

Workers' rights in development loans: Experience with IFC's labour standards requirements

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2. Origin of WB's labour standards requirements (i)

- 1999: ICFTU delegation requests that World Bank ensure that its projects do not violate the core labour standards (CLS) as defined in *ILO Declaration on Fundamental Principles and Rights at Work* (1998)
- 1999-2001: WB says it supports three of four CLS, will do research to determine whether freedom of association and right to collective bargaining are “consistent with” WB's development mission
- 2001: Following instructions from donor governments to IDA (WB's concessionary lending arm), WB prepares “CLS Toolkit” that says CLS “can contribute” to WB's mission

3. Origin of WB's labour standards requirements (ii)

- 2002: WB president responds to renewed demand from ICFTU & WCL and tells unions that WB “supports promotion of CLS but will not apply conditionality on them”
- 2003: WB research concludes freedom of association and right to collective bargaining do not harm growth but do create more equal distribution of income
- 2003: head of IFC (WB's private-sector lending arm) tells ICFTU that IFC will make CLS a requirement for all loans
- 2004: IFC loan to Grupo M (garment manufacturer in Haiti & Dominican Republic) includes “test case” CLS requirement

4. Origin of WB's labour standards requirements (iii)

- 2004: WB procurement division accepts to review labour requirements in Standard Bidding Document for Procurement of Works (SBDW) following a BWI secondment and proposals put forward by BWI and ICFTU
- 2004: ALNI-Indonesia publishes study showing violation of three of four CLS on WB-funded construction sites
- 2004-2006: IFC's social and environmental performance standards (PS) undergo two revisions – most trade union suggestions accepted

5. Origin of WB's labour standards requirements (iv)

- 2006: WB/IFC executive board adopts IFC performance standards with CLS loan requirement; applied starting May 2006
- 2006: WB adopts partial CLS requirement in SBDW; later promises ITUC/GUFs it will adopt all four CLS
- 2007: WB procurement department adopts clauses on all four CLS for SBDW; applied starting May 2007 on an optional basis, i.e. borrowing country must agree
- 2008-2009: Language on all four CLS included in WB-sponsored proposal for harmonized SBDW used by all MDBs

6. IFC's Performance Standard 2 (PS 2): Labour and working conditions (i)

- “*Performance Standards*: define clients' roles and responsibilities for managing their projects and the requirements for receiving and retaining IFC support”
- “*Guidance Notes*: companion documents to the Performance Standards providing guidance to clients (and IFC staff) in meeting the standards”
- “*PS 2 requirements*: ... in part guided by ... ILO conventions 87, 98, 29, 105, 138, 182, 100, 111”
- Other clauses on *Human resources policy, Working conditions and terms of employment, Retrenchment, Grievance mechanism, Occupational health and safety, Non-employee workers, Supply chain*

7. IFC's Performance Standard 2 (PS 2): Labour and working conditions (ii)

- “*Forced labor*. The client will not employ forced labor, ... including indentured labor, bonded labor, ...”
- “*Child labor*. The client will not employ children in a manner that is economically exploitative, ... follow laws applicable, ... children below the age of 18 will not be employed in dangerous work”
- “*Non-discrimination and equal opportunity*. The client will not make employment decisions on the basis of personal characteristics ...”

8. IFC's Performance Standard 2 (PS 2): Labor and working conditions (iii)

- “*Workers’ organizations*: In either case described in paragraph 9 [countries that recognize freedom of association and those that do not] ..., the client will not discourage workers from forming or joining workers’ organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate or seek to participate in such organizations and bargain collectively. Clients will engage with such worker organizations.”

9. Implementation procedure for IFC standards (i)

- IFC classifies projects as category A, B or C depending on whether they have “significant, limited or minimal potential adverse social or environmental risks”
- Client obliged to submit Social & Environmental Assessment and Action Plan to correct potential risks and impacts including on labour as defined in PS 2, commensurate with risk category (none required for category C)
- Assessment and Action Plan to include consultation with “affected communities” and must be publicly disclosed

10. Implementation procedure for IFC standards (ii)

- IFC's *Environmental and Social Procedures* establish inspections, monitoring reports according to risk level
- “The impacts associated with supply chains will be considered in cases where low labor cost is a factor in the competitiveness of the item supplied”
- Complaints about non-compliance with PS 2 can be addressed to IFC's Environmental and Social Development Dept. (CESES)
- Formal complaints can be addressed to IFC's Compliance Advisor/Ombudsman (CAO); also possible to “lobby” WB EDs

11. Experience with application of IFC standards

- Up to 15 March 2010, trade unions submitted 24 cases of possible non-compliance with PS 2 in IFC investments; Global Unions' Washington office involved in all but four cases
- 22 of the cases were submitted by unions to CESES, two to CAO and representation on one case made to EDs
- According to Global Unions' assessment, out of the 24 cases:
 - Positive changes or responses (meeting unions' concerns totally or partially) obtained in 15 cases
 - Financing ended in 4 cases
 - Unsatisfactory response in 1 case
 - Outcome pending in 4 cases

12. Experience with application of IFC standards: four cases (i)

1. Grupo M -Haiti & Dominican Republic – a pre-PS 2 “test case”
 - Jan 2004: IFC accepts ICFTU/ITGLWF proposal to include CLS loan condition because of high risks of violation
 - June 2004: 300 Grupo M workers in Haiti dismissed for striking for union recognition
 - Mid-2004-early-2005: IFC pressures company, hires mediator
 - July 2005: Company agrees to rehire workers, recognise union
 - December 2005: Collective agreement concluded between Haitian union and Grupo M

13. Experience with application of IFC standards: four cases (ii)

2. GOL airlines-Brazil: Complaint originating from ITF about anti-union action and age discrimination submitted mid-2006
Several exchanges between IFC, ITUC/Global Unions Washington Office (WO), ITF-Americas
Company makes some corrections of anti-union action and affiliate chooses not to pursue other matter
3. KESC-Pakistan: Complaint originating with APTUC about refusal of company to negotiate with union, respect CBA, submitted March 2007
KESC invokes need for union to be re-registered as CB agent following ban on collective bargaining 1999-2005; process delayed by Pakistani labour court
In August 2007, IFC informs WO it agrees with KESC's legal stance and disputes APTUC information on wage increases

14. Experience with application of IFC standards: four cases (iii)

4. Feb 2007: ITUC/BWI learn of proposed \$360 million WB assistance to Bujagali hydroelectric project, including \$120 million from IFC
- Mar 2007: BWI and Ugandan affiliate plan organising campaign
- Apr 2007: IFC officially announces project
- May 2007: BWI affiliate encounters resistance to unionisation from contractors; BWI informs IFC of difficulties
- Aug 2007: Construction work begins on Bujagali project
- Sept-Oct 2007: BWI affiliate successfully recruits most workers without hindrance
- Oct 2007: Bujagali contractors accept to abide by industry CBA

15. Recent developments regarding implementation and revision of PS2

- Important loophole in the implementation of IFC's performance standards: IFC's growing investments in financial intermediaries (FIs) and in "undefined assets"
- Following Global Unions' complaints, IFC begins monitoring FIs own operations for compliance with PS 2 in late 2008, but no real monitoring of FIs' investments is yet taking place
- In early 2009, IFC puts in place a simplified multilingual complaints procedure for PS 2 violations
- In 2009, IFC begins a process for revision of the performance standards, with revised policy to be implemented in 2011
- Global Unions and affiliates take part in various consultations and submit written recommendations in November 2009

16. Global Unions' principal recommendations for PS 2 revisions

- Add all asbestos-containing products to IFC's exclusion list
- Require reports from financial intermediaries on PS compliance (or develop specific PS for FIs' compliance, as EBRD has)
- Require client companies to seek alternatives to retrenchments in consultation with workers and provide advance notice and severance pay to those discharged
- Require that contract workers are not hired in order to avoid obligations under national law or PS 2
- Improved information disclosure, notably of implementation reports (action plans, etc.)
- Longer notice period about new IFC projects (currently 30 or 60 days)

17. Strengths of IFC labour standards loan requirement

- PS 2 based on ILO's CLS conventions and spells out specific obligations of borrowing company
- Important incentive to respect and apply PS 2 since it is a compulsory requirement of the lender: non-abidance can be grounds for loan default
- IFC has been responsive to complaints based on possible violations of PS 2 and has delivered tangible changes in some investment projects

18. Weaknesses of IFC labour standards loan requirement

- Unless complaints filed about violations, IFC relies on self-reporting by borrowers on applying PS 2
- Short window – 30 or 60 days – between project publication and executive board’s loan decision
- Information-gathering and monitoring by IFC on fulfilment of PS 2 was initially weak, but significant improvements made
- Tendency to avoid considering loans to “problem industries”, thus preventing IFC from playing role of improving labour practices in sectors that could benefit most from the standards
- Pro-labour standards approach of PS 2 has been contradicted by high-profile WB publications, notably *Doing Business*, which gives top marks to egregious violators of CLS
- Creates confusion as to where WB/IFC really stand on labour rights; recent decision to revise *DB* may correct the problem