

Not performing to standard: The IFC's social conditionality and freedom of association¹

By Conor Cradden

The potential for private or non-state regulation to improve labour standards has been much canvassed in recent years. It has been argued that working conditions in developing economies can be upgraded by making supply or investment contracts conditional on labour standards compliance. Alternatively, this can be achieved by offering access to premium price markets through product labels that certify the successful completion of a social auditing process. Nevertheless, it remains in dispute whether this kind of private regulation is effective from the perspective of workers. Existing research has found that while firms are often prepared to make modest improvements to pay for working conditions in pursuit of some market advantage, they remain unwilling to accept any significant increase in the capacity of workers to influence management decisions about employment conditions and the organisation of work. The research we report here confirms that as long as private regulators do not see it as their role to address the power imbalance between workers and employers, they will have little durable impact on labour standards.

Over the last two years, researchers at the University of Lausanne in Switzerland have been investigating the labour impacts of the International Finance Corporation's (IFC) social and environmental loan conditionality². The IFC is part of the World Bank Group and describes itself as 'the largest global development institution focused exclusively on the private sector in developing economies'. It invests directly in private sector businesses, most frequently in the form of loans or equity investments. Despite being a public international organisation within the World Bank Group; the IFC competes for business with private sector lenders and operates on a fully commercial basis.

In the late 1990s and early 2000s, the IFC came under pressure from civil society actors, including international trade unions, who were concerned by the lack of accountability regarding the potentially negative impact of its investments on workers, the community and the environment. The IFC's response was to develop a comprehensive set of 'performance standards' covering various issues, including labour standards, pollution reduction and biodiversity conservation, protection of cultural heritage, as well as the rights of indigenous peoples. Since 2006, loans and investments have been provided to client businesses on the expressed condition that those businesses either already comply with

these standards or are willing to take steps to come into compliance. Compliance with the performance standards is written into finance contracts, giving the IFC the right to withhold funding or to withdraw from investment relationships entirely if the required standards have not been met.

The aim of the Lausanne study was to assess whether the IFC standards system has managed to improve on the generally poor record of private regulation with respect to freedom of association and collective bargaining rights. The researchers used a mixed-methods approach combining quantitative analysis with qualitative case studies in order to evaluate the impact that the application of the performance standards system has had on union membership, union recognition and social dialogue in IFC client businesses. The study covered 145 businesses in four world regions, drawing on data made public by the IFC, as well as the results of a dedicated field survey that gathered information directly from workers, managers and union representatives in 55 of these enterprises.

Results of the study

The study found that the impact of the performance standards system on freedom of association and collective bargaining rights has been marginal at best.

In those very few cases where the researchers found evidence of change in levels of unionisation or social dialogue that could be causally linked to the standards, the effect depended on the presence of workers' organisations that *already* had the capacity to take effective action. Very few businesses were required to take measures to correct compliance problems related to freedom of association and collective bargaining rights, and the majority of these cases simply involved including some reference to these rights in formal human resource management policies. Furthermore, IFC will not insist that its clients talk with unions where unions are not formally recognised, even where unions allege that businesses are unlawfully avoiding recognition.

IFC does not systematically contact workers or worker representatives as part of its compliance monitoring effort. Contact with workers is rare and ad hoc. Neither does it systematically require its clients to inform their employees about the performance standards, the result

being that ninety four per cent of the workers interviewed reported that they were unaware of their employers' commitment to respect the performance standards' provisions on workers' organisations. This goes some way to explaining why a high levels of freedom of association violations persists among IFC client businesses. While workers interviewed for the study reported knowing of breaches of freedom of association rights in 22 out of 55 of the businesses surveyed, IFC appears to have been unaware of these violations, and the workers in question were largely unaware of the existence of anyone to whom they could complain.

The contractual structure of private governance and the implications for workers

The performance standards' lack of impact on freedom of association and collective bargaining can be related to the private contractual structure that supposedly guarantees standards compliance. Although it is workers whose rights are ostensibly protected by the performance standards on labour and working conditions, they are not parties to the private contract that provides the legal means by which compliance is enforced. Rather, the parties are the IFC and the client business. The weakness of this 'governance by contract' lies in the fact that compliance enforcement depends on a third party's willingness to take action to enforce contractual conditions that affect relations between workers and employers. In the case of the performance standards system, the IFC's capacity to decide whether or not to enforce its contractual rights against its clients is almost unlimited, with no precise template for standards compliance and no independent process for the evaluation of claims of non-compliance³. There is remarkably little scope for workers to take action *within* the regulatory structure.

This raises the question of power. From the workers' perspective, the enforcement of IFC labour standards is a question of political organisation and action rather than of triggering a process of regulatory intervention. Whether or not the public normative commitment involved in agreeing to comply with the standards results in a change of management attitude or behaviour depends on the capacity of workers (a) to collect information about standards violations and to communicate this to the IFC; (b) to establish that what they interpret as standards violations are indeed violations; and, above all, (c) to create the kind of political and industrial pressure that would outweigh the IFC's commercial and reputational interest in *not* sanctioning its existing clients. However, in the particular case of freedom of association and collective bargaining, the rights (supposedly guaranteed by the standards) are precisely those that provide workers with the capacities that make political action possible. The study showed that the IFC takes few, if any, proactive steps to enforce these rights and uncovered no case in which the performance standards contributed to the organi-

sation of a previously unorganised workforce without the intervention of an existing union. When it comes to the enforcement of freedom of association rights, workers who are not already well organised are caught in a 'catch 22': they need to *already* possess the collective capacity to take political action in order to enforce the rights that would give them that capacity.

The IFC performance standards system: soft on power

The work of the Lausanne researchers confirms the second-class status of freedom of association and collective bargaining rights in private standards systems. It points to the emergence of an interpretation of these rights that is soft on power in the sense that it rejects the positive encouragement of collective industrial relations in favour of an exaggerated 'neutrality' that makes the concession of bargaining rights conditional on the spontaneous, unprompted mobilisation of an incontestable majority of workers. This neutrality is taken so far that the IFC does not even require its clients to inform workers of their rights. This is a very long way from the letter and spirit of the ILO's convention 98 on the Right to Organise and Collective Bargaining – specifically referenced in the performance standards – which states that appropriate measures should be taken "to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

¹ For a full report and shorter summary, see: (http://www.snis.ch/project_governance-contract-impact-international-finance-corporations-social-conditionality-worker)

² The 'Governance by Contract' project is based in the *Institut des études politiques, historiques et internationales* and funded by Swiss Network for International Studies (www.snis.ch).

³ The IFC's internal oversight office, the Compliance Advisor Ombudsman, does operate a complaints investigation system, but the aim of this system is to conciliate between IFC clients and complainants. It does not rule on the merits of complaints.

Conor Cradden is research fellow and former 'chargé de course' in the Department of Sociology at the University of Geneva, where he taught a masters degree course on the International political economy of standards. He has an MSc from the London School of Economics and Political Science and a PhD from the European University Institute. Formerly head of research for a UK public sector trade union, he has expertise in labour and organization studies, transnational regulation, participatory democracy and sociological theory.