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Levelling the Playing Field –
The Mandate of Multilateral
Development Banks to Apply
Labour Standards

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Contents

| | |
|---|-----------|
| SUMMARY | 1 |
| ABBREVIATIONS | 3 |
| 1 INTRODUCTION | 4 |
| 1.2 Delimitations | 5 |
| 1.3 Method, Material and Outline | 6 |
| 2 LABOUR RIGHTS AS HUMAN RIGHTS | 7 |
| 2.1 International Labour Organization | 7 |
| 2.1.1 <i>Labour rights in International Human Rights</i> | 9 |
| 2.1.2 <i>Fundamental Principles and Rights at Work</i> | 10 |
| 2.1.3 <i>Decent Work</i> | 12 |
| 2.1.4 <i>Decent Work Country Programmes</i> | 13 |
| 2.1.5 <i>Declaration on Social Justice for a Fair Globalization</i> | 14 |
| 2.2 Technical Cooperation | 15 |
| 2.3 Human Rights Based Approach to Development | 16 |
| 2.4 Millenium Development Goals | 18 |
| 3 INTERNATIONAL LABOUR STANDARDS | 20 |
| 3.1 Labour Standards and Economic Growth | 20 |
| 3.2 Freedom of association and the right to collective bargaining | 21 |
| 3.3 Forced Labour | 24 |
| 3.4 Child Labour | 26 |
| 3.5 Discrimination | 29 |
| 4 MANDATE OF MULTILATERAL DEVELOPMENT BANKS | 32 |
| 4.1 World Bank and Poverty Reduction Strategy Papers | 32 |
| 4.1.1 <i>PRSPs and Labour Standards</i> | 33 |
| 4.1.1.1 Cambodia | 34 |
| 4.1.1.2 Tanzania | 35 |
| 4.1.1.3 Moldova | 36 |
| 4.1.2 <i>Impacts</i> | 37 |
| 4.2 International Finance Corporation | 38 |
| 4.2.1 <i>Labour Standards</i> | 39 |
| 4.2.2 <i>Impacts</i> | 42 |
| 4.2.2.1 The Compliance Advisor/Ombudman | 45 |

| | | |
|--------------|---|-----------|
| 4.3 | European Bank for Reconstruction and Development | 46 |
| 4.3.1 | <i>Labour Standards</i> | 47 |
| 4.3.2 | <i>Impacts</i> | 50 |
| 4.4 | Asian Development Bank | 51 |
| 4.4.1 | <i>Labour Standards</i> | 52 |
| 4.4.2 | <i>Impacts</i> | 55 |
| 4.5 | Inter-American Development Bank | 57 |
| 4.5.1 | <i>Labour Standards</i> | 58 |
| 4.6 | African Development Bank | 59 |
| 4.6.1 | <i>Labour Standards</i> | 60 |
| 4.7 | Equator Principles | 61 |
| 4.7.1 | <i>Impacts</i> | 62 |
| 5 | ANALYSIS | 64 |
| | BIBLIOGRAPHY | 70 |

Summary

This thesis examines five Multinational Development Banks (MDBs) mandate to apply labour standards in their operations. The MDBs are international organizations often set up with a mission to enhance economic growth and reduce poverty. An overwhelming majority of the members of the MDBs are also members of the UN and ILO.

One of the ways UN works to reduce poverty is through the Millennium Development Goals (MDGs). The MDGs consists of eight goals to be achieved by 2015. Each goal has one or more targets that will contribute to the achievement of the goal. The first goal is to eradicate extreme poverty and hunger. The second of the goals three targets is to *“achieve full and productive employment and decent work for all, including women and young people”*.

The ILO has successfully promoted the concept of decent work during the last decade. Decent work encompasses the four strategic components of employment, social protection, social dialogue and international labour standards. Even if international labour standards cover more than the Core Labour Standards, the latter predominantly have been included in the MDBs work. The Core Labour Standards include freedom of association and collective bargaining, the elimination of forced labour, the abolition of child labour and the elimination of discrimination. These four issues are also contained in the Fundamental Principles and Rights at Work that members of the ILO, by the virtue of their membership, are expected to respect, promote and realize.

The thesis also shows that there has been a growing trend of committing to labour standards by the MDBs during the last couple of years but the application of labour standards is not without controversy. There seems to be a dichotomy between developed and developing countries regarding the approach to the application. Labour standards are often associated with increased costs and while low labour costs are considered a comparative advantage, the absence of labour standards might pose a risk to both workers and investments.

The application of labour standards is uneven between the Banks. Two of the five examined banks, the African Development Bank (AfDB) and the Inter-American Development Bank (IADB) do not apply labour standards in their operations in any material way. One of the banks, the Asian Development Bank (ADB) has put a lot of energy into promoting CLS, both within the Bank and towards its member States without much success. The last two banks, The International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD) both applies labour standards and both aims to constitute best practice. The examination

shows that labour standards, within IFC and EBRD, are mainly used as a promotional instrument and a risk assessment tool.

Looking at the composition of the Banks in respect to developed and developing countries in combination with the scope of the applied labour standards it appears to be the banks with the most developed member countries that favour the promotion of labour standards and that the standards are a way of levelling the playing field, reduce risks and protecting investments.

Abbreviations

| | |
|--------|--|
| ADB | Asian Development Bank |
| AFDB | African Development Bank |
| CLS | Core Labour Standards |
| CRC | Convention on Rights of the Child |
| DWCP | Decent Work Country Programmes |
| EBRD | European Bank for Reconstruction and Development |
| EPFIs | Equator Principles Financial Institutions |
| FDI | Foreign Direct Investments |
| GDP | Gross National Product |
| IADB | Inter-American Development Bank |
| IBRD | International Bank for Reconstruction and Development |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| IDA | International Development Association |
| IFC | International Finance Corporation |
| IFIs | International Financial Institutions |
| IMF | International Monetary Fund |
| ILO | International Labour Organization |
| IPEC | International Programme on the Elimination of Child Labour |
| HRBA | Human Rights Based Approach |
| MDBs | Multilateral Development Banks |
| MDGs | Millennium Development Goals |
| MIGA | Multilateral Investment Guarantee Agency |
| PRSPs | or PRS, Poverty Reduction Strategy Papers |
| PR | Performance Requirements |
| PS | Performance Standards |
| UDHR | Universal Declaration on Human Rights |
| UN | United Nations |
| WTO | World Trade Organization |

1 Introduction

Employment is the major source of economic income for workers and their families. At least half of the world's population is engaged in wage employment and many more depend on it.¹ The right to work is considered an enabling human right that makes it possible to provide for many of the other human rights such as food, housing and health. However, to work is not always enough. The International Labour Organization has estimated that approximately 40 per cent of the world's working population is considered as working poor. This means that they, despite their work, earn less than US \$ 2 a day.²

United Nations, UN pursues poverty reduction through the Millennium Development Goals, MDGs. The first of the eight goals is to eradicate extreme poverty and hunger by 2015. Poverty reduction in developing countries requires economic growth and development has been and still is considered equal to economic growth. This view has been heavily criticized with reference to the fact that human rights tend to be disregarded in the process. Instead, human rights have often been considered as a successful outcome of development.

To accomplish the goal of poverty reduction three targets have been set. One of these targets calls for the achievement of “*full and productive employment and decent work for all, including women and young people*”. The concept of Decent Work, adopted by the ILO, embodies the goal of the organization “*to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity*”.³

ILO has traditionally focused its work to assisting member States but in the last decades international organizations such as Multilateral Development Banks, MDBs, have gained an increased interest. The ILO has entered into agreements with several of these Banks. The MDBs are set up with a mandate to increase economic growth but recently many of the MDBs have also recognized that economic growth alone is not enough but has to be supplemented with sustainable development. In some of the examined MDBs sustainable development encompasses the application of environmental and social standards, where the latter contain labour standards.

¹ Global Wage Report 2008/08, Minimum wages and collective bargaining: Towards policy coherence, <www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_100786.pdf>, visited on 24 November 2009.

² *Global Employment Trends 2009*, <www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_101461.pdf>, visited on 24 November 2009.

³ Quotation of ILO Director-General Juan Somavia, <www.ilo.org/global/About_the_ILO/Mainpillars/WhatIsDecentWork/lang-en/index.htm>, visited on 25 March 2010.

The promotion of labour rights, particularly in world trade, is not without controversy. As often when dealing with economics there is a need for incentives or benefits for the application of labour standards. The debates about the effects of workers rights on global competitiveness – as regards both foreign direct investment location and trade competitiveness – tend to focus on whether workers rights hinder competitiveness by raising labour costs.⁴ Findings of research are ambiguous. On the one hand research have showed that higher labour standards do tend to raise labour costs, on the other hand there are evidence that there is a strong correlation between higher GDP and economic growth and the application of labour standards. The application of labour standards in the operations of the MDBs will be further examined in this thesis.

1.1 Purpose

The term Multilateral Development Banks often refers to the World Bank Group and the four Regional Development Banks: the European Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank and the Inter-American Development Bank Group.⁵ The MDBs are international organization consisting of States. States have an international obligation to comply with human rights. Human rights obligations arise either through ratified Conventions or if they are considered jus cogens. In relation to labour standards, an obligation to comply with the Fundamental principles and Rights at Works at work arises by the virtue of the membership of ILO. Most of the member States of the MDBs are also members of the ILO.

The overall purpose of this thesis is to examine what mandate the chosen Multilateral Development Banks have to apply labour standards in their operations. Furthermore, what standards are applied, what are the rationale for applying them and how, if at all, the outcomes of the application of labour standard are measured?

1.2 Delimitations

The examination of the World Bank Group in relation to labour standards is limited to the IFC.

The Poverty Reduction Strategy Papers are only briefly examined because of its vast scope but I chose to include them because they are a requirement for debt relief within the World Bank and the IMF.

Due to lack of space, this thesis is limited to the examination of labour standards even though the MDBs also have made commitments to apply

⁴ D. Kucera, 'The effects of core workers rights on labour costs and foreign direct investment: Evaluating the "Conventional wisdom"', *Discussion Paper Series* no. 130, International Institute for Labour Studies, DP 130/200/ (2001), p. 17.

⁵ *Multilateral Development Banks*, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040614~menuPK:41699~pagePK:43912~piPK:44037~theSitePK:29708,00.htm>, visited on 4 April 2010.

other human rights standards. I have also omitted the advisory services that most of the Multilateral Development Banks offer their clients.

The examined labour standards are primarily the Fundamental Principles and Rights at Work and the Core Labour Standards even if other labour standards are mentioned as well.

Due to client confidentiality, and thus lack of transparency, it is difficult to examine to what extent the labour standards are applied in practice, which means that I will focus on the adopted or stated standards of the Banks.

1.3 Method, Material and Outline

The main method used for this thesis has been a qualitative descriptive method. The thesis is mainly based on material published by the respective Bank and material published by the ILO. Material from scholars such as David Kucera and others have been useful in the examination of the relation between the application of labour standard and economic growth.

Since ILO is the international organization adopting and developing labour standards, a short background of the organization, the development of the Fundamental Principles and Rights at Work and the Decent Work Agenda will be described in chapter 2. This chapter will also contain a description of technical cooperation within the ILO, the Human Rights-Based Approach adopted by the UN and most of its constituents and the Millennium Development Goals. Chapter 3 will examine each of the Core Labour Standards, its support in international human rights law and briefly the content of the eight Conventions covering the Core Labour Standards. Chapter 4 will examine the scope of the mandate of Multinational Development Banks on the application of labour standards. The chapter will also examine how and to what extent the impacts of the application are measured. Chapter 5 will conclude with an analysis.

2 Labour Rights as Human Rights

This chapter will introduce the International Labour Organization, ILO and the relationship between human rights and international labour standards. The chapter will also describe the development of the fundamental labour rights. Finally the concepts of Technical Cooperation, Millennium Development Goals and Human Rights-Based Approach to Development will be outlined and clarified. The goals of the Millennium Declaration have permeated the work of all UN institutions, including the ILO the last decade and will continue to do so for several years. The other two concepts are essential for the application of labour standards within the ILO.

2.1 International Labour Organization

The International Labour Organization is the principal international organization adopting labour standards. The organization was founded at the end of World War I in 1919 as a part of the Treaty of Versailles.⁶ In a time where massive unemployment and unrest was a threat to the fragile peace, it was essential that the economy was stable and benefited not only States but also individuals. Thus, the ILO is based upon the idea that *“universal and lasting peace can be established only if it is based upon social justice”*⁷. Social justice in the context of labour, according to the preamble includes improvement of working conditions

“[...]by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures”.⁸

The purpose of the ILO is to promote the objects of the organization, expressed in the Constitution and the Declaration of Philadelphia, the latter was adopted in 1944 and annexed to the Constitution in 1946. The Declaration lays down four fundamental principles of the ILO, namely that;

“(a) labour is not a commodity;

⁶ <www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm>, visited on 23 November 2009.

⁷ ILO Constitution, preamble para. 1, <www.ilo.org/ilolex/english/constq.htm>, visited on 23 November 2010.

⁸ ILO Constitution *supra* note 7, preamble para. 2.

- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) tripartism is the way to promote the common welfare.⁹

In 1946, ILO became the first specialized agency of the UN.¹⁰ Membership is open to all members of the UN and other States accepted by the Labour Conference.¹¹ Today 183 States are members of the ILO¹², compared to 192 member States of the UN¹³. The International Labour Conference assembles member States every year in June in Geneva. Two government representatives, one employers- and one workers representative represent each member State. The main tasks of the Conference are to adopt international labour standards in the form of Conventions and Recommendations, and to supervise the implementation and application of the standards at the national level by examining State reports. The Conference also adopts the biennial work programme and the budget. To date, 188 Conventions¹⁴ and 199 Recommendations¹⁵, covering most aspects of working life, have been adopted.

States have an obligation to report on ratified Conventions to the ILO. The obligation cover reports on the eight fundamental Conventions every two years and the other Conventions every five years.¹⁶ The governments have to send their reports to employers' and workers' organizations to give them a chance to comment on the State reports. The Committee of Experts on the Application of Conventions and Recommendations later examines the reports. The Committee is composed of 20 jurists and its task is to examine the governments' reports on ratified Conventions. The Committee may comment on the reports in its Annual Report, which is submitted to and examined by the International Labour Conference.¹⁷

The Governing Body is the executive body of the International Labour Office, which is the secretariat of the ILO. The Governing Body is composed of 56 regular members: 28 Government members, 14 Employers members and 14 Workers members. The main tasks of the Governing Body are to elect the Director-General, direct and monitor the Labour Office and the Director-General, determine the agenda of the Labour Conference and to adopt the draft programme and budget for submission to the Labour

⁹ ILO Constitution, *supra* note 7, part I of the Declaration of Philadelphia.

¹⁰ <www.un.org/members/agencies.shtml>, visited on 29 April 2009.

¹¹ ILO Constitution, *supra* note 7, articles 3-4.

¹² <www.ilo.org/public/english/standards/relm/country.htm>, visited on 10 March 2010.

¹³ <www.un.org/depts/dhl/unms/whatisms.shtml#states>, visited on 26 March 2010.

¹⁴ <www.ilo.org/ilolex/english/newratframeE.htm>, visited on 11 March 2010.

¹⁵ <www.ilo.org/ilolex/english/recdisp1.htm>, visited on 26 March 2010.

¹⁶ The Governing Body adopted a decision to change the reporting cycle to three years for Fundamental Conventions and five years for technical Conventions, *dec-GB.306/10/2*, <www.ilo.org/global/What_we_do/Officialmeetings/gb/lang--en/WCMS_117851/index.htm>, visited on 7 April 2010.

¹⁷ <www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CommitteeofExperts/lang--en/index.htm>, visited on 11 March 2010.

Conference.¹⁸ It has been argued that western industrial States is weighted in favour of the ILO due to the fact that ten of the Government members belongs to the States of chief industrial importance and hold non-elective seats.¹⁹ Currently these States are the Brazil, China, France, Germany, India, Italy, Japan, Russia, United Kingdom and United States.²⁰ However, in 1986 an Amendment to the Constitution was adopted that will change the composition of the Governing Body by inter alia, increasing the number of seats to 112 and remove the permanent seats once it enters into force.²¹

Unique to the UN system, the ILO has a tripartite setting of governments and employers' and workers' organizations sharing the decision-making power. As a fundamental principle, the ILO also promotes tripartism within member States by helping to strengthen the social dialogue.²² Social dialogue means

“all types of negotiation, consultation or exchange of information between or among representatives of governments, employers and workers on issues of common interest relating to economic and social policy”.²³

A well functioning dialogue implies that the government actively protects the right to freedom of association and collective bargaining and that it seeks to maintain independent labour market partners at all levels of the society.²⁴

2.1.1 Labour rights in International Human Rights

In the aftermath of World War II and during the Cold War, ILO came to influence the content of the Universal Declaration of Human Rights (UDHR) adopted in 1948 and the two Covenants adopted in 1966. The UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) all contain provisions on labour standards. These provisions will be discussed further in chapter 3.

¹⁸International Labour Office, *Introduction to the Governing Body*, May 2008,

<www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_098160.pdf>, p. 1, visited on 20 May 2009.

¹⁹ P. Macklem, 'Labour Law Beyond Borders', 5 *Journal of International Economic Law* (2002) pp.605-645.

²⁰ <www.ilo.org/global/What_we_do/Officialmeetings/gb/AboutGB/lang--en/index.htm>, visited on 2 November 2009.

²¹ ILO, *The 1986 Amendment to the ILO Constitution: Frequently Asked Questions*,

<www.ilo.org/public/english/bureau/leg/amend/faq1986.htm>, visited on 12 March 2010..

The Amendment will enter into force when two-third of the member States and at least five of the member States of chief industrial importance have ratified the Amendment. By July 2009 the Amendment had been ratified by 93 States including States of chief industrial importance, <www.ilo.org/public/english/bureau/leg/amend/status_1986.pdf>, last visited on 12 March 2010.

²² ILO, *Tripartism*, <www.ilo.org/global/About_the_ILO/Structure/tripartism/lang--en/index.htm>, last visited on 24 September 2009.

²³ ILO, *Thesaurus 2005*, <www.ilo.org/public/libdoc/ILO-Thesaurus/english/tr1859.htm>, last visited on 24 September 2009.

²⁴ ILO, *Tripartism*, *supra* note 22.

2.1.2 Fundamental Principles and Rights at Work

At the United Nations “Social Summit” in Copenhagen 1995 the Secretary-General called for a global drive for social progress and development. The summit adopted a Declaration containing ten commitments where the third commitment called for full employment to enable sustainable livelihoods through productive employment and work. To contribute to this goal States should promote respect for the basic rights of workers and the relevant Conventions of the ILO, including the prohibition of forced and child labour, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination.²⁵

In the World Trade Organization’s Ministerial Conference in Singapore in 1996, an attempt was made to insert labour standards into WTO agreements.²⁶ The attempt failed but resulted in the compromise to recognize Core Labour Standards and the ILO as the competent body to deal with labour standards.²⁷

“We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.”²⁸

The Declaration clearly states that economic growth and development, through increased trade and trade liberalisation, will enable labour standards and not the other way around.

Two years later, in 1998, the International Labour Conference adopted the Declaration of Fundamental Principles and Rights at Work. The Declaration outlines the same four sets of principles, as stated in the Declarations of 1995 and 1996, as fundamental. The principles are the:

- “(a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and

²⁵ UN, World Summit for Social Development, Copenhagen Declaration on Social Development, Part C, <www.un.org/esa/socdev/wssd/text-version/agreements/decpartc.htm>, visited on 12 May 2009.

²⁶ WTO, Understanding the WTO : cross-cutting and new issues: Labour standards, <www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm>, visited on 25 May 2009.

²⁷ F. Z. Mansoor, ‘Trade versus Peace: A Contextual Analysis of Core Labour Standards in the Global Trading Community’, *Asper Review of International Business and Trade Law*, (2005), p. 143.

²⁸ WTO, Singapore Ministerial Declaration, adopted 13 December 1996, <www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm>, visited on 25 May 2009.

(d) the elimination of discrimination in respect of employment and occupation“.²⁹

The principles are covered by eight Conventions and the Declaration says that all member States, regardless of ratifications, have an obligation to respect, promote and realize the principles due to the membership of the ILO³⁰. The reason to single out these rights was that they are considered enabling rights that will contribute to the achievement of others over time.³¹ The Declaration was adopted in spite of extensive fears, mainly from developing countries, that implementation of labour standards would impact the comparative advantage of low labour costs in developing countries.³²

Since the adoption of the Declaration the ratifications of the eight Conventions have increased exceptionally. The ratification of Conventions contra the obligation to adhere to the principles in the Declaration creates two different tracks for member States. The main difference between the two tracks is the obligations they create. While the Declaration was adopted as a promotional instrument that obliges a member State to respect, promote and realize the rights the Conventions might also require a State to take action and adopt and implement national laws and policies. Another difference is the monitoring procedure. While ratified Conventions fall within the regular ILO supervisory system, non-ratifying States are obliged under the Declaration to conduct an Annual Review on the measures taken to achieve respect for the rights in the Declaration. In 2010 there are 52 States reporting under the Declaration.³³ The reports also give employers' and workers' organizations the possibility to point out and highlight relevant labour issues to the ILO.

In sum, over the years, the labour rights contained in the Declaration on Fundamental Principles and Rights at Work have crystallized as the fundamental human rights at work, partly through international human rights instruments but also through universal agreement by the recent renewed international recognition by the adoption of the Declaration and the widespread ratification of the eight core Conventions.

²⁹ ILO *Declaration on Fundamental Principles and Rights at Work*, 86th Session, Geneva, June 1998, <www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> .

³⁰ Freedom of Association and Protection of the Right to Organize Convention (C 87), 1948, Right to Organize and Collective Bargaining Convention (C 98), 1949, Forced Labour Convention (C 29), 1930, Abolition of Forced Labour Convention (C 105), 1957, Minimum Age Convention (C 138), 1973, Worst Forms of Child Labour Convention (C 182), 1999, Equal Remuneration Convention (C 100), 1951, Discrimination (Employment and Occupation) Convention (C 111), 1958. These Conventions will be further examined in chapter 3.

³¹ G. Rodgers, E. Lee, L. Swepston, and J. van Daele, *The ILO and the Quest for Social Justice 1919-2009*, (ILO 2009), p. 38.

³² G. Rodgers, E. Lee, L. Swepston and J. van Daele, *supra* note 31, p. 37.

³³ ILO, *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, GB/307/3, p. 2, <www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_123833.pdf>, visited on 25 March 2010.

2.1.3 Decent Work

In 1999, the ILO committed itself to the concept of Decent Work and the achievement of social justice through promotion of the Decent Work Agenda. The Director General Juan Somavia declared that:

“The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”³⁴

According to the ILO, there was a growing realization among member States that markets and economic growth are not separated from or function separated from their political contexts.³⁵ Decent work encompasses four strategic components necessary to achieve the Agenda: (i) employment, (ii) social protection, (iii) social dialogue and (iv) international labour standards.

First, all workers are included: both in the formal and informal economy, the latter consist, among other groups of unregulated waged workers, self-employed and home workers. To create productive employment however is not enough; the workers need to be protected through labour rights at work. The rights intended is primarily the rights contained in the Declaration on Fundamental Principles and Rights at Work but others such as safe and healthy work is also a requirement of Decent Work.³⁶ Second, workers also need to be protected against vulnerabilities in the context of employment such as loss of livelihood, sickness and old age.³⁷ Social protection in terms of social security must be defined according to the capacity and development of each State. The last component, social dialogue is dependent on the freedom of expression and the freedom of association to be realized. The social dialogue between governments, employers and workers organization lets those affected by the decisions take part in the process. Many of the ILO Conventions encourage and embrace social dialogue since they prescribe that certain decisions should be determined in cooperation. Participation is also considered “*a means by which rights are defended, employment promoted and work secured*” which may create social stability. Social stability is furthermore essential for economic stability, which is needed to obtain investments that can create more employment. Gender equality, although comprised by the labour standard component is considered a crosscutting issue included in all of the four components.³⁸

Since work is the main route out of poverty, the Decent Work Agenda is considered essential to poverty reduction and the concept of Decent Work has also received worldwide recognition. In 2005, the UN World Summit on

³⁴ International Labour Office, *Report of the Director-General: Decent Work*, 87th Session, Geneva, June 1999, <www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>, visited 20 September 2009.

³⁵ Ibid.

³⁶ ILO, *Introductory Report Decent Work – Safe Work*, <www.ilo.org/public/english/protection/safework/wdcongrs17/intrep.pdf>, visited on 2009.

³⁷ *Report of the Director General*, *supra* note 34.

³⁸ *Report of the Director General*, *supra* note 34.

the follow up to the Millennium Declaration identified full and productive employment and decent work for all as a global goal.³⁹ Not only the UN has included the Decent Work Agenda into its work, the EU's commitment to promote decent work covers both its promotion within as well as outside the European Union.⁴⁰ In September 2009, the leaders of the G20 Summit in Pittsburgh also committed to the recovery from the financial crisis by implementing plans that support Decent Work.⁴¹

In conclusion, decent work is productive work protecting the rights of workers enabling workers an adequate income and social protection.

2.1.4 Decent Work Country Programmes

The Decent Work Country Programmes (DWCP) is the main instrument for ILO to provide support to a country. A programme is normally adopted for a period of four to six years.⁴² There are two basic objectives. The first objective is to promote Decent Work in National Development Strategies of a country. The second is to organize ILO knowledge "*in a results-based framework to advance the Decent Work Agenda within the fields of comparative advantage of the Organization*".⁴³ A result-based framework includes measurable results that can be achieved at national level.

The DWCP should reflect the Decent Work Agenda but its contents may vary from country to country depending on what priorities a country adopts. As always, the process should be developed in a tripartite setting. To set up a Decent Work Country Programme a member State has to analyze the current situation and determine a limited number of priority areas of cooperation or Country Programming Priorities, as they also are called. These priority areas should not be more than three and should be in line with already existing development plans such as National Development Plans, Country Programming Frameworks, United Nation Development Assistance Framework and ILO Strategic Policy Framework. Each country also has to set the desired outcome with relevant indicators and define an implementation plan containing activities and resources. Finally, a country also has to monitor and evaluate the Country Programme to be able to make

³⁹ UN General Assembly, 2005 World Summit Outcome, A/60/L.1, <www.un-documents.net/a60r1.htm>, visited on 15 March 2010.

⁴⁰ European Commission, *Promoting decent work for all, The EU contribution to the implementation of the decent work agenda in the world*, COM/2006/0249 final, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0249:FIN:EN:HTML>>, visited on 28 september 2009.

⁴¹ G20, *Leaders Statement, the Pittsburgh Summit, 24-25 September 2009*, para. 43, <www.g20.org/documents/pittsburgh_summit_leaders_statement_250909.pdf>, visited on 15 March 2010.

⁴² ILO, *ILO Decent Work Country Programmes, A Guidebook*, Version 2, Geneva, International Labour Office, 2008, p. 3, <www.ilo.org/public/english/bureau/program/dwcp/download/guidev2.pdf>, visited on 29 September 2009.

⁴³ ILO, *Decent Work Country Programmes*, <www.ilo.org/public/english/bureau/program/dwcp/>, visited on 28 September 2009.

continuous adjustments.⁴⁴ In determining the Country Programme Priorities, consideration must be given to the issues where ILO can make substantial contributions and to set outcomes that can result in a significant change in a country.⁴⁵

By the end of 2009, over 110 countries were engaged in various stages of the programming process and 47 countries had had their final documents approved by the Regional Director. Over 65 countries state that they, at least partly had aligned their Programmes with the United Nations Development Assistance Framework priorities.⁴⁶

Many of the countries with approved documents have chosen employment promotion as their first priority, often linked with poverty alleviation and the creation of youth employment. This is particularly noticeable in the African countries where this is the first priority. The African Country Programme Priorities are also the most homogenous where combating HIV/AIDS and the elimination of child labour is the second or third priority. Of the labour standards or Fundamental Principles and Rights at Work, child labour is the most prioritised standard.⁴⁷ The set outcomes often include improved competitiveness, productivity, conditions at work and international labour standards.⁴⁸

The Decent Work Country Programmes are also ILO's contribution to UN Country Programmes and Poverty Reduction Strategy Papers (PRSPs) The PRSPs will be examined below in chapter 4.

2.1.5 Declaration on Social Justice for a Fair Globalization

The Declaration on Social Justice for a Fair Globalization was adopted at the International Labour Conference in 2008. The Declaration builds on the Declaration of Philadelphia and the Declaration on Fundamental Principles and Rights at Work and reaffirms ILO values. The purpose is to promote a fair globalization through the Decent Work Agenda. The Declaration emphasizes the four strategic objectives of the ILO needed to create a fair outcome for all, which is social justice, full and productive employment, sustainable enterprises and social cohesion. The objectives are considered equally important, inseparable, interrelated and mutually supportive.

⁴⁴ *ILO Decent Work Country Programmes, A Guidebook*, *supra* note 42, p. 4

⁴⁵ *ILO Decent Work Country Programmes, A Guidebook*, *supra* note 42, p. 15 *et seq.*

⁴⁶ ILO, *Implementation on Decent Work Country Programmes*, (GB 306/TC/2), para. 3, <www.ilo.org/public/english/bureau/program/download/pdf/gb306tc2.pdf>, visited on 15 March 2010.

⁴⁷ *Ibid*, para. 9.

⁴⁸ ILO, *Decent Work Country Programmes*, <www.ilo.org/public/english/bureau/program/dwcp/countries/index.htm>, visited on 30 September 2009.

The Declaration also calls for the ILO to continue the cooperation with other international organizations since

“Other international and regional organizations with mandates in closely related fields can have an important contribution to make to the implementation to the integrated approach. The ILO should invite them to promote decent work, bearing in mind that each agency will have full control over its mandate. As trade and financial market policy both affect employment, it is the ILO’s role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies.”⁴⁹

The ILO recognizes that some international institutions such as the World Bank, the Asian Development Bank and International Finance Corporation apply certain labour standards in their activities.⁵⁰ Some of these organizations will be further examined in chapter 4.

2.2 Technical Cooperation

Technical cooperation is a method of assisting countries or organizations with expertise, specialist personnel, technical skills or training within a specific field. Technical cooperation can take the form of dissemination of research, advisory services, projects and programmes. The aim is to develop national institutions and to “*build up knowledge and technical skills in developing countries for the longer term*”.⁵¹ Article 12 of the ILO Constitution states that the Organization has the mandate to enter into technical cooperation with international organizations;

“1. The International Labour Organization shall cooperate within the terms of this Constitution with any general international organization entrusted with the coordination of the activities of public international organizations having specialized responsibilities in related fields.
2. The International Labour Organization may make appropriate arrangements for the representatives of public international organizations to participate without vote in its deliberations.”

One of the objectives for the ILO to engage in technical cooperation is to promote and assist the implementation of the Decent Work Agenda and to promote ratification and the influence of international labour standards in development. To build the capacity of national institutions and the social partners and strengthening tripartism and social dialogue is considered both a means and an end in technical cooperation.⁵² ILO provides technical

⁴⁹ ILO, *Declaration on Social Justice for a Fair Globalization*, section II C, <www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf>. visited on 26 March 2010.

⁵⁰ ILO, Report of the Committee on Technical Cooperation, 87th session; Geneva, June 1999, <www.ilo.org/public/english/standards/relm/ilc/ilc87/com-tc.htm#Conclusions> ,

⁵² *The role of the ILO in technical cooperation*, Report VI, International Labour Conference, 95th Session, 2006, pp. 4 and 17, <www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-vi.pdf>, visited on 4 April 2010.

assistance in various fields and is primarily directed towards member States either in the form of programmes or projects, such as the described DWCPs. Most of the technical cooperation resources concern child labour⁵³, and the largest technical cooperation programme of the ILO is the International Programme on the Elimination of Child Labour, IPEC.⁵⁴ ILO has also entered into technical cooperation with International Organizations such as the Asian Development Bank and the World Bank. Some of the financial development institutions that apply labour standards in its operations will be examined in chapter 4.

2.3 Human Rights Based Approach to Development

The human rights-based approach to development (HRBA) is a development process that takes into account and implements international human rights standards and principles throughout the whole process of development, from assessment and planning to implementation and evaluation.⁵⁵ The HRBA was adopted in 1993 at the Vienna World Conference on Human Rights. In 1997 the Secretary-General called for mainstreaming of human rights in all activities of the UN and its specialized agencies.⁵⁶ A Statement of Common Understanding was adopted in 2003 since many of the institutions had developed their own interpretations of the concept. The statement sets out three components. The first component states that the aim of all programming and development cooperation activities must contribute to the realization of at least one of the human rights laid down by the UDHR and other international human rights instruments.⁵⁷ In reference to international human rights instruments, the Fundamental Principles and Rights at Work can all be found in the UDHR and can thus be subject to realization within cooperation activities of the UN agencies.⁵⁸ The second component is that human rights standards and

⁵³ *The role of the ILO in technical cooperation*, supra note 52, p.50.

⁵⁴ *The IPEC Programme*, <www.ilo.org/ippec/programme/lang--en/index.htm>, visited on 1 October 2009.

⁵⁵ Some of the internationally recognized human rights can be found in the Universal Declaration on Human Rights (UDHR), the Covenant on Economic, Social and Cultural Rights (ICESCR); the Covenant on Civil and Political Rights (ICCPR); the Convention on Elimination of Racial Discrimination (CERD); the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC); the Convention Against Torture (CAT); and the Convention on Migrant Workers and Their Families (MWC).

⁵⁶ *Improving the impact of International Labour Standards through Technical Cooperation, a practice guide*, ILO, 2008, pp. 3-4, <www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100381.pdf>, visited on 4 April 2010.

⁵⁷ UN, *The Human Rights Based Approach to Development Cooperation, Towards a Common Understanding among UN*, <www.undg.org/archive_docs/6959The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf>, visited on 2 October 2009.

⁵⁸ The content of the Fundamental Principles and Rights at Work will be outlined in chapter 3.

principles should guide programming in all sectors and all phases of the process. This includes, among other things, the areas of labour relation, social and economic security and all of the development goals comprised by the Millennium Declaration.⁵⁹ The principles that should guide the process are: *universality and inalienability*, by which is meant that human rights apply to all people without exceptions; *indivisibility* means that all rights are of equal value and can not be prioritised; *inter-dependence and inter-relatedness*, signify that one human right are often dependent on another human right for its fulfilment. Labour rights are often considered as an enabling right since many rights depend on an income; *equality and non-discrimination*, the universality of human rights should be applied equally without discrimination, according to the discriminatory grounds listed in the human rights treaties; *participation and inclusion*; everybody should have the right to free and meaningful participation in matters related to their own development, *accountability and rule of law*: States have an obligation to respect and protect human rights. The obligation at least covers the legal norms and standards enshrined in the human rights instruments and the internationally agreed instruments. Where a State fails to protect a rights-holder should be

“entitled to institute proceedings for appropriate redress before a competent court or other adjudications in accordance with the rules and procedures provided by law. The right to know and freedom of information are essential to securing transparency and accountability”.⁶⁰

Finally, the third component is to build the capacity of the duty-bearers, mainly States, to enable them to fulfil its obligations towards the rights-holders, that is individuals and groups. It is believed that a HRBA will enable the

*“UN system, and its partners to enhance the effectiveness of their work through a focus on equality and nondiscrimination, accountability, justice, and transparency as the core of human development results.”*⁶¹

The HRBA provides ILO with a strong argument of promoting and applying the international labour standards as they all may be found in the international human rights instruments and thus can be applied within the UN sphere in all development activities. The most recent review of the role of ILO in technical cooperation from 2006, reiterates that the central driving force for development is full and productive employment in combination with Decent Work⁶² and the means to do it is through technical cooperation.

⁵⁹ *Supra* note 57.

⁶⁰ *Applying a Human Rights-Based Approach to Development Cooperation and Programming: A UNDP Capacity Development Resource*, UNDP September 2006, p v, http://hurilink.org/tools/Applying_a_HR_approach_to_UNDP_Technical_Cooperation--unr_revision.pdf>, visited on 16 March 2010.

⁶¹ *Ibid.*

⁶² Resolution concerning the role of the ILO in technical cooperation, adopted by the International labour Conference in 2006, para 1.

2.4 Millennium Development Goals

In 2000, the General Assembly adopted the UN Millennium Declaration.⁶³ The Declaration contains eight goals that should be fulfilled by 2015. Each goal has several targets and indicators for measurement.⁶⁴ Poverty reduction is probably the most known goal and, as said earlier, has become the overarching goal of most of the development institutions. Productive employment is an important factor to create economic growth and reduce poverty but in the original Declaration the connection to employment and labour standards were omitted. At the World Summit in 2005, the goals and targets were further discussed and the Outcome Document contains recognition of the Decent Work Agenda.

“We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the Millennium Development Goals. These measures should also encompass the elimination of the worst forms of child labour, as defined in International Labour Organization Convention No. 182, and forced labour. We also resolve to ensure full respect for the fundamental principles and rights at work”.⁶⁵

The ILO is more involved in certain parts of the Millennium Development Goals even though the ILO considers the Decent Work Agenda to contribute to all of the eight Goals. In relation to ILO, the first goal, to eradicate extreme hunger and poverty targets the achievement of “full and productive employment and Decent Work for all, including women and young people”. There are four indicators attached to this target; i) growth of GDP per person employed, ii) Employment-to-population ratio, iii) proportion of employed living below US \$ 1 per day, iv) proportion of own-account and contributing family workers in total employment. By own-account workers is meant self-employed workers dependent upon the income from the goods or services produced by the worker.⁶⁶

⁶³ A/RES/55/2,

http://mdgs.un.org/unsd/mdg/Resources/Static/Products/GAResolutions/55_2/a_res55_2e.pdf, visited on 5 October 2009.

⁶⁴ The eight Millennium Development Goals are: 1) Eradicate Extreme Hunger & Poverty, 2) Achieve Universal Primary Education, 3) Promote Gender Equality and Empower women, 4) Reduce Child Mortality, 5) Improve Maternal Health, 6) Combat HIV/AIDS, Malaria and other diseases, 7) Ensure Environmental Sustainability and 8) Develop a Global Partnership for Development, <www.undp.org/mdg/basics.shtml>, visited on 3 November 2009.

⁶⁵ UN document A/RES/60/1, para 47, <<http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/60/1&Lang=E>>, visited on 4 April 2009.

⁶⁶ Target 1.b of the MDGs, *Millennium Development Goals Indicators*, <http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm>, visited on 5 October 2009.

Out of the 60 indicators ILO monitors “the share of women in non-agricultural wage employment”. The indicator belongs to goal three and the promotion of gender equality and empowerment of women.⁶⁷

⁶⁷ Indicator 3.2 of the Millennium Development Goals, *supra* note 66.

3 International Labour Standards

This chapter will first briefly present some of the arguments put forward in the debate about the application of labour standards and discuss the relationship between labour standards and economic growth. The rest of the chapter will examine the four fundamental labour rights contained in the Declaration on Fundamental Principles and Rights at Work: the right to freedom of association and collective bargaining, the prohibition on forced labour and child labour and the right to non-discrimination.

3.1 Labour Standards and Economic Growth

The application of labour standards on an international level, to put it a bit simplistically, has divided the international society into two groups. Among developing countries there seem to be a fear that the absence of standards will create a “race to the bottom”. This view is grounded in the belief that free trade with countries of lower standards will force down a country’s higher standards to be able to compete with countries with lower production cost. Weaker labour rights coupled with greater tax breaks would trigger social dumping and a race to the bottom to retain corporations and investments in the country since companies are ‘known’ to move their production and investments to countries where production is cheaper and profits are higher.⁶⁸

Many developing countries on the other hand argue that developed countries are just being protectionists and that they use inclusion of labour standards as a social clause that will raise labour costs and thus deprive them of their comparative advantage.⁶⁹ It has also been claimed that the main problem is often not the struggle for better working conditions but to find a job.⁷⁰ Those in favour of applying labour standards have been accused of double standards since many developed countries also neglect the proper protection of labour standards.⁷¹

Research on labour standards and the consequences of its application to development is ambiguous. In the early 1990s, both the World Bank and the OECD concluded in different studies that the application of labour standards

⁶⁸ D. Kucera, ‘Core labour standards and foreign direct investment’, Vol 141, *International Labour Review* (2002 1-2) p 1.

⁶⁹ Z. M. Farkhanda, *Trade versus Peace: A Contextual Analysis of Core Labour Standards in the Global Trading Community*, *Asper Review of International Business and Trade Law*, (2005), p. 142.

⁷⁰ Z. M. Farkhanda, *supra* note 69, pp. 148-149.

⁷¹ Z. M. Farkhanda, *supra* note 69 p. 141.

raises “the cost of labour in the formal sector and reduces labour demand”. By reducing labour demand in the formal sector, more workers would have to work in the informal sector where wages are thereby increase poverty.⁷²

There are also some earlier studies supporting the belief that higher labour costs may negatively affect Foreign Direct Investments.⁷³ If higher labour cost, due to labour standards, would imply less foreign investments this would support the theory of “the conventional wisdom”. The theory argues that foreign investors favour countries with weaker workers rights because these countries have the lower labour cost and this in turn means lower production costs. The conventional wisdom has been contested and research has shown that stronger rights lead to increased economic and social stability. Furthermore, stronger economic and social stability are linked with faster economic growth.⁷⁴ This seems to be the case particularly when it comes to freedom of association and the right to collective bargaining. A correlation between GDP per capita and labour rights illustrates that where GDP per capita is higher, workers’ rights are stronger. Not only is the right to freedom of association and collective bargaining stronger but also are there less child labour and greater gender equality.⁷⁵ Foreign direct investments also seem to be greater in these countries with stronger workers rights. A study from 1999 compared the total number of ratified ILO Convention, as an indicator of workers rights, with United States foreign direct investments. The study showed that the investments were greater in the countries that had ratified the most Conventions.⁷⁶ A survey made in 2002 concludes that there is no evidence that foreign direct investments are higher in countries with weaker labour rights, thus there are no support of the “conventional wisdom”.⁷⁷

Neither did a study from 2005 find any competitive advantage in trade for countries with weaker labour rights since their export rates to the United States were not higher than for countries with stronger rights. However, labour standards and wages in developing countries are often higher in the export-oriented sectors than in other sectors.⁷⁸

3.2 Freedom of association and the right to collective bargaining

Violations of workers’ right to express their opinion and the right to assemble, of trade unions’ right to organize and bargain collectively occur frequently. The ILO Committee of Freedom of Association was established

⁷² G. Rodgers, E.Lee, L. Swepston, and J. van Daele , *supra* note 31, p. 104.

⁷³ D. Kucera, *supra* note 4, pp. 7-9.

⁷⁴ D. Kucera, *supra* note 4, p. 3.

⁷⁵ D. Kucera, *supra* note 4, pp. 16-17.

⁷⁶ W. Cook and D. Noble, ‘Industrial Relations Systems and US Foreign Direct Investment Aboard, Vol 36:4, *British Journal of Industrial Relations* (1998), pp.601-603.

⁷⁷ D. Kucera, *supra* note 68, p. 33.

⁷⁸ Z. M. Farkhanda, *supra* note 69, pp 140-141.

in 1951 and has, since then, received over 2500 complaints from all over the world.

All of the Bill of Rights instruments, the UDHR, the ICCPR and the ICESCR contain provisions on the right to establish trade unions. Article 20 para 1, of the UDHR establishes a right to freedom of peaceful assembly and association. Article 23, para 4 of the UDHR states that “*everyone has the right to form and to join trade unions for the protection of his interests*”. Article 22 para 1 of the ICCPR states almost the same: *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*”. Limitations according to article 22 para 2 must be prescribed by law and be “*necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedom of others*”. Article 8 of the ICESCR elaborates a bit further on the right, recognizing that trade unions “*shall be subject only to the rules of the organization*”, that the organization also has a right to affiliate with other trade unions and that such a federation or confederation has the same rights as trade unions. From its wording it is clear that the article in the ICESCR is more inspired by the ILO Convention on Freedom of Association and Protection of the Rights to Organise, 1948 (C 87) than the ICCPR.

The Convention on Freedom of Association was adopted in 1948, the same year as the UDHR. Article 2 of the Convention guarantees workers and employers the right to establish and join organizations without prior authorisations. According to article 3, the organization shall also enjoy the right to decide its own constitution and rules to elect its representatives. Furthermore, the positive right to organise is combined with a duty of the State to refrain from interference of this right. Article 4 prescribes that dissolution of an organization shall not be carried out by an administrative authority. An organization shall also have the right to establish or join a federation or confederation and to affiliate with other international workers and employers organizations, as states in article 5. Legal personality is often needed for the proper functioning as an organization and article 7 declares that conditions to obtain legal personality must not be so harsh that they would make it impossible to comply with and thereby, in practice, restrict articles 2-4 of the Convention.

To date, 150 out of 183 member States have ratified the convention, which makes it the least ratified convention of the eight fundamental conventions.⁷⁹ Between 2004 and 2007, the Committee on Freedom of Association examined 553 allegations of violations of the Convention. The examined allegation was distributed between eight categories: anti-union discrimination 26%, collective bargaining 15%, denial of civil liberties 13%, establishment of organizations 12%, government interference in trade union activities (by-laws elections and activities), 11 %, right to strike 11%,

⁷⁹ ILO, *Ratifications of the Fundamental human rights Conventions by country*, <www.ilo.org/ilolex/english/docs/declworld.htm>, visited on 16 March 2010.

employer interference in trade union activities 8%, restrictive legislation 4%.⁸⁰

Collective bargaining provides a means of dialogue and enables employers and workers organisations to take part and agree upon working conditions suitable to them. Collective bargaining can take place at many different levels: in the regional level, in a sector, for an entire corporation or even in the working place. For workers, the advantage of collective bargaining is the opportunity to influence conditions relevant to their work. The benefit for employers is stability on the labour market since a collective agreement often involves an obligation to maintain peaceful industrial actions.⁸¹

160 States have ratified the Right to Organise and Collective Bargaining Convention, 1949 (C 98).⁸² The Convention states that workers should be protected against anti-union discrimination and that workers' and employers' organisations should be protected from any interference by each other.⁸³ The state should also provide for the establishment of appropriate machinery for ensure respect for the right to organise. The State should take measures to provide for a machinery that encourages and promotes employers' and workers' organisations to engage in collective agreements for the purpose of regulating terms and conditions of employment.⁸⁴

Out of the four Fundamental Labour Rights, Freedom of Association and the right to Collective Bargaining is probably the least promoted right, by States as well as corporations. The reason, as mentioned above under chapter 3.1 is the concern that stronger trade union rights reduces a country's comparative advantage, mainly by raising labour costs. Higher costs are believed to decrease trade and foreign direct investments, which are essential factors for economic growth and development. Evidence has been found to support the view that union rights in fact may raise labour cost. However, there is no proof that stronger trade union rights neither negatively affect foreign direct investments, nor even that there is a positive effect.⁸⁵ The correlation between trade unions and economic growth is that stronger trade union rights are more often found in countries with stronger democracy and that democratic countries tend to perform economically well.⁸⁶ Managers of transnational corporation ranked factors determining

⁸⁰ Report of the Director-General, *Freedom of association in practice: Lessons learned*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILC 97th Session 2008, Report I(B), p. 10, <www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_091396.pdf>, visited on 7 October 2009.

⁸¹ *Social Dialogue, Collective Bargaining*, <www.ilo.org/public/english/dialogue/themes/cb.htm>, visited on 7 October 2009.

⁸² *Ratifications of the Fundamental human rights Conventions by country*, *supra* note 79.

⁸³ Right to Organise and Collective Bargaining Convention, (C98) 1949, articles 1-2.

⁸⁴ Right to Organise and Collective Bargaining Convention, (C98) 1949, *supra* note 83, articles 3-4.

⁸⁵ Kucera David, 'Union rights – a competition factor?', Vol 134-135 *Labour Education* (2004/1-2), p.3.

⁸⁶ D. Kucera, *Supra* note 85, p. 2.

the country in which they will undertake FDI. The six most important factors were: i) growth of market; ii) size of market; iii) profit perspectives; iv) political and social stability; v) quality of labour; vi) legal and regulatory environment. Labour costs were only ranked nine on the list of important factors.⁸⁷ Looking at these factors it appears that the comparative advantage of a country depends on more than just labour cost.

3.3 Forced Labour

The ILO has estimated that approximately 12.3 million people are caught in forced or compulsory labour. Most of these workers, 9.4 million, live in Asia and 1.3 million workers in forced labour live in Latin America and the Caribbean. Private agents recruit 9.8 million of the workers and approximately 56 % are women or girls.⁸⁸ Forced labour occurs in all sectors such as agriculture, industry and services, the latter often consisting of domestic workers.⁸⁹

The prohibition of slavery has been considered as *jus cogens* for long and article 4 of the UDHR states that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” The prohibition of slavery is reiterated in article 8 of the ICCPR. The article also includes forced and compulsory labour.

The Forced Labour Convention (No. 29), adopted in 1930, defines forced or compulsory labour as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”.⁹⁰ The two main requisites are menace and voluntarily. The first requisite, menace of a penalty covers a wide range of activities such as physical violence, restraints or threats, including death threats, either against the worker or his or her relatives. Threats may also be more subtle and include denunciation to the police or immigration authorities. Penalties can also be economic in nature where the worker might face the loss of income or the job.⁹¹ The second requisite, voluntary, requires a freely given consent to work and that the worker has the possibility to withdraw his or her consent.⁹² A consent that initially was freely given may lose its meaning if the worker was deceived to give it.⁹³

⁸⁷ D. Kucera, *supra* note 68, p. 35.

⁸⁸ Report of the Director-General: *The Cost of Coercion*, Global Report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference 98th Session 2009, Report I (B), p. 1, <www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf>, visited on 10 November 2009.

⁸⁹ *The Cost of Coercion*, *supra* note 88, p. 31

⁹⁰ Forced Labour Convention, C 29), 1930, article 2.

⁹¹ *The Cost of Coercion*, *supra* note 88, p. 5.

⁹² Examples of some of the routes into forced labour are: birth/descent into “slave” or bonded status; physical abduction or kidnapping; sale of person into the ownership of another; physical confinement in the work location; physiological compulsion, i.e. a threat of penalty for non-compliance; induced indebtedness; deception or false promises about types and terms of work; withholding and non-payment of wages; retention of identity

Forced labour includes practices such as “*human trafficking, slavery and slave-like practices, debt bondage, bonded labour and labour exploitation*”.⁹⁴ Debt bondage is considered as a contemporary form of slavery and refers to situations when a worker is forced to keep working for an employer to pay off a debt.⁹⁵ Compulsory labour often implies a State demand to work and may include work required for educational, community or state projects.⁹⁶ Road building in Myanmar is a current example.

The definition of Forced labour is depending neither on the type of work that is done or how hazardous the work is, nor on the legality or illegality of a worker’s status.⁹⁷ People under the age of 18 years old - children, are also protected by the Worst Forms of Child Labour Convention. The Forced Labour Convention entails a positive obligation for ratifying member States to “*undertake [...] to suppress the use of forced or compulsory labour in all its forms within the shortest possible period*”.⁹⁸ Most of the forced or compulsory labour in the private sector goes unpunished⁹⁹ but the Convention requires that Forced Labour is regarded as a serious criminal offence and that it is punished as a penal offence. Ratifying States have an obligation to make sure that the penalties by law are adequate and strictly enforced.¹⁰⁰

To date, 174 member States have ratified the Convention, which makes it the most ratified of the eight fundamental Conventions.¹⁰¹

The Abolition of Forced Labour Convention (No. 105) was adopted in 1957 and has been ratified by 171 member States.¹⁰² Without altering the scope of the Forced Labour Convention (No. 29), the Convention further outlines the context in which forced or compulsory labour cannot be used. Article 1 specifies the state obligation to suppress forced or compulsory labour and not make use of it as:

- “(a) as a means of political coercion or education or as a punishment for holding or expressing political views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;

documents or other valuable possessions. Report of the Director-General, *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference 93rd Session 2005, Report I (B), p. 6, <www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf>, visited on 16 March 2010.

⁹³ *The Cost of Coercion*, *supra* note 88, p. 6.

⁹⁴ *The Cost of Coercion*, *supra* note 88, p. 5.

⁹⁵ *The Cost of Coercion*, *supra* note 88, p 7, para 39-40.

⁹⁶ *The Cost of Coercion*, *supra* note 88, p. 5.

⁹⁷ *The Cost of Coercion*, *ibid*.

⁹⁸ Forced Labour Convention, (C 29), 1930, article 1(1).

⁹⁹ *The Cost of Coercion*, *supra* note 88, p. 7.

¹⁰⁰ Forced Labour Convention, (C 29), 1930, article 25.

¹⁰¹ *Ratifications of the Fundamental human rights Conventions by country*, *supra* note 79.

¹⁰² *Ratifications of the Fundamental human rights Conventions by country*, *supra* note 79.

- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination.”

In 2005, the ILO estimated the annual profit of forced Labour to US \$ 32 billion.¹⁰³ In 2009, the opportunity costs, that is the money lost from the victims of forced labour was estimated to almost US \$ 21 billion. The opportunity costs consist of underpayment in wages US \$ 19.6 billion and recruitment fees US \$ 1.4 billion.¹⁰⁴ The highest rates of forced labour are found in the private economy and in the agriculture, manufacturing, construction and service sectors.¹⁰⁵ The existence of forced labour is said to hamper development in various ways. Apart from the violation of the human rights, the individual of course loses income, which makes it more difficult to break out of poverty. By paying less than the market rate productivity is hampered and underpayment of wages enables manufacturers to distort competition and may therefore be an obstacle to sustainable development in a country.

3.4 Child Labour

In 2004, ILO estimated that approximately 317 million children between the ages of 5-17 were economically active. Of these 218 million children were defined as child labourers and 126 million of these children were caught in hazardous work.¹⁰⁶

Neither the UDHR nor the ICCPR do specifically address the prohibition of child labour. The protections granted to children in the UDHR comprehend special care and assistance during the childhood and the right to education. Education should be free and compulsory, at least in the elementary and fundamental stages and directed to the development of the human personality and respect for human rights and fundamental freedoms.¹⁰⁷

The ICCPR declares that children, without discrimination, should have “the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”.¹⁰⁸

¹⁰³ *The Cost of Coercion*, supra note 88, p. 30

¹⁰⁴ The opportunity costs is calculated from: underpayment of wages US \$ 19.6 billion, and recruitment costs US \$ 1.4, *The cost of coercion*, supra note 88, pp. 31-32.

¹⁰⁵ *The Cost of Coercion*, supra note 88, p. 7

¹⁰⁶ In the 2006 Report of the Director-General, it was estimated that 166 million children, between the age of 5-14, were defined as child labourers and 74 million children carried out hazardous work. Report of the Director General: *The end of child labour: Within reach*, Global Report on the follow up to the ILO Declaration on Fundamental Principles and Rights at Work, ILC 95th Session 2006, Report I(B), p. 6, <[www.ilo.org/public/libdoc/ilo/P/09382/09382\(2006-95\)90.pdf](http://www.ilo.org/public/libdoc/ilo/P/09382/09382(2006-95)90.pdf)>, visited on 4 April 2010 .

¹⁰⁷ Articles 25 respectively 26 of the UDHR.

¹⁰⁸ ICCPR, article 24(1).

The ICESCR states that families should be protected and that children and young persons should be protected from economic and social exploitation and that:

“Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”¹⁰⁹

The Covenant also reiterates and elaborates on the provision on free and compulsory education of the UDHR.

The first UN instrument on children’s rights, the Convention on the Rights of the Child was adopted in 1989 and article 32 of the Convention concerns child labour.¹¹⁰ According to the article

“1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

Furthermore, States have an obligation to take measures to implement the article and include legislative, administrative, social and educational measures. States are required to adopt regulations on minimum ages, working hours and conditions of work.

The two Fundamental Conventions regulating child labour are the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1998 (No. 182). The Minimum Age Convention protects children by setting minimum ages to allow children to work. States also have a positive obligation to adopt a national policy for the effective abolition of child labour and to progressively raise the minimum age admission to employment.¹¹¹ The Convention sets three different minimum ages in relation to employment. First, States are expected to set a general minimum age, not less than 15 years old for employment. However, this provision contains a flexibility clause allowing developing countries to set the age limit to 14 years after consultation with the social partners. Second, article 3(1) prohibits children below the age of 18 years old to perform any work that might jeopardise the health, safety or morals of young persons. Finally, children between the ages of 13 to 14 are allowed to perform light work, that is, work that is not harmful to the development or health of the child as long as it does not interfere with school attendance. Developing countries that have set the minimum age for general work to 14 years old may set the minimum age for light work to 12 years old.¹¹² The Convention

¹⁰⁹ ICESCR, article 10 (3).

¹¹⁰ *Convention on the Rights of the Child* adopted by the General Assembly on 20 November, General Assembly Resolution 44/25

¹¹¹ Minimum Age Convention, 1973 (C. 138), article 1.

¹¹² Minimum Age Convention, (C 138), 1973, article 7.

has only been ratified by 155 member States, which makes it the second least ratified convention.¹¹³

The second most ratified of the fundamental Conventions is The Worst Forms of Child Labour Convention (No. 182). It was adopted in 1999 and has been ratified by 171 member States.¹¹⁴ The preamble recognizes that child labour is caused by poverty and that sustained economic growth leading to poverty alleviation and education is the long-term solution for child labour. The Convention calls for immediate and effective measures for States to eliminate the worst forms of child labour.¹¹⁵ The worst forms of child labour include:

“(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, for procuring or offering a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”¹¹⁶

The conclusions from the International Human Rights Instruments are that the protection granted to children is mainly through the adoption of a minimum age for permissible work and that children below the minimum age are expected to attend school.

The development aspect of child labour is that underdevelopment and poverty are the key causes of child labour.¹¹⁷ There might be immediate profits of child labour since the income of the family increases and employers may benefit by low labour costs and wage discrimination.¹¹⁸ However, there are costs to the individual, society and economy. Children are refused their human rights and prevented from educating themselves. Child labour have a negative impact on the macro economy and labour markets and by ignoring its prevention the long-term development is affected. When children have to work, instead of going to school and develop their qualifications, they are left as unskilled workers. Most of children’s work is less productive than adult labour and consist of unskilled

¹¹³ ILO, *Ratifications of the Fundamental human rights Conventions by country*, *supra* note 79.

¹¹⁴ ILO, *Ratifications of the Fundamental human rights Conventions by country*, *supra* note 79.

¹¹⁵ Worst Forms of Child Labour Convention, (C 182), 1999, article 1.

¹¹⁶ Worst Forms of Child Labour Convention, (C 182), 1999, article 3. The contents of the last paragraph of the article are intended to be determined by the social partners.

¹¹⁷ D. Kucera, *supra* note 4, p. 17.

¹¹⁸ D. Kucera, *supra* note 4, p. 22.

and uneducated labour, which may contribute to a vicious circle and increased difficulties of escaping poverty.

The Prohibition of child labour, together with forced labour, is probably the most regulated provision in the codes of conduct of multinational enterprises. Yet, the problem remains large. One of the reasons are probably that the market of unskilled labour is less important to the export market than the domestic market since the former is often more dependent on skilled labour. Only 5 per cent of the total child labourers work in export sector.¹¹⁹ Still, this means that the export sector would count for approximately 10 to 15 million children in work.

Again, there is less child labour in countries with higher GDP per capita. Taken labour force participation rates for children between 10 to 14 year olds as an indicator, GDP is highest in countries where participation rates are lower. The same conclusion can be said for secondary education non-enrolment rates.¹²⁰

3.5 Discrimination

Discrimination occurs in all societies and all countries. Women, for example, earn less than men do, even when they are performing the same work or work of equal value. People from a different ethnicity are often disregarded in employment situations. An individual may also be subject to multiple discriminations such as ethnicity and gender. Gender and racial discrimination was two of the first discriminatory grounds that were acknowledged and targeted within the field of labour. Today the labour market has to deal with new forms of discrimination. Many countries have expanded the list of prohibited grounds to include “*disability, age, state of health (including actual or perceived HIV/AIDS status), trade union membership and family status, among other grounds*”.¹²¹

Discrimination is considered a systematic and structural phenomenon and may be “*inherent or institutionalized in social patterns, institutional structures and legal constructs that reflect and reproduce discriminatory practices and outcomes.*”¹²² Discrimination can be either direct or indirect. Direct discrimination covers exclusion or preference of one or several persons because they belong to a particular group. Indirect discrimination includes cases where a norm or practice appears to be applied equally to all but where the effect or outcome leads to unfair treatment of a group of people.¹²³ By taking this into consideration and connecting it to one of most

¹¹⁹ D. Kucera, *supra* note 4, p. 22.

¹²⁰ D. Kucera, *supra* note 4, pp. 16-17.

¹²¹ Report of the Director-General, *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILC 96th Session 2007, Report I (B), p. 9, <www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082607.pdf>

¹²² *Supra* note 121, *ibid.*

¹²³ *Supra* note 121, *ibid.*

applied priorities of the Decent Work Country Programmes - employment promotion with the emphasize on youth, one can conclude that it is difficult for young people all over the world to enter the labour market. By just looking at the facts that young people more often are unemployed one might suspect that young people are subject to indirect discrimination. However, to determine whether this would amount to violation of human rights, it is be necessary to look the discriminatory grounds in the human rights instruments.

Discrimination is prohibited in all of the Bill of Rights on almost the same grounds. Article 2 of the UDHR states that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs [...].”

In regards to remuneration, everyone has the right to equal pay for equal work.¹²⁴ Thus, the provision applies to all and there are no “permitted” grounds for discrimination.

Both the ICCPR and the ICESCR oblige the State to ensure the rights of the Covenants for all individuals within its territory and to refrain from making any distinctions based on the same grounds enumerated in the UDHR.¹²⁵ The right to equal remuneration in the ICESCR might seem a bit ambiguous. On the one hand, the right has expanded to fair wages equal pay for work of equal value without the distinction of any kind, on the other hand, women in particular are “guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”.¹²⁶ Equal opportunity in employment should also be promoted without any distinctions other than those of seniority and competence.¹²⁷

The Equal Remuneration Convention, 1951 (No. 100) has been ratified by 167 member States.¹²⁸ The scope of the convention, according to article 1(b), is the application of equal remuneration for men and women worker for work of equal value. The term refers to “rates of remuneration established without discrimination based on sex”. Ratifying States must promote and ensure to all workers the application of the principle of equal remuneration for men and women for work of equal value. The state obligation may be fulfilled though national laws and regulations, the recognized machinery for wage determination or collective agreements.¹²⁹

¹²⁴ UDHR, article 23(2).

¹²⁵ ICCPR, article 2(1) and ICESCR 2(2).

¹²⁶ ICESCR, article 7(a)(i).

¹²⁷ ICESCR, article 7(c).

¹²⁸ *Ratifications of the Fundamental human rights Conventions by country*, *supra* note 79.

¹²⁹ Equal Remuneration Convention, (C 100), 1951, article 2.

The Discrimination (Employment and Occupation) Convention, 1958 (C 111) defines discrimination as

“Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”¹³⁰

The terms employment and occupation include equal access to vocational training.¹³¹ The discriminatory grounds are fewer than in the UDHR but, according to article 1(b), the social partner may expand the grounds after consultation. According to article 1(2) distinctions based on inherent requirements of a job are not considered discrimination.

While economic growth reduces the existence of child labour and forced labour, discrimination does not automatically face the same fate. Neither will economic growth necessarily provide equal opportunity and treatment.¹³² Thus, the Convention conveys positive obligations on/for States, which includes the adoption of a national policy to promote equality in employment and occupation for eliminating any discrimination (art 2). The State also has to take measures to make sure that other national regulations are in conformity with the national policy.¹³³ To date the Convention has been ratified by 169 States.¹³⁴

The main argument for an employer to refrain from discrimination is that it may improve business. Gender inequality is linked with slower economic growth and discrimination narrows down the pool of qualified employees, described as a “selection distortion factor”.¹³⁵ For the State, discrimination is inefficient and may contribute to poverty and social exclusion. For the individual denial of equal opportunity may lead to social immobility.¹³⁶

¹³⁰ Discrimination (Employment and Occupation) Convention, (C 111), 1958, article 1(a).

¹³¹ Discrimination (Employment and Occupation) Convention, (C 111), 1958, article 1(3).

¹³² ILO, Committee on Legal Issues and International Labour Standards, *ILO cooperation with the Asian Development Bank: Core labour standards and the ADB activities*, GB.286.LILS.9, p 8, <www.ilo.org/public/english/standards/relm/gb/docs/gb286/pdf/lils-9.pdf>, visited on 25 March 2010.

¹³³ Discrimination (Employment and Occupation) Convention, (C 111), 1958, article 3.

¹³⁴ *Ratifications of the Fundamental Human Rights Conventions by country*, *supra* note 79.

¹³⁵ D. Kucera, *supra* note 4, p. 32.

¹³⁶ *Equality at work: Tackling the challenges*, *supra* note 121, p. 10.

4 Mandate of Multilateral Development Banks

This chapter will start by briefly examining the application of labour standards in the Poverty Reduction Strategy Papers. The larger part of the chapter will examine the largest Multilateral Development Banks (MDBs), the mandate they have to apply labour standards, the standards they apply and, wherever existent, the impact or outcome of the application. The MDBs chosen for this examination have all entered into technical cooperation with the ILO in the application of labour standards.

4.1 World Bank and Poverty Reduction Strategy Papers

In 1999, the World Bank (WB) and International Monetary Fund (IMF) introduced the Poverty Reduction Strategy Papers (PRSPs).¹³⁷ The PRSPs are an instrument of achieving the Millennium Development Goals and they outline a country's policies and programs to reduce poverty and enhance economic growth. They are a precondition for debt-relief under the Highly Indebted Poor Countries initiative and important to be able to access the World Bank and IMF concessional lending.¹³⁸ PRSPs are time bound, often valid for three to five years. Since the adoption of the first PRSPs in 2000, many countries have already adopted their second set of papers, also referred to as the new generation of PRSPs. Today some 70 low-income countries have produced PRSPs. The PRSPs are prepared by governments through a participatory process with various stakeholders and development partners, including the World Bank and the IMF. They should include: i) description of the participatory process that was used, ii) comprehensive poverty diagnostics, iii) costed and prioritized policies, iv) targets and indicators for monitoring and evaluation.¹³⁹

Criticisms against the PRSPs have among other things targeted: the participatory process arguing that it has been applied in an inconsistent and

¹³⁷ The World Bank Group consists of five institutions: International Bank for Reconstruction and Development (IBRD); International Development Association (IDA); Multilateral Investment Guarantee Agency (MIGA); International Centre for Settlement of Investment Disputes (ICSID) and International Finance Corporation (IFC). The term World Bank refers specifically to the IBRD and the IDA.

¹³⁸ ILO, Committee on Employment and Social Policy, *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments*, GB.300/ESP/3, para 4, <www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_084250.pdf>, visited on 22 March 2010.

¹³⁹ *What are PRSPs?*, <web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0..contentMDK:22283891~pagePK:210058~piPK:210062~theSitePK:384201,00.html>, visited on 20 October 2009.

uneven manner, the uneven balance between the agenda of donors such as the IMF and the World Bank and the national ownership of the process, and “the conditionality attached to concessional lending and lack of emphasis on investment in the productive sectors”.¹⁴⁰ The IMF has also been heavily criticized for their promotion of economic growth and reluctance to apply human rights. Thus, the IMF has been accused of viewing “social justice as a trickle-down effect of economic development”, instead of considering human rights as a part in the development process consistent with the rights-based approach.¹⁴¹

4.1.1 PRSPs and Labour Standards

The ILO considers that Decent Work contributes to poverty alleviation and social exclusion. Decent Work, as described above under chapter 2.1.3 encompasses the four pillars of employment, international labour standards, social protection and social dialogue. The lack of social dialogue and the invisibility of employment in the process of PRSPs were two of the reasons for ILO to engage in the international efforts of poverty reduction and economic growth. To include labour aspects in the PRSPs is voluntary but the ILO has since 2001-02 developed a systematic approach to influence the process by linking the Decent Work Country Programmes to the PRSPs. Today approximately half of the 70 countries that have adopted PRSPs have included their DWCPs into the process.¹⁴² Even countries that have not aligned their PRSPs and DWCPs have put forward generation of work and employment as a means of achieving economic growth. ILO also supports the participation of the social partners through social dialogue, which may increase the national ownership of the process. Due to the length of the process, it has been considered a challenge to maintain the stakeholders’ participation throughout the lifetime of the PRSPs.¹⁴³

The ILO strategy for involvement in the process includes four parts. Besides incorporation of the Decent Work Agenda, ILO seeks to empower the social partners to build their capacity to draft, implement and monitor PRSPs. The ILO also tries to influence and develop partnerships at the national level. Finally, the ILO strives to maintain a

“[...] critical dialogue at the global and regional level with the IFIs, regional commissions, regional development banks and the United Nations Development Programme (UNDP) on the overall assessment of the content and process of PRS strategies”.¹⁴⁴

¹⁴⁰ *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments, supra* note 138, para. 7.

¹⁴¹ P. Barnacle, *Promoting Labour Rights in International Financial Institutions and Trade Regimes, A Colloquy on Employment and Labour Law and Policy for the New Millennium: Promise and Paradox*, Saskatchewan Law Review, (2004), p. 626 et seq.

¹⁴² *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments, supra* note 138, para. 8.

¹⁴³ *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments, supra* note 138, para. 15.

¹⁴⁴ *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments, supra* note 138, para. 9.

All though ILO considers the core Conventions, as well as all other ILO Conventions important to poverty reduction international labour standards are not systematically included in the PRSPs, not even in those that have applied the Decent Work Agenda. However, some of the fundamental rights, such as gender equality and abolition of forced labour are often included in the papers.¹⁴⁵

4.1.1.1 Cambodia

One of the five special focus countries that the ILO worked with to support the PRSPs process was Cambodia. In 2000, approximately 36 per cent of the Cambodian people were living below the poverty line and most of the poor were identified as working poor. The unemployment rate in Cambodia was only 2.5 per cent while the underemployment rate was higher - 13 per cent. Most of the poor and working poor were largely found in the agricultural sector and the majority of them were women.¹⁴⁶ What kept them poor, in spite of jobs, was among other things long hours of work with very little remuneration and the absence of minimum wages; low productivity, education, literacy and health; discrimination of women; little or no social protection in work; and weak rights and voice at work.¹⁴⁷ Child labour and trafficking of women and children were also extensive. With regard to the latter Cambodia had ratified all of the core conventions except the Worst Forms of Child Labour Convention^{148, 149}.

The first PRSP of Cambodia set out four priorities related to the Decent Work Agenda.¹⁵⁰ The first, employment, included job opportunities with the focus of facilitating private sector development and the expansion of exports and tourism. The second, strengthening institutions and improving governance included legal and judicial reforms, decentralization and local governance. Third, reduction of vulnerability and strengthening social inclusion involved disabled, HIV/AIDS, orphans and street children. Finally, the promotion of gender equality included reduction of gender-based disparities, to address legal barriers to women's equal rights, the improvement of legal protection to ensure full legal protection of women and girls and to promote and mainstream gender in all government departments.¹⁵¹

¹⁴⁵ *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments*, *supra* note 138, para. 5 and 36.

¹⁴⁶ *Generating decent work for poverty reduction in Cambodia*, Working Paper No. 48, pp. 5 and 45, <www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079146.pdf>, visited on 30 March 2010.

¹⁴⁷ *National Poverty Reduction Strategy of Cambodia 2003-2005*, p. iiif. <siteresources.worldbank.org/INTPRS1/Resources/Country-Papers-and-JSAs/cambodia_PRSP2.pdf>, visited on 21 October 2009.

¹⁴⁸ Cambodia later ratified the Worst Forms of Child Labour Convention (No. 182) in 2002.

¹⁴⁹ *Generating decent work for poverty reduction in Cambodia*, *supra* note 146, p. 216.

¹⁵⁰ The other priority areas of the PRSP was maintaining macroeconomic stability, improving rural livelihoods, improving capabilities and priority focus on population, *National Poverty Reduction Strategy of Cambodia 2003-2005*, *supra* note 147.

¹⁵¹ *National Poverty Reduction Strategy of Cambodia 2003-2005*, *supra* note 147, p. iv ff.

In the second Cambodian PRSPs the promotion of the private sector “as the main engine of economic growth” was reiterated as a cornerstone of Cambodia’s economic policy.¹⁵² A rectangular strategy was adopted containing four components:

“(1) promotion of economic growth; (2) generation of employment for all Cambodian workers; (3) implementation of needed reforms to ensure equity and social justice; and (4) enhancing efficiency and effectiveness of reform programmes in all sectors towards reduction in poverty and achievement of sustainable development.”¹⁵³

The Cambodian government was criticised for a limited participatory process, which also was considered the weakest point of the PRSP.¹⁵⁴

4.1.1.2 Tanzania

Tanzania adopted its first PRSPs in 2000 and the second in 2005. A survey in 2000/2001 showed that 18.7 per cent of the population lived below the national food poverty line and 35.7 per cent below the national basic needs poverty line.¹⁵⁵ The agricultural sector provides livelihood to 82 per cent of the population, makes up for 45 per cent of the GDP and 60 per cent of the export. The survey also showed that 12.9 per cent of the labour force was unemployed and that unemployment was worse among women and youths. The underemployment rate was 11.2 per cent. Women earned less than men and 1.2 million children were engaged in child labour.¹⁵⁶ While 36 per cent of the women were illiterate, the same figure for men was 20 per cent.¹⁵⁷

The participatory process was criticized in the first PRSP, but consultations were improved in the second. The second PRSP recognized that meaningful consultations needed to include structures of discrimination that generate and sustain poverty, awareness of non-fulfilment of core obligations, the strengthening of institutions that allowed for accountability of policy makers and expanded civil and political rights. The latter included “an atmosphere of freedom of opinion, information, media and association.”¹⁵⁸

The PRSP of Tanzania is outcome based and builds upon the desired outcome. The desired outcomes are put together in three categories: (i) growth and reduction of income poverty; (ii) improved quality of life and

¹⁵² *PRSP II of Cambodia*, 2005, pp. 19-20, [siteresources.worldbank.org/INTPRS1/Resources/Cambodia_PRSP\(Dec22-2005\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/Cambodia_PRSP(Dec22-2005).pdf), visited on 22 October 2009.

¹⁵³ *PRSP II of Cambodia*, *supra* note 152, p. 27.

¹⁵⁴ *Joint Staff Advisory Note on Cambodian PRSP II*, para 10, [siteresources.worldbank.org/INTPRS1/Resources/Cambodia_JSAN\(June21-2006\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/Cambodia_JSAN(June21-2006).pdf), visited on 22 October 2009.

¹⁵⁵ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, 2005, p 4, [siteresources.worldbank.org/INTPRS1/Resources/TanzaniaPRSP\(June-2005\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/TanzaniaPRSP(June-2005).pdf) visited on 22 October 2009.

¹⁵⁶ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, *supra* note 155, p 9.

¹⁵⁷ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, *supra* note 155, p 11.

¹⁵⁸ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, *supra* note 158, p 18.

social well-being; and (iii) good governance and accountability.¹⁵⁹ The PRSP recognizes employment and social protection and one of the targeted objectives during the period of 2005-10 is the creation of 1 million jobs.

Child labour is targeted and the objective is the reduction of the amount of children working from 25 per cent to 10 per cent through sector based programs for reducing worst forms of child labour, enrolment in education and reviews and amendments of laws, policies and national strategies.¹⁶⁰ The second category targets reduced inequalities in outcomes where areas such as income, age and gender are included.¹⁶¹

4.1.1.3 Moldova

Moldova adopted its last PRSP in 2008. In 2000 an interim PRSP was adopted and an ordinary in 2004.¹⁶² Moldova is considered the poorest country in Europe and in 2002, 40 per cent of the population lived below the absolute poverty line.¹⁶³ Further more 61.2 per cent of the households consider themselves poor.¹⁶⁴ Poverty is worst among children and the elderly over 60 years old.¹⁶⁵ In spite of the poverty, only 1.9 per cent of the population were registered as unemployed in 2002 but according to the ILO methodology the unemployment rate was 6.8 per cent.¹⁶⁶

The first PRSP implemented a three-pillar strategy containing economic growth, human development and social protection and inclusion. The Joint Staff Advisory Note of the World Bank found that the Moldovan government had fully endorsed the participatory process.¹⁶⁷ The Second PRSP contains five priority areas chosen by the Moldovan government to work with. The priorities are i) strengthening democracy and the rule of law based on human rights; ii) settlement of the transnistrian conflict and reintegration of the country; iii) enhancing the national economy competitiveness; and iv) human resources development, enhancing employment and promoting social inclusion and finally; v) regional development. Each priority area is matched with activities and sub-

¹⁵⁹ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, *supra* note 155, p. 23.

¹⁶⁰ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, *supra* note 155, p. 27.

¹⁶¹ *National Strategy for Growth and Reduction of Poverty (NSGRP)*, *supra* note 155, annex, p. 14

¹⁶² http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,contentMDK:20200608~menuPK:421515~pagePK:148956~piPK:216618~theSitePK:384201_00.html#M, visited on 11 November 2009.

¹⁶³ Government of the Republic of Moldova, *Economic Growth and Poverty Reduction Strategy Paper (2004-2006)*, <siteresources.worldbank.org/INTPRS1/Resources/Country-Papers-and-JSAs/cr04395.pdf>, p. 8, visited on 22 March 2010.

¹⁶⁴ *Economic Growth and Poverty Reduction Strategy Paper (2004-2006)*, *supra* note 163, p 31.

¹⁶⁵ 45.2 per cent of the children and 43.7 per cent of the elderly were considered poor; *Economic Growth and Poverty Reduction Strategy Paper (2004-2006)*, *supra* note 163, p 29.

¹⁶⁶ *Economic Growth and Poverty Reduction Strategy Paper (2004-2006)*, *supra* note 163, p 22.

¹⁶⁷ *Joint Staff Advisory Note (JSAN) for PRSP on Moldova, 2004*, para.3, <siteresources.worldbank.org/INTPRS1/Resources/Country-Papers-and-JSAs/cr04396.pdf>, visited on 23 October 2009.

activities, altogether a couple of hundred activities. Furthermore, all activities have been time bound, costs have been estimated, results have been anticipated and performance indicators have been set.¹⁶⁸

4.1.2 Impacts

Each country is expected to conduct a progress report for the World Bank and IMF. The World Bank and IMF on the other hand carry out Joint Staff Assessments and Joint Staff Advisory Notes. The progress report describes and evaluates the development progress with the Millennium Development Goals in mind.¹⁶⁹ However, labour standards or the other components of the Decent Work Agenda are not measured other than if a State would include it in their Country Report or a new PRSP.

The ILO has concluded that the promotion of the “*Decent Work Agenda in the Poverty Reduction Strategy Paper (PRSP) processes of some 15 countries has shown the relevance of the Decent Work Agenda in national policies for poverty reduction*”.¹⁷⁰ ILO also recognizes that the new generations of PRSPs focus more on employment and employment creation than the first generation. In relation to this, factors that further employment such as agricultural and industrial growth, infrastructure, micro-enterprises, Small and medium sized enterprises, upgrading of the informal economy, vocational and technical training, provision of credit and special measures for productive youth and women’s employment are also considered in some PRSPs. However, the ILO states that other aspects of employment such as macro economic, trade, financial and investments policies are not considered within development policies. Even when ILO contributes with aspects on “*employment intensity of different patterns and rates of growth and impact on poverty*” these are seldom taken into account.¹⁷¹

While social protection in general is recognized and vulnerable groups identified in the PRSPs rights at work are not systematically considered. Some rights, especially gender equality, child and forced labour are included occasionally.¹⁷²

¹⁶⁸ PRSP II of Moldova, 2008, <<http://siteresources.worldbank.org/INTPRS1/Resources/Moldova-PRSP-April2008.pdf>>, visited on 23 October 2009.

¹⁶⁹ PRS Progress Reports, <web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPRS/0,,contentMDK:20240834~menuPK:495896~pagePK:148956~piPK:216618~theSitePK:384201,00.html>, visited on 11 November 2009.

¹⁷⁰ ILO, Programme and Budget for the Biennium 2006-07, <www.ilo.org/public/english/bureau/program/download/pdf/06-07/pb.pdf>, visited on 22 March 2010.

¹⁷¹ *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments*, supra note 138, p 13.

¹⁷² *The Decent Work Agenda in Poverty Reduction Strategy Papers (PRSPs): Recent developments*, supra note 138, ibid.

4.2 International Finance Corporation

International Finance Corporation, IFC, was established in 1956 and is the private sector arm of the World Bank. As a member of the World Bank, the common mission is to reduce poverty through investments, jobs and sustainable growth. This will lead to economic growth and empowerment of poor people, which will enable them to participate in development.¹⁷³

IFC finances investments in sustainable private enterprises and offers advisory services to companies and governments in developing countries.¹⁷⁴ IFC only finances projects if private capital is not available at reasonable terms and in development projects located within a member State.¹⁷⁵ The vision of the bank is that “*people should have the opportunity to escape poverty and improve their lives*”.¹⁷⁶ According to article 1 in the Articles of Agreement, the purpose of IFC is:

“ [...]to further economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas, thus supplementing the activities of the International Bank for Reconstruction and Development [...]. In carrying out this purpose, the Corporation shall:

(i) in association with private investors, assist in financing the establishment, improvement and expansion of productive private enterprises which would contribute to the development of its member countries by making investments, without guarantee of repayment by the member government concerned, in cases where sufficient private capital is not available on reasonable terms;

(ii) seek to bring together investment opportunities, domestic and foreign private capital, and experienced management; and

(iii) seek to stimulate, and to help create conditions conducive to, the flow of private capital, domestic and foreign, into productive investment in member countries.

The Corporation shall be guided in all its decisions by the provisions of this Article”.¹⁷⁷

IFC is not only motivated to improve lives by economic growth, they also recognize that economic development needs to be sustainable. According to IFC “[...] *economic growth is sustainable only if it is environmentally and*

¹⁷³ *Sustainability Snapshot*, p. 1, <[www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_2005SustReport_2/\\$FILE/Snapshot.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_2005SustReport_2/$FILE/Snapshot.pdf)>, visited on 22 March 2010.

¹⁷⁴ *What we do*, <www.ifc.org/ifcext/about.nsf/Content/WhatWeDo>, visited on 22 March 2010.

¹⁷⁵ *Articles of Agreement*, article III, section 3 (i), <[www.ifc.org/ifcext/about.nsf/AttachmentsByTitle/articles.pdf/\\$FILE/articles.pdf](http://www.ifc.org/ifcext/about.nsf/AttachmentsByTitle/articles.pdf/$FILE/articles.pdf)>, visited on 22 March 2010.

¹⁷⁶ *IFC's Vision, Value & Purpose*, <www.ifc.org/ifcext/about.nsf/Content/Mission>, visited on 22 March 2010.

¹⁷⁷ *Articles of Agreement*, *supra* note 175, article I.

socially sound and helps improve the quality of life for those living in developing countries."¹⁷⁸

The decision-making power is vested in the Board of Governors. Each member State may appoint a Governor and an Alternative Governor.¹⁷⁹ To become a member of the IFC a state has to be a member of the World Bank IBRD and has to have signed and deposited the Articles of Agreement with the World Bank. Today the IFC has 182 member States.¹⁸⁰ The majority of the votes cast take decisions; each member State has two hundred fifty votes and an additional vote for each share of the stock held.¹⁸¹ Currently there are 2,450,000 shares of the stock and the seven largest OECD countries hold 51 % of the shares.¹⁸² United States is the largest shareholder holding approximately 24 % of the shares followed by Japan that holds 6 % of the shares. France, Germany and United Kingdom each hold 5 % of the shares.¹⁸³

4.2.1 Labour Standards

In 2006, the IFC revised its Environmental and Social Standards and adopted eight Performance Standards that clients have to adhere to, to be able to obtain funding from the IFC.¹⁸⁴ The Performance Standards are a risk management tool and are designed to help clients to manage the environmental and social risks of a project. All projects undergo an environmental and social appraisal and projects are categorised according to their expected impacts, where category A is expected to have adverse social and/or environmental impacts that are diverse, irreversible, or unprecedented and category C is not expected to have any or a minimal impact.¹⁸⁵ All projects are initially screened against the performance

¹⁷⁸ *IFC at a Glance*,

www.ifc.org/ifcext/careers.nsf/e11ffa331b366c54ca2569210006982f/a0b36b45f73a565785256ecf0066115a?OpenDocument, visited on 22 March 2010.

¹⁷⁹ *IFC Governance*, www.ifc.org/ifcext/about.nsf/Content/IFC_Governance, visited on 6 August 2009.

¹⁸⁰ *Member Countries*, www.ifc.org/ifcext/about.nsf/Content/Member_Countries, visited on 3 August 2009.

¹⁸¹ *Articles of Agreement*, *supra* note 175, article IV, section 3.

¹⁸² *IFC Fact Sheet*, [www.ifc.org/ifcext/treasury.nsf/AttachmentsByTitle/Investorfactsheet-oct2008/\\$FILE/Fact+Sheet_Oct+08.pdf](http://www.ifc.org/ifcext/treasury.nsf/AttachmentsByTitle/Investorfactsheet-oct2008/$FILE/Fact+Sheet_Oct+08.pdf), visited on 22 March 2010.

¹⁸³ *IFC 2009 Annual Report, their/our story*, p. 106, [www.ifc.org/ifcext/annualreport.nsf/AttachmentsByTitle/AR2009_English/\\$FILE/AR2009_English.pdf](http://www.ifc.org/ifcext/annualreport.nsf/AttachmentsByTitle/AR2009_English/$FILE/AR2009_English.pdf), visited on 22 March 2010.

¹⁸⁴ The eight Performance Standards are: 1) Social and Environmental Assessment and Management System, 2) Labor and Working Conditions, 3) Pollution Prevention and Abatement, 4) Community Health, Safety and Security, 5) Land Acquisition and Involuntary Resettlement, 6) Biodiversity Conservation and Sustainable Natural Resource Management, 7) Indigenous Peoples and 8) Cultural Heritage, www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards, visited on 22 March 2010.

¹⁸⁵ *Definitions of Project Categories*, www.ifc.org/ifcext/disclosure.nsf/Content/Project_Categories, visited on 5 November 2009.

standards to determine their categorisation. The applicable Performance Standards to a project is however depending on the expected impacts.

Performance Standard 2, PS 2, concerns labour and working conditions and “[...] recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with protection for basic rights of workers”.¹⁸⁶ The objectives are further:

“ to establish, maintain and improve the worker-management relationship, to promote the fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labor and employment laws, to protect the workforce by addressing child labor and forced labor, to promote safe and healthy working conditions, and to promote the health of workers”.¹⁸⁷

One reason for considering working conditions, according to the IFC, is that economic outcome and thereby the overall success of the project can be affected by the relationship between management and employees.¹⁸⁸

Responsible business may not only enhance the comparative advantage of a client but may also help to promote a long term profitability and contribute to fulfil the mandate of IFC.¹⁸⁹

The Standard is complemented with a Guidance Note¹⁹⁰, which further elaborates on labour and working conditions. There are also Good Practice Notes on Non-Discrimination and Equality¹⁹¹, Retrenchment¹⁹² and Child Labour in the Work Place and Supply chain.¹⁹³ The Good Practice Notes however, are not policies or requirements but a way of sharing learning and experiences with potential clients.¹⁹⁴ In 2009, the IFC published a Labour

¹⁸⁶ *Performance Standard 2, Labor and Working Conditions*, para 1, <[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS2/\\$FILE/PS_2_LaborWorkingConditions.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS2/$FILE/PS_2_LaborWorkingConditions.pdf)>, visited on 22 March 2010.

¹⁸⁷ *Guidance Note 2, Labour and Working Conditions*, the Objectives, p 1, <[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_GuidanceNote2007_2/\\$FILE/2007+Updated+Guidance+Note_2.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_GuidanceNote2007_2/$FILE/2007+Updated+Guidance+Note_2.pdf)>, visited on 22 March 2010.

¹⁸⁸ *Guidance Note 2, Labour and Working Conditions*, *supra* note 187, para G1.

¹⁸⁹ *IFC's Policy on Social and Environmental Sustainability*, para 7, <[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf)>, visited on 22 March 2010.

¹⁹⁰ *Guidance Note 2, Labour and Working Conditions*, *supra* note 187.

¹⁹¹ *Good Practice Note: Non-Discrimination and Equal Opportunity*, <[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_NonDiscrimination/\\$FILE/NonDiscrimination.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_NonDiscrimination/$FILE/NonDiscrimination.pdf)>. visited on 7 August 2009.

¹⁹² *Good Practice Note: Managing Retrenchment*, <[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_Retrenchment/\\$FILE/Retrenchment.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_Retrenchment/$FILE/Retrenchment.pdf)>, visited on 24 March 2010.

¹⁹³ *Good Practice Note: Addressing Child Labor in the Workplace and Supply Chain*, <[www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_childlabor/\\$FILE/ChildLabor.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_childlabor/$FILE/ChildLabor.pdf)>, visited on 10 September 2009.

¹⁹⁴ *Good Practice Note: Addressing Child Labor in the Workplace and Supply Chain*, *supra* note 193, p 1.

Toolkit.¹⁹⁵ It is a practical tool for IFC personnel to be used in the assessment process to determine whether projects with labour issues fulfil the Standards.¹⁹⁶ Together with the European Bank for Reconstruction and Development, the two banks have developed a guidance note on Workers' Accommodation: Processes and Standards.¹⁹⁷

The basic rights protected are in part based on the eight fundamental Conventions of the ILO and article 32.1 of the UN Convention Rights of the Child and cover the four Core Labour Standards of the ILO: freedom of association and equal opportunity, child labour, forced labour and non-discrimination.

The PS 2 states that clients may not try to restrict the right to freedom of association and collective bargaining in countries where the law protects, or is silent on the issue.¹⁹⁸ In countries where freedom of association and collective bargaining is restricted by law, either by a prohibition or by demanding that workers' organizations are approved by national authorities, the client should ensure alternative means for workers' to protect their rights. The term workers' organizations only include organizations that have been freely chosen by the workers.¹⁹⁹ If the right is restricted in a country, the IFC will, if requested by a client, work together with the client to address the issues.²⁰⁰ The issue of freedom of association and collective bargaining, particularly in countries where labour law enforcement is weak, has been identified as a challenge for the present review of the Standards.²⁰¹

In relation to non-discrimination, clients are obliged not to make employment decisions "*unrelated to inherent job requirements*". Where legal provisions about non-discrimination exist, the client should follow these.²⁰² If however, national law should permit discrimination in the workplace the IFC offers to work with the client to try to resolve the issue.²⁰³ The IFC believes that there is a business case for diversity in the workforce. A company not only exposes itself to a reputational risk when discrimination occurs but also restricts the available workforce. Diversity in

¹⁹⁵ *Labor Toolkit*,

<[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_LaborToolkit/\\$FILE/Labor+Toolkit.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_LaborToolkit/$FILE/Labor+Toolkit.pdf)>, visited on 22 March 2010.

¹⁹⁶ *IFC's Policy and Performance Standards on Social and Environmental Sustainability and Disclosure Policy*, Progress Report on the First 18th Months of Application, para 19, <[www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/rep_PS_18MonthProgressReport/\\$FILE/18+month+Implementation+Board+Paper_web.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/rep_PS_18MonthProgressReport/$FILE/18+month+Implementation+Board+Paper_web.pdf)>, visited on 22 March 2010.

¹⁹⁷ *Workers' Accommodation Processes and Standards*, A Guidance Note by IFC and EBRD,

<[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_WorkersAccommodation/\\$FILE/workers_accomodation.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_WorkersAccommodation/$FILE/workers_accomodation.pdf)>, visited on 24 March 2010.

¹⁹⁸ *Performance Standard 2, Labor and Working Conditions*, *supra* note 186, para 9-10.

¹⁹⁹ *Guidance Note 2, Labor and Working Conditions*, *supra* note 187, para G18.

²⁰⁰ *Guidance Note 2, Labor and Working Conditions*, *supra* note 187, para G24.

²⁰¹ *IFC's Policy and Performance Standards on Social and Environmental Sustainability and Disclosure Policy*, *supra* note 196, para 35.

²⁰² *Performance Standard 2, Labor and Working Conditions*, *supra* note 186, para 11.

²⁰³ *Guidance Note 2, Labor and Working Conditions*, *supra* note 187, para G28.

the workforce contributes to business benefits through wider experiences, perspectives and cultural understanding and can inter alia result in being the employer of choice, improved productivity, a better market focus, enhanced reputation, increased competitiveness and reduced vulnerability.²⁰⁴

The prohibition on child labour requires that States will have to follow provisions in national law on child labour. If a project has been approved and is found to employ children the client has to take action but not necessarily remove the child from work. Children under national school-leaving age cannot work during school hours. Neither can children younger than 18 years old take part in any dangerous work.²⁰⁵ The client also has an obligation to apply the requirements regarding child labour to its supply chain. Clients should inquire about the use of child labour in their supply chain. The provision was criticized since it was left to the client's discretion to decide how the inquiries should be done.²⁰⁶ The application and inquiry in the supply chain also include the prohibition on forced labour and covers "*both labour and material inputs of a goods or service*".²⁰⁷

Other areas related to labour rights and working conditions covered by the PS 2 are human resources policy; working conditions and terms of employment; retrenchment; grievance mechanism; and occupational safety and health.

4.2.2 Impacts

According to the IFC, approximately 25 % of IFC's current projects apply the Performance Standards. Between May 2006 and April 2009, over 1,300 projects were screened against the Performance Standards and the Board approved 560 projects, 365 of these approved projects applied PS 2.²⁰⁸ Any far reaching conclusions from the applications of the Performance Standards has not yet been made since not more than 30 percent of these projects have been in implementation for over a year. To date, 21 out of 365 projects have been required to undergo labour audits. No project has been suspended due to labour issues. Since the implementation of the PS 2, the bank has hired more employees with knowledge in labour issues, which has lead to

²⁰⁴ *Good Practice Note: Non-Discrimination and Equal Opportunity*, *supra* note 191, p. 2-4.

²⁰⁵ *Guidance Note 2, Labour and Working Conditions*, *supra* note 187, para. G39.

²⁰⁶ *One Step Forward, One Step Back, An Analysis of the International Finance Corporation's Sustainability Policy, Performance Standards and Disclosure Policy* p. 11, <[www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/HalifaxReport/\\$FILE/IFC-Analysis-HI-Final.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/HalifaxReport/$FILE/IFC-Analysis-HI-Final.pdf)>, visited on 10 September 2009.

²⁰⁷ *Guidance Note 2, Labour and Working Conditions*, *supra* note 187, para. G67.

²⁰⁸ Out of the projects applying PS 2 14 were category A projects (100 %), 276 category B projects (99 %) and 65 (29 %) FI. (Only high-risk FI loan apply the PS), *IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, Report on the First Three Years of Application, para. 47, <[www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/ReportFirstThreeYears/\\$FILE/IFC_PPSThreeYearApplication.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/ReportFirstThreeYears/$FILE/IFC_PPSThreeYearApplication.pdf)> , visited on 22 March 2010.

increased awareness of these issues. This has also lead to requests of comprehensive labour audits in more projects that are complex.²⁰⁹

The impacts of the application of labour standards can be divided into two parts: impacts on development and impacts on clients. Concerning impacts on development, a project needs to fulfil three requirements to be considered a development success. First, a project needs to be profitable. Second, it has to benefit the society not only the financiers. Third, a project needs to be considered socially and environmentally sustainable which means that it has to meet or exceed the Performance Standards.²¹⁰

A project's development outcome is measured through the Development Outcome Tracking System, DOTS. IFC launched the system in 2005 and began to disclose development results for all active projects in the 2007 Annual Report.²¹¹ The indicators are standardized and applied by sectors and divided into four categories: Financial Performance, Economic Performance, Environmental and Social Performance and Private Sector Development. Indicators related to labour standards are connected both to the categories Economic Performance and Environmental and Social Performance. More employees, increased wages and training are outcomes that belong to the first category and can be connected to stakeholders while improvement in occupational safety and health is an indicator of the latter category.²¹² The 2009 Annual Report states that IFC's client companies provided approximately 2.1 million jobs in 2008.²¹³ According to the IFC, a high development outcome rating can only be obtained if a project makes a positive contribution to the host country's development.²¹⁴

The overall outcome is rated on a six-point scale from highly successful to highly unsuccessful depending on the achievement of standards²¹⁵. It is IFC's clients that have a responsibility to carry out and to disclose the results of the Environmental and Social Impact Assessment, as well as to report on the project's environmental and social performance.²¹⁶ A survey

²⁰⁹ *IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, *supra* note 208, para. 36.

²¹⁰ *Monitor: Results Measurement for Investments*,

<[www.ifc.org/ifcext/devresultsinvestments.nsf/AttachmentsByTitle/IFC_DE_Monitor_Sheets_2v3.pdf/\\$FILE/IFC_DE_Monitor_Sheets_2v3.pdf](http://www.ifc.org/ifcext/devresultsinvestments.nsf/AttachmentsByTitle/IFC_DE_Monitor_Sheets_2v3.pdf/$FILE/IFC_DE_Monitor_Sheets_2v3.pdf)>, visited on 10 September 2009.

²¹¹ *IFC's Development Outcome Tracking System (DOTS)*,

<www.ifc.org/ifcext/devresultsinvestments.nsf/Content/DOTS>, visited on 14 September 2009.

²¹² *Standards Indicators List*,

<[www.ifc.org/ifcext/devresultsinvestments.nsf/AttachmentsByTitle/Standards+Indicators+List/\\$FILE/Standard_Indicators_list_FINAL.pdf](http://www.ifc.org/ifcext/devresultsinvestments.nsf/AttachmentsByTitle/Standards+Indicators+List/$FILE/Standard_Indicators_list_FINAL.pdf)>, visited on 4 August 2009.

²¹³ *IFC 2009 Annual Report, Their/our story*, *supra* note 183, p. 25.

²¹⁴ *IFC 2008 Annual Report, Creating opportunity*, p. 41,

<[www.ifc.org/ifcext/annualreport.nsf/AttachmentsByTitle/AR2008_English/\\$FILE/AR2008_English.pdf](http://www.ifc.org/ifcext/annualreport.nsf/AttachmentsByTitle/AR2008_English/$FILE/AR2008_English.pdf)>, visited on 24 October 2010.

²¹⁵ *IFC's Evaluation Framework*,

<www.ifc.org/ifcext/devresultsinvestments.nsf/Content/Evaluation_Framework>, visited on 14 September 2009.

²¹⁶ *IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information*, *supra* note 208, para. 61.

among clients, carried out in 2008 shows, in general, that the Performance Standards do not hinder IFC's business and help with risk management. Research at the IFC since 2003 has shown that there is a positive correlation between environmental and social risk and financial risk.²¹⁷ Where investments are assessed to have lower risks, it is more likely that the rates of return are higher.²¹⁸

Three years after the adoption of the Performance Standards, in September 2009, the IFC started an 18-month review of its sustainability framework.²¹⁹ Together with the launch of the review, a report of the first three years of implementation of the Performance Standards was published. The report shows that the PS 2 "has provided a useful framework for IFC to pursue objectives related to worker-management relationships, fair treatment of workers, and the promotion of safe and healthy working conditions".²²⁰ There has been an increase of IFC's clients that consider the application of the Performance Standards primarily helpful, from 68 % in 2006, before the standards were adopted, to 77 % in 2008.²²¹ Half of the clients say that costs would not affect their decision to return to IFC for funding in the future while 21 % of the clients think that it might negatively affect the decision of returning to IFC for further funding.²²²

Some clients have found it challenging to implement PS particularly in countries where enforcement of national law is weak or where labour laws are non-existent. In relation to labour issues, a number of challenges have been identified for the present review:

"Requirements on collective bargaining and workers' organizations, as well as supply chain issues have proved to be challenging. The issue of migrant workers, often hired indirectly through contractors, is another area of challenge for clients. Clarifications on working and living conditions of "nonemployee" workers might be needed. Moreover, in a time of economic crisis and shrinking labor market, the role of PS2 in the context of large-scale retrenchment should be considered."²²³

The report proposes that grievance mechanisms should be extended to nonemployee workers that management should disclose more information,

²¹⁷ IFC 2008 Annual Report, *Creating opportunity*, supra note, 214, p. 39

²¹⁸ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, supra note, 208.

²¹⁹ The Sustainability framework consists of the Policy and Performance Standards on Social and Environmental Sustainability and Policy on disclosure of Information, <www.ifc.org/ifcext/policyreview.nsf/Content/Home> , visited on 10 September 2009.

²²⁰ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, supra note 208, para. 70.

²²¹ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, supra note 208, figure 4, p 21.

²²² IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, supra note 208, para. 65.

²²³ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, supra note 208, para. 35.

to workers and that retrenchment requirements should be expanded to labour brokers.²²⁴

Already after the first eighteen months of implementation, it was concluded that the Performance Standards contributed to level the playing field.²²⁵ Now three years after the implementation one of the conclusions by the IFC is that the "Performance Standards have become a global benchmark for managing environmental and social risk by financial institutions".²²⁶

All projects are categorized according to their expected social or environmental impact. Category A projects are expected to have significant adverse impact while category C are expected to have no or minimal adverse impact. Categorisation is important since a category A projects are more thoroughly examined than a category C project and wrongful categorization of projects may lead to less extensive requirements from the IFC. Categorisation is also important for the length of disclosure to the public.²²⁷

4.2.2.1 The Compliance Advisor/Ombudman

Complaints against the IFC (and MIGA) can be filed with the Compliance Advisor/Ombudsman, CAO. The CAO is an independent recourse mechanism with a mission to address complaints by people affected by projects of the two organizations. Complaints are only considered eligible if they relate to environmental or social issues.²²⁸ An individual, group or community that believes that they are adversely affected by a project can file a complaint with the CAO.²²⁹ Since its establishing in 1999 until 2009, the CAO has received 110 complaints.²³⁰ Most of the complaints concern environmental impacts but labour and working conditions have been an issue in 3²³¹ out of 30 complaints during 2008 and 2009. The first complaint concerns a project in Nicaragua and the two others concerns projects in Turkey. All three projects relate to freedom of association of workers but also other working conditions. In all cases, the CAO, or the IFC, have talked to the borrower and stakeholders and have made agreements to implement

²²⁴ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, *supra* note 208, table 2, p. 16.

²²⁵ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, *supra* note 208t, Box 2, p. 3.

²²⁶ IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information, *supra* note 208, para. 84.

²²⁷ IFC 2008 Annual Report, *Creating opportunity*, *supra* note 214, p. 38.

²²⁸ About the CAO, *Who We Are*, <www.cao-ombudsman.org/about/whoweare/>, visited on 17 March 2010.

²²⁹ CAO Annual Report 2008-9, p. 11, <www.cao-ombudsman.org/publications/documents/CAO2008-9AnnualReportEnglish_low.pdf>, visited on 18 March 2010.

²³⁰ CAO Annual Report 2008-9, *supra* note 229, p. 4.

²³¹ Nicaragua / Nicaragua Sugar Estates Limited-01/León and Chinandega, Turkey/Assan Aluminyum -01/Dilovasi, Turkey/Standard Profil -01 Duzce, <www.cao.org>, visited on 22 March 2010.

improvements. The projects are still being supervised either by the CAO or the IFC.

4.3 European Bank for Reconstruction and Development

The European Bank for Reconstruction and Development (EBRD) was established in 1991. The purpose of the bank is

“[...] to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics. The purpose of the Bank may also be carried out in Mongolia subject to the same conditions.”²³²

To fulfil its objective, the Bank finances and co-finances investments in 30 countries in the Eastern Europe and the former Soviet Union.²³³ Investments are made, mainly in the private sector, and are aimed to help build institutions necessary in a market economy.²³⁴ Investments in the public sector can be made in state-owned enterprises if they compete in the open market and in state-owned enterprises in transition to private ownership.²³⁵ Market reform needs to be coupled with democratic reform and the Bank has questioned some countries commitment to a political pluralistic system and the unwillingness to apply democratic principles has led the bank to refrain from public sector funding in these countries.²³⁶

The bank has 61 member countries plus the European Community and European Investment Bank. Besides the two institutions, membership is open to both European and non-European countries, which are members of the International Monetary Fund.²³⁷ The World Bank and its constituents are cooperating partners to the EBRD.²³⁸ All the powers of the Bank are vested in the Board of Governors and each member shall appoint a Governor and an alternate Governor. The voting powers are equal to the number of its subscribed shares in the capital stock of the Bank.²³⁹ A majority of the voting power of the members voting shall decide all matters before the Board of Governors. The largest shareholder is the United States with approximately 10 per cent of the

²³² *Agreement Establishing the European Bank for Reconstruction and Development*, article 1, <www.ebrd.com/pubs/insti/basics.pdf>, visited 2 September 2009.

²³³ *Countries and topics*, <www.ebrd.com/country/index.htm>, visited 2 September 2009.

²³⁴ *Background*, <www.ebrd.com/about/basics/index.htm>, visited on 2 September 2009.

²³⁵ *Agreement Establishing the European Bank for Reconstruction and Development*, *supra* note 232, article 11.

²³⁶ In 2008, these countries were Belarus, Turkmenistan and Uzbekistan. *EBRD Annual Report 2008*, p. 24, <www.ebrd.com/pubs/general/ar08e.pdf>, visited on 2 September 2009.

²³⁷ *Agreement Establishing the European Bank for Reconstruction and Development*, *supra* note 232, article 3.

²³⁸ *Agreement Establishing the European Bank for Reconstruction and Development*, *supra* note 232, article 2 para. 2.

²³⁹ *Agreement Establishing the European Bank for Reconstruction and Development*, *supra* note 232, article 29.

votes, the second largest are France, Germany, Italy; Japan and the United Kingdom with 8.5 per cent of the votes and the third largest is Russia with 4 per cent of the votes.²⁴⁰

Just like the IFC projects are categorised A, B, C or FI depending on their social and environmental impact. In 2008, 302 projects were approved to the value of 5.1 billion Euros.²⁴¹

4.3.1 Labour Standards

The bank gives prominence to the fact that it has had an environment mandate since its establishment. The broad definition of environment also included worker, health and safety issues²⁴². To fulfil its purpose the bank should:

“ [...] foster productive investment, including in the service and financial sectors, and in related infrastructure where that is necessary to support private and entrepreneurial initiatives, thereby assisting in making a competitive environment an raising productivity, the standard of living and conditions of labour”.²⁴³

Conditions of labour are thus believed to be improved in a transitional economy. In 2006, the bank commenced a review of the environmental standards. In relation to labour standards the main objectives of the revision was to adapt to developments and challenges concerning gender issues and to introduce “*best practice in the financial sector*” and to provide “*at least the same level of environmental and social safeguards as those of the IFC and the “ Banks”*”.²⁴⁴ Prior to the adoption of the new Environmental and Social Policy in 2008 the bank neither required any compliance with the right to Freedom of Association and Collective Bargaining nor any compliance with the provision on non-discrimination from clients where the EBRD invested directly in the project. This was a major change in the new requirements together with a stronger focus on occupational health and safety issues.²⁴⁵ During the revision, the bank collaborated with ILO experts, employers’ representatives, and trade union representatives.²⁴⁶ The Bank adopted its new Environment and Social Policy in 2008. The purpose

²⁴⁰ *Members/Shareholders*, <www.ebrd.com/about/basics/members.htm>, visited on 2 September 2009.

²⁴¹ *EBRD Annual Report 2008*, *supra* note 236, p 6.

²⁴² *Environment and social*, <www.ebrd.com/enviro/>, visited on 2 September 2009.

²⁴³ *Agreement Establishing the European Bank for Reconstruction and Development*, *supra* Note 232, Article 2 (iii).

²⁴⁴ *EBRD Sustainability Report 2008*, <www.ebrd.com/search/cs.html?charset=utf-8&url=http%3A//www.ebrd.com/pubs/general/sr08ec.pdf&qt=%22labour+standards%22&col=&n=10&la=en>, visited on 31 August 2009. The “Equator Banks” and their voluntary commitment to the Equator Principles are further examined below.

²⁴⁵ *International cooperation: environmental capacity building*, <www.ebrd.com/enviro/partners/capacity.htm>, visited on 2 September 2009.

²⁴⁶ *Revision of EBRD’s 2003 Environmental Policy: Revised and Updated Stakeholder Consultation and Disclosure Plan*, <www.ebrd.com/search/cs.html?charset=utf-8&url=http%3A//www.ebrd.com/about/policies/enviro/policy/review/scdp2.pdf&qt=revisio+n+of+ebrd&col=&n=1&la=en>, visited on 1 September 2009.

of the policy is to promote environmentally sound and sustainable development.²⁴⁷ The policy contains ten Performance Requirements, where the first eight are equivalent to the Performance Standards of the IFC. Thus, Performance Requirement 2, (PR 2), sets out labour and working conditions that EBRD-financed projects are expected to meet.²⁴⁸ The role of the EBRD is to review the client's environmental and social documents, help the client to identify possible environmental and social benefits and to "avoid, minimise or mitigate adverse social or environmental impacts". The Bank also claims to consider environmental and social issues throughout the whole project.²⁴⁹

The EBRD believes that tangible benefits can be created by fair treatment of workers in combination with safe and healthy work. Thus, the Bank believes that the opposite is true, neglecting a sound management-worker relationship project can result in reputational damage or even jeopardise a project.²⁵⁰ The EBRD also support the Decent Work Agenda and PR 2 seeks to ensure that a client's human resource policy, at the minimum: i) establishes a sound management-worker relation ship; ii) promotes fair treatment, non-discrimination and equal opportunity of workers; iii) promotes compliance with collective agreements and the fundamental principles of the fundamental Conventions and; iv) protects and promotes safe and healthy working conditions.²⁵¹

All of the banks member countries are also members of the ILO and therefore expected to be committed to respect the four Core Labour Standards, even without ratification of the fundamental Conventions.²⁵² To date, all recipient countries, with the exception of Uzbekistan, have ratified all core Conventions of the ILO.²⁵³

The client will have to adopt human resource policies that are consistent with the PS 2. In respect to legal provisions, besides the Core Labour Standards all projects need to comply with national labour laws, social security laws and occupational health and safety laws. Working conditions need to be comparable to those offered by equivalent employers in the country, documented and known by the workers. In the area of Occupational Safety and Health, the client has to minimize risks by identification and by

²⁴⁷ *Environmental and Social Policy 2008*, <www.ebrd.com/search/cs.html?charset=utf-8&url=http%3A//www.ebrd.com/about/policies/enviro/policy/2008policy.pdf&qt=%22free+of+association%22&col=&n=3&la=en>, visited on 2 September 2009.

²⁴⁸ The last two Performance requirements cover 9 Financial Intermediaries and 10 Information Disclosure and Stakeholder Engagement.

²⁴⁹ *EBRD Sustainability Report 2008*, *supra* note 244, p. 43.

²⁵⁰ *Environmental and Social Policy, Performance Requirement 2*, para. 1, *supra* note 247, <www.ebrd.com/search/cs.html?charset=utf-8&url=http%3A//www.ebrd.com/about/policies/enviro/policy/2008policy.pdf&qt=%22labor+and+working+conditions%22&col=&n=2&la=en>, visited on 24 March 2010.

²⁵¹ *Environmental and Social Policy, Performance Requirement 2*, *supra* note 247, para. 2.

²⁵² *Environmental standards*, <www.ebrd.com/enviro/policy/standard.htm>, visited 24 March 2010.

²⁵³ Uzbekistan has not ratified the Freedom of Association Convention (C 87), <www.ilo.org/ilolex/english/docs/declworld.htm>, last visited on 7 September 2009.

taking preventive measures. All projects will have to comply with the Occupational Health and Safety requirements of national law, the European Union and relevant guidelines of the IFC.²⁵⁴ If the client provides accommodation, the basic needs of the workers have to be achieved in accordance with national legislation and international good practice.²⁵⁵ Where the client has anticipated collective redundancies in accordance with European Council Directive 98/59 the employer needs comply with the Directive.²⁵⁶ The client also has to make sure that a grievance mechanism is available for workers to raise reasonable workplace concerns. Non-employee workers are covered by most of the requirements in PR 2, except human resource policies and retrenchment measures. Where low labour cost is a material factor the client will have to make inquires in the supply chain about the use of child labour and forced labour. If child labour or forced labour is discovered in the supply chain, the client should only continue to procure goods or materials where the supplier is committed to eliminate child labour practice within reasonable time or has taken appropriate steps to eliminate forced labour.²⁵⁷ In 2008, an EBRD Good Practice Notes on Family friendly working and the work-life balance was published. The note targets non-discrimination on a gender basis.²⁵⁸ The Bank also promotes gender equality through different initiatives such as micro lending programmes and trade facilitation programmes. In 2008, it was estimated that approximately 40 per cent of the borrowers in the Banks portfolio were women.²⁵⁹ Gender equality is also promoted through internal representation and 41 per cent of the Supervisory Board seats are held by women.²⁶⁰

Clients are required to develop an Environmental and Social Action Plan that should take into account environmental and social impacts and how to avoid or mitigate them.²⁶¹ EBRD may provide guidance but it is the client's responsibility to make sure that "the due diligence studies, information disclosure and stakeholders engagement" are carried out in accordance with the Performance Requirements.²⁶²

²⁵⁴ *Environmental and Social Policy, Performance Requirement 2, supra* note 247, para. 14.

²⁵⁵ The IFC and EBRD jointly developed , a guidance note on Workers Accommodation, *Supra* note 197,

<[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_WorkersAccommodation/\\$FILE/workers_accomodation.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_WorkersAccommodation/$FILE/workers_accomodation.pdf)>, visited on 16 September 2009.

²⁵⁶ Council Directive 98/59/EC of 20 July 1998 on the approximation of the of the laws of member States relating to collective redundancies, OJ L 225, 12.8.1998, 16.

²⁵⁷ *Environmental and Social Policy, Performance Requirement 2, supra* note 250, para. 20-21.

²⁵⁸ *Good Practice Notes: Family friendly working and the work-life balance*, <www.ebrd.com/pubs/general/practice08.pdf>, visited on 31 August 2009.

²⁵⁹ *EBRD Annual Report 2008, supra* note 236 , p. 21.

²⁶⁰ *EBRD Sustainability Report 2008, supra* note 244, p. 56.

²⁶¹ *EBRD Sustainability Report 2008, supra* note 244, p. 47.

²⁶² *Environmental and Social Policy, supra* note 247, p. 5.

The EBRD entered into an agreement for cooperation with the ILO in 1992²⁶³ and has after that consulted with the organization on labour issues, such as the adoption of the Performance Requirements 2.²⁶⁴ Since 1992 the Bank has also included a review of labour issues in its Country Strategy Papers.

4.3.2 Impacts

The Performance Requirements became effective in 2008 and all of the projects signed in 2008 were appraised under the 2003 environmental policy.²⁶⁵ Thus, any evaluation of the new Performance Requirements has not yet been made. To be able to evaluate and measure the impacts of the Performance Requirement monitoring is vital. The purposes of monitoring are to ensure that applicable standards are met and to keep track of ongoing impacts and impacts during the implementation. Monitoring data are used as “*indicators of how the Bank’s investments are contributing to sustainable development*”.²⁶⁶

The obligation of monitoring lies with both the client and the Bank. For high risk projects external audits may be necessary. The extent of monitoring depends on the project and the Bank determines, together with the client, a monitoring programme and plan in accordance with the applied Performance Requirements.²⁶⁷ All clients have to report on their project at least annually. The Bank monitors a project during its lifetime and by reviewing the client’s report on the implementation of the Environmental and Social Action Plan. Specialists or consultants carry out monitoring where environmental and social issues are likely to have a significant impact.

Monitoring has exposed several projects where Occupational Health and Safety has had potential risks because of poor practices with these issues. The Bank states that it often works with the client to reduce risks and successful improvements depend on the ability to make cultural and behaviour change. Furthermore, the Bank also requires that major Environmental and Occupational Health and Safety incidents should be reported to the Banks management.²⁶⁸

According to the 2008 Annual Report a new impact assessment framework was to be developed and presented in 2009. The framework is said to be focusing on systematic reporting to capture transition and performance-

²⁶³ Agreement between the EBRD and the ILO, <www.ilo.org/public/english/bureau/leg/agreements/ebd.htm>, visited on 5 November 2009.

²⁶⁴ *EBRD Annual Report 2008*, *supra* note 259, p. 27.

²⁶⁵ *EBRD Sustainability Report 2008*, *supra* note 244, p. 47.

²⁶⁶ *Environmental and Social Policy 2008*, *supra* note 247, p. 8.

²⁶⁷ *Environmental and Social Policy 2008*, *supra* note 247, *ibid.*

²⁶⁸ *EBRD Sustainability Report 2008*, *supra* note 244, pp. 49-50.

related impact and community-wide impacts of its operation such as poverty reduction, gender equality and the physical environment.²⁶⁹

4.4 Asian Development Bank

The Asian Development Bank was established in 1966 and is the regional development bank for Asia and the Pacific. Since 1999, the bank's overarching objective is an Asian-Pacific region free of poverty.²⁷⁰ It is estimated that two-third of the world's poor live in the region.²⁷¹ According to the Agreement Establishing the Asian Development Bank the purpose is:

“[...] to foster economic growth and co-operation in the region of Asia and the Far East (hereinafter referred to as the "region") and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually”.²⁷²

The Bank finances both public and private sector projects for development purposes in developing member countries.²⁷³ Private sector development is considered vital; however, most of the 86 projects, worth \$ 10.5 billion, financed by the bank in 2008, were public sector projects.²⁷⁴ The Bank also provides technical assistance for preparation and implementation of projects and grant-financed projects.^{275 276}

To become a member of the Asian Development Bank a country has to be a member of the United Nations Economic Commission for Asia and the Far East, the United Nations or any of its specialized agencies.²⁷⁷ The bank has 67 members, including 48 regional and 19 non-regional members.²⁷⁸

Decision-making powers are vested in the Board of Governors. Each member shall appoint one Governor and an alternate Governor.²⁷⁹ Voting powers are distributed according to possession of shares of the stock where regional members should hold at least 60 per cent of the stock.²⁸⁰ The largest shareholders are Japan and the United States with 13 per cent of the

²⁶⁹ *EBRD Annual Report 2008*, *supra* note 259, p 17.

²⁷⁰ *Our vision, an Asia and Pacific Free of Poverty*, <www.adb.org/About/default.asp>, visited on 13 August 2009.

²⁷¹ *Poverty Reduction in ADB*, <www.adb.org/Poverty/default.asp>, visited on 16 September 2009.

²⁷² *Agreement Establishing the Asian Development Bank*, article 1, <www.adb.org/Documents/Reports/Charter/chap01.asp>, visited on 13 August 2009.

²⁷³ Forty-four of the bank's 67 members are considered as developing countries, *Regions and Countries*, <www.adb.org/Countries/default.asp>, visited on 13 August 2009.

²⁷⁴ *Private Sector Development: Supporting Pro-poor Growth*, <www.adb.org/poverty/private-sector.asp>, visited on 13 August 2009.

²⁷⁵ *Operations: Projects and Programmes*, <www.adb.org/About/operations.asp>, visited on 19 August 2009.

²⁷⁶ *Agreement Establishing the Asian Development Bank*, *supra* note 272, article 2 (iv).

²⁷⁷ *Agreement Establishing the Asian Development Bank*, *supra* note 272, article 3 (1).

²⁷⁸ *Membership*, <www.adb.org/About/membership.asp>, visited on 13 August 2009.

²⁷⁹ *Agreement Establishing the Asian Development Bank*, *supra* note 272, Articles 27-28.

²⁸⁰ *Agreement Establishing the Asian Development Bank*, *supra* note 272, article 5.

votes each. Australia, Canada, China, India, and Indonesia 5 are the second largest shareholders with 5 per cent of the votes.²⁸¹ The Board of Governors may delegate some of its powers to the Board of Directors that carries out the daily operations of the bank. Seven out of the ten Directors should come from regional member countries.²⁸²

The Poverty Reduction Strategy, adopted in 1999, states that all activities of the bank, such as policy reform, investment projects and capacity building, should contribute to poverty reduction. In the pursuit of poverty reduction, the activities of the bank should only be based on economic considerations, free from any political interference.²⁸³ The three pillars of Poverty Reduction Strategy are sustainable pro-poor economic growth, inclusive social development and good governance.²⁸⁴

4.4.1 Labour Standards

The Asian Development Bank considers social protection as an integral part of social development and the Bank adopted its Social Protection Strategy in 2001. Social protection is defined as a:

“[...] set of policies and programs designed to reduce poverty and vulnerability by promoting efficient labor markets, diminishing people’s exposure to risks, and enhancing their capacity to protect themselves against hazards and interruption/loss of income.”²⁸⁵

Social protection is considered needed in the quest for poverty reduction because economic growth does not automatically reach all poor. Since work is often the main, or even the sole, income for the poor, efficient labour markets, protection by reducing risks and capacity building is seen as a route to poverty reduction.²⁸⁶ The Social Protection Strategy covers five areas: labour market, social insurance, social assistance, micro- and area-based schemes to protect communities and child protection.²⁸⁷ Decent working conditions are believed to “reduce poverty, raise living standards,

²⁸¹ *Membership*, *supra* note 278.

²⁸² *Agreement Establishing the Asian Development Bank*, *supra* note 272, articles 27-28.

²⁸³ *Agreement Establishing the Asian Development Bank*, *supra* note 272, article 36 (2) states that: “The Bank, its President, Vice-President(s), officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.”

²⁸⁴ *Fighting Poverty in Asia and the Pacific: the Poverty Reduction Strategy*, p. 6, <www.adb.org/Documents/Policies/Poverty_Reduction/Poverty_Policy.pdf>, visited on 19 August 2009.

²⁸⁵ *ADB Social Protection Strategy*, p. 1, <www.adb.org/Documents/Policies/Social_Protection/social-protection.pdf>, last visited on 19 August 2009.

²⁸⁶ *ADB Social Protection Strategy*, *supra* note 285, *ibid*.

²⁸⁷ *ADB Social Protection Strategy*, *supra* note 285, p 12.

and enhance the inclusiveness and sustainability of economic growth by increasing productivity’,²⁸⁸

Unlike the IFC, the ADB has not adopted any Performance Standards. However, since the adoption of the Social Protection Strategy the Bank has committed itself to comply with Core Labour Standards in the design and implementation of its loans.²⁸⁹ The Handbook on Social Analysis states that most ADB countries are members of the ILO and therefore are obliged to comply with the Core Labour Standards comprised by the Declaration on Fundamental Principles and Rights at Work. However, the Handbook also states that the obligation per se does not guarantee compliance with the declaration or ratified Conventions but requires enforcement of adopted labour laws and regulations.²⁹⁰

In ADB operations, considerations of Core Labour Standards are said to be taken into account in every phase of a project; preloan design, design and implementation of a project. Furthermore, the ADB prohibits investments in projects that contain any forced labour or child labour.²⁹¹ In the pre-loan design phase a Technical Assistance fact-finding mission and an Initial Poverty and Social Analysis is mandatory for all projects. This includes an analysis of applicable national labour legislation and an assessment of its compliance with Core Labour Standards. The aim is to improve respect for national and international Core Labour Standards and thereby working conditions. Non-compliance may have negative impact on workers and the outcome of the initial poverty and social analysis decides the scope of work required in the following phases.²⁹² The analysis also intends to identify labour issues that might arise and the degree of risk they possess. Risks are graded on a four level scale from none to significant. A significant risk is, for example, likely to occur during public or private sector restructuring that might lead to redundancies and such a risk would require a retrenchment plan. Non-compliance with national labour standards or international Core Labour Standards also always poses a significant risk.²⁹³

In the design phase a Country Poverty Analysis containing a risk and vulnerability profile should be carried out. The profile should identify

²⁸⁸ *ADB Sustainability Report 2009*, pp. 40-41, <www.adb.org/Documents/Books/sustainability-report/2009/SR2009.pdf>, visited on 24 March 2010.

²⁸⁹ *ADB Social Protection Strategy*, *supra* note 285, p. 56.

²⁹⁰ Five of ADB’s Developing Member Countries - Bhutan, Cook Islands, Federated States of Micronesia, Nauru and Tonga are not members of the ILO. *Handbook on Social Analysis, A Working Document (2007)*, Appendix 9.1, p. 160, <www.adb.org/Documents/Handbooks/Social-Analysis/social-analysis-handbook.pdf>, visited on 25 March 2010.

²⁹¹ *ADB Safeguard Policy Statement (2009)*, appendix 5, p. 76, <www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf>, visited on 24 March 2010.

²⁹² *Handbook on Poverty and Social Analysis*, p. 7-8, <www.adb.org/Documents/Handbooks/Poverty_Social/Section3.pdf>, visited on 21 August 2009.

²⁹³ *Handbook on Poverty and Social Analysis*, p.11.

persons at risk, and can for example identify risks of “*forced or compulsory labor, child labor incidents, and employment situations where inequality is strongly present.*”²⁹⁴ A Summary Labour Market Assessment is also included in the Country Poverty Analysis and is considered a link between poverty reduction and economic growth.²⁹⁵ A well functioning labour market with labour growth can reduce poverty faster and therefore it is equally important to identify possible issues of CLS and other labour risks as well as the potential of a labour market expansion. Besides compliance with CLS, the Bank considers that an appropriate national labour legislation should contain provisions on minimum age, working hours, labour contracts, maternity protection, discrimination of women and minorities and industrial relations.²⁹⁶ Other relevant labour legislations taken into account are retrenchment, job security and occupational safety and health.²⁹⁷

In 2002 ADB signed a Memorandum of Understanding with the ILO “to capitalize on the comparative advantage of respective institution and create a framework for ingoing collaboration”. However, the cooperation between Asian Development Bank and the ILO began already in 2000 with the Region Technical Assistance Project: “*Strengthening the role of Labor Standards in selected Developing Member Countries*”. The project covered four countries: Bangladesh, Nepal, Philippines and Thailand and targeted three areas in relation to labour standards: child labour, gender discrimination in employment and occupational safety and health.²⁹⁸ The outcome of the project showed that the costs of not implementing fundamental labour standards in these three areas are very high. Costs are placed at three different levels, the individual, economic and societal level. At the individual level the children, women or workers are prevented from realizing their human rights. For example, children have a right to childhood and women have the right not to be discriminated against. At the corporate level, both the employer and the society will loose profits due to less “reponsibilised work”, which leads to less increased productivity and. Finally, at the societal level the community might suffer from decreased development if the potential of the individuals are not enabled. Likewise, the project concluded that “*failure to respect labour standards places an economic obstacle in the way of development in the ADB’s member States*”.²⁹⁹

²⁹⁴ *Handbook on Core Labor Standard*, p. 59, <www.adb.org/Documents/Handbooks/Core-Labor-Standards/CLS-Handbook.pdf>, visited on 25 March 2010.

²⁹⁵ *Handbook on Poverty and Social Analysis*, *supra* note 292, para. 20. <www.adb.org/SocialProtection/appendix9_1.pdf>, visited on 25 March 2010.

²⁹⁶ *ADB Social Protection Strategy*, *supra* note 285, p. 15.

²⁹⁷ *Summary Labor Market Assessment*, Appendix 9.1, <www.adb.org/SocialProtection/appendix9_1.pdf>, visited on 20 August 2009.

²⁹⁸ *A Comparative perspective on ILO and ADB Development Policies*, Manilla 2006, pp. 1-2, <www.adb.org/Documents/Events/2006/Senior-Management-Consultation/ilo-adb-comparison.pdf>, visited on 6 November 2009.

²⁹⁹ *Regional Technical Workshop on Labor Standards*, Manila, 18-19 September 2002, <www.adb.org/Documents/Events/2002/Core_Labor_Standards/nodera.pdf>, visited on 28 August 2009.

In connection to the RETA project, the Governing Body of the ILO made recommendations to the ADB on how to implement labour standards in the banks operations.³⁰⁰ The recommendations were up for discussion at a Governing Body meeting in the ILO in 2003. One of the employer's representative argued that a compulsory linkage between financial aid and Core Labour Standards “*undermined the promotional nature of the ILO's work on core labour standards*” and that it was another form of social clause.³⁰¹

Another result of the cooperation between the bank and the ILO was the publication of the “Core Labor Standards Handbook” in 2006. The Handbook does not introduce any new policies or constitute any compliance requirements. The purpose is to explain the differences between Core Labour Standards and other labour standards and provide information and good examples for ADB's operational staff.³⁰²

In the Safeguard Policy Statement from 2009, some stakeholders called for incorporation of Core Labour Standards in the Safeguard Policy. The Bank however considers that the inclusion of Core Labour Standards in the Social Protection Strategy is sufficient³⁰³.

4.4.2 Impacts

One of the objectives of evaluations is to identify achieved results and to be able to make improvements. Evaluations are carried out in two different levels: internal evaluations made by the Bank in relation to a programme or project and independent evaluations made by the Independent Evaluation Department.³⁰⁴

Public Sector Operations and Non-Sovereign Operations are assessed differently. While the former can be designed to attain a narrow socioeconomic objective, the latter often have more indirect impacts resulting from economic growth.³⁰⁵ Impacts on project development on Non-Sovereign Operations are evaluated in four different categories: Private

³⁰⁰ *ILO cooperation with the Asian Development Bank: Core labour standards and the ADB activities*, *supra* note 132.

³⁰¹ *Reports of the Committee on Legal Issues and International Labour Standards, Second report: International labour standards and human rights*, GB.286/13/2, para. 36, <www.ilo.org/public/english/standards/relm/gb/docs/gb286/pdf/gb-13-2.pdf>, visited on 25 March 2010.

³⁰² *Handbook on Core Labor Standard*, *supra* Note, 294, p. 7.

³⁰³ *Safeguard Policy Statement*, June 2009, para. 29, <www.adb.org/Documents/Policies/Safeguards/Safeguard-Policy-Statement-June2009.pdf>, visited on 25 March 2010. The ADB has Safeguard Policies on the environment, involuntary resettlement and indigenous people, <www.adb.org/Safeguards/default.asp>, visited on 28 August 2009.

³⁰⁴ *Independent Evaluation a ADB*, <www.adb.org/Evaluation/about/default.asp>, visited on 17 November 2009.

³⁰⁵ *Guidelines for Preparing Performance Evaluation Reports on Nonsovereign Operations*, para. 41, <www.adb.org/Documents/Guidelines/Evaluation/PPER-prepguide-NonsovereignOperations.pdf>, visited on 25 March 2010.

Sector Development, Business Success, Economic Development and Environment, Social, Health, and Safety Performance.³⁰⁶ The latter category Environmental, Social, health, and Safety Performance, ESHS, assesses the impacts on the physical environment, the social development and workers health and safety.³⁰⁷

One of the reasons for social monitoring is said to be able to manage social risks at a macro level, this would include the possibility “to anticipate effects of events such as economic crises, earthquakes and droughts”.³⁰⁸

To monitor the development impacts of its activities the ADB, in its Social Protection Strategy, states that it

“[...] will pay increased attention to measuring the social returns of project and policy-based lending. Loans should aim to provide, as part of their logical framework and project performance monitoring system

- (i) a set of clearly defined, objective indicators of success; and
- (ii) benefit incidence analysis of social protection investments.”³⁰⁹

The key indicators used in relation to Labour Force and Employment are labour force participation rate, unemployment rate, unemployment rate of 15-24-year-olds and employment by the sectors agriculture, industry and services.³¹⁰ There are no specific indicators used for evaluation in relation to labour standards but the *Handbook on Core Labor Standards* has suggested a list of indicators for Gender Monitoring and Evaluations that take account of labour standards.³¹¹

³⁰⁶ *Project Administration Instructions*, appendix 3 p. 1, <www.adb.org/Documents/Manuals/PAI/pai-6.07-partB.pdf>, visited on 28 August 2009.

³⁰⁷ *Project Administration Instructions*, *supra* note 306, p. 6.

³⁰⁸ *ADB Social Protection Strategy*, *supra* note 285, p. 59.

³⁰⁹ *ADB Social Protection Strategy*, *supra* note 285, *ibid*.

³¹⁰ *Key Indicators for Asia and the Pacific 2009*, <www.adb.org/Documents/Books/Key_Indicators/2009/pdf/Key-Indicators-2009.pdf>, visited on 27 August 2009.

³¹¹ The enumerated indicators are: “(i) Respect for labor, employment, and equality laws, including minimum wages; (ii) Absence of sex-based criteria in income, wages, and benefits; (iii) Increase in number of women in higher decision-making posts; (iv) Increase in number of women and men in non-traditional occupations (reducing sex-based occupational segregation); (v) Increase in numbers of women who have received vocational training, especially for skills that widen job opportunities; (vi) Gender-neutral hiring and firing; (vii) Quality of facilities (separate toilets, etc.); (viii) Maternity protection and benefits provided; (ix) Safety measures geared to women’s as well as men’s needs; (x) No dismissal on the basis of maternity or family responsibilities; (xi) Increased awareness of men and women workers on women workers’ rights; (xii) Increased organizational and representational possibilities for women as well as for men; (xiii) Increase in number of women covered by collective bargaining agreements; (xiv) Increase in numbers of female members of trade unions, especially in leadership positions; (xv) Affirmative action programs in place and operational to promote women’s access to employment and training; (xvi) Percentage of older women and women belonging to ethnic minorities or indigenous peoples participating in the project; (xvii) Women’s legal status with respect to access to credit, land, and jobs improved; (xviii) Effective and operational complaints procedures. *Handbook on Core Labor Standard*, *supra* note 294, p. 141,

4.5 Inter-American Development Bank

The Inter-American Development Bank, IADB, was established in 1959. The purpose of the bank, according to the Agreement Establishing the Bank, is to

“[...] contribute to the acceleration of the process of economic and social development of the regional developing member countries, individually and collectively.”³¹²

The intended region is Latin America and the Caribbean. To fulfil the purpose the Bank should both promote investment of private and public capital as well as utilize its own capital for financing development of member countries for both programme and project lending. The Bank should give priority to loans and guarantees that contribute the most effectively to economic growth.³¹³ The Bank has five priority areas; poverty reduction, energy and climate change, infrastructure, education and innovation and finally opportunities for the majority.³¹⁴

Membership is open to the members of the Organization of American States, Canada, Bahamas and Guyana, to non-regional members, which are also a member of the IMF and to Switzerland.³¹⁵ The IADB consists of 48 member countries of which 26 are borrowing countries, the other 22 are Canada, the United States and 20 non-regional members. The powers of the IADB are vested in the Board of Governor and each member State appoints one Governor and one alternate Governor.³¹⁶ Each member of the Bank holds 135 votes plus one vote for each share of the ordinary capital stock.³¹⁷ While the borrowing countries hold a bare majority of the voting power the largest shareholders are United States holding 30 per cent of the votes, Argentina and Bolivia holding 10 per cent each of the votes, followed by Mexico, Japan and Canada holding 7, 5 respectively 4 per cent of the votes.³¹⁸

According to the Bank itself, some of the comparative advantages of the Bank are attractive financial terms, knowledge of and presence in the region

³¹² *Agreement Establishing the Inter American Development Bank*, article I, section 1, <www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf>, visited on 17 March 2010.

³¹³ *Agreement Establishing the Inter American Development Bank*, *supra* note 312, article I, section 2.

³¹⁴ *Our goals and priorities*, <www.iadb.org/aboutus/whoweare/index.cfm?id=6007>, last visited 2010-03-16

³¹⁵ *Agreement Establishing the Inter American Development Bank*, *supra* note 312, article II, section 1.

³¹⁶ *Agreement Establishing the Inter American Development Bank*, *supra* note 312, article VIII, section 2.

³¹⁷ *Agreement Establishing the Inter American Development Bank*, *supra* note 312, article VIII, section 4.

³¹⁸ *Subscription to capital stock, contribution quotas and voting power, as of December 31 2009*, <idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35104877>, visited on 16 March 2010.

and its responsiveness. The latter contain a built-in institutional bias to respond favourably to request from borrowers.³¹⁹

4.5.1 Labour Standards

For the IADB sustainability means to ensure lasting environmental, social and economic benefits. The way to do this is through the promotion of economic growth and poverty reduction.³²⁰ According to the Bank, the sustainability standards

”are important to ensure that each project is assessed, approved and monitored with due regard to environmental, social, labor, health and safety concerns, and that all project-related impacts and risks are adequately mitigated or controlled”.³²¹

In 2003 the Bank adopted its Social Development Strategy Document. The strategy, identified several of areas for Bank action. In relation to labour standards the Bank should

“[g]ive more systematic attention to core labor standards. The Bank should give more attention to the commitments of member states to the core labor standards [...] advanced by the International Labour Organization (ILO). Support for these standards can contribute to the achievement of the Bank’s development and poverty reduction agendas, especially in the areas of reducing income inequality and inhumane working conditions.”³²²

The Social Development Strategy states that the Bank’s action should contribute to the achievement of the MDGs such as promotion of gender equality and the reduction of child labour. The strategy also aims to prevent social ills such as child labour by assisting countries to enhance school attendance and by different means of discourage companies from employing child labour.³²³

According to the Bank, an environmental and social strategy document is prepared for each IADB operation.³²⁴ But in spite of the referral to the importance of social and labour standards, mainly child labour and gender equality, no standard or policy related to labour have yet been adopted. The Bank’s adopted Sustainability Standards only refers to environmental

³¹⁹ *The Bank’s Comparative Advantage, Institutional Strategies*, <www.iadb.org/aboutus/howweareorganized/index.cfm?lang=en&id=6266>, visited on 4 April 2010.

³²⁰ *Sustainability*, <www.iadb.org/topics/sustainability/index.cfm?artid=6573&lang=en>, visited on 4 April 2010.

³²¹ *Sustainability Standards*, <www.iadb.org/topics/sustainability/index.cfm?artid=6574&lang=en>, visited on 17 March 2010.

³²² *Social Development, Strategy Document*, 2003, p. 19, <www.iadb.org/document.cfm?id=351219>, visited on 17 March 2010.

³²³ *Social Development, Strategy Document*, *supra* note 322, p. 25

³²⁴ Sustainability standards, Environmental Screening and Classification, <www.iadb.org/topics/sustainability/index.cfm?artid=6576&lang=en>, visited on 4 April 2010.

standards or indigenous people, involuntary resettlement, disclosure of information and independent investigation mechanism.³²⁵ The compliance requirements that the Bank sets out also only refers to environmental standards.

In 2008 the IADB set out commitments for 2009 to develop a policy statement on labor that would include occupational health and safety. The Policy on Women in Development from 1987 was also to be replaced with a new Gender Equality and Action Plan.³²⁶ However these documents have not yet been 'adopted'.

4.6 African Development Bank

The African Development Bank, AfDB, was established in 1963. The purpose of the Bank is:

[...]to contribute to the sustainable economic development and social progress of its regional members individually and jointly.³²⁷

The Bank finances projects for social and environmental development with strong poverty reduction impact in its regional member countries.³²⁸

Regional membership is open to any independent African State. Membership is also open to non-regional countries by the approval of the Board of Governors.³²⁹ The Bank has 77 members, 53 independent African countries and 24 non-regional members.³³⁰

The powers of the Bank is vested in the board of Governors and each member country shall appoint on Governor and one alternate Governor.³³¹ The regional member countries hold approximately 60per cent of the votes and no member country hold more than 10 per cent of the votes. The five largest shareholders are Egypt holding 5 per cent of the votes, Japan 5.3 per

³²⁵ *Sustainability Standards, Policies and Initiatives*,

www.iadb.org/topics/sustainability/index.cfm?artid=6575&lang=en, visited on 4 April 2010.

³²⁶ *Sustainability Review 2008*, p. 5,

idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1925086 visited on 17 March 2010.

³²⁷ *Agreement Establishing the African Development Bank*,

www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/30718627-EN-AGREEMENT-ESTABLISHING-THE-AFRICAN-DEVELOPMENT-BANK-6TH-EDITION.PDF visited on 17 March 2010.

³²⁸ *Projects & Operation*, www.afdb.org/en/projects-operations/, visited on 19 March 2010.

³²⁹ *Agreement Establishing the African Development Bank*, *supra* note 327, articles 3 (1) and 3 (3)

³³⁰ African Development Bank, www.afdb.org/en/about-us/african-development-bank-afdb/, visited on 17 March 2010.

³³¹ *Agreement Establishing the African Development Bank*, *supra* note 327, articles 29 (1) and 30 (1).

cent, Nigeria 8.7 per cent, South Africa 4.5 and United States 6.5 per cent of the votes.³³²

Like the other Bank's projects are categorized depending on their anticipated impacts. The AfDB categorizes their projects from 1 to 4. While category 1 projects require a full Environmental and Social Impact Assessment category 2 projects require development of an Environmental and Social Impact Plan. Category 3-4 projects are not expected to have any adverse impacts and thereby do not require any assessments.³³³

In the Bank's New Vision from 1999, poverty reduction was recognized as the most critical development challenge for the African countries. Environment and gender was identified as the two main cross cutting issues.³³⁴

4.6.1 Labour Standards

According to the Bank's Policy on the Environment sustainable development is defined

“as the acquisition, transformation, distribution, and disposal of resources in a manner capable of sustaining human activities without any reduction in the aggregate natural resource stocks. It also assumes that the ecological regenerative and assimilative capacities of the natural ecosystems will be maintained”.³³⁵

From the definition it is noticeable that the AfDB has another perception of sustainable development than at least the IFC, EBRD and ADB where social development has been incorporated in the definition.

Of the Core Labour Standards only gender equality has gained wide recognition by the Bank. The goal of the 2001 Gender Policy is to “*promote gender equality and sustainable human and economic development in Africa*”. The objectives of the Policy are to mainstream gender equality in all of the Bank's operations and to support the member countries to achieve gender equality.³³⁶ The Gender Equality and Women's Empowerment Plan of Action 2009-2012 states that gender equality is not only a development goal and a human right but also a cornerstone of achieving development results. One example of mainstreaming gender into the Bank's actions is the

³³² AfDB Statement of Voting Power as at February 28, 2010, <www.afdb.org/fileadmin/uploads/afdb/Documents/Boards-Documents/2010-vp-eng-February.pdf>, visited on 4 April 2010.

³³³ African Development Bank Group's Policy on the Environment, p. 20, <www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000027-EN-BANK-GROUP-POLICY-ON-THE-ENVIRONMENT.PDF>, visited on 19 March 2010.

³³⁴ The Vision Statement (1999),

³³⁵ African Development Bank Group's Policy on the Environment, 2004, *supra* note 333, p. 12.

³³⁶ The Gender Policy, 2001, para. 5.2 and 5.3, <www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000003-EN-THE-GENDER-POLICY.PDF>, visited on 4 April 2010.

inclusion of a gender analysis in the Environment and Social Assessment Procedures.³³⁷

Other than the promotion of gender equality, labour standards are not systematically applied and the Bank rarely refers to or employs labour standards.

The first Agreement between ILO and AfDB was signed in 1971 and included, among other things promotion of vocational training, management development, industrialization and full employment. In 2004 the organizations signed a Cooperation Agreement including employment promotion, international labour standards, Fundamental Principles and Rights at Work, gender and social protection.³³⁸

4.7 Equator Principles

The Equator Principles are voluntary guidelines that constitute a global standard for financial institutions in project financing to identify and address environmental and social risks. The Equator Principles both refer to the Performance Standards and the Environmental, Health and Safety Guidelines of the IFC as well as the process of applying the Performance Standards. The guidelines were introduced in 2003 and revised in 2006 when the IFC adopted the Performance Standards. The guidelines contain 10 principles and a Financial Institution that adopts the Equator Principles undertakes to apply the principles in its operation.³³⁹

By adopting the principles financial institutions

“[...] ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices. By doing so, negative impacts on project-affected ecosystems and communities should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated and/or compensated for appropriately. We believe that adoption of and adherence to these Principles offers significant benefits to ourselves, our borrowers and local stakeholders through our borrowers’ engagement with locally affected communities. We therefore recognise that our role as financiers affords us opportunities to promote responsible environmental stewardship and socially responsible development”³⁴⁰

³³⁷ *Gender Equality and Women’s Empowerment Plan of Action 2009-2010*, pp. 1 and 19, <www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/GENDER%20EQUALITY%20AND%20WOMENS%20EMPOWERMENT%20AN.pdf>, visited on 4 April 2010.

³³⁸ *Partnership and Cooperation Opportunities, Working Document*, March 2009, <www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/PartnershipForum2009-WorkingDocument.pdf>, visited on 19 March 2010.

³³⁹ *The “Equator Principles”, A financial Industry benchmark for determining, assessing and managing social & environmental risk in project financing*, <www.equator-principles.com/documents/Equator_Principles.pdf>, visited on 17 November 2009.

³⁴⁰ *The “Equator Principles” the preamble, supra note 339.*

One of the benefits of adopting the Principles is that a common environmental assessment method saves financial institutions the burden of producing methods of its own. Other benefits include certainty in project implementation, a more secure long-term investment and gaining reputational advantages.³⁴¹

To date, 67 financial institutions, operating in over 100 countries have adopted the guidelines.³⁴² Sixteen of the financial institutions come from emerging markets and it is estimated that over 70 % of project finance in emerging markets are carried out in accordance with the Equator Principles.³⁴³

The Equator Principles Financial Institutions, EPFIs, consider the principles as a financial industry benchmark. The principles apply to projects for capital cost above \$ 10 million, across all industries.³⁴⁴ In accordance with the Performance Standards of the IFC every project has to be categorised. For projects that are categories as either A or B projects, the borrower has to carry out a Social and Environmental Assessment.³⁴⁵ The applicable Performance Standards, depending on the categorisation of a project, should be applied in non-OECD countries and OECD countries not designated as High-Income countries. In High-Income countries, it is considered that completion of a Social and Environmental Assessment and compliance with national law is an acceptable substitute for the Performance Standards.³⁴⁶

For a borrower or a potential borrower that does not comply with the principles there is a policy not to provide loans.³⁴⁷ Principle 10 contains a requirement of EPFIs to “report publicly at least annually on EP implementation.”³⁴⁸

4.7.1 Impacts

The obligation of EPFIs is limited to annual reporting and any common evaluation of impacts of the applied principles are not available. However, it has been said that

“EPFIs have not seen any decline in business because of adoption, application or implementation of the Equator Principles [...]. They continue to believe that having a framework for the industry will lead to greater

³⁴¹ *Become an Adopting Institution*, <www.equator-principles.com/join.shtml>, visited on 27 March 2010.

³⁴² *Become an Adopting Institution*, *supra* note 341.

³⁴³ *About the Equator Principles*, para. Q33, <www.equator-principles.com/documents/AbouttheEquatorPrinciples.pdf>, visited on 25 March 2010.

³⁴⁴ *The “Equator Principles”*, *supra* note 339, p. 2.

³⁴⁵ *The “Equator Principles”*, *supra* note 339, principle 2.

³⁴⁶ The meaning of high-income countries is defined by the WB Development Indicators Database, according to principle three of the Equator Principles, *the “Equator Principles”*, *supra* note 339.

³⁴⁷ *The “Equator Principles”*, *supra* note 339, p. 2.

³⁴⁸ *Disclosure based on EP 10*, <www.equator-principles.com/reporting.shtml>, visited on 17 November 2009.

learning among project finance institutions on environmental and social issues, and that having greater expertise in these areas will better enable them to advise clients and control risks. In other words, they continue to believe it is good for business.”³⁴⁹

³⁴⁹ *About the Equator Principles, para. Q 27, supra note 343.*

5 Analysis

The ILO has as a UN Specialized Agency adopted the Human Rights Based Approach to development. The HRBA shares many similarities with the Decent Work Agenda and the overarching goal of the ILO, to achieve Decent Work. The ILO has in a relatively short period successfully gained recognition of the Fundamental Principles and Rights at Work and the Decent Work Agenda has largely contributed to their promotion and dissemination.

Even if the IFC is the only specialized agency of the UN of the MDBs, the MDBs consists of States that, at least the most of them, are members of both the UN and the ILO. Through the membership in ILO and the wide ratifications of the fundamental conventions, most States have an obligation to comply with the Core Labour Standards. When some of the MDBs, in recent years, have included specified environmental and social standards to be applied in the Bank's operations, the question is what the reason for this inclusion is.

From the examination in chapter 4 follows that the common purpose and the original mandate of the examined development banks are, according to the constituting agreements, to foster economic development and thereby to achieve economic growth. However, the constituting agreements of both the IADB and the AfDB have also included social development as a purpose of the organizations. The purpose of the EBRD differs slightly from the other Banks. While the two other banks emphasize economic development and poverty reduction, the purpose emphasized by the EBRD is the transition to market oriented economies in former planned economies.

Even though the original mandate of the banks is economic development, a social dimension has been added in recent years. To achieve economic growth is no longer enough. The examined development banks have also started to stress sustainable development. Sustainable development often contains both an environmental and a social aspect where labour rights are included in the latter.

The extent to which the MDBs has implemented and apply labour standards varies widely. The African Development Bank has focused on two main issues, the environment and gender equality. The Bank has identified gender equality as a means of reducing poverty in the member countries and aims to mainstream gender issues into all activities of the Bank. Apart from gender equality, labour standards are hardly ever applied by the Bank.

Core Labour Standards have several times been identified by the Inter-American Development Bank as an issue to work with in order to achieve development and poverty reduction. However, apart from some

considerations of gender equality and child labour, labour standards have not yet been implemented in the Bank's operation.

The application of labour standards in the Asian Development Bank lies somewhere between the two latter banks and the EBRD and IFC. The Bank claims that it applies Core Labour Standards in every stage of its operation and that the Bank requires that its members States, as members of the ILO, to comply with the Fundamental Principles and Rights at Work. In cooperation with the ILO, the Bank has developed a Handbook on Core Labour Standards as a guiding tool for the Bank's operational staff. This is just one example of how the Bank has put a lot of energy to market labour standards as a way of reducing poverty and reach development both to its member States and within the Bank's operation. Despite the considerable resources that the Bank has put into the promotion of labour standards there is little evidence that labour standards are systematically applied.

Like the IFC, The European Bank for Reconstruction and Development has adopted standards that the client has to comply with in order to obtain funding from the Bank. The EBRD Performance Requirements 2 on "*Labour and Working Conditions*" is largely influenced the Performance Standards 2 of the IFC. The Bank strives to provide best practice in the business or at least as good as the IFC. This view is an indirect statement that the IFC currently constitute best practice when it comes to environmental and social standards. With the review of the Performance Standards of the IFC and the changes that it will bring, the EBRD will probably also have to adjust its Performance Requirements to keep up with the IFC. One of the differences between the EBRD and IFC is the absence of a counterpart to the Compliance, Advisor/Ombudsman, an independent mechanism that stakeholders can turn to file a complaint.

The International Finance Corporation has for more than three years applied Core Labour Standards through the Performance Standards in its operations. The Bank has been criticized for lack of transparency and that the Bank as a specialized agency of the UN has not adopted the Human Rights Based Approach to development. The Performance Standards have become the benchmark for the finance sector and even the several private banks has committed to the Equator Principles. Since the Equator Principles apply the Performance Standards the current review of the standards will also lead to changes for the EPFIs. However the application of the Equator Principles by the private banks is completely voluntary without any common control mechanism.

There are two main reasons that can be distinguished for the application of labour standards in the Banks operation. The first reason is that they are used as a risk management tool and the second is that they are used as a promotional instrument for development.

The lack of labour standards and the risk that a bad relationship between workers and the management may cause is emphasized repeatedly. The use

of labour standards as a risk management tool, that helps the financial institutions to assess a projects risks is seems to be the major reasons for the banks to apply the standards and is probably the most salient feature of the Performance Standards/Requirements of the IFC and the EBRD. The banks recognise that there is a correlation between high risk and a poorer financial outcome of a project. Both the IFC and the EBRD think that the overall success of a project can be affected by the relationship between the management and employees. Neglecting fair treatment of workers may cause reputational damage or even jeopardise a project. The EBRD sees its application of the Performance Requirements as a way of helping clients to identify benefits and avoid, minimise or mitigate adverse social and environmental impacts. ADB believe that it is important to reduce non-compliance with national labour markets and international labour standards since it poses a significant risk. The cost of non-implementation of labour standards is frequently expressed as an obstacle to development in the banks member States.

Having realized the financial risk, not only for the client but also for the lenders, the other side of the coin is the encouragement of the application of labour standards. Regarding the promotional character, one of the stated reasons for applying labour standards is the aspiration for a sound workers-management relationship or fair treatment of workers. With the original mandate in mind, the IFC considers that the pursuit of economic development through job creation and income generation needs to be balanced with protection of workers' basic rights. The application of labour standards are used as a promotional instrument and the economic benefits of a well-maintained workforce are emphasized by IFC, EBRD and ADB. IFC considers that responsible business could lead to a comparative advantage that could contribute to the long-term profitability of a corporation. Both the IFC and EBRD believe that that a well-maintained workforce can create tangible benefits, is more productive and enhances economic growth. ADB takes a macro economic perspective and believes that social protection and a well functioning labour market with labour growth can reduce poverty faster. The differences in mandates may explain the different approaches. While the IFC, and largely also the EBRD, provides investments to enterprises for development of the private sector, the ADB provides investments for both public and private sector development.

The banks' promotion of labour standards and their use as a risk assessment tool have an economic purpose. This view implies that there is a discrepancy between the State obligation to respect, protect and promote human rights as well as labour rights and the reason for the banks' application

As mentioned, in the introductory chapter, it is impossible to determine to what extent the labour standards are applied in a single project due to client confidentiality and lack of transparency. However, some conclusions can be drawn from this examination regarding the application of labour standards.

Freedom of Association and the Right to Collective Bargaining is probably the least promoted and applied of the four Core Labour Standards. While IFC, EBRD and ADB presuppose compliance with the Fundamental Principles and Rights at Work due to the ILO membership, neither the IFC nor the EBRD had any policy regarding freedom of association and collective bargaining prior to 2006 and 2008 respectively when the new environmental and social standards were adopted. One reason for the reluctance of a wider promotion is said to be the connection with or the fear of raised labour costs. A strong trade union is associated with higher wages and even though this is a valid claim, it is also true that GDP is higher in countries with stronger workers rights. This would indicate that the cost of non-compliance might negatively affect the short-term profitability while long-term profitability may enhance growth and development.

Another reason might be the difficulty of applying a standard in opposition with national law. The discrepancy between the obligation of complying with national law and Core Labour Standards are probably most noticeable when it comes to freedom of association and collective bargaining since there are many examples where national law prohibits or restricts the right. If this is the matter, the issue is only addressed with the client and not with the State where the project is situated which would be considered as an interference with the sovereignty of a State. Since the clients of the ADB, AfDB and IADB almost exclusively is States this is probably also the reason why the adoption of labour standards has been easier in IFC and EBRD. This difficulty of course concerns all of the Core Labour Standards.

In relation to ILO and the concept of Decent Work, freedom of association is a prerequisite for tripartism and social dialogue, which is important for standard setting within the ILO. To participate in the decision-making process is also considered important for development. Participation is also a requirement for the PRSPs. Even so, freedom of association is hardly ever, if at all, included in the PRSPs.

The prohibition of forced labour and child labour is probably the most applied labour standards of the Core Labour Standards. They have both long been an integral part of the banks work. The perception of forced labour and child labour is very much the same and their application is not particularly controversial. A large corporation that has been found to use child labour or forced labour, either in its operation or in the supply chain, will most likely suffer a greater loss due to reputational damage and loss of good will than they would benefit from low labour costs.

The IFC, EBRD and ADB all prohibit forced labour. While the ADB states that it prohibits investments that contain any forced labour and child labour the other two banks extend the prohibition to the supply chain. Where low labour cost is a material factor to the client the EBRD prescribes that the client have to make inquiries in the supply chain to try to exclude its existence. However it is the client's responsibility to decide how these investigations should be carried out. If forced labour is discovered the client

may only continue to procure goods if the supplier takes appropriate steps to eliminate forced labour.

The RETA project of the ADB showed that the cost of child labour is very high and that the cost affects all levels of society. Child labour is a complex issue since its existence is caused by poverty and underdevelopment. The same factors that are necessary to reduce poverty and create development are, increase poverty and hunger in the short run.

Amongst States that have carried out Decent Work Country Programmes child labour is one of two distinguishing standards that have been widely applied. This is to some extent also reflected in the PRSPs.

The second labour standard most applied in the Decent Work Country Programmes and occasionally also in the PRSP is the provision on non-discrimination and the aim to reduce selected discriminatory practices. The application of non-discrimination provisions mainly refers to gender discrimination and equal opportunity. All five Banks work with gender equality at different levels.

Even though the Core Labour Standards are the most prominent labour standards applied by the Banks, other regulations are also included in the Performance Standards/Requirements. Corporations are required to adopt a human resource policy containing working conditions and terms of employment. For the EBRD these conditions should be documented and known by workers and have to be equivalent of other employers in the country or region. Occupational Safety and Health requirements are also quite thoroughly applied. The purpose of OSH requirements is to minimize risks by taking preventive measures. The EBRD has also included the OSH requirements of the European Union. Other common requirements are the application of regulations on good governance, retrenchment and grievance mechanisms.

Apart from the Core Labour Standards and above mentioned regulations the ADB considers that appropriate national labour legislation should contain provisions on minimum age, working hours, labour contracts, maternity protection, industrial relationships and job security.

The World Bank (IBRD) has not made it mandatory to apply neither the Decent Work Agenda nor Labour Standards in the PRSPs even though the first of the MDGs targets decent work to achieve the goal. Half of the countries that have produced a PRSP have aligned their PRSP with their Decent Work Agenda and acknowledged the significance of Labour Standards to poverty reduction. Yet the use of the standards is uneven.

The impacts of the application of the labour standards are not really measured and the use of indicators to measure the effects of the application of labour standards is scarce, not to say non-existent. In relation to the labour market, the measured impact emphasizes employment growth.

Employment is highlighted both in the initial assessment phase and in the evaluation phase. The initial risk assessments of the ADB estimate growth of employment, growth of employment during construction or growth of employment amongst skill workers without even examining whether there is a supply of skilled workers. The banks also measure growth of employment. The indicators of the IFC measure more employees, increased wages and training of the employees. The key indicators of the ADB are labour force participation rate, unemployment rate, unemployment rate of 15-24 year-olds and employment by sectors.

The use of the Performance Standards/Requirements as a promotional instrument and as a risk management tool is not reflected when measuring the outcomes of a project. The IFC is satisfied by concluding that low risk investments are more likely to generate higher rates of return without measuring or putting forward any further empirical evidence concerning their operations.

In conclusion, by looking at the last decade, one can see that there is a growing trend of taking labour standards into consideration by MDBs and by private banks. However, labour standards are not applied as a part of the HRBA to development or a commitment to human rights. Instead, labour rights are applied as a risk management tool, to protect investments, predominantly from western developed countries to developing countries. This might also explain the reluctance of the members of the ADB to include the application of labour standards as a condition for project lending. ADB is, to a larger extent than IFC and EBRD, represented by developing countries. Requirements have been seen as a social clause interfering with the comparative advantage of developing countries. The alternative way of the ADB has been to stress, not only the risks but also the economic and developmental benefits of applying labour standards.

This might also explain the absence of labour standards in the AfDB and IADB where the majority of the shareholders belong to developing countries. This assumption also adds to the picture of developed and developing countries on two different halves of the ground where labour standards aim to level the playing field.

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