Abstract

The present paper analyses the labour policies that development finance institutions (DFIs) have put in place in order to take into account labour standards issues in their business relations with the private sector. It examines the process by which DFI labour policies have developed, taking into account developments at the global, regional, and bilateral level, and describes the mechanisms designed for their implementation. While providing an overview of the inclusion of labour standards in the policies of 15 DFIs, the paper focuses on initial experiences with the IFC Performance Standards. The paper also reviews the first experiences with the practical application of these policies and argues that these policies have not created business disadvantages for DFIs.
Aligning Private Sector Investment and Labour Standards? The case of policies of Development Finance Institutions’

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1. Introduction

Increasingly, the international community has called for development finance institutions (DFIs) to take into account the objective of promoting decent working conditions when carrying out their investment operations.³ While DFIs do not have a specific mandate for promoting decent work, there is an increasing awareness that they can play an important role in ensuring that international labour standards are not infringed upon in the context of the projects funded by the DFIs (ILO, 2007, pp. 35 et seq.). In response to this emerging perception, a number of DFIs have, in recent years, started integrating labour provisions into their investment policies.⁴ This has been done through the adoption of policy statements supporting international labour standards⁵ and, subsequently, through the adoption of policy instruments requiring client companies to respect specific labour standards.

Despite their large potential impact and the complex challenges arising in this regard (see Woicke, 2005, pp. 345 et seq.), the labour provisions included in DFI policies have not yet been widely studied, nor is there a clear overall picture of the current status of such initiatives.⁶ This paper provides an initial exploration of these developments by documenting the policies of 15 DFIs at the global, regional, and bilateral level that have integrated labour provisions into their investment policies. Here, the focus is on investment and project policies applicable to the DFI’s private sector operations, leaving aside DFI public sector activities such as labour standards in public sector operations.

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³ The ECOSOC 2006 Ministerial Declaration called for “cooperation and coordination, in the pursuit of the goals of full and productive employment and decent work for all” in international and bilateral donor agency activities (see paragraph 33 of the document) (ECOSOC, 2006). A similar statement is made by the World Commission on the Social Dimension of Globalization (2004, pp. 94).
⁴ For the purpose of this paper, the term “labour provisions” is defined as comprising (i) any labour standard which establishes minimum working conditions, terms of employment or worker rights, (ii) any norm on the protection provided to workers under national labour law and its enforcement, as well as (iii) any framework for cooperation in and/or monitoring of these issues. Where reference is made to the standards established by the ILO, the terms “international labour standards” (ILS) or “ILO instruments” will be used. The term “DFI policies” refers to normative standards which are adopted by these institutions in relation to their investment operations and procedures.
⁶ Earlier studies include Penfold (2004), Bakvis/McCoy (2008), and Sims (2008), which however have different scopes and focuses as to the normative frameworks and the DFIs analysed and do usually not deal with the application of these mechanisms in practice.
procurement requirements or in country assistance strategies. Furthermore, a review of first experiences with the application of these labour provisions in practice is provided. Finally, the paper draws conclusions from the current policy framework and practice for the potential of current DFI policies to promote labour standards and suggests ways to address some remaining challenges.

2. DFI operational framework and activities: An overview

Unlike private sector banks, DFIs pursue, in addition to generating profits for their stakeholders, certain public policy goals such as increasing growth in certain sectors or industries and promoting the overall economic development of targeted countries. Rather than competing with private sector banks, DFIs generate finance for projects that are typically considered too risky by the majority of private banks. Thereby they endeavour to demonstrate to potential investors that intelligent investments in development countries may yield a risk-adjusted profit (Sims, 2008, pp. 5).

In the last decades, a variety of DFIs has emerged. The International Finance Corporation (IFC), the private sector investment arm of the World Bank Group, acts at the global level. A number of DFIs have also been put in place at the regional level, covering in particular Africa, Asia, the Americas and Europe, as well as on the bilateral level. While multilateral and regional DFIs are owned by their member States, some bilateral DFIs also have private owners, although the main shares usually remain with the national government (Dellacha and te Velde, 2007).

DFIs provide a wide range of financial services, in particular loans (unsecured or secured against collateral) and equity and quasi-equity (which involves acquiring ownership in the company concerned) (Penfold, 2004, pp. 23). In addition, DFIs typically also provide finance through financial intermediaries and financial expert advice. The focus and range of the financial services offered differs considerably among the DFIs. Also, while this paper focuses on private sector investments, it should be noted that especially regional DFIs also provide considerable public

7 A number of actors, in particular the World Bank, EBRD require bidders to comply with the ILO CLS as well as a number of other labour standards (World Bank, 2007, EBRD, 2009). In accordance with these policies, contractors must sign a declaration stating that they will respect the CLS when carrying out these projects. An example for a – be it rather flexible – approach regarding the integration of labour standards into country assistance strategies can be found in the policies of the World Bank, the EBRD and the AfDB, see World Bank (2002); EBRD (2008); AfDB (2009).

8 Another distinctive feature is that DFIs do not have depositors but rely upon their shareholders for capital (Buiter/Fries, 2002, pp. 4). DFIs are also to be distinguished from development agencies, which provide grants that do not have to be repaid. DFIs are, moreover, distinct from export credit agencies which provide guarantees and insurances against political and certain other risks.

9 The IFC is one of the five institutions of the World Bank Group, such as the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the Multilateral Investment Guarantee Agency and the International Centre for the Settlement of Investment Disputes, see further Ragazzi (2010).

10 The Main regional DFIs are the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the EU’s European Investment Bank and the Inter-American Development Bank. For a review of the current role and the prospects of regional DFIs see Griffith-Jones; Griffith-Jones; Hertova (2008). Important examples for bilateral DFIs are the American OPIC, the German DEG and the Dutch FMO.

11 While some DFIs, such as the European Investment Bank (EIB) concentrate on loans, others such as the British Commonwealth Development Corporation (CDC) focus on equity investments (te Velde; Warner, 2007, pp. 2).
funding which in some cases exceeds the private investments. During 2005, the main DFIs directed US$ 21.3 billion into the private sector, which constituted almost half of DFIs’ total disbursements (US$ 45 billion) (te Velde and Warner, 2007, pp. 2; te Velde (2008), pp. 5). Labour policies of DFIs have thus a considerable potential outreach into the business community in developing countries.

3. How have labour provisions been integrated into DFI investment policies?

The integration of labour standards into DFI’s policies is characterized by (1) a gradual adoption of increasingly comprehensive labour policies by a number of DFIs since the late nineties, (2) cross-influences among the DFI policies and (3) an impact of the labour-related initiatives undertaken by DFIs upon policies of non-DFI financial institutions. In this regard, a leading role has been played by the IFC. By 1998, the IFC had adopted a safeguard policy dealing with specific labour issues such as forced labour and harmful child labour (IFC Compliance Advisory Ombudsman, 2003, pp. 20, 36). Following an assessment by the IFC’s Ombudsman in 2003 and consultations with a wide array of stakeholders, including the ILO, the IFC enhanced its approach as regards the promotion of labour standards by adopting “Policy and Performance Standards on Social and Environmental Sustainability” (IFC, 2006, pp. 7 et seq.). Being embedded in a comprehensive framework of social and environmental standards, the specific labour-related requirements, which are contained in the Performance Standards 2 (Table 1), have been applied to IFC-financed projects since May 2006.

The IFC Performance Standards have become a reference for other DFIs in developing integrated labour provisions within their own policies (Sims, 2008, pp. 11). In particular, the “Performance Requirements” of the European Bank for Reconstruction and Development (EBRD), adopted in May 2008, seem to have been inspired by the IFC’s Performance Standards (EBRD, 2008, pp. 22).

In addition, a number of DFIs have included labour provisions in their policies before or in parallel to the process undertaken by the IFC. An early example is the US OPIC, which started using such provisions in its investment activities in 1989, requiring clients to respect certain labour standards (OPIC, 2008). From the late 1990s, European DFIs, in particular the Danish Industrialisation Fund for Developing Countries (IFU) (IFU, 2005), the Netherlands Development Finance Company (FMO) and the German Investment and Development Corporation (DEG) (Rudolph, 2008), have integrated labour provisions into their investment policies. Numerous regional DFIs (see for example ADB, 2007, pp. 159 et seq.; EBRD, 2008, pp. 22; AfDB, 2009; EIB, 2009, pp. 18 et seq.) and more recent bilateral DFIs, including the Development Bank of Austria (OeEB), established in 2008, have followed suit.

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12 The World Bank Group, for example, covers both investment in the public sector (IBRD) and the private sector (International Finance Corporation (IFC)). The same is true for regional banks although the majority of them tend to prioritize the public sector. Bilateral DFIs typically focus on the private sector (te Velde; Warner, 2007, pp. 2).

## Table 1: Overview of labour provisions in the IFC Performance Standard 2

<table>
<thead>
<tr>
<th>Area of labour issues</th>
<th>Requirement applicable to IFC’s clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>General issues</td>
<td>Client must adopt a human resource (HR) policy and “document and communicate to their employees” information on their employment and working conditions</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>Compliance with national law</td>
</tr>
<tr>
<td></td>
<td>Where national law prohibits unions: alternative mechanisms for grievance and protection of working conditions must be put in place</td>
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<tr>
<td></td>
<td>Clients may not, under any circumstances, discourage workers from, or discriminate against workers for, organizing or bargaining collectively</td>
</tr>
<tr>
<td>Non-discrimination</td>
<td>Compliance with national law if it prohibits discrimination</td>
</tr>
<tr>
<td></td>
<td>No discrimination regarding recruitment, compensation, working conditions, termination of employment training and retirement regarding gender, colour, religion, etc.</td>
</tr>
<tr>
<td>Child labour</td>
<td>No child labour that is exploitative or harmful to the child’s education, health or development</td>
</tr>
<tr>
<td></td>
<td>Minimum age: follows applicable national law, no employment of children under 18 in “dangerous work”</td>
</tr>
<tr>
<td>Forced labour</td>
<td>No use of work or services “not voluntarily performed” “under threat of force or penalty”</td>
</tr>
<tr>
<td>Working conditions</td>
<td>Follow the collective agreement where the client is party to such an agreement</td>
</tr>
<tr>
<td></td>
<td>Where no collective agreement covers wages, hours of work, overtime arrangements and compensation, sick leave, maternity leave or annual leave, national law will be respected</td>
</tr>
<tr>
<td>Occupational safety and health</td>
<td>Client must take steps to minimize, as far as possible, the risks of occupational injury and disease</td>
</tr>
<tr>
<td></td>
<td>The client must: identify risks, take preventive measures, provide training to workers, document occupational accidents and diseases</td>
</tr>
<tr>
<td>Retrenchment</td>
<td>In the event of mass lay-offs, a retrenchment plan is required to mitigate effects of retrenchment in consultation with workers and in a non-discriminatory manner</td>
</tr>
<tr>
<td>Grievance mechanism</td>
<td>Possibility for workers to raise concerns with the management in a transparent and expeditious manner</td>
</tr>
<tr>
<td>Non-employee workers</td>
<td>Covers contract workers performing core functions for the client for a “substantial duration”</td>
</tr>
<tr>
<td></td>
<td>All labour provisions apply, except those on HR policy, retrenchment and supply chains</td>
</tr>
<tr>
<td>Supply chains</td>
<td>Client must “inquire about and address child labour and forced labour in its supply chain”</td>
</tr>
</tbody>
</table>

Source: IFC (2006)

As seen in Table 2, the scope of the labour provisions that have been adopted varies considerably. Issues most widely covered are those relating to the four Core Labour Standards (CLS)\(^{14}\) and – albeit to a lesser extent – issues in the area of occupational safety and health, working time and wages. Interestingly, twelve of the DFI policies examined refer directly to at least some of the ILO

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\(^{14}\) The Core Labour Standards or Fundamental Rights at Work have been defined by the ILO Declaration of 1998 (ILO, 1998), which requires ILO member States to comply with and promote rights and principles in four areas: Freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; and elimination of discrimination in respect of employment and occupation. This applies regardless of whether the member State has ratified the eight relevant ILO Fundamental Conventions (No. 29, 87, 98, 100, 105, 111, 138, and 182).
Table 2: Labour provisions in operational policies of major DFIs

<table>
<thead>
<tr>
<th>Name of DFI</th>
<th>Reference to ILO instruments*</th>
<th>Areas covered by DFI policies**</th>
<th>Labour provisions inserted into contracts with partner companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Finance Corporation (IFC)</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS and other selected labour issues (see table 1)</td>
<td>Yes (for investment through financial intermediaries the specific standard applied depends on the risk factor)</td>
</tr>
<tr>
<td>Asian Development Bank (ADB)</td>
<td>ILO 1998 Declaration</td>
<td>Issues related to CLS, minimum wage, occupational safety and health</td>
<td>Yes (usually for large infrastructure projects depending on the social assessment)</td>
</tr>
<tr>
<td>African Development Bank (AfDB)</td>
<td>Unclear</td>
<td>Issues related to occupational safety and health and gender issues</td>
<td>Yes (in the form of concrete commitments depending on the social assessment)</td>
</tr>
<tr>
<td>European Bank for Reconstruction and Development (EBRD)</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS, occupational safety and health, employment contracts, retrenchment, non-employee workers, minimum conditions of work, respect for collective agreements, EU rules on non-discrimination</td>
<td>Yes</td>
</tr>
<tr>
<td>European Investment Bank (EIB)</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS and occupational safety and health</td>
<td>Yes (in the form of concrete commitments depending on the social assessment)</td>
</tr>
<tr>
<td>Inter-American Development Bank (IADB)</td>
<td>Unclear</td>
<td>Issues related to CLS and certain selected areas (for large infrastructure projects)</td>
<td>Yes (primarily national legal requirements — international labour standards are typically aimed at through a specific action plan)</td>
</tr>
<tr>
<td>UK Commonwealth Development Corporation (CDC)</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS, wages, occupational safety and health and other selected areas</td>
<td>Yes</td>
</tr>
<tr>
<td>DEG</td>
<td>Fundamental Conventions, Conventions on working time, pay and occupational safety and health</td>
<td>Issues related to CLS, working time, wages and occupational safety and health</td>
<td>Yes</td>
</tr>
<tr>
<td>FMO</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS and other labour issues (identical to the IFC Performance Standards)</td>
<td>Yes</td>
</tr>
<tr>
<td>IFU</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS, weekly rest, working hours, annual leave, wages and occupational safety and health</td>
<td>Yes (primarily national legal requirements — international standards are typically aimed at through a specific action plan)</td>
</tr>
<tr>
<td>Norfund (Norway)</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS and other labour issues (identical to the IFC Performance Standards)</td>
<td>Yes</td>
</tr>
<tr>
<td>OeEB</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS, occupational safety and health and other selected labour issues</td>
<td>Yes (primarily national legal requirements — international standards are typically aimed at through a specific action plan)</td>
</tr>
<tr>
<td>OPIC</td>
<td>Unclear</td>
<td>Issues related to CLS (except non-discrimination), wages, working hours and occupational safety and health</td>
<td>Yes (primarily national legal requirements — international standards are included where national standards are not sufficient)</td>
</tr>
<tr>
<td>Swiss Investment Fund for Emerging Markets (SIFEM)</td>
<td>Fundamental Conventions on child and forced labour</td>
<td>Issues related to child labour and forced labour — other labour issues, including occupational safety and health and minimum working conditions, as far as covered by national law</td>
<td>Yes</td>
</tr>
<tr>
<td>Swedfund (Sweden)</td>
<td>Fundamental Conventions</td>
<td>Issues related to CLS and other selected labour issues</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Notes:
* Reference to the ILO instruments does not necessarily imply that the policies embrace all the obligations contained in these instruments but may refer to them as a source of inspiration or a benchmark.
** The substance of the labour conditions referred to may be derived from ILO standards or national law or may be established by the DFI policy itself. Some of the bilateral and regional DFIs also refer to the IFC Performance Standards or the IFC policy on occupational safety and health.
Source: Policy documents of the various DFIs as well as interviews with DFI officials.

The World Bank, which provides finance mainly directly to states, does currently not have such a policy in place. However, it does address the issue of labour standards in its public procurement policies (as seen later in this text).
Fundamental Conventions, which may be due in part to consultation with the ILO in the design of these policies, as in the case of the IFC and EBRD (Sims, 2008, pp. 7). However, these DFI policies do not necessarily embrace all the specific requirements of the relevant ILO Conventions. As for the insertion of labour provisions into the contracts concluded with partner companies, three different approaches can be observed. In the approach, the DFI includes its labour requirements – regarding national law and international standards – in the form of concrete commitments based on an action plan if the social impact assessment reveals problems in this regard. A second approach involves the insertion of a general requirement to comply with national law into the investment contract while issues relating to international standards are included as commitments set out by a possible action plan. The third and major approach incorporates all labour provisions contained in the DFI policy into the investment contract at a general level. Additionally, concrete commitments based on the social impact assessment of the company may be included.

Most frequently the main reference point for labour provisions in DFI policies is national law, although, a minimum standard is generally maintained on a number of issues, in particular related to CLS. That having been said, some DFI policies go further. The policies of the EBRD and DEG extend beyond the scope of the labour standards protected by the IFC’s Performance Standards (Rudolph, 2005; EBRD, 2008, pp. 22 et seq.). The EBRD requires companies, for example, to respect certain EU regulations on non-discrimination (EBRD, 2008, pp. 23). Many of these DFIs, including IFC and IADB, also have an exclusion list in place that specifically precludes them from investing in clients that use child labour and forced labour. The same applies to the members of the Association of the European Development Finance Institutions (EDFI), which covers all European bilateral DFIs (EDFI, 2009). The increasing parallels between the different DFI policies as to labour issues reflect the intense consultation processes that have taken place among the DFIs, in particular with the IFC and within the EDFI.

The dynamics regarding the development of labour policies within DFIs, in particular within the IFC, have also influenced the policies of financial actors other than DFIs. The Multilateral Investment Guarantee Agency (MIGA), which is the investment guarantee arm of the World Bank Group, adopted the Performance Standards in 2007 (MIGA, 2007). In 2003, the leading international private sector banks (known as the “Equator Banks”) adopted provisions known as the “Equator Principles”. Since their revision in 2006, the Equator Principles contain the social and environmental safeguards of the IFC Performance Standards. Banks that adopt the Equator Principles commit themselves to apply these principles to any project with a minimum value of US$ 10 million. Adherence to the Equator Principles rose from ten compliant banks in 2003 to almost 60 compliant banks in 2008 (Sims, 2008, pp. 11). The IFC estimates that the Equator

16 As regards freedom of association, a special approach is often applied. Where national law directly contradicts international standards (for example, by prohibiting workers from forming unions), many DFI policies require their clients to adopt parallel procedures to enable the affected workers to collectively express their concerns (see for example IFC (2007c)).
17 EIB, too, uses certain elements of EU labour regulation as source of guidance when carrying out its social assessments, EIB (2010a), pp. 26.
18 It is unclear whether the term “harmful child labour” is completely equivalent to the ILO’s concept of “the worst form of child labour”. The IFC exclusion list can be found at: http://www.ifc.org/ifcext/disclosure.nsf/Content/IFCExclusionList. The IADB exclusion list can be found at: http://www.iadb.org/mif/environm/socguidelines4.cfm?lang=en [11 February 2011].
Principles are now applied to 80 per cent of project finance provided by private banks in developing countries (IFC, 2007a, pp. 10).

4. Practical implications of DFI labour provisions

4.1. Implementation procedures of DFI labour policies

As regards the practical impact of the DFI labour policies on workers’ reality, the design of the procedural framework is of crucial importance. Here, three issues shall be analysed, including (1) the assessment procedure used by DFIs to analyse and address shortcoming of their client companies, (2) the recourse mechanisms available to those concerned by the projects financed by the DFIs, and (3) the coordination of DFIs with their fellow institutions on labour issues.

While the details of the DFI policies differ in this regard, the application of these policies is typically based on an initial social screening of the proposed investment. If potential problems in relation to labour practices are identified a social impact assessment, is carried out. Possible social impacts established by this assessment may, subsequently, be addressed through an action plan. In the following section, the IFC framework will be the focus of the analysis, given that it is considered to be one of the most comprehensive procedural frameworks for labour policies, as well as the fact that a relatively large amount of information is available on this DFI and its procedures.

The assessment procedure typically falls into two main steps: First, an initial social screening must be conducted by the client company. Depending on the level of risks identified, the investment project is classified as one of three categories (A, B, or C). Projects of the categories A and, often, also B require the client company to carry out a social impact assessment and to develop an action plan designed to avoid, or at least mitigate, possible negative impact on labour conditions. The IFC will take this action plan into account when conducting its own social impact assessment (mandatory at least for “A projects”), which often involves labour audits by consultants and usually also includes consultations with NGOs and trade unions. In the event of compliance difficulties, the IFC will (in extreme cases) reject the project or require the company to remedy these problems, often in combination with technical assistance offered to the company (see further IFC, 2006, pp. 7 et seq.; 2007c, pp. 36 et seq.). Similar procedures are also followed by the other DFIs, which have integrated labour concerns into their investment policies.

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20 In many cases, the DFI policies include a clause requiring clients to comply with the DFI’s labour policy in general, as well as specific requirements in the form of an action plan to be met by the client, based on the initial social assessment. Some DFIs, including AfDB and ADB, and EIB focus exclusively on the latter requirement (see for example ADB (2007)).

21 Unlike under earlier environmental and social policies, under the Performance Standards, the IFC not only submits its client company to an auditing procedure prior to the investment, but works with the client company to ensure compliance throughout the life of the investment (Warner, 2006, pp. 2).
Box 1: Implementation of labour provisions in indirect DFI investments

Investments conducted through financial intermediaries (i.e. another bank) or funds may complicate the application of labour provisions in DFI policies. The link between the DFI and the company concerned, in such circumstances, is more remote than in the context of direct project finance. Here, DFIs usually require their financial intermediary or fund to have a social management system in place to ensure that the projects or companies of their portfolio comply with the specified level of protection in terms of labour standards. The IFC applies a three-tier approach in this regard. The precise standard of protection depends on the initial social screening. While financial intermediaries with low-risk portfolios only have to apply an exclusion list, portfolios with a medium-risk factor require the financial intermediary additionally to ensure the application of national law. In cases of a high-risk portfolio, financial intermediaries also apply the IFC Performance Standards (IFC, 2009).

Similar approaches are used by the British CDC and the Swiss SIFEM, which engage primarily in fund-of-fund investment. Funds that receive finance from one of these two DFIs are required to ensure that the funds’ client companies comply with the DFIs’ labour policies, mainly by means of a social management system to be established by the funds. In both cases, fund managers are required to report regularly on specified labour issues concerning their portfolio in annual social and environmental reports. In addition to on-going fund manager monitoring, these DFIs also carry out selective on-site visits.

To provide third parties from potentially harmful consequences of their operations, a number of DFIs, in particular at the global and regional level, have also put in place specific review mechanisms. These policies typically allow the affected parties to bring their concerns before a body that is formally independent from the operational part of the DFI and reports directly to the DFI’s highest oversight body. Review bodies typically fulfil two main functions: First, they provide a forum for mediation and promoting dialogue between the third parties and the DFI in case of a dispute. Second – if a dispute cannot be solved by mediation or conciliation or in case the review body detects a compliance problem on its own – the review body conducts an examination of whether a DFI has complied with its internal policies. If compliance problems are confirmed by the investigation, review bodies may recommend amendments to the DFI’s policy or ways to solve the case at issue (see, for example, IFC Compliance Advisory Ombudsman, 2007).

The first DFI to put a safeguard policy into place was the World Bank in 1994 after facing criticism of shortcomings in its environmental and community policies (Clark, 1999; Horta, 2002; Brodnig, 2005). As regards DFIs dealing with the private sector, some actors such as IFC, the EBRD and the EIB, have developed this approach further by also applying safeguards to their labour policies (see, for example, IFC Compliance Advisory Ombudsman, 2007, pp. 21; EBRD 2008, pp. 22 et seq.; 2010, pp. 4; EIB, 2009, pp. 18 et seq.; 2010b, pp. 6). Some other review mechanisms

22 As concerns EBRD, the old Independent Recourse Mechanism was replaced by the Project Complaint Mechanism in 2010 with a view to increasing the mechanism’s accessibility as well as the possibilities for review and to promote dialogue among the parties, see further at:
cover selected labour issues: While the ADB review mechanism covers occupational safety and health issues (ADB, 2009, pp. 9, 30, 38 et seq.), the AfDB allows for review of gender issues (Rees and Vermijs, 2008, pp. 71). The EIB Complaints Mechanism is particularly comprehensive. Here, individuals may make a submission to the EIB’s internal Complaints Office, but may also have recourse to the European Ombudsman (an independent EU institution) if they consider the reply from the complaints office to be unsatisfactory (EIB, 2010b, pp. 10).23

Interesting developments can also be observed regarding the interaction between DFIs with a view to improving the application of their social policies. Given that projects often receive finance from more than one DFI, some DFIs have started to coordinate their policies, including the social requirements to be met by the client. Often, DFIs that co-finance a given project agree on joint environmental and social (E&S) requirements. A response to the need for coordination can be seen in the creation, in 1992, of the Association of the European Development Finance Institutions (EDFI), to which 16 bilateral DFIs subscribe at present.24 In May 2009, EDFI members signed a declaration on “Principles for Responsible Financing”, which commits members to working with client companies in order to progressively realize the standards contained in a number of international instruments, including ILO Fundamental Conventions (EDFI, 2009).25 Since 2007, the EDFI has also adopted “Harmonized Environmental, Social, and Governance Standards” (EDFI, 2009). While they do not harmonize the content of the labour provisions in DFI policies, these Standards do contain social category definitions, and certain technical standards, including on social due diligence, to facilitate the joint application of their social policies. In practice, DFIs which co-finance a project often also coordinate their responses if problems arise regarding the labour provisions, for example in the form of a jointly designed action plan that the client company is required to implement. A regular exchange between the DFI’s social experts also takes place (Sims, 2008, pp. 11).

4.2. Application of DFI labour policies in practice

Little is known about the practical application of labour provisions in the policies of DFIs as these labour policies are a rather recent phenomenon and much of the relevant information is confidential.26 For this preliminary analysis, the focus will be on the IFC Performance Standards since documentation on the application of IFC’s labour provisions is more advanced than that of comparable DFIs. Some preliminary insights can, for example, be drawn from the IFC’s report on their first three years of implementation of the Performance Standards (IFC, 2009),27 a trade union.

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23 If complainants consider a response of the EIB Complaints Office unsatisfactory or if they consider that the Complaints Office’s recommendations have not been appropriately implemented, they may also file a confirmatory complaint within specific deadlines (EIB, 2010b).
25 Other instruments are the UN Declaration of Human Rights, the IFC Performance Standards and the IFC’s Environmental and Health & Safety Guidelines (EDFI, 2009).
26 In particular, information on the application of labour provisions in DFI policies regarding investments through financial intermediaries has proven difficult to obtain.
27 IFC also published an assessment of the application of its Performance Standards with the first 18 month assessment which the more recent assessment partly draws on (IFC, 2007a).
assessment of the IFC Performance Standards (Global Unions, 2009) as well as the case reports of IFC’s CAO Ombudsman.

As to its approach to the management of labour issues, IFC has hired staff to implement its environmental and social policy, including a number of labour specialists, totalling 62 staff members in 2009, and has established a Labour Advisory Group (IFC, 2009, p. 12). Also, strong emphasis was put on familiarizing the IFC’s general staff with the Performance Requirements (Table 3). According to the IFC review, more than 1,600 staff members received face-to-face training on the IFC’s Performance Standards, while 192 participated in an online training course on the IFC’s E&S management. Furthermore, beyond the initial assessment, 17 projects were subject to a comprehensive labour audit. The IFC also has a number of tools for internal review in place which seeks to assess and gradually improve the IFC’s E&S performance, such as an Environmental and Social Review Procedure and a Quality Assurance and Control System (IFC, 2009, pp. 7).

Table 3: Staff hired and capacity building undertaken on IFC Performance Standards in the first three years of application

<table>
<thead>
<tr>
<th>Staff Members in the E&amp;S Department in 2009</th>
<th>Specialists on E&amp;S in investments through financial intermediaries in 2009</th>
<th>Number of staff (IFC and WB) that received face-to-face training on the Performance Standards</th>
<th>Number of staff that completed an online course on E&amp;S</th>
<th>Labour audits carried out on project sites</th>
</tr>
</thead>
<tbody>
<tr>
<td>62</td>
<td>11</td>
<td>1,616</td>
<td>192</td>
<td>17</td>
</tr>
</tbody>
</table>

Notes: * These figures include consultants.
Source: IFC (2009)

As for the first trade union experiences with cases brought to IFC’s attention, 21 submissions were filed to the IFC by trade unions between 2006 and 2009 (Global Unions, 2009, pp. 7 et seq.). These cases involved two requests for information and 19 reports of alleged breaches of IFC Performance Standards (Table 4). Of these 19 cases, 17 dealt – exclusively or partly – with freedom of association issues. IFC has reacted with a variety of measures, including enhanced monitoring and capacity building activities for finance recipients. In some cases – all related to freedom of association – direct interventions by IFC at the company level lead to improvements of the situation regarding labour standards. In a few cases, the project was suspended or not pursued. Among the most promising cases is a case concerning a Brazilian airline where an IFC intervention further to being informed about the case by trade unions helped to end anti-union activities (Bakvis and McCoy, 2008, pp. 6). In a similar case involving a Ugandan construction union, the IFC’s intervention was instrumental in making the company apply a collective agreement (Murie, 2009).

Furthermore, a number of DFIs, including EIB, Norfund, and SIFEM have trained their staff on issues related to labour standards in collaboration with the ILO or the ILO’s Turin-based International Training Centre.
Table 4: Submissions regarding breaches of the Performance Standards filed with the IFC by trade unions between July 2006 and August 2009

<table>
<thead>
<tr>
<th>Type of submission</th>
<th>Freedom of association</th>
<th>Child labour</th>
<th>Others</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of cases submitted by trade unions to the IFC</td>
<td></td>
<td></td>
<td></td>
<td>21</td>
</tr>
<tr>
<td>Number of requests for information</td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Number of registered complaints</td>
<td>17</td>
<td>3</td>
<td>4</td>
<td>19</td>
</tr>
<tr>
<td>Intervention undertaken by IFC</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional capacity building or monitoring provided</td>
<td>3</td>
<td>–</td>
<td>–</td>
<td>3</td>
</tr>
<tr>
<td>Project suspended or not pursued**</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Correction of alleged violations due to IFC intervention</td>
<td>5</td>
<td>–</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Company bankrupt</td>
<td>2</td>
<td>–</td>
<td>–</td>
<td>2</td>
</tr>
<tr>
<td>No breach found by IFC</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Pending or no information</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

Notes:
* Due to the complexity of the problems at stake, some of the cases submitted to IFC involve several allegations, which have triggered different interventions by IFC. The total number of the interventions undertaken by IFC, therefore, does not coincide with the total number of the cases submitted.
** It is unclear to which extent the decision to suspend or to not pursue the project was due to a lack of the company's compliance with the DFI's labour policies.

Source: Global Unions (2009).

Based on a review of existing cases, Bakvis and McCoy (2008, pp. 7), Berber Atgas (2009, pp. 43) and Murie (2009, pp. 17), respectively, see potential in the Performance Standard 2 to positively influence the situation of workers. However, the consideration that the IFC relies to a large extent on the borrowers' self-assessment and consultants has led some to argue that the IFC Performance Standards are effective mainly in cases where local unions are present and are able to monitor the workers' situation (Bakvis and McCoy, 2008, pp. 7). Moreover, it has proven useful for the implementation of these policies that these local unions are linked to global unions, so as to be able to further inform the IFC and provide more detailed information regarding implementation (see Berber Atgas, 2009, pp. 43).29

Furthermore, in a few cases, labour concerns have also been raised to IFC’s Compliance Advisor Ombudsman. Out of the 73 cases that were filed with the Ombudsman until 1 August 2010 only four dealt with labour issues.30 Except for one case, the dispute between the complainant and the client company and/or the IFC could be resolved amicably. Three of the four complaints dealt with the freedom of association of trade unions. The measures recommended by the Ombudsman, which were subsequently included into an agreement adopted by the parties, differed depending on the characteristics of the specific cases, ranging from mediation tools and training of company officials on the IFC Performance Standards to independent labour audits to assess and monitor the problems raised (Table 5). At the time of writing, the Ombudsman continued to review the

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29 It should be mentioned, however, that trade unions are, up to now, less involved in the implementation of policies of other DFIs.
30 Most of these cases focus on local communities, indigenous people and environmental concerns,
implementation of these agreements. While it is too early to draw preliminary conclusions from these cases, it appears that the IFC CAO Ombudsman has taken these cases seriously and submitted them to a comprehensive assessment.

Table 5: Cases on labour issues filed with IFC’s Compliance Advisor Ombudsman

<table>
<thead>
<tr>
<th>Name of the case</th>
<th>Date of filing</th>
<th>Labour concerns raised</th>
<th>Action taken by the Compliance Advisor Ombudsman (CAO)</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nigeria / Niger Delta Contractor Revolving Credit Facility-01/Niger Delta (Environmental Rights Action)</td>
<td>1 June 2001</td>
<td>Employment practices and environmental/social performance of Shell contractors (among other non-labour related issues)</td>
<td>CAO conducted an appraisal and accepted the complaint in June 2001. The CAO’s Assessment Report, made a number of recommendations, including the development of a participatory monitoring and evaluation program.</td>
<td>CAO’s assessment was rejected by the complainants and CAO closed the case in January 2005.</td>
</tr>
<tr>
<td>Nicaragua / Nicaragua Sugar Estates Limited-01/León and Chinandega (complainant: Center for International Environmental Law)</td>
<td>1 March 2008</td>
<td>Labor and working conditions such as rights of association and restrictions to forming a union (among other non-labour related issues)</td>
<td>Since February 2009, CAO has convened a dialogue table to address the concerns of community members and the client company. Alongside the dialogue table, CAO has assisted community members from Goyena and Abangasca to address concerns together with the company.</td>
<td>The parties have so far agreed on a framework to address some of the health issues raised by the complainant. CAO is monitoring implementation of the agreements made by the parties.</td>
</tr>
<tr>
<td>Turkey / Standard Profil-01/Duzce (complainant: Confederation of Turkish Trade Unions)</td>
<td>1 September 2008</td>
<td>Labor and working conditions and more specifically, rights of association and restrictions on formation of a labor union.</td>
<td>CAO conducted a preliminary field visit in November 2008 followed by regional consultation visits. CAO recommended that the client company take a number of actions such as (1) promote awareness of IFC Performance Standards (PS2); (2) assist workers and management to implement a training program to ensure the application of the Performance Standards (3) implement an independent labor audit to provide assurance of adherence to IFC’s core labor standards.</td>
<td>The parties agreed on the recommendations proposed by the CAO. CAO is now working with both Standard Profil and IFC in pursuit of effective implementation of the recommended actions. For example, a CAO-hired labour training expert carried out training for workers and managers on Performance Standard 2. CAO continues to monitor progress until the satisfactory completion of all agreed actions.</td>
</tr>
<tr>
<td>Turkey / Assan Aluminium-01/Dilovasi (complainant: Confederation of Turkish Trade Unions)</td>
<td>1 October 2008</td>
<td>The company’s support of and conformity with the IFC Performance Standards regarding freedom of association</td>
<td>The complaint was accepted by the CAO, however while the project was in an early stage of IFC involvement and therefore IFC had not yet completed its own due diligence procedure and processes.</td>
<td>IFC completed its due diligence and finalized its agreements with the client company. The complainants were informed about the results and did not object to it. The CAO closed the case but continues to monitor the implementation of these agreements.</td>
</tr>
</tbody>
</table>

Source: Database on cases submitted to the CAO Ombudsman. Available at: [http://www.cao-ombudsman.org/cases/] [11 February 2011].

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4.3. Reactions from client companies to DFI labour policies

Aside from the implications of DFI labour policies on workers, the question of their effect on client companies also arises. Also in this regard, the main – preliminary – evidence comes from the IFC. In an IFC survey, it was found that the Performance Standards are largely acceptable to IFC’s clients. According to this survey, while 60 per cent of the respondents believe that costs under the Performance Standards are higher than in the average sector, only 21 per cent of the respondents consider that the Performance Standards might negatively affect their decision to collaborate with the IFC. For IFC investments through financial intermediaries, the number of respondents that share this latter perception is even lower (15 per cent). By contrast, 60 per cent of the financial intermediaries responding to this study consider that the Social and Environmental Management System that the IFC requires them to put in place has positive implications for their brand reputation (IFC, 2009, pp. 22).

In this regard, some parallels can be drawn between the experiences with the IFC Performance Standards and the Equator Principles. The preliminary evidence regarding the business impact of the Equator Principles indicates that they have not negatively influenced the business relations of the banks adhering to the Principles. As Sims (2008, pp. 13) notes, the number of banks adhering to the Equator Principles continued to grow after the Equator Principles were revised so as to align with the IFC’s enhanced Performance Standards in 2006. Further, Scholtens and Dam (2007) find that the adoption of the Equator Principles has not led to negative reactions by the banks’ shareholders. However, Sims (2008, pp. 14 et seq.) observes a drop in the percentage of the proceeds of the DFI project advisers (mandated arrangers) covered by the Equator Principles since 2006. This suggests that adopting the standards of protection embodied in the Equator Principles entails certain additional costs (Scholtens and Dam, 2007, pp. 1318), which are, however, for a number of banks outweighed by the expected enhancement of their reputation (IFC, 2007b, pp. 58; Sims, 2008, pp. 15). So far, a business disincentive for DFIs to include labour standards into their lending conditions is thus not apparent.

5. Concluding remarks

Over the past fifteen years, a growing number of DFIs, at the global, regional and bilateral level, have integrated labour provisions into their investment policies. Generally, these policies include specific requirements to which the client company must comply. Twelve of the 15 DFIs analysed in this paper, explicitly make reference to the ILO 1998 Declaration or, more frequently, to the ILO’s Fundamental Conventions, using the four CLS as a central element of their labour policies. Where several DFIs conduct joint investments, they often use a common labour policy and, in particular within EDFI, jointly address problems that arise as regards implementation. Many DFIs have put in place complex procedures to implement these policies into their operations, which differ across DFIs and vis-à-vis the different investment types.

Especially in terms of implementation as well as in terms of transparency, a leading role has been taken by IFC. The first limited experiences with cases where the IFC Performance Standards have been invoked by trade unions suggest that these labour policies can indeed contribute to the

31 That said, not all of the labour provisions which refer to ILO instruments necessarily incorporate all labour standards contained therein.
improvement of labour standards in developing countries. In a number of cases, the situation improved after the case had been brought to the IFC’s attention. However, most of these cases have dealt with freedom of association so it remains to be seen what the effect of IFC Performance Standards will be on other labour standards. Also, it should be noted that scarce data are available regarding the application of IFC’s labour policies to its investments through financial intermediaries where the implementation appears to be particularly difficult (Sims, 2008, pp. 18). Moreover, it should be noted that the IFC experience cannot necessarily be generalized for other DFIs, due to considerable differences among the DFI’s, including as regards staffing (Sims, 2008, pp. 11), expertise on labour issues, and transparency.

A number of possibilities to further develop labour policies exist. The fact that few negative reactions from client companies have been reported can be seen as an encouraging signal for DFIs to adopt such labour provisions into their policies more widely, or to enhance those already in place. Given that DFIs themselves are, increasingly, considered to be bound by international human rights standards, (see further Dann, 2010, pp. 253 et seq.), there is a strong case for DFIs to progressively extent their policies so as to fully embrace the content of ILO conventions dealing with CLS and other essential labour standards. Reference to (additional) ILO conventions, including those on occupational safety and health or working time, would also further improve coherence between DFI policies and ILO instruments. Also, tools providing rewards for client companies which implement the DFI labour provisions might be an avenue to consider.

As regards implementation, it is crucial that the competences of the review mechanisms are interpreted widely. Furthermore, much of the effectiveness and credibility of the IFC Performance Standards will depend on the extent to which the DFIs’ operative management implements the recommendations, which are not legally binding on IFC (see, for example, IFC Compliance Advisor Ombudsman, 2007, pp. 23). Also, the cooperation and coordination on labour issues among DFIs seems important in this regard, also with a view to avoiding a competition between the DFIs themselves at the expense of labour concerns.

Furthermore, drawing on the assessment of IFC’s experiences, two specific issues appear to be particularly important regarding the practical application of the labour policies. First, it appears that apart from well-designed policies, the comprehensive staffing has played an important part in terms of effectively applying the IFC’s labour requirements to its projects. Indeed, the first experiences with IFC’s implementation strategy reinforce the view that capacity building is an important component in enabling staff to ensure that internal compliance with labour provisions is truly effective and sustainable. In this light, it appears important to ensure appropriate staffing also of the social departments of other DFIs which may have fewer resources for social management at their disposal. Also, IFC’s policy with regard to familiarizing the staff members involved in project planning with its labour policy arguably plays an important role in terms of mainstreaming labour standards in the DFI’s overall operations.

Another key factor of particular importance for the effective of DFI labour policies seems to be the involvement of civil society actors. Since part of the labour policies inherently require a participation of the affected parties, in particular the review mechanisms, the effectiveness of these policies crucially depends on the presence and the involvement of trade unions or associations that are able to suitably defend the interests of the workers concerned. In this regard, reflection is needed on how social partners and representatives of civil society, which often dispose of considerable
information on labour standards violations in the different countries, can be integrated more into the supervision process. This could be done by making available information on projects or evaluation reports through channels available to the general public or direct consultations with the relevant actors.\textsuperscript{32}

The development of labour provisions is likely to remain a dynamic process. This is illustrated, among other things, by the fact that IFC is currently revising its Performance Standards with a view to refine it in the light of the experience gained so far.\textsuperscript{33} By and large, DFI labour policies constitute a promising step, not only as a tool for the promotion of labour standards in developing countries but also for further mainstreaming social concerns into the global economic governance framework. It is hoped that the initial findings of this paper may enable further research to assess more comprehensively the practical impacts of these policies on labour standards and working conditions.

\textsuperscript{32} European DFIs, for example, have, so far, been reported to not have taken a very active approach on providing information on their work to the public, see Dalberg (2010).

\textsuperscript{33} See further at: \url{http://www.ifc.org/policyreview} [11 February 2011].
References


Dann, P. Forthcoming. Entwicklungsverwaltungsrecht. Theorie und Dogmatik des Rechts der Entwicklungszusammenarbeit, untersucht am Beispiel der Weltbank, der EU und der Bundesrepublik Deutschland (Frankfurt).


_______. 2009. 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 (Washington).


_______. 2007. Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization. Report to the International Labour Conference, 96th Session (Geneva).


