

IFC Safeguards Update
Meeting with International Labor Groups and ILO – Summary
Geneva, Switzerland, April 11, 2005

Participants: Neil Kearney, ITGLWF; Michael Urminsky, ILO; Lee Swepston, ILO; Guy Rider, International Confederation of Free Trade Unions; Dwight Justice, International Confederation of Free Trade Unions; Peter Bakvis, International Confederation of Free Trade Unions; Elizabeth Drake, AFL-CIO; Rachel Kyte, IFC; Motoko Aizawa, IFC; Julia Grutzner, IFC; Larissa Luy, IFC; Sandra Polaski, Consultant

Introduction and welcome: Rachel Kyte, IFC

Rachel Kyte opened the discussion with a brief overview of IFC, the objectives of the update, the role of the proposed Policy and Performance Standards, and the process going forward.

Discussion:

A number of questions were posed regarding the process of consultation and internal IFC process and Board approvals going forward. IFC clarified that:

- The Policy and Performance Standards would be submitted for Board approval, while the Guidance Notes will be submitted only for information;
- IFC's own procedure will also be updated: this lays out how IFC processes projects. For implementation, IFC will put tools into place, such as Human Rights Impacts Assessments etc.
- Stakeholders will be involved in the updating of tools, over the coming two to three years.
- IFC will not become labor – literate overnight and will rely on existing expertise.

The International Labour Organisation (ILO) offered to help IFC work out the practical implications. ILO has prepared a manual for the Asian Development Bank (ADB) on how to operationalize labor standards.

Participants made a number of points on priority issues for IFC to address in the Performance Standard:

- Make a balanced case for labor rights and the business case;
- Reference ILO Conventions in the Performance Standard, which will help create certainty around expectations; the ILO Conventions have little scope for misunderstandings;
- Revise the typology of countries in the text on workers associations. With respect to freedom of association and collective bargaining this does not really work. Where countries prohibit freedom of association, companies cannot do what the government does not allow.
- Revise the requirements on contract labor. IFC should try to cut through the complexities and focus on the core issues around the workers right to know who the employer is, what the associated rights are.
- Make reference to pre-existing instruments on retrenchment, including guidance provided by ILO, and the OECD. These address not only retrenchment, but also major changes in operations. OECD provides for reasonable notice to be given, ILO highlights the need for consultations.
- Address important implementation, enforcement, and review mechanisms, to which workers' organizations can be party, or perhaps trigger the mechanisms.

ILO highlighted comments it submitted to IFC regarding the introductory paragraph and IFC's description of the relationship between international and national law. In some countries national law is not silent on workers rights, but certain sectors are not covered by national labor law, for instance agriculture. China appears to be moving on a number of labor conventions, and looking ahead may soon ratify the convention regarding discrimination, and forced labor.

IFC Presentation and Discussion:

IFC presented some of its evolving thinking regarding Performance Standard 2. Below is a summary of participant suggestions and IFC responses.

Introduction of PS 2:

- Note that failure to respect workers' rights impedes development generally
- Address compliance with the rule of law
- Not use the possessive "their" in relation to workers
- Ensure that the standards is both rights based, and development based
- Note that the requirements are "consistent with the requirements contained in", instead of "several" requirements being "based on" ILO Conventions
- Not allow clients to choose between UN and ILO standards. Some UN requirements can be weaker, for instance on child labor the UN speaks to economic exploitation.
 - IFC noted that the requirements it places on its clients are those laid out in the Performance Standard.

Contracting / Supply Chain issues:

- The requirement should be that everybody is protected by staying within the legal and institutional framework. Clients should not be allowed to avoid their obligations by structuring contractor relationships with this aim, for instance by creating five layers of paper organizations. Clients should be required to work with legitimate enterprises.
- Make it a burden of proof on the client, that contracting relationships have not been set up for the main purpose of avoiding requirements.
 - IFC explained that different clients may have very different leverage in the market, depending on market share, size etc. The challenge is to differentiate between the situations and address both. Requirements may be more easily applied to Greenfield projects than when working with existing projects.
- Do not allow clients to circumvent their requirements under the Performance Standard through agreeing on stability clauses with the host governments.
 - IFC noted that not all investors have a direct relationship with the state.

Objectives:

- Make reference to governance in the objectives

Human Resources Policy:

- Important that information is accessible to workers.
- Be careful not to eliminate the "documentation" of the policy. Where the Human Resources Policy is not documented, it can lead to lack of clarity.

Workers Organizations:

- Revise the manner in which country situations are currently differentiated
- Present this requirement positively: The client shall "respect", or "take a positive attitude"
- Refer to situations where national law "prohibits", not "substantially restricts" workers' organizations, and differentiate between countries that restrict workers organizations and should not mean clients use alternative means to workers organizations.
- While freedom of association cannot be meaningful without the protection of certain political and social rights, it is within the realm of enterprises not to discourage or prohibit workers who want to self-organize those who prohibit them.

- Even where the law is silent, there is normally established practice (e.g. Belgium)
- Hold companies to one standard: not to discourage. There are nine countries that prohibit the respect of Human Rights. In these situations, you can only be complicit by doing business. There is no good guidance IFC can give to the private sector for these situations.
- Talk to ILO, international trade unions etc about how to deal with these very special cases in practice.
- Build on your draft language from your own November draft of the Guidance Note, paragraph 14 which was good language

Non-Discrimination and Equal Opportunity:

- Referring to discrimination with respect to “employment relationship” appears as though this requirement applies to access to employment only, not access to training etc.
- Include a list of personal characteristics that should not influence employment decisions and apply this in all national contexts
- National laws are very rarely silent; only three or four countries have no laws at all. Non-discrimination laws are always in the constitution, often in labor law
- It should read “inherent” job requirements. Even this is open for abuse, as it could be argued to be an inherent requirement for a receptionist to be young, female etc
- Take out the clause “by methods appropriate to national conditions and practice”.
- Drop the example in the Guidance Note, which refers to practice that is not compliant with International Human Rights standards.
- Annex D of the Guidance Notes on pregnancy tests could be wider. In reality, marriage is at times used as a reason to be fired.
- When affirmative action programs are justified, this should only be based on government policy to address long term discrimination, not up to the client to determine.

Retrenchment:

- A world standard exists on retrenchment practices. IFC should draw on ILO and OECD guidance for language on retrenchment. This guidance includes the need for consultation to mitigate adverse impacts, and to give workers reasonable notice of anticipated lay-offs, possibly a say in the decisions
- Clients should be required to mitigate adverse impacts to the maximum extent possible
- Client requirement should also apply to situations of major changes in operations with view to mitigating adverse social impacts
- This includes situations beyond privatizations, for example mergers causing a consolidation of the work force, or the move of a factory to a different location
- Refer to ILO 158 in the footnotes or Guidance Notes (GN)

Child Labor:

- Refer to “child labour”, not “harmful child labour”, which is imprecise. Enterprises understand that child labor is always abuse.
- Require clients not to use anybody under the age of 12, and only for light work between the ages of 12 and 14, at the end of compulsory schooling.
- Do not rely only on national labor law which often does not cover sectors like agriculture.
- Refer to ILO Convention 138, ratified by around 140 countries, which has tried to address different circumstances flexibly.

Forced Labor

- To require never working with prison labor can be too restrictive.

Working Conditions:

- The requirements under working conditions are really about workers' organizations and should be addressed under that heading.
- Clarify what the requirements are if no collective bargaining agreement exist, and the law is silent. The requirement could be prevailing industry conditions – otherwise a publicly financed project would undercut prevailing conditions.

Performance Standards 1 and 9:

- Address labor risks in Performance Standards 1 and 9 in addition to social and environmental issues.
- With respect to community engagement, place a higher level of obligation on clients regarding employee engagement on certain issues
- Look not only at mitigation but also at alternatives that would avoid adverse impacts, such as alternatives to retrenchment to avoid adverse labor impacts
- Involve workers in the review process, as addressed in Guidance Note paragraph 12
- Where labor risks are high, a labor assessment should be completed by IFC clients, and trade unions should be engaged in the process.

Tools and mechanisms / other issues:

- **Lessons learnt in IFC's Grupo M project** in the past 18 months should be drawn on for Guidance Notes paragraphs 47 to 50.
- Put in place three types of **mechanisms**:
 - A labor risk assessment, drawing on a variety of sources for information. Grupo M was considered a low risk case, and IFC looked at other sources of information only after a campaign was launched against the project's labor practices
 - Specific steps contained in the Action Plan
 - Specific steps regarding enforcement mechanisms. In the Grupo M case, measures were adopted ad hoc.
- It is best to have different options in place, rather than putting the '**nuclear option**' - plant closure - on the table.
- IFC noted that:
 - The Guidance Note needs to identify labor issues as risk more explicitly
 - More detail on labor assessment needs to be given in the Guidance Note
 - Further detail and guidance will need to be provided on what good grievance processes look like. IFC sees a layered approach with a sequence of activities: first, workers should go to the work place grievance mechanism, then, in sequence, the local and national grievance mechanisms; only then should IFC's own grievance mechanism be used. Effective redress mechanisms need to exist within the workplace.
 - IFC wants to learn from the Grupo M example which has helped already in the development of this Performance Standard. The desire is to react more systematically and less ad hoc to such issues.
 - IFC's 'nuclear option' is the decision to call a loan - this effectively stops IFC's leverage to improve the situation.
- Apply the requirements of the Performance Standard to clients and projects of different sizes, as they are pretty basic. If a very **small enterprise** cannot sustain basic employer obligations, it may be an inappropriate form of economic enterprise in its market.
 - IFC highlighted that a study of Brazil's Small and Medium Sized Enterprises (SME) sector found that if corporate social responsibility standards were enforced, the sector could still

be vibrant. IFC cannot exempt SMEs from applying the standards. It is therefore IFC's responsibility to find requirements that are applicable to all types of investments.

- At the very least, IFC needs to stand by the eight **Core Labour Standards (CLS)**. It is acceptable to ILO if the rest of the standards are considered areas for further development.
 - IFC is debating where to make mention of the CLS. This could be in the introductory material, or issue by issue.
- Clarify **IFC's own process**. Will labor issues impact categorization? Might labor issues lead to the refusal of a project? Consider not only client capacity but also the operating environment and third party issues.
 - IFC procedure will clarify how the Performance Standards will be processed. The application of this Performance Standards to different lines of business, including financial markets activities etc, is under discussion and will be clarified