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A Brief Guide to Using the IFC Performance Standards

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. PS 2 also obliges clients to meet requirements on workplace health and safety, retrenchment procedures, grievance procedures and supply chain issues.

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 PS 2 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 22 proposed IFC investment projects. Global Unions' Washington Office has provided assistance for most of these complaints or communications.

A table with descriptions of the 22 labour cases submitted to the IFC is at the end of this note. They have originated from four developing or "emerging" economy regions (Latin America-Caribbean, Central and Eastern Europe, Africa and Asia) and the ITUC and six GUFs (ITGLWF, ITF, IUF, UNI, BWI and ICEM) have been involved in various cases. The complaints or communications delivered positive results in the majority of cases: in 15 of the 22 cases company practices were corrected (at least partially), the project was withdrawn or additional monitoring to verify compliance was added. In one case unions' complaints were rejected and, as of this writing, outcomes were still pending for six cases.

Communications about PS 2 violations can go through three channels: the IFC's Environmental and Social Development Department, the IFC Compliance Advisor Ombudsman (CAO), or (as a last resort) by contacting labour-friendly Executive Directors of the World Bank. The latter represent member-country governments.

In the large majority of cases, trade unions have gone forward with communications to the IFC Environmental and Social Development Department, which is responsible for overseeing compliance with the Performance Standards. 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//>. This document is a brief guide to the accelerated complaint process with suggestions on how to use it most effectively.

1. Be informed about upcoming IFC projects.

It is preferable, but not obligatory, to submit complaints about proposed IFC projects 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.

The IFC 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, Global Unions' Washington Office and the IFC. The earlier the union alerts the IFC to a project's violations of PS 2 (either anticipated or ongoing) the more effective the complaint process will be.

To aid union vigilance on upcoming IFC investments, the 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.* Although early communication will have the greatest impact, it should be noted that **the IFC will review complaints submitted at any point in the life of the project.**

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 PS 2. To hold the IFC accountable to its commitment to uphold the core labour standards, it is important that trade unions document and communicate the company's specific non-compliance with PS 2. Complaints should therefore be made with direct reference to the provisions of PS 2, which is a four-page document consisting of 18 paragraphs. Trade unions should therefore be encouraged to review the text of PS 2, available online in Arabic, Chinese, English, French, Portuguese, Russian, and Spanish at <http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>.

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

* 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.

may be violating the IFC loan agreement. The guidance notes are also available online in the same seven languages at <http://www.ifc.org/ifcext/sustainability.nsf/Content/GuidanceNotes>.

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 PS 2 violation, unions should also prepare any available 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 to prepare the information required. A copy of the questionnaire 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 PS 2 violation, and for a **reference to the specific provision of PS 2 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 PS 2.

After preparing your answers, **access the online form** at <http://www.ifc.org/laborps2/>. Currently the form is only available in English. We have requested that the IFC post it in other languages but until that is done, unions in non-English-speaking countries may need 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 IFC 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. In either case, the follow-up process will involve the union organization submitting the complaint as the primary resource for information and Global Unions' Washington Office as a facilitator in those complaints with which it is associated.

If the IFC 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 to 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 could 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 IFC, 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, Global Unions' Washington Office is available to engage in these procedures with IFC headquarters on affiliates' behalf.

The IFC has been responsive to complaints based on possible violations of PS 2 and has delivered positive results in several, though not all, of these cases. A copy of the accelerated online complaint form and a log of the PS 2 cases raised with the IFC are attached to this document.

ITUC / Global Unions – Washington Office

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Communication Form for Issues under PS2

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 country

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 PS 2:

(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:

Communication Form for Issues under PS2

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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."

Log of Complaints Filed with the IFC under PS2 ITUC / Global Unions Washington Office

Date of first contact	Country	Company & IFC project number	Sector	Origin of Complaint	Nature of Complaint	Outcome
June 2004	Haiti	Grupo M #20744	Garment	Haitian union *	FoA: 300 workers dismissed for striking for union recognition.	Workers re-hired, union recognized, CBA concluded.
July 2006	Brazil	GOL airlines #24609	Transport	ITF	FoA: anti-union action & age discrimination regarding cabin crews.	Company corrects some anti-union action; the union chooses not to pursue discrimination charge.
Nov. 2006	Belarus	Detroit Investments #25113	Food & Beverage (Agri-business)	IUF & ITUC **	FoA: general anti-union repression in Belarus.	IFC does not accept union request to reject project financing, but does include additional project monitoring & training programme on FoA.
Jan. 2007	Bulgaria, Croatia, & Poland	Schwarz Group #22328	Retail	Ver.di (Germany) †	Company record of lack of social dialogue.	Improvements of local human resources management, including grievance mechanisms, electronic work-time registration.
Jan. 2007	Africa Region	CelTel #25514	Telecom	UNI-Telecom	Child labour: use of child street vendors to sell phone cards.	IFC claims employer is monitoring situation, invites documentation of violations. No other follow up.
Mar. 2007	Pakistan	KESC #25396	Electric Power	APTUC-Pakistan & ITUC	FoA: employer refuses to recognize union as CB agent.	IFC supports employer's stance that union must re-register, despite legal obstacles.
May 2007	Uganda	Bujagali #24408	Hydropower construction project	BWI	FoA: subcontractors resisting unionization.	IFC intervenes, obstacles to unionization lifted, contractors abide by industry CBA.
Nov. 2007	Belarus	A1 #26253	Retail	ITUC	FoA: general anti-union repression in Belarus.	IFC does not accept union request to reject project financing, but does include additional project monitoring & training programme on FoA.
Nov. 2007	Indonesia	Wilmar #25532	Agri-business	ITUC	Forced labour in supply chain (palm oil supplier).	IFC investigates & determines the supplier no longer used.
2008	Turkey	Sarten #25740	Production (tin cans, plastic containers)	Türk-İş †	FoA issues.	Project is active but no information about outcome.
2008	Turkey	Unitim #25832	Textiles, Apparel	Türk-İş †	FoA issues.	Company in bankruptcy.

* The Grupo M investment (Haiti) is considered a pre-PS 2 “test case” because IFC accepted to include a labour rights requirement in the loan contract at the suggestion of ITUC and ITGLWF.

** The Detroit Investments case (Belarus) was also presented to World Bank Executive Directors representing EU countries.

† Cases not submitted with assistance of ITUC/Global Unions Washington Office.

†† Cases submitted by the union through the Compliance Advisor Ombudsman (CAO).

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Date of first contact	Country	Company & IFC project number	Sector	Origin of Complaint	Nature of Complaint	Outcome
2008	Turkey	Atateks #26376	Textiles, Apparel	Türk-İş †	FoA issues.	Company in bankruptcy.
Jan. 2008	Bangladesh	Kazi-Poultry (N/A)	Agri-business	ITUC	Warnings about local conditions concerning bird flu, child labour, FoA.	Proposed investment is not pursued.
May 2008	Jordan	Disi Water #26620	Infra-structure	AFL-CIO	FoA: no rights for migrant workers and other issues.	Project is suspended.
Apr. 2008	Nigeria	Ecobank #26872	Finance	UNI-Finance	FoA: various incidents of anti-union action.	IFC adopts new procedures to monitor projects of “financial intermediary” (FI) status; company changes practices.
July 2008	Colombia	Avianca #25899	Transport	ITF	FoA: discrimination against union activists in job assignments.	Investigation is carried out, results pending.
Sept. 2008	Bulgaria, Romania, & former Yugoslavia	Soravia Real Estate #26132	Real Estate	BWI	Request for information about project.	IFC responds and provides requested information.
Sept. 2008	Panamá	La Autoridad del Canal de Panamá #26665	Infra-structure	AFL-CIO & ITUC	Question about which labour code has jurisdiction over project.	IFC verifies jurisdictional status of project.
Sept. 2008	Turkey	Standard Profil #26098	Oil & gas	Türk-İş & ICEM ††	FoA: problems in recognition of trade union representative by employer.	Union agrees with IFC programme for training of management and union on FoA.
Oct. 2008	Turkey	Assan Alüminyum #26648	Manu-facturing	Türk-İş ††	FoA: problem of union recognition in privatized firm.	Union agrees with IFC programme for training of management and union on FoA.
Feb. 2009	Guatemala	GyT #26634	Finance	Local organization	FoA in finance sector.	Outcome pending.
Aug. 2009	DRC	Millicom #28033	Telecom	UNI-Telecom	FoA: hostile stance towards union; inadequate consultation regarding planned retrenchment; child labour in supply chain.	Outcome pending.

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