

ITUC REPORT

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Labour Standards in World Bank Group Lending Lessons Learned and Next Steps



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EXECUTIVE SUMMARY

This report reviews the evolving stance of the World Bank Group (WBG) to the Core Labour Standards (CLS), noting important developments but also significant gaps and identifying steps forward.

Section I of this report describes the history of the shifting attitude within the World Bank towards CLS and compliance with them in the different branches of the WBG. When the International Labour Organization (ILO) codified the fundamental rights of workers in the 1998 *Declaration of Fundamental Principles and Rights at Work*, the World Bank was initially hesitant to recognize the importance of these standards to its work. But starting in 2002-2003 the Bank endorsed the standards as being consistent with its development mandate and agreed to promote them. The Bank's private-sector lending arm, the International Finance Corporation (IFC), took the next logical progression beyond rhetorical support when it developed its Performance Standards in 2006. Performance Standard 2 (PS2) required borrowing companies to ensure that their operations were in compliance with CLS and other basic labour conditions. Next, the Bank's procurement department led the process for all the multilateral development banks (MDBs) to require CLS compliance in major construction works financed by the banks. This requirement was included in the MDBs' harmonized conditions of contract for construction formally adopted in 2010.

Section II discusses trade union experiences with the implementation of PS2. Unions have informed IFC of 27 cases of possible non-compliance with PS2 through a communication procedure developed by the IFC Social & Environmental Development Department (CES). The paper looks at five specific cases in detail, discussing the nature of the labour rights violation and the response of IFC. It concludes that while some complaints were responded to quickly and corrective actions were taken expeditiously, in other cases the response time was very lengthy and no effective corrective action was taken.

Section III suggests improvements for strengthening the World Bank Group's commitment to labour standards. Trade unions present specific recommendations regarding the IFC's PS2 complaints response procedure, the staff training and implementation measures to support the new MDB standards for construction contracts, and the adoption of an overarching labour "Safeguard" for the World Bank Group.

This last recommendation is a call for coherence and consistency in the WBG approach to labour standard lending requirements. The major step forward taken by IFC in 2006 needs to be followed up by the other lending arms of the Bank. This is the recommendation of the Bank's Independent Evaluation Group (IEG) in a report it published in 2010, and is endorsed by trade unions and other civil society groups. The revision of the Bank's social and environmental safeguards policy, scheduled to be completed at the end of 2012, offers a unique opportunity for the Bank to recognize and commit to upholding the fundamental rights of workers in all of its projects and programmes.

I. CORE LABOUR STANDARDS & THE WORLD BANK GROUP

Introduction

What are Core Labour Standards?

Over the past two decades, there has been a growing appreciation among international agencies involved in economic development and finance that they have responsibility to ensure that their activities do not violate fundamental workers' rights. These rights were recognized and defined in several international forums during the 1990s, including the World Summit for Social Development, held in Copenhagen in March 1995.

In June 1998, the International Labour Organization, the standard-setting body for international labour standards, codified the fundamental workers' rights for the first time by adopting the *Declaration of Fundamental Principles and Rights at Work* at its annual International Labour Conference. The *Declaration* defined eight fundamental rights conventions (among the 182 ILO conventions that had been adopted or were under preparation at that time) for which all ILO member countries would be required to submit regular reports on implementation, whether or not the country had ratified them. Observance of these eight fundamental rights conventions, also known as the "Core Labour Standards", thus became and remains a *de facto* condition of membership for the ILO's 183 member states.

The fundamental rights conventions cover the elimination of forced labour, child labour and discrimination in respect of employment; and freedom of association and right to collective bargaining.¹ Not a single government voted against the adoption of the 1998 *Declaration*, thus confirming the high degree of consensus in support of the Core Labour Standards (CLS). Several governments also promoted the recognition of CLS by other international institutions whose work has a direct impact on workers and the conditions under which they work. The international trade union movement joined in this effort.

Slow changes in World Bank position on CLS

The multilateral development banks (MDBs) and particularly the World Bank are an important focus of attention for extending recognition of the CLS because of the important role they play in economic development and restructuring. As the world's most important development finance institution, the World Bank's programmes touch almost every aspect of economic and social development in borrowing countries. There are few World Bank projects or programmes that do not have an impact on labour and employment in some way.

¹ The eight fundamental rights conventions of the ILO are Conventions 29, 87, 98, 100, 105, 111, 138 and 182.

In the months following the adoption of the ILO's *Declaration* in June 1998, the CLS issue was brought into negotiations of the Twelfth Replenishment of Resources for the International Development Association (IDA), the World Bank's concessionary lending arm. The "IDA-12" replenishment agreement, concluded in December 1998, included three references to CLS. The last of these stated that "[World Bank Country Assistance Strategies] need to be grounded in a systematic analysis of key issues with an impact across many economic and social sectors, including... core labor standards... These analyses should draw as warranted on the expertise and support of the entire World Bank Group, including the World Bank's thematic networks, and of institutions such as the IMF, ILO and World Trade Organization."²

Trade unions, having witnessed and documented incidents of sub-standard employment practices in some Bank-funded activities, were also concerned that the World Bank take steps to ensure the projects and activities it financed were in compliance with CLS; demonstrating a commitment to CLS in practice. In January 1999 an international trade union delegation travelled to Washington to present proposals for ensuring that World Bank projects conform with CLS.

The initial response from World Bank staff was lukewarm. Even though IDA-12 asked the Bank to include an analysis of CLS in its country strategies, Bank staff told the visiting trade union delegation that the Bank could only agree with some of the standards.³ Furthermore, the Bank would not take action to verify compliance with any of the core labour standards. The Bank's unwillingness to monitor and uphold commitments to CLS, despite recognition of their importance in the 1998 replenishment agreement, was troubling. Also problematic was the Bank's "pick and choose" attitude to the CLS, directly contradicting the spirit of the ILO *Declaration*.

The Bank's social protection and labour staff claimed, and maintained for years, that the Bank could not support freedom of association and the right to collective bargaining because the evidence concerning the economic impacts of these rights was "mixed" and because these standards had "political as well as economic implications".⁴ The Bank never explained why the right for workers to negotiate a collective bargaining agreement with their employer was more "political" than, say, the abolition of slavery or gender inequality. As to the "mixed" evidence about the standards' impact, it wasn't until 2003 that the Bank released a comprehensive analysis: a review of economic literature on CLS, completed in 1999. The study found no support for the Bank's earlier supposition that high levels of unionization and collective bargaining tended to discourage economic growth.⁵

² International Development Association, "Additions to IDA Resources: Twelfth Replenishment", World Bank, December 1998

³ At the January 1999 meeting, the Bank's labour experts explained, without presenting any factual evidence, that unions and collective bargaining were a hindrance to perfectly competitive markets and they therefore presumed that these rights had a negative impact on economic efficiency.

⁴ World Bank, Social Protection Sector Strategy: From Safety Net to Springboard, Washington, 2001, p. 29

⁵ T. Aidt and Z. Tzannatos, Unions and Collective Bargaining: Economic Effects in a Global Environment, World Bank, Washington, 2002

The study did find evidence associating high levels of unionization and bargaining coverage with more equal distribution of income, which would seem to support the Bank's poverty reduction mandate. The World Bank's president expressed the Bank's new position on CLS during a public meeting in 2002: "the Bank supports promotion of all of the four of the core labor standards ... but does not apply conditionality on these standards in its lending".⁶

While this theoretical support for CLS was welcome, it was not sufficient for ensuring that the Bank's work would comply with the standards it purportedly supported. Trade unions and some governments continued to urge the Bank to go beyond rhetorical support for CLS, noting that its credibility in voicing support for them would be hollow without practical steps for implementation.

The development of IFC Performance Standard 2

Recognizing the need for a labour standard

The first division of the Bank to recognize this need was the institution's private-sector lending arm, the International Finance Corporation (IFC). During a public meeting in September 2003, the Chief Executive Officer (CEO) of IFC stated that all borrowers should be required to comply with CLS and that IFC would include them in the new safeguards policy under development.

At the time, IFC was striving to take a leadership role among all banks, both private and public, in putting forward social and environmental standards in development project financing. International trade union bodies had alerted IFC to troublesome cases of workers' rights violations in IFC-financed firms, over which IFC claimed to have limited leverage. The IFC seemed to understand better than other divisions of the World Bank Group that mere lip service to labour standards would do nothing to enhance its credibility among governments and the private sector, let alone among trade unions and other civil society organizations. Making compliance with CLS obligatory for borrowers would give IFC the authority to end such practices.

IFC's new *Policy on Social and Environmental Sustainability* was developed over the following two and a half years, and went into effect on 30 April 2006. "Performance Standard 2: Labor and Working Conditions" (PS2) explicitly referenced the eight ILO core conventions and made observance of the CLS obligatory for all client companies. It also included other basic requirements concerning the provision of information to employees and occupational safety and health, and outlined procedures in case of retrenchment.

Subsequent to the 2006 adoption of the *Performance Standards on Social and Environmental Sustainability*, all new IFC investments were required to comply with PS2. To support the Performance Standards, IFC prepared Guidance Notes with detailed recommendations for their application, trained

⁶ World Bank, "Transcript of Town Hall Meeting with NGOs", Washington, January 2002

staff on the new requirements and hired labour experts to work on monitoring and implementation. IFC's Compliance Advisor-Ombudsman (CAO) was available to respond to complaints about non-compliance.

Early experience and the benefits of compliance

Even before Performance Standard 2, IFC had experimented with measures requiring client companies to respect fundamental workers' rights. In 2003 two international trade union bodies⁷ warned IFC of the poor labour practices of Grupo M, a large clothing manufacturer opening a new facility in a Haitian export processing zone (EPZ) with IFC support. In 2004 IFC agreed to include a loan covenant requiring the firm to respect the workers' freedom of association. Within only a few months, and in flagrant disregard of the loan condition, Grupo M fired hundreds of workers for protesting against the management's refusal to recognize or negotiate with a union that a majority of the employees had joined.

This occurred at a time when the Haitian government was threatened by an armed insurrection and was barely functioning. Several months of pressure and mediation efforts were required, but in 2005 the dismissed workers were rehired. By the end of the year the firm had negotiated a collective agreement with the union, a first for an EPZ in Haiti, an agreement that was ratified by the employees. A practice of settling differences through negotiation became firmly established at the firm and the level of production and employment subsequently expanded substantially.⁸

IFC's experience with the Haitian garment manufacturing investment highlights the challenges of achieving full implementation of requirements to respect workers' rights in a difficult context. However, it also demonstrates the means of achieving compliance, particularly when there is an economic cost to the firm (loss of a loan) for not doing so. It also showcases the benefits to both the employees and the firm when fundamental workers' rights are respected.

Unions and CSOs' role in monitoring

Over the following five years, trade union organizations, occasionally in alliance with other civil society groups, advised IFC of 27 cases of possible non-compliance by firms in which IFC had invested. These cases involved allegations of refusal to respect freedom of association and to bargain collectively, gender discrimination and child labour. They occurred in various developing and emerging economy regions where IFC has operations: Africa, Asia, Central and Eastern Europe and Latin America.

After trade union organizations raised several cases where they felt the new requirements were not being applied in full, IFC's Social and Environmental Development department (CES) agreed to create a simplified multilingual

7 International Textile, Garment and Leather Workers' Federation (ITGLWF) and International Confederation of Free Trade Unions (ICFTU). The ICFTU became one of the founding organizations of the unified International Trade Union Confederation (ITUC) in November 2006.

8 P. Bakvis and M. McCoy, "Core Labour Standards and International Organizations: What Inroads Has Labour Made?" Briefing Paper No. 6/2008, Friedrich-Ebert-Stiftung, 2008. <http://library.fes.de/pdf-files/iez/05431.pdf>

online complaints mechanism. IFC undertook investigations into many of these instances, requiring a full labour audit in cases of repeated serious incidents of PS2 non-compliance. Where violations were discovered, employers were asked to respond to the complaints and engage in corrective action. Part 2 of this report discusses specific examples of trade union complaints regarding PS2 non-compliance. They show that while some complaints were responded to quickly and actions were taken towards resolving the problems identified, in other cases responses were unduly long and no substantive actions were taken to correct serious problems. The latter situations seemed to occur more frequently with recalcitrant employers operating in national contexts of recurrent violations of workers' rights.

To put the number of complaints in perspective, IFC invested in about 2200 projects over the first five years that the Performance Standards were in effect. The number of complaints thus represents less than two per cent of investment projects, which may be reflective of a high rate of compliance. However, as explained below, it is important to caution that one cannot assert that PS2 was fully implemented in all of more than 98 per cent of IFC investments that did not give rise to complaints about non-compliance.

Limitations in monitoring & application

IFC relies largely on self-reporting by client companies rather than monitoring by its staff, meaning that trade unions or other civil society organizations play a vital role as the only independent source of information able to verify whether firms do indeed comply with PS2. However, many IFC investments are in countries where independent trade unions are severely restricted or even illegal. In these circumstances it is impossible for organizations to play the independent monitoring role. Even in countries where unions face no such restrictions, they often lack the human or financial resources to engage in this kind of monitoring.

Limited access to information about investments is another serious impediment. IFC posts notices about investments thirty days before the project goes to IFC's board for approval (sixty days in advance for high-risk projects). This gives unions little time to learn about newly proposed investments that may be problematic, conduct an investigation and report to IFC in the early stages of the loan preparation during which the precise loan conditions are negotiated.

Additionally, the growth of IFC's portfolio of investments in financial intermediaries, which by 2011 comprised 45 per cent of the institution's investments, signifies that a growing number of final investments fall outside of the scope of direct supervision by IFC, since it does not monitor the application of the Performance Standards in the end-projects funded through financial intermediaries.

2011 revision of IFC policy

Trade unions and other organizations made several recommendations for improvements of the Performance Standards during a review process that began in 2009 and ended with the adoption of a revised policy in May 2011. Union raised access-to-information and compliance procedure issues, and proposed various improvements including for the protection of contract workers.⁹ While the suggested improvements were not obtained in full, the revised PS2 did include new language requiring borrowing companies to examine alternatives to dismissals in case of business down-turns, enhanced protections for migrant workers and an improved mechanism for examining labour rights violations issues in firms' supply chains.

Despite the limitations discussed above, it is clear that IFC's PS2 has set a new standard concerning workers' rights protections for public providers of development finance. Building on the World Bank's research work establishing the consistency of CLS with development goals, IFC has taken actual steps to see them implemented. The modest level of trade union complaints since PS2 went into effect is certainly not indicative of full compliance, especially in contexts where independent verification is challenged. However, it seems likely that companies borrowing from IFC are aware of the standards and that most are taking steps to ensure their operations are in compliance with them.

CLS in World Bank-financed construction works

Working with the Procurement Department

Although the World Bank's private-sector lending arm, IFC, was first to include an obligatory CLS lending requirement, trade unions and other organizations continued to press the Bank's lending arms for public-sector projects, IBRD and IDA, to also require observance of the standards. As early as 1999, Building and Woodworkers' International (BWI) and its predecessor organizations encouraged the Bank to include CLS language in its Standard Bidding Document for Procurement of Works (SBDW).

In 2004, the Bank's Procurement Department received an expert advisor from BWI to formulate and present recommendations for including CLS language and also basic protections for construction workers in areas such as health and safety and housing.¹⁰ The BWI report followed incidents of CLS violations in large Bank-financed infrastructure projects, such as the Chad-Cameroon Pipeline, built from 2000 to 2003, where mass dismissals of sub-contracted employees took place when they attempted to join a union.

Additional evidence of workers rights' violations at World Bank projects was found by other independent groups. For example, in 2004 the Indonesia chapter of the Asia Labour Network on the IFIs, a regional research group,

9 ITUC/Global Unions, "Recommendations for Improvements to Labour Aspects of IFC's Social and Environmental Performance Standards", Washington, November 2009

10 International Federation of Building and Wood Workers, *Improving Working and Living Conditions in Construction: Addressing Needs Through International Labour Standards in World Bank Procurement*, Washington, 2004

issued a monitoring report on World Bank-funded infrastructure projects in their country. The report determined that three of the four CLS had not been respected, citing evidence of child labour, gender discrimination and anti-union activities on the construction sites. A World Bank spokesman was quoted in a Jakarta newspaper stating that the Bank took the information from the study “very seriously”, had sent letters to contactors asking for corrective action to be taken and would seek to implement future improvements in its projects.¹¹

MDB's harmonized construction contract

Although it took some time after the BWI submitted its recommendations, the World Bank's procurement officials took action in 2007 to include CLS clauses and some other labour protections in its SBDW. However, these initially had the status of suggested but not obligatory clauses. The World Bank also sponsored a proposal to include the CLS and other labour clauses in the harmonized contract documents used by all of the multilateral development banks (MDBs), that is, the regional banks as well as the World Bank. After a long process of negotiation, the MDBs agreed to incorporate the CLS as “General Conditions” for major construction works, meaning those submitted to international competitive bidding. The new harmonized contract was published in June 2010.¹²

In January 2011 the MDBs co-organized a conference on the new construction contract, which featured many other new sections in addition to those concerning staffing and labour. BWI and the ITUC were invited to present their suggestions for implementing the new labour clauses.

The trade union representatives put forward proposals for the preparation of an implementation guide and training for MDB staff and project managers on the new requirements, as well as the establishment of monitoring procedures and a complaints mechanism. They noted that IFC had taken similar measures upon adopting PS2 in 2006 and suggested that the MDBs could benefit from the IFC's approaches and expertise. In fact, the European Bank for Reconstruction and Development (EBRD) had already benefited from consultations with IFC in the development of the labour requirements included in its Environmental and Social Performance Requirements of 2008.

World Bank procurement officials responded by suggesting a seminar on implementation on the staffing and labour section of the harmonized construction contract jointly with the other participating MDBs in late 2011 or early 2012.

¹¹ Jakarta Post, “World Bank projects abuse laborers: Study”, 27 July 2004

¹² International Federation of Consulting Engineers (FIDIC), Conditions of Contract for Construction: MDB Harmonised Edition, Geneva, 2010. The articles corresponding to CLS requirements are 6.20, 6.21, 6.23 and 6.24 (pp. 27-28). The participating banks for the MDB Harmonized Major Works Contract are: African Development Bank, Asian Development Bank, Black Sea Trade and Development Bank, Caribbean Development Bank, Council of Europe Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank and World Bank.

Looking Forward

Inconsistency across the World Bank Group

Although the Bank has promoted CLS for a decade, the inconsistent adoption and application of the standards among the different divisions of the World Bank Group has created ambiguities and administrative complications, most notably in projects involving joint financing.

The application of CLS in infrastructure projects with public- and private-sector components is one such example. Since 2006, private-sector firms were obliged to respect IFC's PS2, but until recently no such obligation existed for the nominally public-sector components, whose work was frequently carried out by private contractors. Even after the MDBs' inclusion of CLS language for major construction works contracts, the IBRD and IDA investments are not subject to the same enforcement procedures as IFC's (for example, a recourse mechanism such as the CAO or the Inspection Panel).

Additionally, no CLS requirement of any sort currently exists for non-construction projects financed by the World Bank. Thus, for example, the Bank can provide financing for a country's health or education sector without any obligation on the part of the ministry concerned to ensure that employees affected not be subject to discrimination or that they have an opportunity to collectively negotiate changes to their working conditions if they so choose.

Recommendations of the Independent Evaluation Group

The World Bank's Independent Evaluation Group (IEG) has also underlined inconsistencies in the standards used by IFC, the Multilateral Investment Guarantee Agency (MIGA)¹³ and the public-sector financing arms of the World Bank. In a 2010 report, the IEG determined that "the Bank, MIGA and IFC use different norms for categorization of risks and that this needs to be made consistent across the Bank Group".¹⁴

Significantly, the IEG found that "the thematic coverage of the [IFC] Performance Standards is more relevant to the WBG's investment project portfolio than the policies in the current safeguards suite, due to the addition of explicit provisions on labor impacts, community impacts, and pollution prevention and abatement.... There is no obvious reason to presume that community and labor impacts are not relevant to the Bank's portfolio.... The lack of a comprehensive policy for coverage of social risks thus appears to be resulting in the inability to capture social risks adequately."¹⁵

The IEG report concluded with the following recommendation, as regards the absence of a labour safeguard at the World Bank: "The World Bank should: Ensure adequate coverage of social effects—integrating community

¹³ MIGA's standards are based on IFC's Performance Standards on Social and Environmental Sustainability.

¹⁴ Independent Evaluation Group-World Bank, "World Bank Group Effectively Addresses Large-Scale Social and Environmental Risks but Must Increase Attention to Outcomes", Press Release, Washington, 23 September 2010

¹⁵ Independent Evaluation Group-World Bank, Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience, World Bank, Washington, 2010, pp. 83, 84, 92

and gender impacts, labor and working conditions, and health, safety, and security issues not currently covered by its safeguard policies—by consolidating existing social safeguards with other WBG policies on social risks as requirements under one umbrella policy on social sustainability.”¹⁶

Next step: an overall labour standards safeguard

Since the 1990s, the Bank has maintained adopted nine separate Safeguards for identifying and controlling the risks in nine thematic areas, ranging from involuntary resettlement and rights of indigenous peoples to dam safety and the protection of physical culture, environment, forests and other natural habitats. However, labour and working conditions are not addressed in the current system of Safeguards. This absence is a serious weakness in Bank policy, about which trade unions and other organizations have complained on numerous occasions.

More than five years ago, IFC decided that labour standards were an essential element of its new sustainability policy and included a comprehensive labour standard, the central element of which is the CLS requirement. Last year, the World Bank’s Procurement Department officially included the CLS requirement in the Bank’s standard contract language and worked with all the MDBs to incorporate them in the harmonized construction contract.

The construction contract language on CLS was an important step forward, but it is less comprehensive than IFC’s PS2 and will be less effective because it is not subject to the implementation oversight of any Bank department. Further, non-construction activities financed by the IBRD and IDA are still outside the scope of any kind of labour standard. As the Bank’s IEG observed, there is no reason to presume that labour impacts are not relevant to the Bank’s portfolio, and the absence of a labour standard means that social risks of the Bank-funded activities are not being adequately addressed.

In April 2011 the World Bank announced a process for updating and consolidating its social and environmental safeguards policy. The Bank explained that a draft comprehensive and updated safeguards policy would be prepared and submitted for public consultation at the end of 2011. It was to be revised and made available for a second round of consultations in mid-2012, and adopted by World Bank Board of Directors around the end of 2013.

The World Bank should fill the gap left by the absence of an overall labour standards requirement and include such a requirement in the updated and consolidated social and environmental safeguards policy that it will adopt. Section 3 of this paper presents a concise list of ITUC/Global Unions recommendations to strengthen labour standards in World Bank Group lending.

¹⁶ Ibid, p. 104

II. CASE STUDIES

The following case studies explore trade unions' experience with the implementation of IFC Performance Standard 2 (PS2), which sets labour and working conditions requirements for client countries. The cases are from a range of regions and economic sectors, illuminating labour standards violations that trade unions have documented and how unions and the IFC have engaged to attempt to resolve them. Trade unions have raised concerns most frequently through an online communication form, developed by IFC to facilitate communication about PS2 non-compliance with the IFC Environmental & Social Development department (CES). Trade unions have also reached out to IFC staff, contacted IFC management and in two cases filed complaints with the IFC Compliance Advisor Ombudsman (CAO). Each of the cases below highlights the benefits and challenges of implementing labour standards, as well as the strengths and limitations of the mechanisms set up to facilitate this dialogue and ensure that IFC clients comply with these standards.

Case Study A: Child labour in telecom operations in Africa

The IFC has multiple projects with Millicom, a global telecommunications company based in Luxembourg with subsidiary companies operating throughout the developing world. In May 2009, the IFC publicly disclosed a proposed investment in Millicom's operations in the Democratic Republic of Congo, known as Tigo (IFC project #28033). The Tigo trade union delegation, including members of the Fédération Nationale des Travailleurs de la Communication (FNTC), alerted the global union federation representing workers in the telecom sector, UNI Global Unions, to labour rights violations by the IFC client company. With assistance from the ITUC/Global Unions Washington Office, UNI submitted a communication to CES regarding the proposed investment in Millicom DRC in August 2009, before the funds had been disbursed to the client.

The complaint pointed to three areas of non-compliance: child labour, freedom of association and collective bargaining, and retrenchment. The union noted that Tigo sub-contracts the sale of its telephone cards, and that children have been frequently employed to sell these cards. The union also complained that Millicom DRC's management had taken a hostile stance towards the union and stymied social dialogue, prompting the resignation of the president of the Tigo union delegation and a union complaint to the local office of the International Labour Organization (ILO). In addition, Tigo had proposed to make 100 workers redundant. The union communication to IFC argued that it had not been properly consulted in this process. The IFC agreed to conduct an investigation into the complaint.

One month later, the Millicom DRC investment was approved by the World Bank Board of Directors, without informing the complainant unions of the investigation's outcomes nor of any steps taken to resolve issues of non-

Extending the Scope of PS2: Workers in the Financial Sector

IFC has invested in a number of Ecobank sites in a strategy to expand access to local and regional banking services in Africa. Ecobank has operations in 22 African countries.

In 2008, UNI-Finance communicated to IFC about freedom of association restrictions on bank employees by the management of Ecobank in Nigeria. According to the 2006 IFC Sustainability Policy, projects categorized as “financial intermediaries” were not subject to application of Performance Standard 2. UNI insisted that workers in the financial sector should be included in the scope of these requirements. The Environmental and Social Review staff of IFC reviewed this suggestion and agreed. Within a short period of time, IFC began to stipulate the application of PS2 to all financial intermediary projects.

compliance with PS2. At the same time, IFC disclosed an additional investment in Millicom, now in its operations in Chad (IFC project #28644). The ITUC/Global Unions Washington Office promptly filed a communication about this investment, noting that the investigation in DRC was not yet concluded and arguing that Millicom’s management systems were inadequate to address the problem of child labour, recognized as a systemic problem in Africa and in the sector. ITUC/Global Unions noted the similarity of Millicom’s “pyramid distribution” scheme in the two countries, including the low ratio of “direct” to “indirect” employees, raising further question about the current capacity of the company to adequately address the use of child labour, and adherence to PS2. ITUC/Global Unions recommended that the company’s operations in Chad be given equal scrutiny.

Over the following months, the ITUC/Global Unions Washington Office made regular requests for updates on the Millicom DRC and Chad complaints; IFC always responded promptly but shared little indication of progress. CES staff explained that investment teams for both projects had been contacted. For the DRC, a due diligence team from IFC Johannesburg had initiated an investigation to verify the company responses to the union complaint and interview officials of the company, union, and government. The results of this investigation were never shared with ITUC or UNI. Regarding Millicom Chad, IFC alerted the staff working on this investment to pay special attention to labour issues, in particular child labour, during the regular due diligence process. However, in the absence of a union complaint first communicated to the client company, the usual investigation process would not be triggered.

The chief outcome of the communication process between trade unions and the IFC was an Action Plan, agreed between IFC and the client company, which responded to each of the concerns raised in the union complaint. This document was posted online and shared with the ITUC/Global Unions Washington office in May 2010, seven months after the original communication from UNI. The Action Plan obliged Millicom DRC to take steps to improve social dialogue with the union and requiring more stringent terms

for service contracts, aiming to prevent child labour. It did not refer explicitly to the redundancy issue raised in UNI's original communication, but required monthly progress reports on company resolution of differences with national labour authorities. Although the IFC acknowledged that the substance of the Action Plan might also be integrated into the agreement with Millicom Chad, it was not clear how the investigation ultimately affected the IFC investments in Millicom Chad, and further Millicom investments in Guatemala and Colombia.

Troublingly, the Action Plan was not disclosed by Tigo or Millicom to the employees, in breach of IFC policy that such documents be disclosed to affected communities. There was no indication that forthcoming monthly and annual reports, as mandated by the Action Plan, would be disclosed either by the IFC or by Millicom. In July 2011, the Tigo union delegation reported that the Action Plan had not been acknowledged by the local company management, and its terms had not been implemented.

Conclusions

Depending on the response of the company, the commitment of the IFC investment officer and the availability of IFC CES staff, investigations of complaints may take longer than determined by the timeline originally agreed to by IFC. Because this investigation process is not linked to investment requirements, projects can proceed without resolution of the complaint (even in the early stages of the project).

In the investigation that was triggered, IFC communications at the local project level were primarily with the client. Further efforts are necessary to ensure the continued involvement of complainant unions in the investigation process, including the sharing of results.

Case Study B: Safety & health at Bujugali Dam, Uganda

In May 2007, Building and Woodworkers' International (BWI) lodged a complaint with IFC regarding poor working conditions and freedom of association violations at the Bujugali Dam in Uganda (IFC project #24408). Working with its local affiliate, the Ugandan Building and Construction Workers' Union, BWI opened a dialogue with IFC to address project compliance with PS2, citing safety and health problems, challenges to freedom of association, absence of a functioning grievance procedure and wage discrimination.

This contact with IFC facilitated the unions' visit to the dam site and meeting with the firm that had been awarded the construction contract. Further communications between IFC, the client company and the unions brought about a process of dialogue that fulfilled the client's commitments to PS2. Construction work began on the project in August 2007, and the Ugandan Building and Construction Workers' Union, with the support of BWI, began an organizing campaign which was not impeded by the company. In October 2007, Bujugali contractor accepted to abide by the national industry collective bargaining agreement (CBA).

In this case, the IFC investment country had a low capacity for monitoring labour and working conditions. However, active trade union engagement with IFC at an early stage was able to produce positive results. The fact that this was a large investment project, with high environmental and social risks, likely motivated IFC to allot greater time and resources to addressing concerns of unions and other civil society groups. Trade unions also feel that the contractor hired for the project, an Italian firm, was relatively open to dialogue with unions, given the tradition of social dialogue in the firm's home country.

Conclusions

Active IFC involvement can and should facilitate dialogue between client companies and unions. It can play an important role in improving labour standards in a context with weak oversight or monitoring. However, the effectiveness of this work may vary depending on the level of IFC staff commitment to the value of this endeavour, the capacity of the union representing the affected workers and whether the client company is amenable to the engagement.

Case Study C: Freedom of association and discrimination in Latin American aviation

Two trade union experiences with IFC civil aviation investments in Latin America demonstrate the range of effectiveness of current IFC systems to ensure client compliance with PS2. In both cases, the client company restricted union activity and engaged in discriminatory labour practices based on union membership. Trade unions communicated their concerns to the CES staff, who proceeded to investigate and develop a plan to bring the companies into compliance. However, the case results were quite different; satisfactory changes were made at Brazilian GOL airlines (IFC project #24609), but at Colombian Avianca airlines (#25899) the disputes continue, almost three years after the original complaint. Much of this difference can be ascribed to the behaviours of the client companies and the general respect of workers' rights in the countries of operation.

The Brazilian GOL airlines had been spreading biased information about unions and publically discouraging union activity. Management had also engaged in age discrimination in hiring cabin crew employees. Soon after the trade union complaint, filed by the International Transport Workers' Federation (ITF), the company responded to IFC and adjusted its relationship towards the union, coming into compliance with PS2. The union felt that no further action was necessary with regards to the discrimination problems identified earlier.

Avianca Airlines, a Colombian company, demonstrated a tougher anti-union stance. In fact, Avianca has been under international scrutiny since the ILO 2004 review finding that the company's practices were prejudicial to collective

bargaining.¹⁷ In 2008, the ITF submitted a complaint against Avianca to IFC on behalf of the workers represented by the Asociación Colombiana De Auxiliares De Vuelo (ACAV). The complaint was submitted to IFC before the funds were invested in the company. The complaint asserted that Avianca management discriminated against union activists in job assignments, refusing to give preferred routes to union members. Trade unions also accused Avianca management of writing letters to the US Embassy in Colombia that falsely accused union members of drug-trafficking. These underhanded labour practices resulted in flight attendants' travel documents being revoked and their work schedules and routes being negatively affected.

In this case, the company dug in its heels. Any Action Plan agreed upon with the IFC has not been disclosed. IFC proceeded with the investment in January 2009, without resolving the trade union complaint. A labour audit commissioned by IFC in 2009 was conducted haphazardly and produced no effect. Ultimately, drug-trafficking charges against union members were lifted, but this is attributed to the intervention of the AFL-CIO Solidarity Center and its communications with the US Department of State. A second labour audit was commissioned by IFC and conducted in September 2010, but the results have not yet been shared with the complainants. Anti-union activity continues unabated, despite IFC interventions. The company continues to find new ways to actively discourage union membership and to penalize individual union leaders. In June 2011, the ITUC/Global Unions Washington Office wrote to the IFC Vice President for Business Advisory Services to alert IFC management of this continuing flouting of IFC loan requirements.

Conclusions

The national labour rights context is significant and IFC influence in a situation of company intransigence can be limited if IFC does not make clear to clients that PS2 compliance is mandatory and that non-compliance can result in revocation of the loan. Colombia is a country with a particularly checkered reputation for trade union rights, and Avianca did not take seriously its obligation to respect PS2.

Case Study D: Freedom of association in Turkish manufacturing

Since 2007, the ITUC/Global Unions Washington Office has conducted a series of workshops for trade unionists on PS2 and its requirements for IFC client companies.¹⁸ Following a regional training in Central Asia, the Confederation of Turkish Trade Unions (TÜRK-IS) filed complaints regarding PS2 non-compliance of two IFC client companies in Turkey: Standart Profil (IFC project #26098) and Assan Alüminyum (#26648). In each case, TÜRK-IS reported that company management was not respecting workers' right to join and form unions. TÜRK-IS raised the case of Standart Profil with the CES

¹⁷ International Labour Conference, Committee on Freedom of Association Report, Colombia (Case No. 2362), June 2004

¹⁸ The German organization Friedrich-Ebert-Stiftung has generously supported this training series.

department, and then a year later filed complaints about both Standart Profil and Assan Alüminyum with the IFC Compliance and Advisory Ombudsman (CAO). These cases, in particular that of Standart Profil, illustrate the different processes triggered by contacting CES staff and filing a formal complaint with the CAO.

TÜRK-IS raised the complaint against Standart Profil in August 2007, contacting the Director of the Southern and Central Asia Department and IFC management in Washington. They did so on behalf of the Petroleum Chemical Rubber Workers' Trade Union of Turkey (Petrol-IS), which encountered actions by company management that clearly violated PS2 when it tried to organize workers at the Düzce production facility. These anti-union activities included dismissal of workers for trade union membership, unilateral transfer of trade union members to less desirable workplaces, and direct threats to union members and their families. IFC appears not to have responded to the trade union complaint; IFC staff did not contact or meet with the complainant union, and while IFC staff may have discussed the union's concerns with company management they issued no official response or public document (e.g. an agreed Action Plan) demonstrating that the complaint had been addressed. A communiqué from Petrol-IS dated 12 August 2008¹⁹ explains that Standart Profil tolerated the existence of a limited number of union members at the workplace to signal PS2 compliance to IFC, but stood in the way of Petrol-IS's efforts to unionize the percentage of workers required by Turkish law to allow for collective bargaining in the workplace.

TÜRK-IS took a further step, lodging a complaint with the CAO in September 2008. The investigation process of the CAO was more thorough, and is publically documented on the CAO website. A team consisting of one CAO staff and two consultants visited the project site and met with union representatives (from TÜRK-IS, Petrol-IS, and others), Standart Profil management and human resources staff, and regional officials. In its Stakeholder Assessment Report, completed in February 2009, CAO recommended that Standart Profil take the following actions: (1) Promote awareness of PS2 by means of increased visibility in the workplace; (2) Implement a training program to ensure the effective application and understanding of PS2; and (3) Implement an independent labour audit to provide assurance of adherence to PS2. Both company management and the unions agreed that these actions represented a satisfactory resolution to the complaint and agreed to collaborate with CAO and the IFC in their implementation. A PS2 training for workers and managers was held in January 2010, and social dialogue structures (representative workers' committees) were established in the company. The complaint remains open, and the CAO continues to monitor steps towards the completion of the agreed actions. As of this writing, Standart Profil is appealing a Turkish court decision that the company's workers fall within the classification of workers that may be represented by Petrol-IS.²⁰

¹⁹ Available through CAO at: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=80

²⁰ International Federation of Chemical, Energy, Mine and General Workers' Unions, "ICEM at Standard Profil: Halting Union Avoidance in Turkey's Rubber Sector", 1 June 2011, available at:

<http://www.icem.org/index.php?id=217&la=EN&doc=4451>

In the case of Assan Alüminyum, TÜRK-İS again wrote letters to IFC regional staff and management and filed a complaint with the CAO. Because the proposed investment was in the early stages of development and IFC was in the process of completing its due diligence, the CAO did not move to investigate the complaint, but determined to provide IFC the opportunity to address the concerns raised through its regular appraisal process. The original Action Plan (August 2008) worked out between IFC and its client company, Assan, had addressed PS2 compliance but had not taken note of freedom of association issues. The IFC and Assan Alüminyum agreed upon a new Action Plan (February 2009) stipulating actions comparable to those required of Standart Profil. This Action Plan is posted on the IFC website, and was shared with the Turkish unions by the CAO. IFC released a Labour Assessment Report of company PS2 compliance in April 2010, addressing the material issues raised in the original CAO complaint. IFC made the investment in Assan Alüminyum at this time, and the CAO closed its involvement in the case four months later.

Conclusions

The CAO complaint triggered a more complete investigation than did a communication to IFC, presumably directed to the CES department. The process and results of the CAO investigation were communicated with a transparency that IFC's usual procedures do not afford. It is especially significant that the CAO investigation team met with the complainant unions, where the CES procedure relies primarily (and frequently solely) on communications with the client company, which is insufficient to gauge PS2 compliance. While monitoring of Standart Profil is ongoing, the Stakeholder Assessment report was completed and publicly available six months after the original complaint. This timeframe is comparable to the complaints raised through the CES mechanism.

Case Study E: Working conditions at Indian tea plantation

In January 2011, trade unions submitted a complaint about PS2 violations at the Nowera Nuddy Plantation, a tea plantation in West Bengal, India, owned by Amalgamated Plantations Private Limited (APPL), a wholly-owned subsidiary of the Indian multinational Tata (IFC project #25074). The complaint was submitted to the CES department by the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the global union federation representing its affiliate the Progressive Tea Workers Union (PTWU).

The complaint focused on the unions' concerns about health and safety standards at the plantation, exemplified by the collapse of a 29-week pregnant worker performing heavy duties in the field despite a visit to the company clinic that morning, and the national Maternity Benefit Act, which permits a woman to perform light duties at that stage of pregnancy. This August 2010 event triggered a worker action, to which management responded by

closing down operations for two weeks. During this lock-out, workers had no access to income. Returning to work, representatives requested time from management to negotiate terms of compensation for the lock-out and potential reinstatement of workers fired or suspended for participation in the worker action. Management refused to negotiate and commanded a second lock-out, this time for three months (September-December 2010). During this period, workers were forced to rely on emergency rations distributed by the government of West Bengal, usually reserved for the poorest of the poor and victims of natural disasters.

IFC conducted a site visit to Nowera Nuddy in September 2010. This site visit was poorly executed, as IUF communicated in a letter to the IFC Vice President for Business Advisory Services immediately thereafter. Workers were not given advance notice of the investigation. They were not interviewed independently, but in the presence of local management who acted as the workers' interpreters. Potential fear of retribution and the possibility of managers accidentally or purposely misconstruing workers' statements compromised the value of this investigation.

IUF elected to use the CES online complaint mechanism in January 2011, as the PWTU dispute with the company over the terms of compensation from the lock-out remained unresolved. IFC responded in April 2011 via the ITUC/Global Unions Washington Office. In its response, IFC stated that their review had found no issue of PS2 non-compliance. It explained that IFC had required that APPL post a notice regarding the Maternity Benefits Act at the Nowera Nuddy clinic. It also announced an independent audit of APPL's occupational health and safety practices. It was not clear who would undertake this audit, how it would be implemented, if workers and trade unions would be properly consulted, and if the results of the audit would be disclosed. There was no mention of the extended lock-out period that so severely affected employees' lives. In addition, the response referred to an IFC investigation conducted in September 2010 (pre-dating the IUF communication).

While the IFC's response to the unions was deeply unsatisfactory, their intervention with the client company may have been a motivation for APPL to sit down with IUF and the PWTU. Negotiations between the company and the PWTU were ultimately resolved in May 2011. Workers received compensation for the three month lock-out, and workers previously suspended or fired for union activity were reinstated.

Conclusions

The international union campaign for just resolution of workers' dispute at Nowera Nuddy was able to achieve positive results, and IFC's intervention was a source of pressure on the company.

However, IFC's methods of investigation and its response to the unions were deeply unsatisfactory. Minimal due diligence would have revealed the poor working conditions at the site, and monitoring of the project should have alerted IFC staff to the continuing three-month worker lock-out, which jeopardized employees' rights to work and to food and indicated APPL's lack of interest in negotiations with the PWTU.

A lack of communication with the complainant and local union raises doubt that IFC is being consistent and responsive to complaints.

III. RECOMMENDATIONS

IFC's Performance Standard on labour

The adoption of IFC's Performance Standard on labour and working conditions (PS2) was a major step forward on the part of the World Bank Group in terms of taking measures to ensure that the Bank's own operations live up to standards that the Bank endorsed and promoted. IFC's Environment and Social Development Department (CES) has taken a number of steps towards implementation, including the preparation of guidance notes for implementation, putting in place monitoring mechanisms, training staff on labour issues and creating a dedicated complaints mechanism for PS2. The input of CES is particularly important during the approval phase of new projects, when IFC's "due diligence" procedures should identify where there is a strong likelihood the potential borrowers may not comply with PS2. The Compliance Advisor-Ombudsman (CAO) has also been attentive to labour issues and responded to some complaints that have been addressed to it.

In several cases, some of which are documented in Section II of this report, the responses of both CES and CAO have led to positive outcomes in terms of addressing complaints that have been submitted by trade unions, and occasionally other organizations, with regards to non-respect of PS2. The CES procedure has been easily accessible, has often responded quickly to complaints, provided regular communication in Washington and, in cases where employers have been cooperative, led to corrective measures being taken expeditiously.

However, as some of the examples described in Section II demonstrate, some cases have dragged on and led to unsatisfactory results, especially when employers have been less cooperative, and particularly so in national contexts where violation of workers rights is rampant. These cases have highlighted some weaknesses in the CES procedures, and some lapses in IFC's due diligence procedures during project appraisal. The weakness also include not fully sharing all relevant information with the affected parties, not having clear timelines for corrective actions and overly relying on company information rather than seeking additional input from the complainant. Trade unions' experience has been that CES personnel are highly skilled and dedicated, but there may be a lack of sufficient staff, resources or institutional support that explains some of the unsatisfactory outcomes. It is also apparent that the lack of real financial pressure -- that is, making it clear to client companies that PS2 compliance is obligatory and that the failure to comply can lead to loss of IFC financial support -- may have allowed some companies to believe that compliance was voluntary and could be ignored.

The limited labour experience with the CAO procedure, while appearing on the surface to be more "legalistic" and less expeditious for resolving problems that have immediate negative impact on workers, has shown some

beneficial results with timelines that were not substantially longer than the CES procedure. It has also shown some clear advantages in seeking full input from the complaining party (i.e. the trade union) in addition to asking for the client company's response; has put on emphasis on serious dialogue between the parties; and has documented and made public the results of its enquiries as well as the recommended actions. The fact that the complaints are fully documented and posted on IFC's web site probably increases the chances that the lessons learned from these cases will feed back into IFC and improve compliance in future investments.

The following suggestions are made on the basis of five years of experience with implementation of PS2, with the aim to enhance the effectiveness of the CES investigation and response procedure:

- ▶ *In the course of its due diligence procedures, IFC should more thoroughly assess risks that potential clients are not in compliance with PS2; this assessment should include consultation with relevant trade union organizations*
- ▶ *Investigations of complaints from trade unions and others must include direct communication with the complainant and the results of the investigation must be shared with the complainant*
- ▶ *Action plans for resolving cases of non-compliance should be shared with the complainant (via direct communication from IFC, the IFC website, and the client company) and include explicit timelines for specific measures to be taken*
- ▶ *Where reports on dialogue with the union are required, these should be shared with the union for verification*
- ▶ *It should be made clear to client companies that failure to implement action plans can result in financial penalties, i.e. withholding of loan payments and eventually revocation of the loan*
- ▶ *IFC's monitoring and implementation procedures should be modified and improved in light of the experience and problems encountered with the application of PS2 in similar investments or national contexts*

MDBs conditions of contract for construction

Among all of the multilateral development banks (MDBs), the World Bank has taken the lead in promoting the adoption of CLS requirements in the harmonized construction contract for major construction works. The adoption of these standards as well as some other labour-related requirements was an important step for the MDBs to take. The challenge now is for the World Bank, in collaboration with other MDBs to the extent that is possible, to put in place measures for full implementation of the contract requirements on

labour. IFC's substantial experience with PS2 and the measures it has taken for implementation could prove to be a useful time- and resource-saving precedent, especially given that the CLS requirements were adapted from IFC's PS2.

The following suggestions are made for the World Bank's implementation of the staff and labour provisions of the MDB's harmonized conditions of contract for construction:

- ▶ *Preparing an appropriate implementation guide and engaging in training of Bank staff and project managers on the labour provisions of the harmonized construction contract*
- ▶ *Adopting monitoring mechanisms of major construction works, and establishing a complaints mechanism for cases of non-compliance so as to ensure full compliance*
- ▶ *Practising transparency about projects and inviting input from trade union organizations in order to foster dialogue with contractors and to encourage their participation in regular monitoring of Bank-funded projects*

World Bank's revision of social and environmental safeguards

The revision process for the World Bank's environmental and social safeguards polices, which is scheduled to be completed at the end of 2013, presents a unique opportunity to fill the major gap that exists in the World Bank Group's labour standards requirements. The inconsistencies between different components of the WBG in this regards have been highlighted by trade unions, other civil society groups and the Bank's own Independent Evaluation Group (IEG). The revised safeguards policy that the Bank will submit for consultation in 2011 should have a robust labour standards policy consistent with the progress made in some divisions of the WBG, noting the following recommendations:

- ▶ The policy should require compliance with all four of the core labour standards and also properly adapted requirements such as those found in IFC's PS2 for other basic working conditions, namely the provision of information to workers on conditions of employment, retrenchment procedures, grievance mechanisms, occupational health and safety standards and supply chain standards
- ▶ There should be adequate monitoring of compliance by World Bank staff and the Inspection Panel must be available to examine complaints about possible non-compliance
- ▶ As with other safeguard provisions, corrective action should be taken promptly to correct incidences of non-compliance, and failure to take corrective action would result in loss of financial support

ANNEX: USING THE IFC PERFORMANCE STANDARD: A HOW-TO FOR TRADE UNIONS

As unions' experience with PS2 has grown, the ITUC/Global Unions Washington Office has continuously updated a "how-to" guide for unions to engage with the IFC. This guide may serve as a training tool as well as a lobby tool.

Introduction

All companies that borrow from the World Bank's private-sector lending arm, the International Finance Corporation (IFC), must agree to meet the IFC Performance Standards, a set of eight social and environmental conditions required of all IFC clients with loans originating after 1 May 2006. Performance Standard 2 requires all clients, or borrowing companies, to respect the core labour standards (forced labour, child labour, non-discrimination, and freedom of association and collective bargaining) as defined by the International Labour Organization. PS2 also obliges clients to meet requirements on workplace health and safety, retrenchment procedures, grievance procedures and supply chain issues. In 2009, after three years of implementation experience, the IFC undertook a review of its social and environmental sustainability policy. The revised policy, which was adopted in 2011, states that the protection of workers' rights is an objective of PS2. It includes improved protections for migrant workers and requires that borrowing firms that claim to be under market pressure examine alternatives to dismissals.

The IFC Performance Standards have the potential to be a useful tool to help enforce workers' rights, but it is up to trade unions to use the standards to their advantage. Unions can play an important role in ensuring that IFC clients, i.e. borrowing companies, meet their labour standards obligations by documenting violations of PS2 and communicating this information to the IFC through the mechanisms available.

As of this writing, unions have registered complaints or requested assurances about respect for labour rights for 27 proposed IFC investment projects. Global Unions' Washington Office has provided assistance for most of these complaints or communications, which have originated from four developing or "emerging" economy regions (Latin America-Caribbean, Central and Eastern Europe, Africa and Asia) and involved the participation of the ITUC and six GUFs (ITGLWF, ITF, IUF, UNI, BWI and ICEM). IFC responded to these complaints by investigating them, and in some cases undertaking a full labour audit in cases of repeated serious incidents of non-compliance. Unions have been able to use this intervention to resolve disputes with management or to support an organizing campaign.

Communications about PS2 violations can go through two channels: the IFC's Environmental and Social Development Department (CES) and the IFC Compliance Advisor Ombudsman (CAO). Executive Directors of the World Bank, who represent member-country governments, can also be made aware of any serious violations.

In almost all cases, trade unions have gone forward with communications to the CES Department, which is responsible for overseeing compliance with the Performance Standards. This procedure can be most useful for informing IFC of potential PS2 violations before the project is approved, as a means of advising IFC to require its client company to make specific improvements to labour practices before proceeding with the investment. In January 2009, the IFC responded to Global Unions' request for an accelerated process to report violations, instituting an online communication form that sends complaints directly to the IFC, with copies to Global Unions' Washington Office. The form can be accessed at <http://www.ifc.org/laborps2/>.

Submitting a complaint to the CAO triggers a more formal and legalistic review process. Unions that have not received satisfactory responses from the CES Department may wish to consider this option, which has appeared to be a more thorough, if time-consuming, process. Full instructions for submitting a complaint to the CAO are available in 15 languages at <http://www.cao-ombudsman.org/howwework/filecomplaint/>.

Below you will find a brief guide to the accelerated complaint process to CES. This document also includes an overview of the CAO complaint process, as well as suggestions on how unions can use each mechanism most effectively.

Submitting a complaint to IFC Environmental & Social Development Department (CES)

1. Be informed about upcoming IFC projects

It is preferable, but not obligatory, to submit complaints about proposed IFC projects to CES before they are approved. Registering concerns about IFC projects before they are approved by the World Bank/IFC Board of Executive Directors can give unions more leverage in the complaint process.

The IFC conducts an initial assessment before the launch of each planned project to determine its compliance with the Performance Standards. It is required to make public disclosures about all of its investment projects. This public information is available on the IFC's website at least 30 days prior to the formal approval of the project (or 60 days in advance in the case of high-risk projects). For every project, a Summary of Project Information (SPI) provides all of the basic information about the proposed investment, including background on the company, the purpose of the project, possible social or environmental risks and links to relevant documents like environmental impact assessments.

Project information remains on the website throughout the life of the project and even after it is completed. The IFC's project database is searchable by country and sector and is online at <http://www.ifc.org/projects>.

While the IFC should be expected to ensure compliance with the labour standards, we encourage enterprise-level unions to monitor the project to document and report any labour violations to the GUF to which they are affiliated, the ITUC/Global Unions Washington Office and IFC. The earlier the union alerts the IFC to a project's violations of PS2 (either anticipated or ongoing) the more effective the complaint process will be. It should be noted that **the IFC will review complaints submitted at any point in the life of the project.**

To aid union vigilance on upcoming IFC investments, the ITUC/Global Unions' Washington Office sends out twice-monthly updates on newly disclosed projects to mailing lists that include relevant GUF representatives and regional and national union representatives.²¹

2. Document the violation

The IFC has put in place monitoring procedures of projects that it considers of higher risk, but unless complaints are raised the IFC relies largely on self-reporting by its clients on the application of PS2. To hold the IFC accountable to its commitment to uphold the core labour standards and other basic labour conditions, **it is important that trade unions document and communicate the company's specific non-compliance with PS2.** Complaints should therefore be made with direct reference to the provisions of PS2 (a document of about four pages). Trade unions should therefore be encouraged to review the text of PS2, which is available online. At the time of printing, the 2011 revised version is only available in English, but translations to Arabic, Chinese, French, Portuguese, Russian and Spanish should be available soon. [http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Updated_PS2_August1-2011/\\$FILE/Updated_PS2_August1-2011.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Updated_PS2_August1-2011/$FILE/Updated_PS2_August1-2011.pdf)

The Performance Standards Guidance Notes are companion documents that provide guidance to borrowing companies (and IFC staff) in meeting the standards. Trade unions should point out instances where the employer is not following the procedures outlined in these guidance notes, and may be violating the IFC loan agreement. The guidance notes, under revision at the time of printing, will soon be available on the IFC website in the different languages. You can search for them here: <http://www.ifc.org/sustainability>.

Specific and detailed documentation of violations, as they relate to the IFC Performance Standards, is important. However, **it is not required that the names of individual workers or trade unionists be used.** In addition to documenting the PS2 violation, unions should also prepare any available

²¹ To join this mailing list, contact washingtonoffice@ituc-csi.org or fricciardone@globalunions-us.org and note the region and sectors you would like to receive updates about.

information about the company's record on labour rights, or any potential problems the IFC may have overlooked in its initial project assessment.

3. Contact the IFC using the online communication form

A simple online form initializes the accelerated complaint process. It is helpful to review this questionnaire in advance to prepare the information required; a copy is attached to this guide.

After recording the union, company, and project identification, the form asks only ten questions. Many are simple “yes or no” questions, allowing additional space to provide details. It asks for a description of the PS2 violation, and for a **reference to the specific provision of PS2 that is being violated**. The description of the violation typically answers the questions: who, what, when, where, why, and how? The reference should cite the applicable paragraph of the PS2.

After preparing your answers, **access the online form at <http://www.ifc.org/laborps2/>**. The form is available in Arabic, Chinese, English, French, Russian, and Spanish. Unions are welcome to request assistance from the relevant GUF or Global Unions' Washington Office. Once the online form is submitted to the IFC, an electronic copy is also received by the Global Unions' Washington Office.

4. What Next?

The complainant union and the ITUC/Global Unions' Washington Office should receive an automatic message from the IFC acknowledging receipt of the complaint. The CES department will review the submitted complaint within five working days, at which point it will either contact the complainant organization for more information, or contact its project team to begin an internal review. The CES investigation frequently relies primarily on communications with the client company. However, **unions should insist on being included in this investigation and request to be informed about the results**; these communications can be facilitated by Global Unions' Washington Office. In our experience, the time frame for IFC's final response or client company action has varied widely depending on the CES capacity to investigate the complaint and the client company responsiveness.

If CES establishes that the company is in non-compliance with the performance standards, it can take several approaches to rectify the situation. If the project has not yet been approved by the Board, it may be delayed pending further information. Alternatively, the IFC may simply discuss the problem with the company, decide on an “Action Plan” to remedy the problem, and then increase its supervision of the project to confirm that the client is making the necessary changes. In this case, the documentation of trade unions will continue to be important in exposing the scope of the issue and verifying whether corrective actions have indeed been taken. If non-compliance in an ongoing project persists, the IFC can require a “labour audit” by an outside consultant or bring

in a third party arbitrator to intervene. The IFC also has the option to enforce the client's adherence to the performance standards by withholding future disbursements of the loan, if any remain, or by recalling the loan, thereby requiring the company to pay back the loan ahead of schedule.

When making a complaint to the CES, trade unions should consider what kind of action is needed to resolve the situation and make sure that the problem does not occur again. For example, periodic trade union-company-IFC meetings, increased supervision by the IFC or mediation are some options trade unions could consider suggesting. In the case of repeated violations or problems that persist despite IFC intervention, trade unions can demand that the IFC stop loan disbursements to the company or that it recall the company's loan. Again, the ITUC/Global Unions Washington Office is available to engage in these procedures with IFC headquarters on affiliates' behalf.

To date, the CES department of the IFC has been responsive to complaints based on possible violations of PS2 and has delivered positive results in several, though not all, of these cases. The CES process is particularly useful before the loan is approved. Quick responses by the CES department have in some cases resulted in IFC loan proposals being postponed or withdrawn, or specific changes to labour practices required at the beginning of the project.

Submitting a complaint to the CAO

1. How is this mechanism different?

The IFC is an investor in its client company; while it is committed to upholding the Performance Standards, the CES department is not a neutral party. The CAO is the independent recourse mechanism for projects supported by the IFC; it works with communities and civil society organizations to help resolve concerns about IFC projects.

This difference is reflected in the procedures for investigating complaints. While CES investigations rely primarily on communications with client companies, the CAO assessment meets with all stakeholders in the project, including the complainant. In addition, the details of the CAO investigation are publicly disclosed online.

The responses of the two mechanisms are also different. If CES determines there are gaps in the client's adherence to PS2 requirements, it will work with the company to develop an "Action Plan", which the company is required to disclose. The CAO, on the other hand, will engage with the different stakeholders, including workers, to identify strategies to address the issues. This may involve joint fact-finding, facilitated discussions or dialogue, dispute mediation or a joint-monitoring program.

2. When should a union consider filing a CAO complaint?

A union can file a CAO complaint at any point in the life-cycle of an IFC project. It is possible to file complaints through both the CES mechanism and the CAO. It is not necessary to file a complaint with CES before filing a complaint with CAO.

The union may wish to consider filing a complaint with the CAO if it feels the intervention of the CES department of the IFC has been inadequate. This situation may arise if the union feels the IFC has done an unsatisfactory investigation of the complaint, if the IFC proposed action plan does not adequately address union concerns about PS2 violations, or if the company remains unresponsive to the intervention.

It is important to keep in mind that the CAO process is based on a process of dialogue between the different stakeholders, which is therefore more thorough and also possibly more time-consuming than the CES mechanism. CAO allows up to six months for continued efforts to resolve the conflict through dialogue. After this period, if CAO determines that the parties are unwilling or unable to find a joint resolution to the issue, it will undertake an appraisal of IFC's compliance with its Performance Standards. The advice CAO ultimately provides may influence IFC lending operations, but immediate pressure on the company would likely be limited.

3. How to file a CAO complaint

The CAO offers clear guidance on how to file a complaint. The initial communication must mention the group making the complaint, the name of the IFC project and its location. Supportive evidence may be included and is encouraged, but is not necessary. Detailed guidelines are available online in 15 languages, and a model complaint letter is attached to this document. <http://www.cao-ombudsman.org/howwework/filecomplaint/>

IFC ENVIRONMENTAL & SOCIAL DEVELOPMENT DEPARTMENT (CES) COMMUNICATION FORM

Submit the complaint online: <http://www.ifc.org/laborps2/>

General Info:

1. Your Name
2. Your Email Address
3. Name of Company and specific site/plant/operation
4. IFC project number (if known). (available here: <http://www.ifc.org/projects>)
5. Name of Trade Union and Country of Operation

Details

6. The Trade Union:

- Has representation of the workforce in the company
 Has no representation in the company

If the company does have representation, what percentage of the workforce is represented?

7. The communication is being filed on behalf of:

- Group of unionized employees
 Group of employees not unionized
 Trade Union

If others, please specify interest or link:

8. Describe the actions taken by the company considered to be in non-compliance with provisions under PS2:

9. Provision in PS2:

(if other, please specify)

10. Affected employees are:

- Regular staff
 Contracted
 Sub-contracted personnel
 Part of the supply chain

11. Number of affected employees subject to this communication:

12. Has there been any discussion with the company on the subject matter of this communication?

- Yes. If yes, provide details of the discussion with the company and the current status of discussion.
 No. If no, why not? (see below)

Please justify your answer above:

13. Has the subject matter of this communication been passed through internal or country grievance mechanisms for resolution?

- Yes. If yes, provide details, including type of mechanisms used, dates and resolution.
- No.

Provide Details:

14. Has the subject matter of this communication been reviewed by a court of law or administrative tribunal?

- Yes. If yes, provide details, including type and dates of proceedings, and current status.
- No.

Provide details:

15. Has the subject matter of this communication been discussed with the Global Unions (Washington DC office)?

- Yes.
- No.
- Don't Know.

16. Additional information relevant to this communication:

When you have completed the form, click "Done." A copy of the complaint will be sent to the IFC, and to the Global Unions Washington Office. You will see the below message:

"Thank you for submitting a labor communication/concern to IFC. It will be reviewed by specialists from the Environment and Social Development Department and relevant investment departments. We will contact you within five (5) working days if additional information is required."

CAO COMPLAINT MODEL LETTER

To:

Compliance Advisor/Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
Fax: (+1) (202) 522-7400
e-mail: cao-compliance@ifc.org

I/we, _____, lodge a complaint concerning the
_____ project, located in _____

This complaint is made on behalf of _____ (ignore if not applicable).

I/we live in the area known as _____ (show on an attached

map if possible). I/we can be contacted through the following address, telephone and fax numbers, and e-mail:

Street address

Mailing address (if different from street address)

Country

Postal Code

Telephone

Fax

Email

I/we do not wish our identity to be disclosed (ignore if not applicable).

I/we have been, or are likely to be affected by social or environmental impacts of the project
in the following way(s):

If possible, please provide the following information:

- ▶ A description of the name, location, and nature of the project (provide a map, if possible).
- ▶ A description of the action taken by me/us to try to resolve these issues (include dates, if possible).
- ▶ A list of other person(s) contacted by me/us in attempting to resolve these issues (attach copies of correspondence, if possible).
- ▶ Any other relevant facts to support this complaint.

In addition, please answer the following question:

- ▶ I/we would like to see this complaint resolved in the following way:

Note: The CAO will keep the identity of complainants confidential if requested to do so, but will not accept anonymous complaints. Material may also be submitted on a confidential basis to support a complaint and will not be released without the consent of the party that submitted it.

Complainants should be aware that other affected parties, including the company and IFC staff, will usually be informed about the substance of the complaint. Complainants should identify to the CAO from the start any information that complainants do not wish to be disclosed. A process for handling the complaint will be agreed with the complainant.

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