

Core Labour Standards And International Organizations: What Inroads Has Labour Made?

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Over its almost ninety years of existence, the International Labour Organization (ILO) has adopted 188 conventions that define international labour standards in a wide variety of areas, such as limits on working time, occupational health and safety standards, employment policy, and basic working conditions for specific categories of workers. For ILO conventions to have legal status and be enforced in each member state, they must be ratified by the national government. However there is a group of eight fundamental rights conventions, commonly known as the Core Labour Standards (CLS) that apply to all ILO member states whether or not they have ratified them.

1. The ILO Declaration

The International Labour Conference decided to make application of the eight fundamental rights conventions a de facto condition of ILO membership when it adopted the *ILO Declaration of Fundamental Principles and Rights at Work* in 1998. The ILO Declaration defined the four principles concerning the fundamental rights of those eight conventions (ILO Conventions 29, 87, 98, 100, 111, 105, 111, 138 and 182):

- Freedom of association and right to collective bargaining
- The elimination of all forms of forced or compulsory labour
- The effective abolition of child labour
- The elimination of discrimination in respect of employment and occupation

In the ten years since the *ILO Declaration* was adopted, several organizations, foremost among them the international trade union movement, have striven to get other international agencies or agreements to include measures which ensure that their policies and actions are consistent with CLS. Much of the atten-

tion of trade unions, grouped together in the International Trade Union Confederation (and prior to the ITUC's creation in November 2006, in the ICFTU and WCL), the Global Union Federations (GUFs) and TUAC, has been focused on international trade and financial institutions, whose activities have a huge impact on labour markets. They have also supported efforts by the ILO to extend observance of CLS to all of the United Nations system, of which the ILO is part. Some ITUC affiliates have also recently challenged their countries' development cooperation and export credit agencies to adopt policies that require the projects they finance to respect CLS.

Not a single government voted against the *Declaration of Fundamental Principles and Rights at Work* when it was adopted in 1998, yet there has still been opposition to efforts to ensure that the 181 member countries of the ILO live up to their commitment. While other multilateral bodies on which these same governments are represented have expressed support in principle for CLS, they have often been resistant to change practices that entail violation of CLS. The resistance has been the strongest among those agencies that have the most important impact on the

labour force, notably the international trade and financial institutions. Nevertheless, some important steps towards compliance with CLS have taken place, even among institutions and agencies that previously declared the standards to be beyond their areas of concern or responsibility.

This paper describes recent advances in CLS compliance among institutions that are multilateral or have an international mission; the international trade union campaigns that have contributed to the progress; the new opportunities for improved enforcement of CLS that have resulted; and the challenges for the trade union movement in building on these advances.¹

2. “Mainstreaming” core labour standards in the UN system

A year after the adoption of the *ILO Declaration* in 1998, the ILO incorporated CLS, together with other labour rights, as one of its four pillars of its Decent Work Agenda (DWA). The other three pillars are employment creation and enterprise development, social protection, and governance and social dialogue. With the support of trade unions, the ILO has sought to obtain official recognition for the DWA by the highest bodies of the UN, which occurred when the 2005 General Assembly adopted a resolution expressing support for “full and productive employment and decent work for all ... as part of our efforts to achieve the Millennium Development Goals”. The UN’s Economic and Social Council elaborated on this commitment in 2006, by developing a toolkit to promote DW. The UN’s Chief Executive Board for Coordination, chaired by the Secretary General, adopted a *Toolkit for Mainstreaming Employment and Decent Work* in April 2007.

The ILO states that the *DW Toolkit* is designed “to help organizations throughout the multilateral system assess and improve employment and decent work outcomes of their own policies, programmes and activities”.² It provides a series of self-assessment questions that each agency should use to determine how its activities affect DW outcomes, including 61 specific questions for identifying whether it is taking sufficient measures to ensure that its programmes and activities are in compliance with CLS, how the effects could be taken into account in a more systematic way, and how to promote concrete measures to optimize DW outcomes, preferably at the programme design stage.³ The ILO has engaged in sensitizing workshops for other UN agencies and the *DW Toolkit* will be used for diagnostic exercises of UN work in several “One UN” countries, i.e. pilot countries where different agencies are engaged in a process to improve inter-agency cooperation.

Although the *DW Toolkit* has been called for and adopted by the highest levels of the UN, it is a self-improvement tool and there is no obligation for agencies to report back to higher UN authorities on activities that are in non-compliance with CLS or to correct them once identified. The global trade union movement may wish to call for a more prescriptive approach, rather than leaving it up to individual agencies whether and how they will engage in DWA mainstreaming, and, as it has done with some non-UN agencies, call attention to cases of non-compliance with CLS in UN agencies. As of this writing, the work within the UN for “mainstreaming” CLS through the DWA is only at its beginning stages, but it is obvious that the agencies will have to examine their procurement and contracting practices in the course of this work. The UN’s endorsement of the DWA and the subsequent adoption of the *DW Toolkit* could lead to wider application of core labour standards by UN agencies, but additional measures may be necessary for the agenda to be taken seriously by all of the UN system.

1 This paper deals with advances in CLS compliance within multilateral organizations and treaties. It does not attempt to describe important advances made in other areas, such as commitments to comply with CLS in agreements negotiated between GUFs and multinational enterprises.

2 ILO, *Global Employment Trends*, January 2008, Geneva, p. 6

3 ILO, *Toolkit for Mainstreaming Employment and Decent Work*, Geneva, 2007, p. iv

3. CLS and trade agreements

3.1. WTO

Concerned that international competition for trade and investment could put downward pressure on workers' rights, trade unions began pushing for the inclusion of a basic workers' rights clause in the World Trade Organization's rules even before the first WTO ministerial in 1996. Because of opposition from certain developing countries that claimed that it was disguised protectionism and from critics who said that including a labour mandate in the WTO was overly burdensome, a workers' rights clause was not integrated into the WTO's mandate. However, the first and fourth WTO Ministerial Conferences did adopt language committing the WTO "...to the observance of internationally recognized core labour standards". And, despite the exclusion of labour issues from the agenda of the Doha negotiating round, some WTO-ILO cooperation was realized in 2007 when the two institutions produced their first joint publication, *Trade and Employment: Challenges for Policy Research*. Especially if the Doha round should conclude, it is likely that pressure for a formal WTO mechanism on the trade and CLS relationship will continue to build in the coming years. In the meantime, the ITUC has published reports since 1997 on WTO members' records on CLS compliance on the occasion of Trade Policy Reviews for WTO members, even though there is no WTO requirement on CLS.⁴

3.2. CLS in other trade agreements

Support for labour standards in trade is stronger at the bilateral and regional levels. Most North American and European Union free trade agreements (FTAs) now refer to, if not require, core labour standards compliance.

a. United States

The CLS policies in US trade agreements have evolved since the 1994 NAFTA⁵ agreement, which included a labour "side agreement" in an attempt to respond to opposition from North American unions. The agreement made reference to international labour standards but only required signatories to abide by their own national labour laws. More recent agreements, such as the US-Jordan Free Trade Agreement (2000) and the US-Morocco FTA (2004), refer to CLS compliance but require only that signatories "strive to ensure" that the standards are met. Other recent agreements, such as the 2005 CAFTA⁶, contain NAFTA-style provisions that require countries to enforce their own labour laws, but also emphasize the ILO's role in helping improve and enforce those laws. The newest agreements, such as the US-Peru FTA and US-Panama FTA, require that countries include and effectively implement the CLS within their national labour law.

Enforcement of CLS requirements in US trade agreements has been spotty in the past, but may improve as the agreements move away from ineffectual enforcement mechanisms. NAFTA, for example, required each of the three signatory countries to maintain a National Administrative Office to address public or government complaints about non-compliance with the labour criteria. However, no case ever progressed beyond ministerial consultations or resulted in fines or sanctions.⁷ The US-Jordan FTA also included a review process for violations of the labour clauses but did not allow for public complaints, meaning that trade unions were shut out of the complaints process. The Panama and Peru FTAs, on the other hand, show improvement in that they no longer relegate labour issues to a separate dispute mechanism, but subject them to the same procedures as the commercial provisions of the agreements. The current US Congress also appears to be taking the labour rights aspects of trade agreements more seriously: an FTA signed by

4 The WTO uses its Trade Policy Review Mechanism (TPRM) to analyze members' trade policies and their effects on the world trading system.

5 NAFTA (North American Free Trade Agreement): Canada, Mexico and the US

6 CAFTA (Central America Free Trade Agreement): US, Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

7 ITUC, "Trade Unions and Bilaterals: Do's and Don'ts", 2008.

the US and Colombia in late 2006 has yet to be approved in Congress because Democratic party leaders want assurances that Colombia will improve its record on labour and human rights. US trade union leaders have said that the FTA should not pass until it is renegotiated to protect Colombian trade unionists, who are killed at a rate of nearly one per week.⁸

The majority of US FTAs take a punitive approach towards CLS violations, even though the penalties are often only theoretical. Probably the most successful US FTA with regard to CLS was the 1999 agreement with Cambodia, which rewarded improvements in CLS enforcement with increased US market access for Cambodian garment exports. The US and Cambodian governments and the Cambodian garment manufacturers' association shared the costs of an ILO-monitored programme to improve compliance with CLS. However, the expensive and labour-intensive model of the Cambodian programme has not been easy to replicate. The CAFTA agreement, for example, also aspires to a cooperative approach to improve labour standards, but lacks both the funding and incentive structure of the Cambodian programme.

b. European Union

If US FTAs take a "stick" approach to CLS enforcement, European agreements favour a "carrot" approach. Like recent US FTAs, all EU trade agreements refer to the CLS. But unlike US agreements, most do not actually provide for enforcement. Instead, the EU approach focuses on technical assistance and cooperation to improve labour rights as part of a broader sustainable development and human rights approach to trade.⁹ For example, early agreements, such as the 1999 EU-South Africa agreement, cite the ILO and its standards as the basic "reference point" for labour rights but do not contain mechanisms for resolving complaints around workers' rights violations. The more recent EU-Chile FTA includes CLS as well as broader human rights goals, but does not

include specific enforcement measures.¹⁰ The economic partnership agreement concluded in December 2007 between the EU and the "Cariforum" group of Caribbean states includes more comprehensive references to CLS, although they are again of a promotional, rather than a punitive nature. While the EU trade agreements are not necessarily linked to specific cooperation programmes on labour rights, many EU member governments provide funding through their development cooperation or aid agencies to strengthen and build capacity of trade unions in developing countries.

c. Canada

Canada's early FTAs follow a model similar to that of the US, but newer agreements have evolved to incorporate both US-style punitive measures and European-style cooperative measures. The 1996 FTA with Chile and the 2001 Canada-Costa Rica FTA both made reference to the CLS, but only required the parties to effectively enforce their national labour law. The Canada-Chile FTA allowed for fines up to \$10 million, but did not provide for trade sanctions. The later Canada-Costa Rica FTA allowed arbitration panels to hear cases on violations of CLS, but did not provide for fines or other sanctions, only cooperative measures.¹¹ The Canadian FTA negotiated with Peru in January 2008 has the strongest CLS requirements and combines both punitive and cooperative measures. Signatories are required to respect CLS as well as their domestic labour laws. Violations are punishable by fines, which then are put into a special fund to strengthen and enforce workers' rights.

d. Mercosur

The Mercosur countries of Brazil, Argentina, Uruguay and Paraguay adopted a declaration on labour standards in 1998. The declaration includes, but reaches beyond, the CLS. Enforcement is assured by a dedicated commission that oversees adherence and advises member countries on compliance. Trade unions

8 Hugh Bronstein, "Colombia trade deal dead this year, US unions say", Reuters, 12 February 2008.

9 ITUC, *ibid.*

10 ITUC, *ibid.*

11 Thomas Greven, "Social Standards in Bilateral and Regional Trade Agreements", FES Occasional Paper, N° 16, Geneva, March 2005.

in the region formed their own coordinating body, the *Coordinadora de Centrales Sindicales del Cono Sur*, to advise and pressure the Mercosur on labour issues and other concerns of trade unions with regards to the regional integration process.

e. Unilateral trade arrangements

Both the US and EU consider core labour standards in their Generalized System of Preference (GSP) programmes, which grant non-reciprocal trade preferences to developing countries. The US considers countries' adherence to "internationally recognized labour standards" as well as some other basic labour standards.¹² The US has effectively, but selectively, used GSP to demand better labour rights enforcement from some of its trading partners. The EU's GSP provisions include CLS and also allow for the removal of preferences for a country that violates them, as in the cases of Burma, suspended from the GSP since 1997, and Belarus, suspended in June 2007. In keeping with its emphasis on cooperation rather than punishment, the European "GSP+" programme provides additional trade incentives for countries that incorporate ILO conventions in national labour law and enforce them. Countries granted "GSP+" for their CLS adherence – which oddly include a few not known for their respect of CLS such as Colombia and Georgia¹³ – benefit from additional duty reductions.

4. Incorporating CLS into the World Bank's operations

4.1. Background

When an international trade union delegation met with World Bank officials in early 1999, about half a year after the adoption of the *ILO Declaration*, they were told that the World Bank could agree with some, but not all, of the core labour standards and would not take measures to ensure that Bank-funded projects complied even with the standards which it

supported. The Bank argued then, and for the next few years, that empirical evidence on economic benefits of freedom of association and right to collective bargaining was "mixed" and that these standards had "political as well as economic implications".¹⁴ Implausibly, the Bank's labour experts appeared to believe that forced labour, racial or gender discrimination and child labour had no political connotations, but that collective bargaining rights did.

By 2002 the World Bank began to change its tune on CLS and development, especially after it published a survey of economic literature that found no support for the Bank's prior assumption that high levels of unionization and bargaining coverage tended to discourage growth (it did find that higher rates of unionization and bargaining were associated with more equal distribution of income).¹⁵ In early 2002 the World Bank's president announced: "the Bank supports the promotion of all of the four core labour standards but ... does not apply conditionality on these standards in its lending".¹⁶ In late 2003 the Bank went beyond rhetorical support for CLS when the head of the Bank's private-sector lending arm, the International Finance Corporation (IFC), agreed with ICFTU representatives that all borrowers should be required to comply with CLS. He stated that such a requirement would be included in the IFC's new loan safeguards policy. The IFC was then striving to be a leader among all banks, public and private, in developing social and environmental standards in development project financing, and seemed to understand better than the rest of the World Bank that it had to practice what it preached if it was to have any credibility when expressing support for CLS.

4.2. IFC's performance standard on labour

It was almost three years before the IFC made good on its commitment, but the World Bank's executive board adopted the new *IFC Policy and Performance Standards on Social and Environmental Sustainability* in February 2006 and began applying it to all new IFC

12 There is no explicit reference to the ILO conventions, though three out of four CLS are covered. Non-discrimination is not included.

13 See European Commission Decision 2005/924/EC for the list of GSP+ beneficiary countries.

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

15 Toke Aidt and Zafiris Tzannatos, *Unions and Collective Bargaining: Economic Effects in a Global Environment*, World Bank, Washington, 2002

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

loans and investments in May 2006.¹⁷ In addition to making observance of CLS an obligation for all projects, IFC's "Performance Standard 2: Labour and Working Conditions" (PS 2) requires that borrowers meet other basic labour conditions on human resources management, retrenchment, occupational health and safety and supply chain management. Besides referencing the ILO's eight CLS conventions, PS 2 spells out the specific obligations of the borrowing company in ensuring that its operations do not violate CLS. The ITUC and GUFs supported the IFC's adoption of PS 2 and offered their cooperation for implementing the standard.

After the adoption of PS 2 in 2006, the IFC hired labour experts, created a Labour Advisory Group, trained its staff and prepared a number of guides and good practice notes to advise both IFC staff and client companies on implementing its labour standards requirements.¹⁸ Global Unions and other interested parties were consulted on the content of these instruments, as they were during the design of PS 2 and its accompanying guidance notes.

4.3. Monitoring CLS compliance in IFC loans

Even before the IFC formally adopted PS 2, it had taken some measures to ensure that projects respect fundamental workers' rights. In January 2004, the IFC agreed to include a freedom of association condition in a loan to the Grupo M clothing manufacturer in the Dominican Republic, after the ICFTU and the International Textile, Garment and Leather Workers' Federation (ITGLWF) informed IFC that the company had been implicated in dismissals and beatings of workers who tried to form a union. The loan condition proved to be instrumental in protecting workers at a new Grupo M plant in a Haitian export processing zone, when in mid-2004 hundreds were fired after protesting management's refusal to recog-

nize and negotiate with the union a majority had joined. Although it took several months of pressure and mediation, in 2005 the dismissed workers were rehired. By December of that year, Grupo M and the Haitian union approved a collective agreement – the first in the Haitian EPZ – that made improvements in the very low wages and working conditions.

Since the adoption of PS 2, the ITUC and GUFs have alerted IFC to several cases of possible violation of the standard in current or proposed investments. These have included concerns about anti-union action in an airline in Brazil; refusals to recognize and negotiate with unions in a power company in Pakistan and a dam project in Uganda; child labour in a mobile phone company in Africa; restrictions on trade unions and occupational health problems in a poultry plant in Bangladesh; and an investment in the retail sector in Belarus, where trade unions are severely repressed.

The IFC took action to correct the problematic practices in some of these cases. For example, its interventions helped the Ugandan construction union (affiliated to Building and Wood Workers International-BWI) achieve recognition and application of a collective agreement in the IFC-funded project, and stop anti-union actions of the Brazilian airline, to which the International Transport Workers' Federation (ITF) and its Brazilian affiliate had called attention. Other cases did not have a satisfactory outcome from the unions' point of view; for example in Pakistan, where IFC endorsed the company's stance that it had no legal obligation to negotiate with the union. As of this writing, some of the cases raised by unions are not fully resolved. In at least one case, the unions' actions have led to a delay in the investment proceeding, as IFC seeks to establish a corrective action programme with which the company must agree to be eligible to receive a loan.

17 IFC, *Policy Performance Standards on Social and Environmental Sustainability*, Washington, April 2006. Several members of the World Bank's board of directors who supported the adoption of a CLS loan requirement proved to be helpful in obtaining improvements proposed by the ICFTU, such as explicit references to the eight CLS conventions of the ILO, which were not included in the first draft prepared by IFC. These directors included, but were not limited to, representatives of EU member governments whose development ministries had issued policy papers in favour of improved CLS compliance.

18 The basic guide explaining what IFC clients must do ensure compliance with PS 2 is: IFC, *Guidance Note 2: Labor and Working Conditions*, Washington, July 2007

Global Unions consider the adoption and implementation of IFC's CLS requirement for all loans a major advance. However important challenges remain in ensuring that the standards are effectively applied in all IFC projects. Unless complaints are filed by trade unions or other parties about violation, the IFC relies largely on borrowing companies' self-reporting; IFC's own information-gathering and monitoring mechanisms only cover a small portion of the activities it finances. Also, unions have only a short period of time – 30 or 60 days depending on the type of project – between the public announcement of a loan and its submission to the Bank's board for approval, to react to potential violations of PS 2. Early reaction is important because the IFC sets out specific corrective action and monitoring procedures for the borrower before the loan is approved. Global Unions have urged IFC to improve its information and consultation processes so as to allow earlier input from unions about risks of potential violation of CLS in each project.

4.4. CLS in World Bank public infrastructure projects

The international trade union movement's proposals, dating back to 1999, to ensure that projects financed by the World Bank group respect CLS were not limited to the Bank's investments in the private sector. However the adoption of a CLS requirement by IFC proved to break the barrier. Once the IFC had made CLS a standard loan requirement, it was no longer credible for other divisions to argue that policies against involvement in "political" matters prevented the Bank from requiring compliance with the standards. Trade unions also pointed out that because many large development projects received financing from both IFC and public-sector divisions of the Bank, it could be a logistical nightmare if some of the project contractors (those financed by IBRD and IDA) could engage in discrimination and union-busting, while others (those financed by IFC) would have to respect CLS. In early 2004, a few months after the IFC committed to adopting the requirement, the World Bank's procurement department agreed to receive an expert from BWI, who spent two months

preparing and presenting recommendations for bringing the Bank's construction contracts into compliance with CLS.

The Bank's procurement department was slow to react to BWI's written recommendations, but it finally did so in 2006 as the executive board was preparing to adopt IFC's PS 2. In December 2006 the World Bank's president and the director of operations officially informed the ITUC that the Bank would include CLS clauses in its Standard Bidding Document for Procurement of Works (SBDW), which is used by the public-sector lending divisions of the Bank, the IBRD and the IDA, for major public projects (costing more than US\$ 10 million – principally infrastructure projects). The World Bank would also sponsor inclusion of the new clauses in the "harmonized" SBDW used by all of the multilateral development banks, i.e. the World Bank and the regional development banks. Further meetings took place to discuss precise language, and the new CLS clause, modelled largely on sections of IFC's PS2, was adopted by the Bank in April 2007 and began to be included in new loan contracts.¹⁹ The process for harmonization of the SBDW of all the development banks began in September 2007.

The World Bank has suggested cooperation with BWI and ITUC for implementation of the new loan requirement, but has not yet adopted the kinds of training programmes and guides that IFC did when it adopted PS 2 in 2006. Unions continue to press the Bank on this absence. An additional concern is that the Bank is considering a "country systems" approach to procurement, whereby client countries receiving World Bank aid for infrastructure construction would use their national procurement systems instead of the Bank's. Although the World Bank says it will use country systems only when the country's procurement system and contract conditions are equivalent to its own, trade unions and the ILO have raised concerns that the Bank is not giving adequate consideration to labour issues in country procurement systems. While not opposed to stronger national control over Bank funds, Global Unions believe the Bank must insist that a country have a CLS require-

19 <http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Works-4-07-ev1.pdf>, p. 154 and 232-233

ment in its procurement contracts and that it have the capacity to enforce it before country systems are used. The trade union movement believes that the Bank must intervene directly when necessary to ensure full implementation of CLS requirements in Bank-financed projects.

4.5. World Bank's *Doing Business* Report: discouraging respect for CLS?

Global Unions' final concern is the highly contradictory message the World Bank puts out with regard to its institutional position on labour rights. At the same time the Bank requires that its borrowers or contractors comply with CLS, its highest-circulation publication, an annual report called *Doing Business*, grades countries according to whether national regulations exist on hours of work, minimum wages, recourse against unjust dismissal, etc. *Doing Business* gives the best ratings to countries that have the fewest labour regulations. Given this rating system, it is not surprising that *Doing Business* gives some of the best scores for "Employing Workers" to countries that have poor records for respecting workers' rights. Some particularly egregious violators of workers rights, including Belarus, Eritrea and Saudi Arabia, receive among the best ratings. The World Bank uses *Doing Business* to pressure countries to deregulate their labour markets and as a criterion for allocating concessionary loans. Global Unions have proposed that the Bank end this flagrant lack of coherence on labour standards by removing labour from the mandate of the department that prepares *Doing Business*.

5. CLS at other multilateral development banks

As mentioned above, the major regional development banks are involved in a process for a harmonized standard bidding document that will include clauses requiring observance of the CLS.²⁰ Each of these is also engaged in processes for adopting CLS policies or has taken other steps for observance of CLS in its operations.

a. Asian Development Bank (ADB)

The ADB was the first multilateral development bank to officially adopt a policy requiring observance of the CLS in bank operations, following suggestions made by Asian trade union bodies. The ADB's board of directors in 2001 adopted a Social Protection Strategy stating: "In the design and formulation of its loans, ADB will comply with the internationally recognized core labour standards".²¹ In 2002 the ADB signed a memorandum of understanding with the ILO for putting this policy into practice, but progress was slow. It was not until 2006 that the ADB launched a *Core Labour Standards Handbook*, intended to guide staff in implementing the policy.²² The handbook provides useful explanations on how CLS are supportive of the ADB's development and poverty reduction mandate and puts forward a number of suggested steps. However the ADB is not as clear as the IFC in spelling out staff or borrowers' responsibility in implementing the 2001 CLS mandate. The handbook frequently advises that projects "may" or "can" include measures concerning CLS compliance, thus suggesting that compliance is voluntary even though the 2001 policy states that ADB loans "will comply" with CLS. It appears that the ADB has not taken further steps for implementing the handbook, but it is preparing a staff guide on working with trade unions.

b. Inter-American Development Bank (IDB)

Starting in 2000, trade unions of the Americas urged the IDB to adopt a CLS loan requirement. The IDB took little action until its private sector department prepared a guide in 2006 called *Managing Labour Issues in Infrastructure Projects*, which devotes considerable space to the CLS and their application, as well as to other labour issues. The guide draws heavily on ILO sources and provides useful practical tools, but its influence was blunted by a cautionary note placed at the beginning of the document: "The guidelines do not necessarily reflect specific requirements for financing by the IDB nor do they reflect the official position of the Bank".²³ Although IDB officials have

20 The banks involved in this harmonization processes are the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank.

21 ADB, *Social Protection* Manila, 2002, p. 56

22 ADB, *Core Labor Standards Handbook*, Manila, 2006

23 IDB, *Managing Labor Issues in Infrastructure Projects*, Washington, 2006, p. i

expressed support to trade unions for a general policy requiring that IDB operations comply with CLS, the Bank undertook a major “realignment” process in 2007 involving the departure of hundreds of staff, which has slowed down progress on this and many other policy initiatives.

c. European Bank for Reconstruction and Development (EBRD)

In late 2006 the EBRD began consultations with trade unions, employers and the ILO with the objective of adopting a new policy to update the labour component of its “Environmental Policy”, which dated from 2003 and required compliance with three of the four CLS. In a paper released in mid-2007, the EBRD stated: “To match commitments of IFC and others, the Policy should embrace all four core labour standards (including Freedom of Association and Collective Bargaining).”²⁴ The draft policy was issued in February 2008 and largely replicates IFC’s PS 2, but with some changes.²⁵ It would apply to all loans of the EBRD, a large majority of which go to the private sector. The Bank expects that the board of directors will adopt the new EBRD Environmental and Social Policy in mid-year 2008.

d. African Development Bank (AfDB)

The AfDB began internal discussions on adopting a CLS policy for its lending in early 2008. In addition to harmonizing with the World Bank’s CLS clauses for its procurement contracts, the AfDB is considering adopting an IFC PS 2-style requirement for its private sector lending activities.

e. Equator Principles

One offshoot of the IFC’s social and environmental performance standards is the “Equator Principles”, modelled on IFC’s standards and adopted by private banks engaged in developing-country project finan-

cing. In 2003, ten banks adopted the principles based on IFC’s original loan safeguards. The principles were modified and expanded in July 2006 following IFC’s adoption of PS 2 and the other standards.²⁶ By February 2008, sixty banks in twenty-four countries (including some state-owned entities) had endorsed the Equator Principles, meaning that they committed to applying them to all projects with a capital cost of \$10 million or more. The IFC estimates that the Equator banks cover well over 80 per cent of global development project lending. However, neither IFC nor any other body monitors compliance. The participating banks must report annually on implementation of the principles, but there are no specific reporting requirements. Some environmental groups have criticized the lack of monitoring and have given examples of projects financed by Equator banks that appear to violate the environmental standards. Global Unions have not engaged in monitoring application of the Equator Principles.

6. CLS in bilateral development agencies

6.1. Bilateral development aid

Many of the countries that led the charge for better enforcement of core labour standards in IFI-sponsored projects cite CLS promotion as a goal of their development aid to poorer countries. For example, Germany’s action programme on poverty reduction declares: “One of the vital prerequisites for lasting poverty reduction is absolute adherence to human rights as well as to core labour standards. The German government ... supports its partner countries’ efforts to implement the principles enshrined in these standards.”²⁷ Norad, the Norwegian bilateral aid agency, also recently emphasized that it is “...intensifying efforts to promote workers’ rights, which are enshrined in the ILO conventions”.²⁸ Britain’s Department for International Development (DfID) similarly enunciated support for CLS in a 2004 white paper.²⁹

24 EBRD, “Environmental Policy Discussion Paper”, London, June 2007, p. 7

25 EBRD, *Environmental and Social Policy* (draft), London, February 2008, p. 20-23

26 <http://www.equator-principles.com/>

27 BMZ, *Poverty Reduction – a Global Responsibility: Program of Action 2015* Berlin, p. VI.

28 http://www.norad.no/default.asp?V_ITEM_ID=1620&V_LANG_ID=0

29 DFID, “Labour standards and poverty reduction”, London, 2004

Despite their support for the CLS, Germany, Norway, Britain and most other donor countries do not yet have CLS conditions in their lending policies for public sector projects. In fact, most are only beginning to consider making CLS compliance a hard requirement. States the German programme, “The government *will examine opportunities* [emphasis added] for incorporating core labour standards into government contracts for development cooperation activities.”³⁰ At present, only Denmark’s aid agency, Danida, requires that its development projects “be implemented under observation of fundamental rights of workers”.³¹ Contractors on Danida-funded projects must sign a declaration stating they comply with the fundamental principles and rights at work as defined by the ILO.³²

It seems likely that a number of donor countries’ bilateral aid agencies will eventually adopt CLS requirements for their project lending. Many have expressed their commitment to do so during recent consultations with trade unions, and a number of the countries’ private sector development finance institutions (DFIs) have already adopted CLS requirements. Given that the World Bank introduced CLS standards in its private sector arm, the IFC, before implementing similar requirements for public sector projects, it is not surprising that donor countries may follow the same model in their bilateral operations.

6.2. Bilateral Development Finance Institutions

Like IFC, bilateral DFIs invest in private sector companies operating in developing countries. Many have followed the IFC’s lead of championing the “business case” for CLS compliance, and some refer directly to IFC performance standards in their policies. The Netherlands’ FMO, for example, updated its sustainability policy following IFC’s adoption of its CLS requirements in 2006 to state: “FMO will apply [IFC] performance standard 2 as a baseline and strive to

fully apply the ILO Conventions on CLS and on Basic Terms of Employment in our investments”.³³ Other DFIs with core labour standards requirements include Denmark’s IFU, Germany’s DEG, and Britain’s CDC and its Emerging Africa Infrastructure Fund. Sweden’s SIDA states that “all PSD activities shall promote...core labour standards”, but it is not clear whether any CLS requirements are included in SIDA’s operational policies.³⁴

Few bilateral development finance institutes provide public information about how they monitor and enforce compliance with CLS requirements. A notable exception is Denmark’s IFU, whose policies require a client to complete an action/improvement plan and annual reviews, if necessary, to ensure compliance. Other DFIs have indicated that they will train their staff on CLS compliance and enforcement. Norway’s Norfund and Finland’s Finnfund held trainings with the ILO in December 2007 to teach their investment officers about CLS in emerging markets.³⁵ Norfund currently requires its clients to adhere to all four CLS, while Finnfund’s policy states that it will not support projects that use child or forced labour.

6.3. Monitoring Core Labour Standards in Foreign Direct Investment

Nearly all of the countries that have implemented CLS policies in their DFIs make some reference to CLS compliance in their policies for their national export credit agencies. These agencies act as financiers or insurers for domestic private sector businesses that invest or operate abroad. Even the US export credit agency, OPIC, has a policy that bars it from providing assistance to any activity “that contributes to the violation of internationally recognized workers rights [CLS and basic wage, health, and safety standards]”, even though the US itself has not ratified all eight CLS conventions.³⁶

30 BMZ, *ibid.* p. 24.

31 Danida, *Strategic Framework for Danida’s Mixed Credit Programme*, Copenhagen, 2007

32 From the “End User/Buyer’s Agreement” required for Danida mixed credits.

33 FMO, *FMO Sustainability Policy*, The Hague, Appendix 1

34 SIDA, “Policy Guidelines for SIDA’s Support to Private Sector Development”, Stockholm, 2004, p. 8

35 http://www.norfund.no/index.php?option=com_content&task=view&id=194&Itemid=78

36 <http://www.opic.gov/doingbusiness/investment/workersrights/index.asp>. Of the CLS conventions, the US has only ratified conventions 105 (abolition of forced labour) and 182 (worst forms of child labour).

Export credit agencies generally do not provide much information about how they enforce their CLS policies, so the impact of these policies is not clear. However, some countries actively monitor their companies' adherence to CLS via the voluntary OECD Guidelines for Multinational Enterprises.³⁷ The Guidelines are voluntary principles on business conduct, which include the CLS as well as much broader labour requirements. Although compliance with the Guidelines is not legally required, OECD countries must have a designated National Contact Point (NCP) to respond to citizens, unions and NGOs that allege that a company has violated the Guidelines in its overseas operations. A handful of countries – Belgium, Chile, Denmark, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Norway and Sweden – have tri- or quadripartite NCPs that include trade unions in their review of labour complaints.

7. Conclusion

Since the adoption of the *Declaration of Fundamental Principles and Rights at Work* a decade ago, undeniable progress has taken place in incorporating CLS requirements into the operations of various multilateral bodies. The steps are largely the result of pressure from national trade organizations working in close coordination with the ITUC and GUFs. Recent policies adopted by some international trade and finance organizations recognize the ILO as the standard-setting body responsible for defining and implementing the CLS, and include specific measures that the particular agency must take to ensure its activities comply with CLS. Much more needs to be done to expand these advances to other agencies and institutions, but

the day has passed when multilateral institutions could ignore the workers' rights violations taking place in their own operations by claiming that they were someone else's responsibility.

Effective enforcement of the CLS policies remains the major challenge for trade unions. Some development banks that were quick to adopt policies favourable to CLS compliance took no measures to implement them, whereas others that proceeded more slowly have built up some capacity to monitor and enforce CLS compliance. The international trade union movement can play an indispensable role in applying pressure to improve CLS enforcement in agencies and institutions that have adopted CLS policies. By alerting them about risks of potential violation, providing the kinds of information that only trade unions possess, and calling attention to cases of actual non-compliance, trade unions can demonstrate the need for stronger enforcement mechanisms.

Of course, for core labour standards to take hold universally, a comprehensive approach is necessary. The international trade union movement must help build the capacity of trade unions in each country to ensure effective enforcement of fundamental workers' rights. While multilateral trade and financial institutions and trade agreements must do their part such that their activities are in compliance with CLS, the ultimate purpose of these efforts is to oblige each member government to undertake all-important national work to implement and enforce CLS. This work, which is reflected in the basic mandate of the ILO to strengthen national labour laws, tribunals and labour inspectorates, is crucial to an expansion of observance of CLS.

37 Application of the OECD Guidelines is not limited to companies that receive export credits, though many export credit agencies make specific reference to the Guidelines in their policies.

About the authors

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Acronyms:

BWI	Building and Wood Workers International
CAFTA	Central America Free Trade Agreement
CLS	Core Labour Standards
DWA	Decent Work Agenda
EPZ	Export processing zone
EU	European Union
FTA	Free trade agreement
GSP	Generalized System of Preferences
GUF	Global Union Federation
ICFTU	International Confederation of Free Trade Unions
IFI	International financial institution
ILO	International Labour Organization
ITF	International Transport Workers' Federation
ITGLWF	International Textile, Garment and Leather Workers' Federation
ITUC	International Trade Union Confederation
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
PS	Performance Standards (WB-IFC)
TUAC	Trade Union Advisory Committee to the OECD
WB-IDA	World Bank/International Development Association
WB-IBRD	World Bank/International Bank for Reconstruction and Development
WB-IFC	World Bank/International Finance Corporation
WCL	World Confederation of Labour
WTO	World Trade Organization

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