). For more than 20 years, Japan has been the leading export market for Malaysian timber, with a significant proportion of that coming from the state of Sarawak in Borneo.

Global Witness (2013) and other NGOs have long documented how that export trade has been plagued by allegations of systemic corruption, illegal logging and human rights violations. Many of the same companies involved in that trade – the Sarawak timber companies and their logistics operations, as well as the Japanese timber traders and construction companies – are involved in Olympic construction projects. Until 2016, Japan had no official action plan to exclude illegal wood-based products from the domestic market (Momii 2014:7), however as part of the Olympic effort the TOCOG was compelled to create sustainable sourcing principles in the 'Tokyo 2020 Fundamental Principles for the Sustainable Sourcing Code' (TOCOG 2016). Despite criticism from NGOs regarding both the process and content of the Draft Code (BHR 2016), out of those principles a separate Sustainable Sourcing Code and the accompanying Sustainable Sourcing Code on Timber were created. It is the position of the BWI that the Sustainable Sourcing Code on Timber is designed to accommodate an existing supply chain characterised by alleged human and worker rights violations.

Japan has a voluntary system to promote the sourcing of legally verified wood-based products – the goho-wood system – which is coordinated by the Japan Federation of Wood Industry Associations (JFWIA), and which the private sector is encouraged to follow.¹ Goho is Japanese for 'legal'. There are three ways in which wood-based products can be verified as goho under the Japanese Forestry Agency's Guidelines: through forest certification in combination with a chain of custody system such as FSC, PEFC/Sustainable Green Ecosystem Council (SGEC), through verification by entities authorised by industry associations, and through verification by the company themselves (Momii 2014:8). The majority of companies opt for verification through the industry associations to which they belong.

¹ In May 2016, Japan also adopted the 'Law Concerning the Promotion of Distribution and Use of Legally-Harvested Timber'. According to a forestry expert, this 'law is a different approach from other demand-side regulations for illegal timber imports, such as the US Lacey Act, the EU Timber regulation and Australian Illegal Logging Prohibition Act, in the sense that it is designed to promote the trade of legal timber, rather than attempting to eliminate illegal timber on the market' (Momii 2016).

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This requires the industry association to establish a code of conduct and procedures for approving its members. In order to be approved, a company must be able to keep legal products separate from those that are not verified and keep records of transactions and stocks of legal products. Only then, it can issue documents to direct buyers stating it as registered goho-wood supplier. However, there is no requirement that original proof of legality accompany the product (Momii 2014:8) and this has been widely criticised by Global Witness (2013).

Workers' rights violations at Shin Yang

In April 2017 a coalition of environmental and human rights NGOs called for an urgent investigation into the use of plywood linked to tropical forest destruction and human rights abuses used for the construction of the Tokyo Olympic Stadium (RAN 2017). The Shin Yang Group is a large-Sarawak-based consortium with interests in construction, shipping, real state, plantations, and quarrying. Under different subsidiaries it operates two mills in Miri and three mills in Bintulu, as well as holding a number of forest concessions. Shin Yang is the majority shareholder of Zedtee Plywood, a company which manufactures and sells plywood and

vener, and is also involved in extraction and the sale of logs.

In May 2016 Zedtee Plywood signed a Memorandum with Itochu Kenzai Corporation and Japan Kenzai Corporation around marketing certified timber produced from Anap Muput Forest Management Unit (FMU) in Japan. By November 2016 a Sarawak representative of Itochu Kenzai Corporation was able to report to Zedtee staff that "Anap Muput FMU timber will feature significantly in the construction of Tokyo 2020 Olympic Stadium", noting on their website that "Itochu Kenzai would like to buy as much certified plywood manufactured by Zedtee Plywood SB as possible".

Workers at Zedtee Plywood allege that the company has exhibited a pattern of anti-union behaviour, including targeting union organisers attempting to improve working conditions. The Timber Industry Employees Union of Sarawak (TIEUS) has had fluctuating membership at the Zedtee Plywood mill for over a decade, however anti-union behaviour has almost wiped out the union altogether. In March 2016, for example, a Zedtee worker and TIEUS union organiser used his own time to attend a workshop on workers' rights advocacy. He had worked for the company for twelve years, however on the next day – with no evidence or witnesses provided – he was accused of

Freedom of Association at Zedtee?

The organiser concerned began working at Zedtee in 2004, and was a union member from 2005. We believe he was targeted by management because he spoke out and sought to address about the employment issues of his colleagues. For example:

- In 2013 he took a complaint to the Government regarding non-compliance with Malaysian labour law and workers contracts. These included illegal deductions for sick leave, violation of working hours rules, refusal to pay time and a half on public holidays, and other illegal deductions. Despite a number of mediations these issues were never solved.

In 2014 and 2015 the company ransacked migrant workers dormitories, confiscating and destroying foodstuffs and utensils (see photos). He raised these episodes with management, along with a range of others including awarding union members' families lower compensation than non-members for workplace fatalities, and a developing pattern of termination without notice.

In September 2015 he and the Union President found arbitrary limits had been placed on their



² Zedtee holds a chain of custody from the Programme for the Endorsement of Forest Certification (PEFC) (SIRIM-COC-0077).

stealing scrap metal and forced to resign (he signed the resignation form because the company threatened not to pay the wages for that month). Following the forced resignation, the BWI assisted TIEUS in filing a PEFC complaint with Zedtee's certifying body SIRIM-QAS in 2016, alleging that by forcing a union organiser to resign, they had breached their obligations under the certification standard to uphold the rights of freedom of association and collective bargaining.²

The claims were investigated through Zedtee's annual surveillance audit in October 2016, but the complaint was dismissed by SIRIM-QAS in January 2017. In a follow-up meeting, it was suggested that the case was dismissed as an isolated incident rather than a consistent pattern of behaviour. It is unclear why this interpretation has been applied (nothing in Standard supports this approach), and identifies potential issues for certifying bodies in effectively implementing labour standards. It also shows that further clarity should be provided in the certification clauses. The present imprecision makes it easy for companies to appear compliant with their obligations, despite no effective recognition of the rights to freedom of association and collective bargaining. The BWI will appeal this claim to the accreditation body. This instance is a warning sign for TOCOG's Sustainable Sourcing Code for Timber, as it relies heavily on certification schemes to determine whether workers can freely exercise their rights.

Limits of Current Timber Sourcing Code and Grievance Mechanism Procedures

The complaint highlights necessary areas of improvement to the current Sustainable Sourcing Code for Timber. The Code hardly mentions issues regarding workers' rights, beyond a cursory reference to health and safety procedures (Article 2(v)). It presumes that certification mechanisms are themselves sufficient for upholding labour rights and encourages this approach (Article 3). Non-certified timber can be used, however the procuring party must be able to demonstrate it complies with a number of requirements. Again, amongst these requirements, issues relating to labour are confined to health and safety and hygiene. It

Another Shin Yang controversy?

Shin Yang also owns the Forescom Plywood Mill in Bintulu (Sarawak), another PEFC-certified timber company.³ TIEUS had begun recruiting members at Forescom's Bintulu mill, however on 4 July 2017 a group of 19 Forescom workers that are all members of TIEUS (indeed they represent the majority of members on the site) received letters explaining that that they were being terminated the next day. No compensation was paid. In documentation to the Sarawak Labour Department the company claims they no longer needed their service due to increasing production costs and a decline in market demand. Workers still engaged at the plant have noted that Forescom is continuing to hire both local and foreign workers, and have found job advertisements in local newspapers and online for new jobs at Forescom.

A conciliation was held between Forescom and TIEUS in August 2017, in which it the union argued that the workers should either be reinstated or paid proper compensation. In subsequent communication to the Bintulu Labour Office, Forescom have offered to reinstate nine workers but said they can neither reinstate nor compensate the other ten workers.

appears, from the Sustainable Sourcing Code, for Timber that labour rights are almost irrelevant.

By contrast, the general Sustainable Sourcing Code, includes an exhaustive list of relevant rights that must be upheld, including compliance with and respect for international labour standards, freedom of association and collective bargaining laws, ban on forced labour, ban on child labour, ban on discrimination in employment and careers, compliance with minimum wage laws, a ban on long working hours, safe and hygienic workplaces and non-exploitation of migrant workers.

The BWI is a strong supporter of forest certification and believes it can strongly incentivise respect for human rights and better forestry management practices. However the almost exclusive emphasis placed on certification as a monitoring mechanism for labour rights in timber imports should be reconsidered, as there are serious shortcomings in many certification

³ Forescom holds a chain of custody certificate from the Programme for the Endorsement of Forest Certification (PEFC) (SIRIM-COC-0096) and FSC Chain of Custody certification SCS-COC-005759.

schemes. For example, the Chain of Custody (CoC) standard allows a percentage-based method through which mixing certified and non-certified raw material during the production or trading process is allowed. Up to 30 percent of non-certified wood can be included under a CoC certification, and can be used as building material in TOCOG construction sites coming from high risk sourcing areas such as Sarawak. It is therefore TOCOG's responsibility as the main organisation body of the Olympics to put in place more stringent due diligence mechanisms to mitigate the risk of illegal logging and violation of labour rights. Further, given BWI's experience in assessing the capacity of certifying bodies to understand and administer their labour rights obligations, we believe that there is a high likelihood that violations can be missed.

Adding a Grievance Mechanism that doesn't have the input of third parties to this mix does little to strengthen the outcomes for construction companies. The third-party Grievance Mechanism process that has been proposed - rather than establishing it directly under the operation - has the capacity of creating perverse incentives for the company that wins the contract. TIEUS' experience with third-party certification has been corroborated by other BWI experiences. To counter this, unions must be involved of the process of the process of designing and implementing a Grievance

Mechanism intended to ensure supply chain compliance. Designing a mechanism by which the TIEUS complaints regarding Shin Yang can find justice is an ideal place for TOCOG to begin.

Recommendations

Given the information contained in this Briefing Note, we urge TOCOG to do the following:

1. Revisit the Sustainable Sourcing Code for Timber to ensure it includes the same labour rights obligations as the general Sustainable Sourcing Code, and make sure the Grievance Mechanism (GM) is available for these complaints.
2. Immediately Release to the public information regarding the proposed GM, and open up this proposal to public consultation,
3. Ensure that the operation of the GM is not contracted out to an external party
4. Ensure that trade unions and workers association are given an active role in the Grievance Mechanism, in terms of implementation, monitoring and verification.
5. Conduct a thorough supply chain audit on companies that supply timber to Olympic projects, beginning with Shin Yang's involvement in the New National Stadium.

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