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**ENSURING ADB'S COMPLIANCE
WITH CORE LABOUR STANDARDS**

**An Advocacy Approach Paper
By Souparna Lahiri**

ABBREVIATIONS

ADB	Asian Development Bank
AfDB	African Development Bank
BPSIP	Bihar Power System Improvement project
BR	Bangladesh Railways
BSEB	Bihar State Electricity Board
BWI	Building and Wood Workers' International
CAS	Country Assistance Strategy
CLS	Core Labour Standards
CPA	Country Poverty Analysis
CPS	Country Partnership Strategy
CSP	Country Strategy Programme
DGH	Director General of Highways
DMC	Developing Member Country
DMF	Design and Monitoring Framework
EA	Executing Agency
EBRD	European Bank for Reconstruction and Development
FFA	Framework Financing Agreement
GAP	Gender Action Plan
GOB	Government of Bihar
GOI	Government of India
GUFs	Global Union Federations
IBRD	International Bank for Reconstruction and Development
IDB	Inter-American Development Bank
IFC	International Finance Corporation
ILO	International Labour Organisation
ILS	International Labour Standards
IPSA	Initial Poverty and Social Analysis
IRM	India Resident Mission
ITF	International Transport Federation
MAWR	Ministry of Agriculture and Water Resources
MC	Member Country
MDB	Multilateral Development Bank

MFF	Multi-Tranche Financing Facility
MoU	Memorandum of Understanding
NGOs	Non-government Organizations
OS	Operational Safeguard
PAM	Project Administration Manual
PCP	Public Communication Policy
PCR	Project Completion Report
PID	Project Information Document
PMU	Project Management Unit
PPTA	Project Preparatory Technical Assistance
PR	Performance Requirement
PS	Performance Standard
PSI	Public Service International
RRETIP	Rajasthan Renewable Energy Transmission Investment Programme
RRP	Report and Recommendation of the President to the Board
RRVPNL	Raajsthan Rajya Vidyut Prasaran Nigam Limited
RSDD	Regional Sustainable development Department
SARD	South Asia Regional Department
SPRSS	Summary Poverty Reduction and Social Strategy
SPS	Social Protection Strategy
SPU	Safeguard Policy Unit
TA	Technical Assistance
UNI	Union Network International

TABLE OF CONTENTS

Abbreviations	2
Core Labor Standards As Fundamental Principles Governing Rights At Work	5
ILO Declaration On Fundamental Principles And Rights At Work	5
Core Labor Standards And Multilateral Development Banks	6
ADB's Social Protection Strategy And CLS	8
Recommendations From The Asian Development Bank/International Labour Organization Regional Workshop On Labour Standards, 2002	14
The Core Labour Standards Handbook: Providing A Framework To Integrate CLS in ADB Operations	15
Country Strategy And Programme	16
Engagement Of Global Unions With ADB	21
Compliance With CLS in Selected ADB Funded Projects: A Reality Check	24
Translating ADB's Commitment To CLS in its Operational Cycle: Major Advocacy Points	36

CORE LABOR STANDARDS AS FUNDAMENTAL PRINCIPLES GOVERNING RIGHTS AT WORK

Labor standards are rules that govern how people are treated in a working environment. They come in a variety of forms and originate at the local, national, and international levels. It can be as simple as ensuring that basic rules of good sense and good governance have been taken into account.

Labor standards are concerned with basic human rights at work, respect for safety and health, and ensure that people are paid for their work. They also extend to questions of good governance, such as labor inspection and basic labor administration.

At the national level, labor standards are usually set by laws and regulations. Some can also be found in collective agreements. Normally, these bind only the contracting parties—trade unions and employers—but once accepted in some countries, they acquire the force of law for the entire country or economic sector.

At the international level, labor standards are found in international conventions and recommendations. International labor standards (ILS) are important for two reasons. First, they represent the international consensus on minimum best practices, whether on human rights generally or more precisely on labor matters. Second—and more immediately important in many cases—when they have been ratified by member countries they constitute binding legal obligations in national and international law, and may even be incorporated into national law.

There are a set of four internationally recognized basic rights and principles at work:

- i. freedom of association and the effective recognition of the right to collective bargaining,
- ii. elimination of all forms of forced or compulsory labor,
- iii. effective abolition of child labor, and
- iv. elimination of discrimination in respect of employment and occupation.

The four basic rights listed above have achieved consensus internationally as the “core” labor standards (CLS). International support for these standards reflects an understanding that they are applicable to all countries. They do not establish a particular level of working conditions, wages, or health and safety standards to be applied internationally. They are not intended to alter the comparative advantage of any country. These basic rights have been repeatedly articulated in international human rights instruments and declarations, such as the Universal Declaration of Human Rights in 1948, UN International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of the Child, 1989. Their most

prominent recent expression is in the Declaration of the 1995 Copenhagen Summit on Social Development. ■

ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

The Declaration adopted in 1998, commits the Member States of the International Labour Organisation (ILO) to respect and promote principles and rights in four categories whether or not they have ratified the relevant Conventions.

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, makes it clear that these rights are universal, and that they apply to all people in all States - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.

This commitment is supported by a Follow-up procedure. The Member States that have not ratified one or more of the core Conventions are asked each year to report on the status of the relevant rights and principles within their borders, noting impediments to ratification, and areas where assistance may be required. These reports are reviewed by the Committee of Independent Expert Advisers. In turn, their observations are considered by the ILO's Governing Body.

Internationally recognized labor standards, when ratified, are also part of the legislative framework of an MC including provisions on minimum age, maximum hours and overtime, labor contracts, industrial relations, special protection appropriate for new mothers, and anti-discrimination provisions to protect women and minorities. All MCs, by virtue of being the member of the International Labour Organization (ILO), are held to respect, promote, and realize the fundamental Core Labor Standards.

CORE LABOUR STANDARDS AND MULTILATERAL DEVELOPMENT BANKS

The 1998 ILO Declaration on Core Labour Standards specifically asks international organizations, such as development banks, to promote an atmosphere conducive to the achievement of CLS. An assessment of compliance with CLS helps refine the development banks' agenda and poverty reduction strategies.

Asian Development Bank

The Asian Development Bank (ADB) was the first multilateral development bank to officially recognize observance of the CLS in bank operations. The ADB's board of directors in 2001 adopted a Social Protection Strategy which states: “In the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards”. As an important step

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towards social protection “in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards and take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country’s labor legislation and Core Labor Standards” . In 2002 the ADB signed a memorandum of understanding with the ILO for operational collaboration in taking forward ADB’s commitment to CLS.

While, the SPS of ADB includes safeguards related to the environment, involuntary resettlement and indigenous and tribals, it does not include any labor safeguards or operational manual to promote CLS in ADB operations. ■

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In 2002, World Bank launched a website Core Labour Standards Toolkit for Staff Preparing Country Assistance Strategies which provides a 3-step process for

- a) understanding CLS and their relevance to development and poverty reduction;
- b) locating information on CLS on specific countries; and
- c) diagnosing CLS in the Country Assistance Strategy (CAS).

World Bank maintains that “The principles embedded in the four core labor standards can contribute to the World Bank’s development mission. Adherence to core labor standards promotes effective labor market institutions that can contribute to economic growth and reduce workplace risks faced by the poor.” One of its studies did find that higher rates of unionization and bargaining were associated with the more equal distribution of income.

In late 2003, the head of the Bank’s private-sector lending arm, the International Finance Corporation (IFC), agreed all borrowers should be required to comply with CLS. He stated that such a requirement would be included in the IFC’s new loan safeguards policy. The World Bank’s executive board adopted the new IFC Policy and Performance Standards on Social and Environmental Sustainability in February 2006 and began applying it to all new IFC loans and investments in May 2006. In addition to making observance of CLS an obligation for all projects, IFC’s “Performance Standard 2: Labour and Working Conditions” (PS 2) requires that borrowers meet other basic labor conditions on human resources management, retrenchment, occupational health and safety and supply chain management. Besides referencing the ILO’s eight CLS conventions, PS 2 spells out the specific obligations of the borrowing company in ensuring that its operations do not violate CLS.

IFC clients are expected to respect workers’ freedom of association and right to collective bargaining and “will not discriminate or retaliate against workers who participate or seek to participate” in the organizations of their choice, regardless of whether national lawfully protects those rights. The new IFC policy also requires that all proposed IFC projects include an assessment of the project’s labor, health and safety impacts and risks and adopt measures to respond to any negative impacts commensurate with the level of impact and risk. Non-compliance with CLS could lead to cancellation of the IFC loan.

¹See Chapter III

²Social Protection, ADB, Manila, 2002

The World Bank Group's public sector arms, IBRD and IDA are, however, yet to come out clearly with an operational policy recognizing the adherence and implementation of CLS in their operations.

AFRICAN DEVELOPMENT BANK

Operational Safeguard 5 related to labor conditions and health and safety is included in the Integrated Safeguard Systems (ISS) adopted by the African Development Bank (AfDB) in 2014. This safeguard establishes the Bank's requirements for its borrowers or clients concerning workers' conditions, rights, and protection from abuse or exploitation. It also ensures greater harmonization with most other multilateral development banks.

The specific objectives of OS 5 are to i. Protect workers' rights; ii. Establish, maintain, and improve the employee– employer relationship; iii. Promote compliance with national legal requirements and provide supplemental due diligence requirements where national laws are silent or inconsistent with the OS; iv. Align Bank requirements with the ILO Core Labor Standards, and the UNICEF Convention on the Rights of the Child, where national laws do not provide equivalent protection; v. Protect the workforce from inequality, social exclusion, child labor, and forced labor; and vi. Establish requirements to provide safe and healthy working conditions.

This OS applies to investments in both the public and private sectors in which the Bank is a direct contractual partner. Its applicability is established during the environmental and social assessment process.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

European Bank for Reconstruction and Development (EBRD) follows its Performance Requirement 2 (PR 2) for integrating CLS and labor and working conditions in its investments. The PR 2 recognizes that for clients and their business activities, the workforce is a valuable asset, and that good human resources management and a sound worker-management relationship based on respect for workers' rights, including freedom of association and right to collective bargaining, are key ingredients to the sustainability of business activities.

By treating workers fairly and providing them with safe and healthy working conditions, clients may create tangible benefits, such as enhanced efficiency and productivity of their operations. PR 4 addresses health and safety issues.

The objectives of this PR are to:

- respect and protect the fundamental principles and rights of workers
- promote the decent work agenda, including fair treatment, non-discrimination and equal opportunities for workers
- establish, maintain and improve a sound worker-management relationship
- promote compliance with any collective agreements to which the client is a party, national labor and employment laws
- protect and promote the safety and health of workers, especially by promoting safe and healthy working conditions
- prevent the use of forced labor and child labor (as defined by the ILO) as it relates to project activities.

The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project life cycle. The implementation of the actions necessary to meet the requirements of this PR will be managed under the client's overall Environmental and Social Management System (ESMS) and project-specific Environmental and Social Management Plans (ESMPs).

Projects are required to comply, at a minimum, with

- (i) national labor, social security and occupational health and safety laws, and
- (ii) the fundamental principles and standards embodied in the ILO conventions.

INTER-AMERICAN DEVELOPMENT BANK

Starting in 2000, trade unions of the Americas urged the IDB to adopt a CLS loan requirement. The IDB

took little action until on 22nd April 2003, the IDB and ILO formally signed a Memorandum of Understanding (MoU) in commitment to the support and promotion of an inclusive and sustainable path for growth and development in Latin America and the Caribbean, with social justice and decent work.

³ Toke Aidt and Zafiris Tzannatos, Unions and Collective Bargaining: Economic Effects in a Global Environment, World Bank, Washington, 2002

The objective of this MoU is to formalize a non-exclusive framework of cooperation and to facilitate collaboration between the IDB and ILO to promote joint initiatives and projects to tackle low productivity, inequality and social exclusion in Latin America and the Caribbean through better jobs and the formalization of the informal economy.

Their joint activities include initiatives to promote fundamental principles and rights at work and the strengthening of labor institutions (labor ministries, training institutions, employment services, social security administrations, among others), as well as workers' and employers' organizations, through capacity building.

The private sector department of IDB prepared a guide in 2006 called *Managing Labour Issues in Infrastructure Projects*, which devotes considerable space to the CLS and their application, as well

as to other labor issues. The guide followed ILO sources and provides useful practical tools, but

its impact was blunted by a cautionary note placed at the beginning of the document: "The guidelines do not necessarily reflect specific requirements for financing by the IDB nor do they reflect the official position of the Bank".

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ADB'S SOCIAL PROTECTION STRATEGY AND CLS

Social Protection Strategy (SPS) of the Asian Development Bank was approved on 13 September 2001. According to ADB, Social Protection is a key step in ADB's battle to have Asia and the Pacific region "free of poverty." The SPS spells out the scope of social protection and commitment of the ADB to develop priority interventions in five major elements:

- labor market policies and programs designed to generate employment, improve working conditions and promote the efficient operations;
- social insurance programs to cushion the risks associated with unemployment, ill health, disability, work-related injury and old age;
- social assistance and welfare service programs for the vulnerable groups with inadequate means of support, including single mothers, the homeless, or physically or mentally challenged people;
- micro and area-based schemes to address vulnerability at the community level, including micro-insurance, agricultural insurance, social funds and programs to manage natural disasters; and
- child protection to ensure the healthy and productive development of children.

When implemented properly, these policies and programs can make a major contribution to the overarching goal of the Asian Development Bank (ADB) of reducing poverty. Social protection, as an integral part of social development, one of the three pillars of the ADB Poverty Reduction Strategy, aims to assist individuals in breaking the cycle of poverty and enhancing the ADB's developing member countries

(DMCs) the quality of growth by investing in human capital, increasing productivity and reducing citizen's vulnerability to risks.

⁴IDB, *Managing Labor Issues in Infrastructure Projects*, Washington, 2006

FROM THE HANDBOOK ON SOCIAL PROTECTION

“The new century starts with profound changes. Globalization is shifting trade, capital, technology and information flows, changing values and social structures. The increased opportunities resulting from access to new ideas, goods, services, and technology are also accompanied by increasing risks. Interdependence may lead to possible economic shocks and downturns; if no social policies and safety nets are in place, countries may experience mounting unemployment, poverty, marginalization, and political conflict. Most of the political opposition to globalization is due to the absence of adequate transitional compensation systems, which makes implementation of reforms very difficult given that populations may have to pay the costs of reform in the short term. Globalization requires the development of effective social protection systems in both developed and developing countries. The world’s forward-looking development agenda gives social protection a primary role in sustaining growth and well-functioning markets.”

ADB has developed a definition of social protection based on labor markets and small-scale agriculture, in line with ADB’s overarching goal of reducing poverty in the Asia and Pacific region. Social protection is defined as the 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.

Social protection also refers to the public actions taken in response to levels of vulnerability, risk, and deprivation for those who fall temporarily or persistently under levels of livelihood deemed acceptable within a given polity or society.²

In a 2008 briefing paper, the bank clearly states that the Asian Development Bank (ADB) is committed to working with its developing member countries (DMCs) to promote good labor and social protection practices in Asia and the Pacific. ADB believes that decent working conditions help reduce poverty, raise living standards, and enhance the quality of economic growth by increasing productivity. Since the approval of its social protection strategy in September 2001, labor standards have been an integral part of ADB’s development mission. ADB is guided by the internationally recognized core labor standards (CLS) in designing and implementing its projects.³

SOCIAL PROTECTION AND LABOUR MARKET POLICIES

The focus on labor adjustments and an efficient operation of labor markets recognizes that, as economic development is undertaken, employment will become the major economic support for most workers and their families. Therefore, improving labour market operations is an important strategy to reduce poverty, facilitate human capital development, and address gender discrimination. It also helps to allocate a country’s human capital resources to most productive uses, enhancing general economic welfare and encouraging sustainable growth and development.

According to ADB’s Social Protection Policy and Strategy, labour market improvements include the following:

- (i) Labor market assessments documenting demographic trends, labor-absorbing sectors, unemployment, migration flows, and the size and causes of the informal sector.
- (ii) Active labor markets programs including (a) direct employment generation (promoting small and medium enterprises, public works); (b) labor exchanges or employment services (job brokerage, counseling) linking supply with demand for labor; and (c) skills development programs (training and retraining of labor).
- (iii) Passive labor market policies including (a) unemployment insurance, (b) income support, and (c) an appropriate legislative framework that strikes a balance between economic efficiency and labor protection. An appropriate legislative framework will include provisions on issues such as minimum age, maximum hours and overtime, labor contracts, industrial relations, special protection appropriate for new mothers, and anti-discrimination provisions to protect

⁵Social Protection, Our Framework Policies and Strategies, Asian Development Bank, Manila, July 2003

⁶DFID. 2000. Social Protection: New Directions of Donor Agencies, London; and DFID-ODI, 2000. Social Protection Concepts and Approaches: Implications for Policy and Practice in International Development, London.

⁷ Core Labour Standards and ADB in Brief, ADB, April 2008, Manila

⁸ Social Protection, Our Framework Policies and Strategies, Asian Development Bank, Manila, July 2003

women and minorities. Internationally recognized labor standards, when ratified, are also part of the legislative framework of a DMC. With regard to the Core Labor Standards, no explicit ratification is needed for them to be part of the legislative framework of a country. All Asian and Pacific DMCs, by virtue of being member of the International Labour Organization (ILO), are held to respect, promote, and realize the fundamental Core Labor Standards.⁸

- (iv) Safeguards: appropriate steps to be taken to ensure that procurement of goods and services, contractors, subcontractors, and consultants, comply with the country's labor legislation (e.g., minimum wages, safe working conditions, social security contributions, etc.) as well as with the Core Labor Standards.

A summary labor market analysis should further help determine country priorities, not only in social protection but also in the selection of development interventions, by revealing employment patterns. The size of the formal and informal sectors; the sectoral distribution (population engaged in agriculture, industry, and services); rural and urban active population; evolution of real wages; the role of women in the labor force; working conditions; compliance with national and international labor laws and standards including the reported existence of child or bonded labor and violations of other Core Labor Standards—all will provide additional information to help determine the country priorities.

Country labor market analysis evaluates which sectors/sub-sectors and geographical areas have a demand for labor and identify which areas supply of labor remains unfulfilled. Labor market analysis is a key element in the strategic link between economic growth and poverty reduction, and the analysis should provide recommendations to ensure efficient and inclusive development patterns.

OPERATIONAL IMPLICATION OF CLS IN SOCIAL PROTECTION

Within ADB operations, social protection issues arise in seven contexts:

- (i) country poverty analysis and programming strategies
- (ii) ADB project activities
- (iii) safeguards
- (iv) staffing and staff skills
- (v) operational assignments and responsibilities,
- (vi) strategic partnerships, and

- (vii) monitoring progress.

The need for operationalizing CLS within the ambit of social protection should be reflected in the Country Partnership Strategy (CSP). The country poverty analysis and the labor market analysis should bring out the incidence of vulnerability, social risks and identify the segment of the affected population including the workers, nature of employment, pro-active institutions, policies, and legislations.

ADB operations may include direct social protection lending or non-lending activities such as TAs, according to the country, province and project specific needs emerging out of the CSP. Social protection issues also emerge as important collateral issues in lending where social protection is not the direct objective of the loan. Incorporating social protection dimensions to extend the reach of social protection concerns.

Incorporation of the Social Dimensions into Bank Operations is guided by the Operations Manual OM 47 which mandates social impact assessments to ensure that vulnerable groups are not negatively affected by an ADB intervention. The OM 47 was updated to OM C3 on 6 December 2010.

According to the SPS, ADB's specific Social Protection issues include:

- (i) those vulnerable groups that maybe negatively affected by an ADB intervention must be adequately compensated and mitigation measures put in place to avoid creating further poverty (e.g., in case of public or private sector restructuring, workers, particularly low-income workers, should not be unfairly disadvantaged, regardless of race, skills, gender, age, or religious and political beliefs) ; mitigation measures should always aim to adequately balance social objectives and economic sustainability;
- (ii) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards; (b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation and Core Labor Standards;
- (iii) As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.

The ADB publication (2003), Social Protection, Our Framework Policies, and Strategies, suggests that "at least one social protection specialist will be required in the Office of Pacific Operations and one in each of the social sector divisions of the regional departments to provide direct operational support. In addition, one such specialist will also

be required in the central support department to ensure implementation of the Social Protection Strategy and support networking with other responsible divisions.”

It has also assigned responsibilities and institutional arrangements where:

- (i) Country priorities should be determined by regional departments, particularly the resident missions, and social sector divisions, assisted by the Poverty Reduction and Social Development division in the Regional and Sustainable Development Department (RSDD);
- (ii) Social protection interventions should be designed by social sector divisions, and other sector divisions;
- (iii) Labor trade unions to have an official interlocutor at ADB’s NGO Center;
- (iv) Reinforcement of collateral issues and safeguards to be the responsibility of sector divisions, resident missions, Office of the General Counsel, operation services offices, overview by the Poverty Reduction and Social Development Division in RSDD;
- (v) Human Resources Division to be responsible for recruitment of staff and internal training;
- (vi) ADB Institute should be responsible for external training; and
- (vii) Coordination and monitoring the implementation of SPS, including issuing of manuals and guidelines should be the responsibility of Poverty Reduction and Social Development Division of RSDD.

WHETHER OM 47/C3 ADDRESSES CORE LABOUR STANDARDS

OM 47 which was changed to ON C3 in 2007 and updated and re-issued on 6 December 2010 is based on:

- (i) Safeguard Policy Statement 2010.
- (ii) ADB Policy on Gender and Development 1998.
- (iii) Cooperation between ADB and NGOs 1998.
- (iv) Enhancing the Fight Against Poverty in Asia and Pacific: the Poverty Reduction Strategy of the Asian Development Bank 2004.
- (v) Social Protection Strategy 2001.
- (vi) Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank (2010-2020).

(vii) The Public Communications Policy of the Asian Development Bank 2005.

This OM is subject to Compliance Review.

Explaining ADB’s correspondent policies, the OM C3 states that ‘All ADB operations have social dimensions that need to be taken into account from the country strategy formulation, programming, and project processing phases onward. The key social dimensions, supported by specific ADB policies or strategies, include (i) participation; (ii) gender and development; (iii) social safeguards; and (iv) management of social risks, especially among vulnerable groups’. (pg 2)

The OM further says:

In pursuing the social development outcomes, ADB

- (i) encourages consultation with and participation by stakeholders (including the government, executing and implementing agencies, clients and/or beneficiaries, people affected by ADB-supported projects); provides them with opportunities to engage in key stages of the country strategy formulation, programming, and project cycles; and actively seeks, where appropriate, the cooperation of nongovernment organizations and other civil society groups in formulating, designing, implementing, monitoring, and evaluating projects;
- (ii) addresses gender considerations in relevant aspects of ADB operations, including macroeconomic, sector strategy, country strategy formulation, and programming work, and in key stages of the project cycle; and proposes strategies to promote social inclusion and gender equality and to empower women;
- (iii) integrates social analysis in preparing country partnership strategies and regional strategies and programs; identifies potential social issues during project preparation to ensure that the project design maximizes social benefits and avoids or minimizes social risks, particularly for vulnerable and marginalized groups; and
- (iv) ensures that project design and implementation arrangements include actions to enhance benefits and to monitor and evaluate the distribution of the benefits of the project, with performance targets and indicators for monitoring and evaluating benefits included in the design and monitoring framework of the project performance management system. (pg 3)

In effect, the OM talks about participation, gender, social safeguards, vulnerable groups; the government, executing and implementing agencies, clients, beneficiaries and those affected by ADB-

supported projects. The OM provides opportunities to these stakeholders to engage (where appropriate) in formulating designing, implementing, monitoring and evaluating projects, but refrain from putting down or include specific words such as workers or trade unions as stakeholders and phrases commensurate to ADB's commitment to labor standards and CLS along the project cycle.

In the Operational Procedures part of the OM, labour is mentioned only as part of the identification of the key issues during the preparation of IPSA where CLS is not mentioned, CLS is also completely forgotten even when the OM deals with the SPRSS, essentially an action plan to be implemented during project cycle reflecting the issues identified by the IPSA.

Therefore, in the context of labor and trade unions as stakeholders at the project level and commitment towards CLS, it is left to the interpretation of the OM by the ADB staff or whoever concerned. The real test could be if and when a complaint is filed on the violation of the SPS and ADB commitment to CLS under OM 47/C3.

INTEGRATING CLS IN ADB PROJECT CYCLE

Between 1999 and 2004, ADB worked with ILO on a regional technical assistance project to promote and improve labor standards among ADB's DMCs. Other efforts include regional studies analyzing labor standard issues in Bangladesh, Nepal, Philippines, and Thailand and incorporating a regional framework and action plan for ADB and its DMCs into ADB's social protection strategy.

Interaction between ADB and the ILO has intensified through strategic consultations in preparing ADB's Social Protection Strategy; technical assistance on improving the role of labor standards in selected developing member countries; training on emerging issues in social protection and social safety nets; and project technical assistance and lending activities. ADB and ILO signed a Memorandum of Understanding (MoU) in 2002 to strengthen cooperation between ADB and ILO towards achieving decent work for all which is consistent with and supports ADB's goal of poverty reduction in the region. The MoU was signed by Myoung-Ho Shin, ADB Vice-President (Operations 1) and Yasuyuki Nodera, Regional Director, ILO Asia-Pacific Region on the eve of ADB's 35th Annual Meeting of Board of Governors in Shanghai, China on May 09, 2002.

The MoU was to create operational framework and practical modalities for collaboration.

ELEMENTS OF COOPERATION AND COLLABORATION

Recognizing a common ground, ADB and the ILO identified areas for cooperation, collaboration and coordination to improve their contribution to the achievement of these goals.

ADB and ILO agreed to collaborate in the following areas:

- The exchange of documentation, studies, research and best practices to promote cooperation and complementarity in operations.
- Consultations on ADB country strategies and assistance plans. ILO technical staff will participate in some ADB country poverty analysis or country strategy and program preparatory missions, contributing advice and labor market assessments, to ensure that ADB's portfolio supports inclusive, employment generating development patterns, and enhances workers' welfare.
- ILO will facilitate ADB's participation in developing a cooperative framework among counterpart ministries, employers, workers' organizations, civil society partners, and development institutions in countries where ADB plans a social protection intervention.
- ILO will help implement ADB-funded lending and non-lending activities in areas relating to its competence and capacity, such as regional, advisory, and project preparatory technical assistance.
- ILO will assist ADB's project design and review missions through interagency consultations and engagement of ILO experts by ADB.

ILO and ADB also agreed to hold a senior consultation meeting at least once a year on issues of strategic importance to review regularly the implementation of their programs. In addition, staff will maintain regular consultations on activities of common interest.

ILO, which is a specialized agency of the United Nations system, is committed to the attainment of social justice through the promotion of decent work with its strategic components of CLS, employment, social protection, social dialogue, and cross-cutting gender issues, in order to enable men and women to have decent and productive work in conditions of freedom, equity, security, and human dignity.

ADB and the ILO recognize the expertise of each organization and seek to establish an operational framework and practical modalities for their cooperation, which focus on development issues, including-

- (i) consultations between the two organizations on ADB country strategies and assistance plans, and, where appropriate and feasible, participation by ILO technical staff in ADB country poverty analysis or country strategy and program preparatory missions, by contributing advice and a summary labor market assessment, to ensure that ADB's portfolio supports inclusive, employment-generating development patterns, enhances welfare, and helps to allocate human resources to their most productive uses;
- (ii) contributions by ILO, within the framework of its mandate, to the development of a cooperative framework and networking among ministries, social partners, and other civil society partners in countries where ADB is planning a social protection intervention in line with its social protection strategy; and
- (iii) assistance from ADB to ILO in the development of decent-work country programs

Between 1999 and 2004, ADB worked with ILO on a regional technical assistance project to promote and improve labor standards among ADB's DMCs. Other efforts include regional studies analyzing labor standard issues in Bangladesh, Nepal, Philippines, and Thailand and incorporating a regional framework and action plan for ADB and its DMCs into ADB's social protection strategy.

The interaction between ADB and the ILO has intensified through strategic consultations in preparing ADB's Social Protection Strategy; technical assistance on improving the role of labor standards in selected developing member countries; training on emerging issues in social protection and social safety nets; and project technical assistance and lending activities. ADB and ILO signed a Memorandum of Understanding (MoU) in 2002 to strengthen cooperation between ADB and ILO towards achieving decent work for all which is consistent with and supports ADB's goal of poverty reduction in the region. The MoU was signed by Myoung-Ho Shin, ADB Vice-President (Operations 1) and Yasuyuki Nodera, Regional Director, ILO Asia-Pacific Region on the eve of ADB's 35th Annual Meeting of Board of Governors in Shanghai, China on May 09, 2002.

⁶ DFID. 2000. Social Protection: New Directions of Donor Agencies, London; and DFID-ODI, 2000. Social Protection Concepts and Approaches: Implications for Policy and Practice in International Development, London.

⁷Core Labour Standards and ADB in Brief, ADB, April 2008, Manila

⁸Social Protection, Our Framework Policies and Strategies, Asian Development Bank, Manila, July 2003

The MoU was to create an operational framework and practical modalities for collaboration.

ELEMENTS OF COOPERATION AND COLLABORATION

Recognizing a common ground, ADB and the ILO identified areas for cooperation, collaboration, and coordination to improve their contribution to the achievement of these goals.

ADB and ILO agreed to collaborate in the following areas:

- The exchange of documentation, studies, research and best practices to promote cooperation and complementarity in operations.
- Consultations on ADB country strategies and assistance plans. ILO technical staff will participate in some ADB country poverty analysis or country strategy and program preparatory missions, contributing advice and labor market assessments, to ensure that ADB's portfolio supports inclusive, employment generating development patterns, and enhances workers' welfare.
- ILO will facilitate ADB's participation in developing a cooperative framework among counterpart ministries, employers, workers' organizations, civil society partners, and development institutions in countries where ADB plans a social protection intervention.
- ILO will help implement ADB-funded lending and non-lending activities in areas relating to its competence and capacity, such as regional, advisory, and project preparatory technical assistance.
- ILO will assist ADB's project design and review missions through interagency consultations and engagement of ILO experts by ADB.

ILO and ADB also agreed to hold a senior consultation meeting at least once a year on issues of strategic importance to review regularly the implementation of their programs. In addition, staff will maintain regular consultations on activities of common interest.

ILO, which is a specialized agency of the United Nations system, is committed to the attainment of social justice through the promotion of decent work with its strategic components of CLS, employment, social protection, social dialogue, and cross-cutting gender issues, in order to enable men and women to have decent and productive work in conditions of freedom, equity, security, and human dignity.

ADB and the ILO recognize the expertise of each organization and seek to establish an operational framework and practical modalities for their cooperation, which focus on development issues, including (i) consultations between the two organizations on ADB country strategies and assistance plans, and, where appropriate and feasible, participation by ILO technical staff in ADB country poverty analysis or country strategy and program preparatory missions, by contributing advice and a summary labor market assessment, to ensure that ADB's portfolio supports inclusive, employment-generating development patterns, enhances welfare, and helps to allocate human resources to their most productive uses; (ii) contributions by ILO, within the framework of its mandate, to the development of a cooperative framework and networking among ministries, social partners, and other civil society partners in countries where ADB is planning a social protection intervention in line with its social protection strategy; and (iii) assistance from ADB to ILO in the development of decent work country programs through interagency consultations.

FURTHER TO THE ADB-ILO MOU

As a follow up to the MoU, in 2002 a regional technical workshop on labor standards was jointly organized by ADB and ILO with participation from the public and private sectors, labor and employer organizations, NGOs, and international development agencies.

In 2005, ADB's Procurement of Works Standard Bidding Document was amended to be consistent with the MDB Harmonised Edition 2005 which includes 22 labor-related clauses covering some CLS areas.

In March 2006, a workshop on labor issues in enterprise restructuring was held, with ADB and ILO staff and labor union representatives from the Philippines participating. In April 2006, ADB hosted an ADB-ILO consultation meeting in Manila to assess progress in implementing the MOU and to identify possible areas of collaboration, particularly in labor markets and social protection.

ADB has organized in between two Asia Pacific level Consultation with Global trade Union Federations on the issue of Labour Standards.

⁹Core Labour Standards Handbook, Manila, 2006, ADB and ILO

¹⁰ http://www.adb.org/Documents/Manuals/Bidding_Documents/Prequalification/fidic-conditions-of-contract-for-construction.pdf

In October 2006, ADB released a Core Labour Standards Handbook in collaboration with the International Labour Organisation (ILO). As part of the Bank's Social Protection Strategy adopted in 2001, the Handbook formally commits ADB to comply with the internationally recognized core labor standards (CLS) in the design and formulation of its loans. It also states that ADB's developing member countries, by virtue of being ILO members, would be held to respect and promote the fundamental core labor standards. The Handbook provides guidelines for Bank staff on integrating CLS into ADB's operational cycle.

Though regional consultations between ADB and ILO did not progress since then, ILO has provided inputs to ADB-supported projects through studies, capacity strengthening, and technical advice. ILO also acted as executing agency for some projects dealing with improving labor standards. A number of ADB publications benefited from ILO's technical expertise, such as: the Guidelines on HIV/AIDS and Infrastructure; Primer on Interacting with Workers' Organizations; Handbook on Core Labour Standards; and the Social Protection Index, Handbook on Social Protection, Labour Issues in Public Enterprise Restructuring, Handbook on Social Analysis and Handbook on Poverty and Social Analysis. In May 2009, ADB and ILO renewed its cooperation to focus on the Bank's response to the global financial crisis, social protection work and green jobs.

RECOMMENDATIONS FROM THE ASIAN DEVELOPMENT BANK/INTERNATIONAL LABOUR ORGANIZATION REGIONAL WORKSHOP ON LABOUR STANDARDS, 2002

- Strengthen Country Programming Strategies. The inclusion of labour standards consideration in the Asian Development Bank (ADB) country programming strategies should be strengthened to improve its country based poverty and social analysis and to highlight priorities that need to be addressed.
- Strengthen Project Design. The inclusion of labour standards consideration should be strengthened in the planning, design, and implementation of all ADB activities, as approved by ADB in its Social Protection Strategy. Respect for labour standards should be addressed as an issue in itself, and as a matter of ADB's corporate social responsibility.
- Strengthen Project Implementation. Violations of labour standards in the implementation of

ADB-funded activities, or failure by contractors and subcontractors to observe the standards they are required to implement, should be prevented. ADB has limited capacity for oversight of the employment conditions of its projects. A proposed option is to request social audits from its contractors or reports from relevant labour stakeholders (e.g., labour unions).

- **Review Procurement Documents.** Procurement documents should be reviewed to ensure that they meet these requirements. There is a need to incorporate general clauses on labour standards in bidding documents.
- **Develop Proactive Policies and Interventions.** Enforcing labour standards and good working conditions cannot happen overnight. For instance, if working children were suddenly removed from their income generating activities, their families would sink further into poverty. The solution lies in a progressive agenda to eliminate child labour, in which the first step is to fight its worst forms (children working in prostitution, hazardous jobs, etc.) urgently, while other working children are temporarily allowed to help their families providing that they can combine work with an education.
- **Ensure Cost-Effectiveness.** The measures necessary to take full account of labour standards may involve additional costs of implementation. Care has to be taken (i) not to construct implementation measures at such a high level that it is uneconomical to carry out economic activities and projects, (ii) to build the costs of implementation of labour standards into the costing of economic activities and projects at all levels, and (iii) to ensure that respect for labour standards is never used as a non-tariff barrier or protectionist measure.
- **Develop Capacity and Training.** The measures needed to respect labour standards require training and familiarization of responsible staff, contractors, and subcontractors, and probably the acquisition of new skills. A training programme should be put into place, once good practice on labour standards has been established.
- **Raise Public Awareness.** Public information campaigns ensure sensitization of public opinion on the long-term benefits of respecting labour standards, and how the cycle of poverty is reproduced by violating labour standards.
- **Involve Different Stakeholders and Institutions.** Ensuring compliance with labour

standards requires positive involvement of nongovernment organizations, such as employers' associations, labour unions, and community and civil society groups. Proper involvement of these institutions is particularly required for conflict resolution. It is estimated that more than 350 million new jobs are needed in the next decade to absorb all the new entrants into the labour market in Asia and the Pacific. Involving the private sector in good, corporate socially responsible practices is essential to promote employment under decent working conditions.

THE CORE LABOUR STANDARDS HANDBOOK: PROVIDING A FRAMEWORK TO INTEGRATE CLS IN ADB OPERATIONS

While writing the foreword to the CLS Handbook, Bindu N Lohani for ADB and Lee Sewpston for ILO clearly said that:

“This Handbook provides information about CLS, explains the difference between core and other (noncore) labor standards, and presents examples of good practices in the application of CLS in ADB operations.... gives practical knowledge on how CLS can be taken into account by ADB staff and their Government counterparts. In order to give a comprehensive view, the Handbook is not limited to project-level interventions, but also covers the planning and design of country strategies and programs.”

The Handbook describes the CLS and how to integrate them into ADB operations, whenever necessary. It was developed by ILO and ADB as a result of regional technical assistance.

Quoting ADB's commitment in the SPS 2001, the handbook states:

“The 1998 ILO Declaration on Fundamental Principles and Rights at Work specifically asks international organizations, such as development banks, to promote an atmosphere conducive to the achievement of CLS. Accordingly, although compliance with CLS may not be a condition for lending or technical assistance in client countries, ADB staff are encouraged to analyze the situation relating to CLS in formulating CSPs and individual loan projects. The question is how can ADB staff, project teams, etc., ensure that CLS are included in ADB operations? How can they find out if CLS are being respected? At what stage/s of the operational cycle can CLS be incorporated to ensure that ADB's overarching goal, strategic objectives, and operational priorities are met? A parallel question concerns the relationship of CLS and other labor standards. Since ADB needs to

OPERATIONAL CYCLE

Country Strategy and Program

- Country poverty analysis
- Country strategy and program

Pre-project Design (PPTAs)

- Concept papers
- PPTA fact finding missions
- Initial poverty and social assessment
- Technical assistance report

Project Design

- Selection of consultants
- Inception report
- Mid-term report
- Final report
- Draft RRP with SPRSS
- Loan negotiations

Project Implementation

- Government, executing and implementing agencies, beneficiaries
- Contractors, suppliers, consultants
- Review missions, progress reports
- Mid-term review
- Project Completion Report
- Project Performance Evaluation Report

PPTA= Project Preparatory Technical Assistance

IPSA= Initial Poverty and Social Assessment

RRP= Report and Recommendation of the President

SPRSS- Summary Poverty Reduction and Social Strategy

The operational framework provided by the CLS Handbook follows essentially ADB's own project cycle and integrates CLS and CLS related activities in four different phases of the project cycle – Country Strategy and Programme, pre-project design, project design and project implementation.

ISSUES RELATED TO CORE LABOR STANDARDS

- Risk and vulnerability profile
- A summary of labor market assessment
- Identification of bonded labor, child labor, or gender and other inequalities in employment
- Identification of special consultants in the PPTA team (labor, gender, etc)
- Identification of the situation concerning freedom of association
- Designing necessary interventions to adhere to CLS
- Participation of stakeholders concerning the future implementation of CLS clauses
- Formulation of appropriate of assurances/ covenants for inclusion in loan documents
- Scrutinizing draft bidding documents
- Consultations with implementing agencies on CLS
- Drafting model clauses for bidding documents
- Compliance with national legislation concerning CLS and ILS
- Monitoring and evaluating of CLS

COUNTRY STRATEGY AND PROGRAMME

CSP provides the overall strategic framework to guide ADB's operations in a country over a 5-year period. The conduct of a country poverty analysis, thematic assessment— environment, gender, the private sector, governance—and sector roadmaps constitute essential elements of CSP preparation, and they are important tools for assessing the importance of labor issues and CLS in country programming.

Risk and vulnerability profiles and summary labor market assessments can give information on the general situation of labor standards in a particular country. This stage may “flag” potential conditions in a country that may trigger a CLS issue during

project design. The risk and vulnerability profile will assist in understanding the dynamics of poverty. The profile should depict the major risks that affect poor people. Concerning the CLS, the profile should identify persons at risk too, for example, forced or compulsory labor, child labor incidents, and employment situations where inequality is strongly present. The risk and vulnerability profile should also be compared with the findings from the summary labor market assessment, e.g., due to labor market policies, labor standards and legislation, and child labor situations.

As an important component of the poverty profile, a summary labor market assessment includes, among other things, an analysis of ILS/CLS in the DMC. A labor market analysis is a key element in the strategic link between economic growth and poverty reduction, and the summary should provide recommendations to ensure efficient and inclusive development patterns. Given that all ADB interventions need to be designed in accordance with CLS, the summary assessment should indicate the country's compliance/noncompliance with labor standards, including CLS. The enforcement related issues should also be studied during the assessment.

The labor market assessment should reflect information and data on employment, unemployment, and underemployment rates; incidence of seasonal labor; sectoral distribution (people employed in agriculture, industry, services); regional disparities; real wage dynamics; labor-intensive sectors and their potential for generating employment; the informal sector; the self-employed; changes in participation rates (especially for women); working conditions; compliance with national and international labor laws and standards, including the reported existence of child or bonded labor and violations of other CLS.

The assessment should be able to dwell on:

- (i) the legal framework, including national labor laws and implementing regulations, and other legislation that may affect conditions of work, such as penal and civil codes and education laws—scope of coverage should be determined;
- (ii) specific laws on women, equality, child labor, safety and health, industrial relations, etc.;
- (iii) health and accident insurance schemes and whether there is provision for casual or informal sector workers;
- (iv) existence and contents of collective bargaining provisions applicable to the sector or activity, and of collective bargaining as a tool for dispute resolution;
- (v) information on the occupational accidents and injuries;
- (vi) information on the informal economy activities and levels of legal protection.

Ideally, information collection should involve collaboration and consultation with relevant international, national, and local organizations and institutions, such as the ministry responsible for labor; national statistics office; national trade unions and employers' organizations; international trade unions and employers' organizations; labor research institutes, often in national universities; regional representation of the ILO; and other civil society organizations concerned with labor issues (women's organizations, child protection organizations, trade associations, etc.).

Even if it is not possible to carry out a full labor market assessment, the analysis should at least signal the existence of any major labor problem, which should be addressed as a priority issue through ADB.

The Pre-Design Phase

There are two critical stages during the project pre-design when CLS issues need to be addressed:

- (i) The concept paper constitutes the link between country programming and TA fact-finding mission. It describes the purpose and the expected results/benefits of a tentative project. Expected social or environmental issues or concerns, like CLS, need to be identified. The concept paper also identifies resources needed for the project design and preparation.
- (ii) During the fact-finding mission for the PPTA, CLS should be flagged in the initial poverty and social assessment (IPSA).

CLS are an integral part of both the IPSA and the detailed poverty and social analysis. The section on labor in the IPSA should be used to record the national situation with regard to CLS.

Operationalizing CLS in the pre-design PPTA phase should include:

- Identification of bonded labor, child labor, or gender and other inequalities in employment
- Identification of the need for special consultants in the PPTA team (labor, gender, etc.)
- Identification of the situation concerning freedom of association

The pre-design phase should identify issues related to or that can trigger off CLS such as:

- Is the project related to infrastructure development that includes civil works contractors?

¹²Core Labour Standards Handbook, Manila, 2006, ADB and ILO

¹³ Felipe, J., R. Hasan (eds.). 2006. Labor Markets in Asia: Issues and Perspectives. London: Palgrave Macmillan for the Asian Development Bank

- Is the project related to public sector reform where some labor policies and laws will be updated or revised?
- Depends on the planned contractual arrangement, e.g., formal or conventional contracting.
- Enterprise restructuring and privatization projects usually trigger several labor issues.

Appendix 9 of ADB's Handbook for Poverty and Social Analysis addresses how to handle labour retrenchment and ADB has also published guidelines on how to address labour issues in enterprise restructuring and infrastructure reform.

This Handbook recognizes that labor issues are likely to be 'significant' when workers lose their employment as a result of public sector restructuring.

In the case of public enterprise restructuring,

- (i) preparation of retrenchment plan (Appendix 9.2 and 9.3)
- (ii) Focus on work consultation in the participation strategy (Appendix 4.4)
- (iii) Preparing gender plan (Appendix 5.1)
- (iv) Quarantine of social services such as housing, healthcare and educational facilities from divestiture, and
- (v) Summary labor market assessment are recommended.

The IPSA is finalized during the TA fact-finding mission in order to produce an IPSA Report, including a poverty analysis; and a decision on what detailed poverty and social analysis will be needed during the design phase, including the terms of reference (TOR) for all poverty and social analyses required during the design process, including resource needs, expertise required, responsibilities, and time frame. An IPSA should undertake poverty analysis to link and validate the concept of the project, cover issues related to labor, participation and consultation, gender, governance and institution, and risks and vulnerabilities.

The IPSA is drafted and reported using a specific format which flags of various social issues likely to be addressed in the design phase. The criteria for assessing the significance of such issues in the IPSA are:

PARTICIPATION:

- (i) Project success depends on intense and/or sustained involvement of citizens [whether in the design process (e.g., affordability assessment), in implementation or operation and maintenance.

- (ii) The project may face the risk of delay, protest, or obstruction because stakeholders feel excluded from the decision-making process (e.g., large infrastructure, restructuring, and tariff reform projects).

GENDER:

- (i) Specific measures are needed to provide for differential gender requirements.
- (ii) Women may be disadvantaged by the project because of economic, political, or socio-legal discrimination.
- (iii) Potential for increasing the direct poverty reduction impact is of particular relevance to women and/or women may face specific barriers to access.

RESETTLEMENT:

- (i) Requires construction or rehabilitation work;
- (ii) Is expected to require land acquisition; and/or
- (iii) Is expected to engender loss of assets, resources, or income.

INDIGENOUS PEOPLES:

- (i) Will be located in, or pass through, areas of significant indigenous peoples' settlement and/or use.
- (ii) Proposes to specifically target indigenous peoples in one or more of its main activities; or is anticipated to have significant negative effects on indigenous peoples.

LABOUR:

- (i) Workers may lose their employment as a result of public or private sector restructuring.
- (ii) The project may develop labor market policies or investments.
- (iii) The project, including ADB-financed procurement of good and services, is not in compliance with the national labour legislation (e.g. minimum wage, safe working conditions, social security contributions, etc.) and any of the International Core Labor Standards – i.e. the project is at risk of including/employing (i) forced labor, (ii) child labor, (iii) having discrimination at the workplace, or (iv) impedes workers to associate and to collectively bargain.

AFFORDABILITY:

- (i) There is a danger that the access to goods and services of poor or otherwise vulnerable groups will be worse off as a result of the project because of pricing of such goods and services.
- (ii) Unless addressed, the benefits of the project's reforms will flow primarily to non-poor consumers and un-serviced poor groups will remain excluded from the service.

OTHER RISKS/VULNERABILITIES:

- (i) Vulnerable groups may be negatively affected by an ADB intervention; in this case, temporary safety nets may need to be developed.
- (ii) There exists a danger that the access to goods and services of poor or otherwise vulnerable groups will be worse off as a result of (i) real loss of entitlements and (ii) loss of livelihood or employment.

THE PROJECT DESIGN PHASE

The design phase involves selection of consultants, preparation of inception and mid-term reports, then final report and the draft RRP with SPRRS followed by loan negotiations.

In terms of operational aspects, the design phase will require:

- Designing necessary interventions to adhere to CLS
- Participation with stakeholders concerning the future implementation of CLS clauses
- Formulation of appropriate assurances/covenants for inclusion in loan documents
- Scrutinizing draft bidding documents (in construction projects)

The draft RRP of the Project is submitted by the ADB President to the Board for approval. The RRP includes the Summary Poverty Reduction and Social Strategy (SPRRS) as a core appendix. The SPRSS demonstrates the steps taken to address the issues identified in the original IPSA report and summarizes the poverty reduction measures or plans included in the project design.

The SPRSS includes:

- A brief poverty analysis
- A matrix highlighting the key social issues, accompanied by a brief narrative assessment of how the project design has addressed the issues; and
- A narrative summary of any proposed social action plan or mitigation measures.

The proposed social action or mitigation measures should include:

- resettlement plan
 - gender plan
 - participation strategy
 - addressing CLS and labor retrenchment plan, where applicable
 - indigenous peoples development plan
 - mitigation plan.
1. To consider compliance of CLS in the design, it should be checked whether the following have been considered in the design:
 2. There are intended employment creation aspects of the project;
 3. Workers contracted under the project may be at risk of gender, race, or age discrimination;
 4. The project location may have a high incidence of child labor or bonded labor, and the project contractors may be at risk of using them; and
 5. The project area may be in a high-risk area for trafficking of women and children.

As a mitigation measure, the project design phase should subsequently seek the following information.

1. Check national labor laws in the sector affecting the workers involved in the project. Does the country have legislation or regulations directly on the subject concerned?
2. Check the consistency between the existing law and practice, and the relevant CLS. If law and practice are not in conformity with the CLS, the latter should be the point of reference for ADB action.
3. If there is no applicable national labor law, the CLS should be the point of reference.

Accordingly, the mitigation measures and intended actions should be reflected in the SPRSS. The SPRSS should, in essence, reflect also the concerns and suggestions/recommendations arising out of the consultations with workers, workers organizations, trade unions, and related stakeholders.

If CLS concerns could create a violation in the project, the loan agreements should include covenants to address them. The CLS concerns could be explained also in the report and recommendation of the President (RRP) (Chapter VI, Assurances) and a covenant related to the mitigation of labor law risks incorporated.

PROJECT IMPLEMENTATION PHASE

During project implementation phase, the operational activities for adhering to CLS include:

- Consultations with implementing agencies on CLS
- Drafting model clauses for bidding documents
- Compliance with national legislation concerning CLS and ILS
- Monitoring and evaluating of CLS

“In projects that are designed to promote or to take account of CLS, it will be necessary to ensure that the standards are respected in the implementation of the project, both during the bidding process and during the implementation of the project. There will also be situations in which well-designed projects may encounter CLS problems during implementation by executing agencies, contractors, and subcontractors who violate these standards. Measures will have to be put into place to ensure that standards are taken into account in the letting of contracts for project implementation, which will involve information, training, and awareness-raising among other factors. ADB review missions should ensure that projects are complying with CLS and with the terms of the contracts in this respect.”

INCLUSION OF CLS IN BIDDING DOCUMENTS

Invitations to bid should include a specific reference to ILS/CLS. They should include language indicating that the executing agency should ensure that all work done under the project (for example, by contractors or others providing goods or services) complies with applicable labor legislation, ensuring

in particular that the core elements of the CLS are complied with. The bidding document should also indicate that compliance with such provisions would be monitored during the project’s implementation.

TAKING ACCOUNT OF PROJECT SITE PRACTICES

Typical project site practice for physical and civil works should consider:

1. Whether the employers and contractors are keeping records and what do they include.
2. If the records that are being kept include the questions that need to be answered to monitor the application of labor standards (age and sex of employees, wages paid, accidents and illnesses, etc.)

3. Contractors’ attitude towards unions or other forms of workers organizations.
4. Any presence of worker/employer/contractor consultation mechanism.
5. Whether contractors regularly provide basic safety clothing and equipment.

It is critical for successful implementation of the project that the technical staff supervising the contract clearly understand the need to implement CLS, and also the possible costs for the project.

DEVELOPING A CONSULTATION PROCESS

Several parties have a role to play in the implementing of ILS/CLS in the project. Accordingly, it is important to:

1. plan and budget for a series of stakeholder workshops to address implementation issues;
2. plan and budget for training and briefing sessions for specific groups, e.g., trade unions, women’s organizations, and organizations working for the protection of child workers etc;
3. provide for separate training for employers and those supervising the implementation of the contract (e.g., engineers on construction projects); and
4. provide for discussion and awareness-raising sessions on required ILS/CLS issues.

This process should also include addressing stakeholders’ concerns and a list of possible stakeholders to be consulted including the trade unions, and Ministries and departments of labor.

CAPACITY BUILDING OF STAKEHOLDERS TO IMPLEMENT CLS

Capacity building in labor standards is important for the sustainability of the project. It is important that labor standards briefings are included in all pre-bid meetings and ADB business opportunities seminars. Materials for capacity building and briefings should include the relationship of CLS with local and national laws, where CLS should be addressed in the conditions of the contract and associated specifications and ways to monitor implementation of CLS on site.

¹⁴Core Labour Standards Handbook, Manila, 2006, ADB and ILO

¹⁵Ibid

¹⁶Ibid

MONITORING IMPLEMENTATION OF CLS

One of the main reasons that CLS are not implemented is the absence of monitoring. National inspection services and other mechanisms are under-funded and under-resourced, and monitoring of labor law is sometimes considered to be an unjustified expense.

Monitoring systems should be agreed on in advance and put in place before the physical work starts. This means, among other things, that a decision should be made on who will be responsible for monitoring and the form of reporting. In ADB projects, the executing agency is usually responsible for monitoring. Sometimes, *'if the project is a complicated one, or draws a lot of public interest, like large power/resettlement projects, an independent monitoring team/agency could be hired.'*

PROJECT COMPLETION AND POST EVALUATION

On the completion of implementation, a project completion report (PCR) is prepared as a factual record of problems encountered and how they were overcome; any adjustments in project scope and implementation arrangements; the degree to which appraisal targets were achieved; and the performance of various actors, including contractors, suppliers, consultants, executing agency, the government, and ADB. At this stage, the focus should also be on labor issues and how the CLS were implemented.

Post-evaluation is undertaken after significant project benefits start to flow. Because Project Performance Evaluation Reports (PPERs) are prepared a few years after the end of the project implementation (around 25% of the projects are targeted for evaluation), it gives a good opportunity to evaluate also the impact of CLS on project activities.

ENGAGEMENT OF GLOBAL UNIONS WITH ADB

The Global Unions have been participating since 2002 in various ADB/ILO joint workshops on various social issues arising out of the realm of development financing and its impact, financial crisis, inclusive growth, and labor standards. However, direct engagement on the issue of CLS began in 2006 when Public Service International (PSI), first raised the issue of CLS in ADB AGM 2006.

Since 2006, the Global Union Federations (GUFs) have jointly campaigned for trade union rights and CLS in ADB projects, intervened to influence various policies such as the safeguard policy and public communication policy and demanded a "Labour Desk" within ADB to respond to workers and trade unions' issues.

The key messages that GUFs have used in their campaign include:

1. ADB projects should comply with internationally recognized CLS, trade union rights, and gender equity.
2. Provide social support and stable jobs that build sustainable economies and societies
3. ADB should consult with unions and workers

Additionally, PSI has campaigned for Quality Public Services (QPS).

THE LABOR DESK

In what was the first ever collective articulation on the rationale for demanding a Labour Desk in ADB by the GUFs during ADB's Hanoi AGM in 2011, the GUFs pointed out that despite ADB's commitment to promoting Core Labour Standards within the projects it supports, its increased interaction with the International Labour Organization (ILO) and trade unions over the last decades included signing of memoranda of understanding; launching joint pro-labour activities; promoting open dialogues; holding trainings; and jointly publishing papers on the importance of ensuring workers' rights, violations of the rights of workers and trade unions in ADB sites persist. Workers directly employed by ADB contractors and sub-contractors continue to work and live under poor conditions and have very little means to bring their plight to the ADB for appropriate action.

The GUFs also pointed out that the ADB does not have a specific department dedicated to deal with complaints and issues of violations of labor conditions in the projects it finances. The role of the ADB in holding contractors responsible for labor rights violations is likewise undefined and loose.

As a result, a particular national government's labor laws are often the only regulations which shape or dictate the contractors' accountability;

¹⁷Ibid

¹⁸Ibid

¹⁹Labour Desk Handbook, BWI APRO, May 11, Kuala Lumpur

although, at times, the government is itself the project contractor – effectively having the role of “judge, jury, and executioner.” Violations in ADB projects often occur in countries which have little history of fair and swift delivery of justice for cases and hearings on industrial relations.

These conditions, according to the GUFs, make the establishment of a labor desk in the ADB an imperative. For several years now, the Global Union Federations (GUFs), the international trade union organizations working to defend human rights and labour standards across the globe, have been campaigning to establish a labour desk to fulfill the functions of:

- (a) Monitoring and ensuring the respect for core labor standards in all ADB-funded projects and activities.
- (b) Acting as a liaison between the ADB, trade unions and workers; and investigating and responding to allegations of violations.

Establishing a Labour Desk offers a shift in systems and perspectives in the need to protect and uphold workers’ rights. It gives the ADB the edge and power to step in when labor disputes in its projects and activities fail to merit fair hearings in the local setting.

The GUFs define a labor desk is an institution or department within an organization which is responsible for all labour-related issues arising from that organization’s work. A labor desk at the Asian

Development Bank would be a mechanism that places the compliance with core labor standards and protection of workers’ rights in ADB-financed programs as its central concern.

The international trade union federations have further sharpened their argument when they pointed out in Hanoi that a labour desk within the ADB could take many different forms, but ultimately it is the body which would be the focal point for interacting with international and national labour organisations and workers, and for ensuring that the ADB, and executing agencies as well as the contractors for ADB-funded projects, are promoting and protecting workers’ rights in ADB-financed projects.

Incidentally, the concept of Labour Desk should not be something new to the ADB as its own Social Protection Strategy clearly states that in terms of responsibilities and institutional arrangements ‘Labour trade unions to have an official interlocutor at ADB’s NGO Center’.

But, at the 2010 ADB Annual Governor’s Meeting in Tashkent, Uzbekistan, when GUF representatives from the BWI, Public Services International (PSI) and Union Network International (UNI) presented

to ADB President Haruhiko Kuroda a model labour desk and pressed him to establish a functioning labour desk in order to protect workers’ rights in ADB-funded project sites and areas of operation, President Kuroda reiterated ADB’s refusal to consider developing a labour desk, arguing that current accountability mechanisms are sufficient to address the concerns and complaints of Civil Society Organizations, including trade unions.

CAMPAIGN ON VIOLATION OF CLS IN ADB PROJECTS

Trade union campaign on CLS violation started with PSI’s study mission on the impacts of the ADB funded Madhya Pradesh Power Sector Reform in India in September 2008. The PSI report pointed out that:

- i) Collective bargaining rights of the unions were not respected;
- ii) Industrial Dispute Act provisions were not implemented;
- iii) Trade union activists were harassed;
- iv) Non recruitment for 15 years leading to increased workload, outsourcing, inhuman working conditions;
- v) Health and safety issues were neglected;
- vi) Compassionate appointments were banned;
- vii) Social security benefits were withdrawn;
- viii) Trade unions were not consulted while restructuring plan was drawn up; and
- ix) ADB failed to respect its own responsibility to draw up a retrenchment plan while designing the project.

In 2011, the GUFs came out with serious CLS violations in ADB-funded projects in Nepal, Cambodia, and India. Regarding the Regional Railway Construction Network project in Cambodia, unions’ findings indicate:

- Workers were not provided copies of the employment contracts they were asked to sign.
- Pay slips provided to workers were in English language only, thus limiting the workers’ understanding of the slips’ contents and details.
- A large number of workers on the site reported being required to work compulsory overtime.

²⁰Ibid

- Around half of the workers surveyed claimed not being paid an extra salary for working on their rest days while many reported that contractors required workers to report to work even on their assigned rest days and holidays.
- Employers did not give the worker's accident insurance plans and did not pay premiums for legally mandated benefit plans.
- Employers did not set up sick bays or clinics nor provide an ambulance service within the project Site.
- Emergency medicines were not available to the majority of the workers.
- Health and safety issues were ignored leading to sub-human working conditions.

VIOLATIONS RECORDED IN THE MELAMCHI DRINKING WATER PROJECT IN NEPAL INDICATE:

- Workers were not provided with written and formal employment contracts.
- There was the substantial incidence of compulsory overtime work.
- Many workers reported having no rest days and not receiving extra pay for working on designated rest days.
- The majority of surveyed workers reported that working on rest days was compulsory and that working on holidays was also compulsory and without corresponding extra pay.
- Workers reported that no premiums are deducted from their salaries as worker contributions to legally mandated benefit plans non-implementation of employer-provided accident insurance plans.
- Safe drinking water was not available to the majority of the workers.

During the last five years, the GUFs in South Asia have taken up the issue of CLS in ADB projects as a priority in their campaigns and activities. Training and capacity building programs on ADB policies and CLS have been regularly conducted and research studies on CLS Compliance in ADB-funded projects in energy, water, transport and public service sectors were commissioned in the region. Initial meetings with country ADB Missions have also taken place.

RAISING CLS IN ADB AGMS AND POLICY REVIEWS

Public Service International (PSI), one of the Global Trade Unions, first raised the issue of CLS in ADB projects in the Hyderabad AGM in 2006 and a resolution was adopted by the PSI APRO. In Kyoto (2007), PSI campaigned in support of CLS in

ADB projects and in Madrid (2008) demanded to mainstream of CLS in ADB projects. Joined by UNI and BWI, PSI in Bali (2009) questioned ADB's strategy 2020 and addressed the impacts of workers' crisis.

In Tashkent (2010), PSI campaigned for decent work and exposed ADB's poor performance in Madhya Pradesh Power Sector project. In the Hanoi AGM (2011), the GUF representatives continued their campaign on CLS in ADB Projects. The Manila 2012 AGM witnessed a massive demonstration by the GUFs and the workers.

During ADB's Safeguard Policy Review in 2008-09, in response to the second draft released by the ADB-SPU Safeguards Team, PSI pointed out that it views the Bank's update of its 'safeguard policies' as an opportunity to strengthen and integrate in a more cohesive manner ADB's current policies and guidelines on social protection and ILO's core labor standards (CLS) and decent work agenda into the Bank's 'safeguards' framework. But the SPU Team refuse to include CLS and labor issues within the scope of safeguard review and wrote back stating:

"On the scope of the SPU, as approved by ADB Management, the SPU covers environment, involuntary resettlement, and Indigenous Peoples. It is envisaged that labor issues will continue to be addressed through ADB's Social Protection Strategy and as part of the requirements indicated by OM Section C3 on Incorporation of Social Dimensions into ADB Operations. Comments related to core labor standards would be addressed in that context."

In their submission to the SPU, PSI urged ADB to:

- Embark on a new and separate review and 'update' of its existing labor safeguards and social protection strategy that will provide for mandatory and clear-cut operational guidelines vis compliance to all four core labor standards and decent work agenda.
- Consolidate into a more coherent framework ADB's various labor-related policies/guidelines.
- Incorporate language similar to IFC's Performance Standards (PS2).
- Adopt new labour standards lending requirement independently from the new Safeguards Policy.
- Where country labor legislations are inadequate, to commit and use the internationally recognized labor standards benchmark and CLS.

COMPLIANCE WITH CLS IN SELECTED ADB FUNDED PROJECTS: A REALITY CHECK

The CPS and selected ADB-funded projects in countries like Bangladesh, Indonesia, India, Philippines, and Uzbekistan have been studied and their project designs scrutinized to find out whether ADB's own Social Protection Strategy and guidelines as espoused in its CLS Handbook, Social Protection Handbook and Social and Poverty Analysis Handbook have been followed. The summary findings include violations of labor standards and CLS in design and implementation of the projects.

The projects selected are:

1. Rajasthan Renewable Energy Transmission Investment Programme, India
2. Bihar Power Sector Improvement Project, India
3. Railway Sector Investment Programme, Bangladesh
4. Regional Roads Development Project, Indonesia
5. Amu Bukhara Irrigation System Rehabilitation Project, Uzbekistan, and
6. Angat Water Transmission Improvement Project, Philippines

LABOUR MARKET ANALYSIS IN COUNTRY PARTNERSHIP STRATEGY (CPS)

All the CPS have country poverty analysis and risk assessment and management plan documents as linked documents to the CPS. Although the country poverty analyses show increasing inequality, formalisation of work, the poor being vulnerable to economic shocks and lack of safety nets, the CPAs do not reflect results of any proper labor market assessment.

CPA for Bangladesh has a paragraph on labor market issues related to the country's employment policy and Uzbekistan CPA has a couple of paragraphs on the labour market and employment on the need for steady job and employment creation and skill development. There is no information on the country labor standards and legislations, any reference to CLS and labor enforcement or contractual nation and social security of the workers.

All the CPS, though, have mentioned gender inequity and the need for developing gender action plans.

The risk assessment and management plans have no reference to labor standard, CLS or any associated mitigation plans and measures.

None of the CPSs indicate that they have accounted for any dedicated staff for labor standards/CLS-related activity at the country level or in country Resident Missions.

Bihar Power Sector Improvement Project (India)

THE PRE-DESIGN PHASE

At a first look, the project seems to be facilitating construction of new transmission lines, substations, T & D efficiency to improve, augment and streamline BSEB's transmission and distribution system while developing the institutional capacity of the BSEB staff through training for better implementation of the project. However, the PID of the project mentioned that *"The Government of Bihar (GOB) is in the process of organizational restructuring for the power sector through evaluating different options for unbundling of Bihar State Electricity Board (BSEB) into generation, transmission and distribution companies. Subsequently, a financial restructuring plan will be developed". In the "Draft Design and Monitoring Framework" document dated August 2010, the impact of the project has been subjected to or conditioned under Assumptions which read "GOB remains committed to power sector reforms and institutional improvement".(pg 3).*

Under Schedule 5 – Execution of Project and Operation of Project Facility (pg 18), attached to the Loan Agreement of the project signed by the representatives of Government of India and ADB on June 15, 2011, para 10 for Institutional Reforms reads:

"The State shall ensure that by no later than 1 year from the Effective Date, a roadmap shall have been approved by the appropriate authority of the State and the Borrower, showing a plan with milestones for restructuring and unbundling activities of the BSEB in accordance with the Borrower's Electricity Act, 2003."

These project documents, therefore, clearly point out that unbundling and restructuring of BSEB are important components of the ADB funded Bihar Power System Improvement Project and the outcomes and outputs of the ADB assistance heavily depend on unbundling and restructuring

²¹Bihar, Economic and Human Development Indicators, UNDP, 2012

of BSEB. But, there is nothing in the IPSA to acknowledge the proposed sectoral reform and public enterprise restructuring and the possible impacts thereof.

The sector analysis of the project does not mention that the BSEB unions since 2002-03 were protesting against restructuring and reform of BSEB and the protest continued in 2011 when the loan agreement was signed.

On Consultation and Participation (Section B), the IPSA does not identify workers and trade unions as stakeholders. As indicated in this section, Consultation and Participation Plan was not deemed necessary.

In Section C, related to Gender and Development, the IPSA mentions that since project benefits are indirect, the project does not have the potential to promote gender equality and/or women's

empowerment by improving women's access to and use of opportunities, services, resources, assets, and participation in decision making. It also says that there will be no adverse impact on women indicating that Gender Action Plan (GAP) is not required.

For 'Labour' which is categorized under Social Safeguard Issues and Other Social Risks, employment opportunity and CLS are flagged but the IPSA recommends that no action plan is required. Labour retrenchment is not flagged off here. Similarly, HIV/AIDS, under Other Risks and/or Vulnerabilities is flagged with no action plan. Human trafficking is not flagged here.

The BPSIP was the first ADB funded project for a low income and backward state like Bihar. Undertaking IPSA was, therefore, a great opportunity to bring out the issues of poverty, social condition, human and social development indicators, access to resources for the poor, vulnerable and marginalized groups, livelihood patterns, social and development exclusion.

For a project intervention in a backward state like Bihar where the poverty headcount ratio is 53.5% , the poverty, and social analysis should include incidence of child labour, forced labour, wage discrimination, determination of wage and minimum wage, especially for power sector workers (for BPSIP) and specifically for labour, protection of migrant workers, status of freedom of association and collective bargaining, an analysis of the labour enforcement and monitoring machinery.

PROJECT DESIGN PHASE

In this phase the RRP takes shape which is submitted to the Board of Directors for approval of

the project. The SPRSS is an important document prepared during the design phase and becomes the core appendix of the RRP. SPRSS reflects the issues flagged off in the IPSA and elaborates on the action plan and mitigation strategy.

The SPRSS, that has been prepared for BPSIP reflects the problems arising out of an incomplete IPSA, especially on the issues of Labour and Consultation and Participation. In the column for a strategy to address the issue of CLS, SPRSS states: "Standard assurances on labor standards will be included in civil works contracts."

The Project Administrative Manual (PAM) of BPSIP also says:

... the loan agreements include a standard assurance related to core labor standards for contractors, including gender equal pay for equal work, an awareness program on HIV and sexually transmitted diseases and human trafficking.

The above-mentioned loan agreement of BPSIP signed on 15 June 2011, in Schedule 5 (pg 19) under para 8 clearly states:

The EA shall ensure that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

This para does not explicitly mention Core Labour Standards and/or International Labour Standards, freedom of association and collective bargaining.

Whether in the agreement between the EA and the contractor, in the bidding documents and in the civil works contract, such standard assurances are inserted cannot be verified since all these documents are regarded as business information and are exempted from disclosure under the ADB PCP.

PROJECT IMPLEMENTATION PHASE

The CLS Handbook recommends:

1. Project site practices related to the application of labor standards - age and sex of employees, wages paid, accidents and illnesses, etc. and

employers and contractors should keep such records.

2. Developing a consultation process.
3. Capacity building of stakeholders to implement CLS.
4. Monitoring activities for compliance with CLS

There is no evidence of (for at least two construction sites studied) any public display board or public records kept on the application of labor standards. Also, none of the review and monitoring documents related to BPSIP has disclosed has any information related to the above.

The consultation process should include addressing stakeholders' concerns and a list of possible stakeholders to be consulted including the trade unions, and Ministries and departments of labor.

With trade unions not being regarded as stakeholders in the design phase, there is no scope for developing a consultation process on CLS during implementation. There is no document to suggest that training, discussion and awareness raising sessions on CLS and other labor-related issues were organized with employers, supervising team and engineers on site.

There are no available reports to suggest that standards briefings are included in all pre-bid meetings and ADB business opportunities seminars. The capacity building and briefings should include the relationship of CLS with local and national laws, where CLS should be addressed in the conditions of the contract and associated specifications and ways to monitor implementation of CLS on site.

The team leader in charge of the PMU based in Patna did not even know anything about CLS and that CLS needs to be integrated into the project design. It seems that the PMU is entirely dependent on consultants to integrate ADB policies in the project document. The site in charge of the principle contractor for the erection of a grid substation also had no information on CLS and that CLS and labor standards need to be monitored at the site.

The ADB Monitoring and Review reports prepared by the EA and vetted by the ADB do not mention anything about CLS or labor standards.

LACK OF DUE DILIGENCE

The absence of core labor standards and other standard commitments enshrined in the ADB policy in the loan agreement and civil works contracts is a grave error in due diligence on the part of the ADB project design team and the

consultants and has led to the significant negative impact on the ground where workers are concerned.

Summary findings of two studies conducted in 2011 and 2015, commissioned by PSI indicate:

1. At the construction site of the grid substation, there was no display board or public record of nature of construction taking place, who is undertaking the construction, who are the contractors and sub-contractors and who is funding the project. There was no board displaying the number of workers working in the substation, their duty hours, rest day and wage.
2. The presence of child labor and adolescent labor engaged in cooking and erection of high voltage transmission line respectively.
3. Workers were not paid stipulated minimum wages due to them.
4. Workers were not paid their social security benefits including provident fund.
5. Some of the workers reported long working hours and no overtime pay.
6. Those engaged in the erection of transmission lines working in forced labor conditions; they are not paid regular monthly wages and recruited after paying and advance. They are mostly migrant workers.
7. The workers live in an inhuman condition in the labor camp whose condition is shocking; made at random with wooden planks, tin and stray clothes with gaping holes on the roof and in the wall of the room where there are beds for around 10 workers. It has only one light and a fan when the temperature outside is raging around 42-degree centigrade. They workers do not have any toilets or bathrooms and drinking water from the under-ground well is provided at the site. They use wooden planks as beds, have their own mosquito nets since the area is infested by mosquitoes, with no pillows or mattresses.
8. There is nothing to understand that occupation health and safety is taken care of and no sign of awareness on HIV/AIDs and sexually transmitted disease.
9. Workers engaged in laying down or erection of transmission lines are not included in the Scheduled Employment under Minimum Wages Notification of Government of Bihar.
10. The wages and benefits of the contract/casual workers engaged in the construction work, are discriminatory compared to the permanent workmen employed by the

Transmission Companies in Bihar doing the same kind of job.

11. The BPSIP had no labour restructuring and retrenchment mitigation plan. The restructuring and unbundling of the BSEB, however, have their impacts which include:

- i) Around 7,000 workers who were working as temporary workmen in erstwhile BSEB with bare minimum wages are now being continued as agency workers under the payroll of the various private agencies to whom supply and distribution have been contracted out, much against the report and recommendations of the state labor department.
- ii) Changes in the service and benefit conditions of the staff and employees in the restructured BSEB without any information and consultation with the trade unions in violation of the Industrial Dispute Rules, Section 9 (A).
- iii) Non-appointment of family members on compassionate ground of employees who died on duty, since 2013.
- iv) Discriminatory practices in the pay grade and pay band of fourth class workmen.
- v) Delay in appointment to vacant posts in non-executive cadre leading to increasing workload of the existing appointees.
- vi) Demand for parity in pay and other services and benefits in accordance with the sixth pay commission for pre-2006 pensioners unresolved.
- vii) While the existing employees and workers of BSEB before restructuring will continue

to enjoy the guarantee from the State Government of Bihar against their service conditions and benefits, the new recruits after restructuring will not get that guarantee.

RAJASTHAN RENEWABLE ENERGY TRANSMISSION INVESTMENT PROGRAM, INDIA

PRE-DESIGN PHASE

With regard to the all important poverty analysis, the IPSA of the project states that 'social and gender analysis will be carried out by social development/safeguard specialist. Funds for social and gender analysis will be made available through the project PPTA'. The PPTA – Rajasthan Renewable Energy Capacity Development and Implementation Support - is expected to be implemented over 28 months from December 2013 to March 2016. The executing agencies (EAs) are the Energy Department, Government of Rajasthan and the Rajasthan Rajya Vidyut Prasaran Nigam Limited.

It is evident, therefore, that the IPSA left the social and gender analysis to be developed during PPTA. The initial timeline of the PPTA closure being March 2016, the expected social and gender analysis will be available long after the RRP of the project is approved by the ADB Board, the loan agreement is signed, the pre-design and design phases are completed and the sub-project 1 under tranche 1 is under implementation. The social and gender analysis was, thus, not available even during the design phase.

Although the participation of the stakeholders was envisaged for information and consultation on the project design, the IPSA clearly states that no

ADB's response to union's initial communication

On 11th August 2012, Shri M D Joshi, the General Secretary of the Rajasthan Vidyut Prasaran Mazdoor Congress (RVPMC), wrote an email to Shri L George, the team leader of the RRETIP, stating that the RVPNL authority did not discuss anything about the ADB funded upcoming loan project with their registered union. The email was replied to on 8th November 2012 in which Shri L George stated:

“This loan from ADB to RRVPNL has not been approved at this stage and the timing will depend on receipt of required state and central government clearances.

I would request you to discuss with Mr. LN Nimawat, SE, RRVPNL who is the Project Management Unit head appointed by RRVPNL for further details on the project proposed for ADB financing.”

The RRETIP IPSA does flag employment opportunities and core labour standards, and HIV/AIDS under Social Safeguard Issues and Other Social Risks (III).

PROJECT DESIGN PHASE

The SPRSS which is included in the RRP of the project as core appendix, on the issue of ‘Participation and Empowering the Poor’ mentions:

1. Consultations with the civil society organizations to seek their perceptions on the project were held and will continue to be held throughout the project cycle.
2. Civil society organizations could participate in the grievance redress mechanism and provide suggestions on the implementation of the project.

Beyond these, there no plan of action on the consultation, participation and collaboration with trade unions as stakeholders on the adherence to CLS during the implementation of the project was prepared.

Whereas the FAM clearly states that “The EA shall ensure that the Project is undertaken in conformity with the Gender Action Plan and the Consultation and Participation Plan as agreed between ADB, the The borrower, the EA as listed in the FAM.”

While addressing Other Social Risks (V), on the issue of risks in the labor market, boxes related to unemployment and underemployment have been checked while the box related to core labor standards has been left unchecked. Additionally, the SPRSS says that there will be job opportunities for skilled and unskilled laborers during the construction period.

There is no reason given in the SPRSS why the issue of core labor standards has been dropped and no further action was planned when the IPSA had flagged off the issue of CLS. It further indicates that while conducting feasibility studies and design of the project and detailed poverty and social assessment, CLS was not found relevant to be reported in the summary poverty reduction and social strategy (SPRSS).

The absence of CLS in the SPRSS which is the core document appended to the RRP, also raises important questions as to whether incidence of child labour, forced labour, discrimination in payment in the project area, and right to freedom of association and collective bargaining, as enshrined within the CLS and enforcement of labour laws were really looked at. It is also required to check whether the existing national labor laws are in conformity with the CLS and related ILO Conventions.

Appendix 1 of the Facility Administration Manual (FAM) for RRETIP, August 2013 (pg 32) under Tranche 1 Project Specific Gender Inclusive Measures, the given activities and targets include:

- Construct separate toilets for men and women at project sites.
- Introduce and implement occupational health and safety measures separately for working men and women.
- Support RRVPNL to establish a child care facility to look after children of working mothers at construction sites.
- Sensitization workshops held for contractors on gender responsive targets and core labor standards, including equal pay for work of equal value.
- Bidding documents contain provisions for core labor standards.

Schedule 5, para 13 of the loan agreement for Rajasthan Renewable Energy Transmission Investment Programme – Project 1, dated 12 September 2014, signed between ADB and the India, does have the sentences quoted in the ADB response as above. But, the para carefully avoid mentioning of CLS which according to the ILO Declaration encompasses all the core issues of child labor, equal pay equal work, forced labor and also right to freedom of association and collective bargaining. Here when CLS is not mentioned in para 13, it explicitly avoids the issues of forced labor and the freedom of association and protection of the right to organize and collective bargaining.

The clear objective to avoid mentioning CLS is, perhaps, at the instance of the Indian Government, which is yet to ratify the ILO Conventions 87 and 98 related to freedom of association and protection of the right to organize and collective bargaining and India does not have a legislation protecting the trade unions right to organize and collective bargaining.

Article 19(1)© of the Constitution of India guarantees to all its citizens the right to form associations and unions. The issue of the right to form trade unions and right to organize is somewhat protected by the Trade Union Act and the Industrial Disputes Act but the right to collective bargaining has no legislative support. In absence of such a legislation, the Supreme Court of India has come out with guidelines to protect a trade union’s right to collective bargaining through recognition of a trade union by the employer through secret ballot of the workers employed.

²²Facility Administration Manual, August 2013, Rajasthan Renewable Energy Transmission Investment Program, ADB

For the last eight years, the authorities in RRVPNL has not conducted any elections to this effect to provide recognition to any of the existing unions the right to collective bargaining. The unions have gone to the court but the court's directions have not been implemented by the RRVPNL which is a serious violation of the core labor standards (CLS).

ADB's response to the union's letter also refers to labor safeguard covenants being included in the bidding documents and the agreement between the EA and the civil works contractor. But, both these documents are not publicly available, being considered business information and not liable to public disclosure under ADB's Public Communication Policy (PCP). Therefore, there is no way that we can verify whether such safeguards are indeed being included in the above documents.

PROJECT IMPLEMENTATION PHASE

During the current implementation phase of the project, with no trade unions and workers organizations being consulted and taken on board, the Shri M D Joshi, General Secretary of the Rajasthan Vidyut Prasaran Mazdoor Congress (RVPMC), on 28 July 2015, again wrote to the ADB team leader do the project in Manila stating the following:

- (i) The union is still not aware of the details of the project including how the aims and objectives and the output of the project will ensure creating job opportunities for the locals while protecting their rights and interests.
- (ii) The safeguards as designed in this program does not target the workers who will work on the projects, their rights and the core labor standards (CLS).
- (iii) The project design has also deprived the workers to be represented in the project's participation and consultation process where no union has been accepted as a stakeholder to participate in consultations.

The letter demanded that:

1. Immediate steps should be taken to incorporate adequate measures to safeguard the rights of the workers to decent work and respect for national labor laws, including adherence to CLS in the project design;
2. Take appropriate measures to mitigate violation of labor laws and CLS during the implementation phase (including joint monitoring and review along with the unions) and incorporate those as part of the project implementation arrangement; and

3. ADB and the management of the RRVPNL should immediately consult our Union as a legitimate stakeholder of the Project and convey to us the mitigating measures taken as above.

This letter was responded to on November 6, 2015, where Shri V Rao Karbar, the team leader (energy) from the ADB Resident Mission in India generally provided very broad and standard reply. The letter said that 'The PMU -supported by safeguard review consultants- will consult with all relevant stakeholders during the monitoring of the project to understand and address concerns raised. ADB will continue to work with the executing agencies to ensure that various provisions of contract agreement related to labor practices are followed during the project implementation. During the periodic loan review missions, the ADB mission members will consult with RRVPNL and the Government of Rajasthan, Project Director and relevant PMU staff on project implementation and adherence to the loan covenants, (including on social, safeguards, social development and gender-related aspects of loan implementation).

However, the union is yet to be consulted or invited to participate in any project related monitoring or review activities. No review and monitoring documents are available to show that issues related labor standards and CLS are being considered in the implementation phase.

VIOLATION OF LABOR STANDARDS

A study of the RRETIP conducted in 2015 found out serious violations and pointed out that:

1. In the construction sites, there are no separate toilets for women workers and no child care centers have been developed which are a violation of ADB's FAM and Gender Action Plan (GAP) for RRETIP.
2. The incidence of forced labor in the working condition of workers employed by the civil works contractors and wages being paid in pairs – to both husband and wife together – indicate a violation of CLS and India's national labor laws and also discriminatory against women workers.

²³Souparna Lahiri, Rajasthan Renewable Energy Transmission Investment Programme, A Study on ADB's Compliance with Social Protection Strategy and Core Labour Standards, PSI, December 2015, Unpublished

3. Both RRVPNL and its contractors have violated India's national labor laws by not ensuring livable and decent living quarters for the workers in the construction sites and ensuring the safety of their children.
4. A total absence of safety measures, not providing safety gears and non-implementation of occupational health issues are a serious violation of the FAM and loan agreement of the RRETIP.
5. According to the workers engaged in the construction sites and employees and union members of RRVPNL, no awareness generation, and campaign program has been undertaken on the issues of HIV/AIDS and sexually transmitted diseases as per the loan agreement and FAM of the project.
6. While preparing IPSA and SPRSS due diligence was not done on the issue of freedom of association and right to collective bargaining existing in the RRVPNL, the EA of the RRETIP. The RRVPNL authorities have consistently failed to facilitate union elections for recognizing the right to collective bargaining for the workers and employees engaged in RRVPNL. This is a grave violation of the CLS which has been completely overlooked by the ADB team.
7. The working and living conditions in the existing substations being upgraded and those which are already upgraded under the RRETIP have been completely overlooked by the ADB. According to the ADB response to the query by the researcher, the ADB project team leader has mentioned about the monitoring report being submitted by the EA which should take care of the issues concerned including adherence to CLS in project implementation but that report is yet to be published or made available for public disclosure.
8. The issues that arise related to working and living conditions of the employees of RRVPNL engaged in the newly constructed and upgraded substations include:
 - (i) No restrooms or living quarters for employees;
 - (ii) No separate toilet and other relevant facilities existing for women employees;
 - (iii) No supply of clean and safe drinking water;
 - (iv) No supply of water in general in at least two substations;
 - (v) Non-implementation of occupational health and safety issues – absence of safety

gear like boots, gloves, helmets, earthing rod and checkered plates;

- (vi) No training facility for technical helpers engaged in substations and working on high tension lines; and
- (vii) Unhealthy conditions existing in substation premises including the incidence of stagnant water causing diseases and snakes moving around.

These are serious violations of India's national laws and also that of the loan agreement for the RRETIP.

9. The working and living conditions existing for women employees is discriminatory, preventing them from joining their postings in most of the substations, pose safety and security problems for working women and jeopardizing their long-term recruitment and employment prospects in the RRVPNL. This is a serious violation and oversight, and also poor due diligence on the part of a multilateral institution like the ADB.

10. Since bidding documents and the agreement between the EA and the civil contractor are considered as business information and therefore exempted from public disclosure, it is not possible to verify whether these documents do carry the clauses on CLS and labour laws as stated in the loan agreement, IPSA, SPRSS and the FAM unless they can be accessed privately.

RAILWAY SECTOR INVESTMENT PROGRAMME, BANGLADESH

When RSIP was approved in September 2006, the following developments already took place:

1. ADB adopted its Social Protection Strategy (SPS) in 2001.
2. ADB and the ILO signed a joint MoU to strengthen commitments towards achieving decent work and implementation of Core Labour Standards (CLS) in ADB-funded projects.
3. ADB and ILO jointly published a Handbook on Core Labour Standards.
4. In 2003 ADB published 'Social Protection, Our Framework Policies, and Strategies'. And
5. In 2006 ADB published 'Labor Issues in Public Enterprise Restructuring' detailing steps to be taken while undertaking to restructure in the public enterprise including retrenchment plan.

ADHERENCE TO AND IMPLEMENTATION OF CLS: MAJOR VIOLATIONS

With reference to the ADB's project operational cycle and the issues of CLS that ADB is committed to addressing, a study commissioned by the International Transport Federation (ITF) found that:

1. During the preparation of the Country Partnership Strategy (CPS) for Bangladesh, a labor market assessment which is mandatory was not done. During the consultation phase of the CPS preparation, the stakeholders did not include the trade unions and no draft CPS was circulated for comments amongst the trade unions in Bangladesh.
2. When the RSIP was conceptualized, fact-finding missions visited BR premises and network and pre-project design was initiated including the Technical Assistance program, no Initial Poverty and Social Analysis (IPSA) was prepared which is also mandatory. That IPSA was not carried out is corroborated by the Public information and disclosure unit of the ADB office based in Manila.
3. Apart from the complete lack of consultation with the BR unions on the project, the project documents do not show that project consultant team or the fact-finding team had any labor and/or gender consultant or any ILO specialist. No assessment has also been made on the situation of freedom of association in Bangladesh and BR in particular and issues like that of child labor, bonded labor was not particularly flagged off in the Summary Poverty Reduction and Social Strategy (SPRSS) document.
4. The project was designed without any consultation with the BR unions and their participation in the consultations was not solicited for. However, during the project implementation phase, ADB organized five consultations with the trade unions in Syedpur, Lalmonirhaat, Parbatipur, Pakshi, Chittagong and Rajshahi mainly to get a feedback of the unions trying to take them on board on the BR reform, and was not linked to their participation in the implementation phase.
5. The SPRSS in the section on gender development mentions:

Consultation with both men and women was ensured during the course of the social analysis to assess the impact of the Project on them. Currently, the major portions of the existing route are single line and the frequency of train service is irregular creating problems for men and women in reaching the workplace and accessing other social services on time. Due to less frequent train service, platforms, waiting for area, and train compartments get overcrowded, especially during peak office hours when everyone wants to avail the same train service, posing more difficulty for women. The Project will lead to an increase in the frequency of the train service, and capacity of the platforms and waiting area will be expanded, thus benefiting both men and women and offer special benefits to women by providing faster and more frequent access to place of work and different social services like schools, health care facilities, markets, and increased employment opportunities. It further states that 'The Project will also provide employment opportunities to both and women during the construction phase and provisions will be included in contractors' bidding document to ensure that contractors do not differentiate between men and women's wages and benefits for work of equal value. Contracts for all subprojects will include specific clauses on these undertakings, and compliance will be strictly monitored by Bangladesh Railway during project implementation. Furthermore as the Project aims to improve the country's competitiveness in the manufacturing sector (principally the garment industry) by reducing the cost of transportation, and the vast majority of workers in the garment industry are women, this Project will facilitate the enhancement of sustained employment opportunities for women in the garment and other industries.' But, strangely the SPRSS failed to generate any output document on gender development and inequality.

On the issue of affordability of services and its social impact, the SPRSS says that "Communities will be better off as a result of faster and more frequent market accessibility and reduced freight charges for transportation of goods. Communities will be better off as a result of faster and more frequent market accessibility and reduced freight charges for transportation of goods." It completely misses the issue of recommended tariff hike of train travel and its impact on the poor and vulnerable sections of the population.

While flagging off labor, the same SPRSS addresses the issue of labor as – 'Employment opportunities for men and women during the construction and operation stage will be at minimum wage rates and provide equal wages for men and women.' The RRP of the investment programme mentions that BR

²⁴Confirmed by the Public information and disclosure unit of ADB through email communication dated 22 August 2013

²⁵Email dated 2 September 2013

will ensure that the civil works contractors comply with all applicable labor laws, use their best efforts to employ women and local people living in the vicinity of the subprojects and disseminate information at worksites on the risks of sexually transmitted diseases and HIV/AIDS for those employed during construction. BR will require contractors not to differentiate between men and women's wages and benefits for work of equal value. Contracts for all subprojects will include specific clauses on these undertakings, and compliance will be strictly monitored by BR during project implementation.

The issue of decent work and CLS never figured in the matrix. Thus the RRP of the investment program is completely silent on the implementation of decent work and CLS in its civil work construction and sub-projects.

The current reform and investment project do not have any retrenchment plan that ADB SPS necessitates and clearly mentioned and written in the 'Labor Issues in Public Enterprise Restructuring', published by ADB itself.

The mandatory assessment of the situation on freedom of association and collective bargaining prevailing in Bangladesh and its impact on BR was never prepared. Issues like child labor and bonded labor were not flagged off in the SPRSS matrix.

The BR Sangram Parishad has pointed out that none of the agreements arrived at between them and the BR management right from 1990 on the issues of retrenchment and redundancy of the BR staff, and restructuring and reform of the BR have been complied with or implemented.

Moreover, the chapter XIII of the Bangladesh Labour Act on Trade Unions and Industrial Relations as derived from the Industrial Relations Act 1969 restricts the recognition of trade unions in any establishment such as BR for collective bargaining to three only which is violative of the CLS and the ILO Conventions 87 and 98.

Working and living condition of employees and workers engaged in privatized, outsourced services and civil contract work

One of the major outcomes of the restructuring program is the participation of private sector in rail concessions. Accordingly, the reduction of employee strength in some of the services due to voluntary separation and natural attrition was followed up with handing over some of the services to the private contractors. While BR still remains the principle employer, the outsourced/private contractors employ staff who practically do the same kind and nature of the job as any other BR employee, but are provided with wages/salary and benefits which are nowhere near that of the

BR employees, and in fact violates Bangladesh Labour Act, 2006.

Discussion with some of the employees working with private contractors who have been outsourced some of the railway services by the Bangladesh Railways indicates that there is a rampant violation of labor laws and incidence of payment of bare minimum wage at no work no pay basis and without any fixed period of working hours. They are not even paid overtime incentives. The employees are not provided with provident fund benefits, medical and sick leave, annual leave, paid holidays and maternity benefits for women workers. It is not also always clear whether all the employees/workers engaged by the private sector have letters of appointments.

These, in fact lead to violation of sections 5 (Letter of appointment and identity card), 46 and 47 (Right to and Payment of Maternity Benefits), 101 and 102 (Daily and weekly hours of work), 103 (Weekly holiday), 108 (Extra allowance for overtime), 115 -118 (Casual leave, Sick leave, Annual leave with wages and Festival holidays and 264 (Provident funds) of the Bangladesh Labour Act, 2006.

Systems staff in the software management of ticketing and reservation is paid between Tk 10,000-20,000 a month, depending on seniority. No other benefits or social security net exists for them.

A woman cleaner working as a cleaner and sweeper in the Kamalapur station premise is paid Tk4,500 per month for working 16 hours a day with no leave and social security benefits.

A coach attendant on the Dhaka-Chittagong sector is paid at the rate of Tk4,500 per month for 24 trips of 8 hours each. They do not have any leave or other benefits. A cleaner on the same train gets Tk3,000 per month for a 24-hour duty.

The condition of work in the Bhairabh Bazar-Chittagong rail corridor and specifically around the Pubail station reflects a violation of both the domestic labor laws of Bangladesh and the CLS to which both BR and ADB are committed to adhering and implement fully.

1. The migrant workers are housed in the waiting hall of the condemned Pubail station and in the under construction Pubail station, with no electricity; there is no separate toilet for them, other than the dilapidated and unusable toilet of the station and water is accessed from an outside tap in the station premises. No cots or mattresses are provided to them. The waiting room is in a bad and unhygienic shape where they cook their own food also. They do not have clear and fixed

working hours. One of the workers narrated that they did not get any bonus payment for the Id festival, nor were they paid any wages before the Id as the contractor feared that they will go home if they are paid their wages. In that case, they are working as bonded laborers. The civil works in this section have been contracted out to CREC, a Chinese engineering company and on the ground is being implemented by TOMA Construction and Company Limited (TCCL).

2. Employees and workers working with private contractors indicate that there is a rampant violation of labor laws and incidence of payment of bare minimum wage at no work no pay basis and without any fixed period of working hours. They are not even paid overtime incentives. The employees are not provided with provident fund benefits, medical and sick leave, annual leave, paid holidays and maternity benefits for women workers.

REGIONAL ROADS DEVELOPMENT PROJECT, INDONESIA

The documents related to this project prove once again how little importance both the ADB and the borrower countries attribute to the issue of labor standards, core labor standards, health and safety issues.

The RRP of the project, under poverty and social issues states in para 28:

Local communities will benefit from temporary construction jobs, and routine maintenance will employ unskilled and semiskilled workers. The employment and fair treatment of women in construction and maintenance will be encouraged. DGH will ensure that employment opportunities are announced to local communities and will ensure that contractors conform with appropriate labor laws and standards.

Under the sub-head of “Assurances”, the RRP says that “The government has assured ADB that implementation of the project shall conform to all applicable ADB policies, including those concerning anticorruption measures, safeguards, gender, procurement, consulting services, and disbursement as described in detail in the project administration manual and loan documents. The government has agreed with ADB on certain covenants for the project, which are set forth in the loan agreement.” Here under all applicable policies, safeguards, gender are mentioned but labor standards and CLS are specifically left out.

IPSA AND SPRSS

The IPSA of the project flags only employment opportunities and leaves out CLS. As mitigation measures, the IPSA states that ‘provision of fair wages and basic facilities in the labor camp and preventive measures for child labor will be built into the contractor’s bidding document.’ There are no specific requirements mentioned regarding working and living conditions. The IPSA also states that Consultation will take place and Consultation and Participation Plan will be required to be prepared. But, workers and trade unions are not mentioned as stakeholders.

While SPRSS flags employment opportunities as does the IPSA, the SPRSS adds that ‘Specific provisions will be included in bidding documents ensure that civil works contractors comply with applicable core labor standards and labor laws, and incorporate applicable workplace occupational safety norms’. However, the SPRSS also says that Consultation and Participation Plan is not required.

THE LOAN AGREEMENT

The para 6 of the Schedule 5 of the loan agreement states:

The Borrower shall, and shall cause the Project Executing Agency to ensure that all Works contracts under the Project incorporate provisions and budgets to the effect that contractors:

- (a) comply with the Borrower’s applicable labor laws and related international treaty obligations and do not employ child labor;
- (b) provide equal wages to male and female workers for work of equal value;
- (c) recruit local labor for construction work;
- (d) encourage the recruitment of women for the construction work; and
- (e) Works contracts (i) include appropriate clauses requiring contractors to allow their workers to attend planned campaigns on HIV/AIDS and human trafficking prevention during construction and to maintain adequate sanitation and working conditions, and (ii) include clauses for termination by the Borrower in case of any breach of the stated provisions by the contractors.

It is interesting to note that the para mentions international treaty obligations, but chooses not to mention core labor standards; talks of incorporating certain obligations and provisions in the works contract. But, all the related documents including this one are not coherent in clearly mentioning that the obligations related to labor

standards, core labor standards, and national labor laws have to be inserted specifically in bidding documents, loan agreement, works contracts and the agreement with the contractors.

The Social Monitoring Report for the quarter January to April 2015 of the project does not mention even once anything related to workers – labor standards or health and safety.

ANGAT WATER TRANSMISSION IMPROVEMENT PROJECT, PHILIPPINES

This project has been recently approved on 18 March 2016.

The RRP of the project include a para on Assurances which says that ‘the government and the EA have assured ADB that implementation of the project will conform to all applicable ADB policies including those concerning anticorruption measures, safeguards, gender, procurement, consulting services, and disbursement as detailed in the project administration manual and loan documents. The government and the EA have agreed with ADB on certain covenants for the project, which are set forth in the loan agreement and guarantee agreement’. There is no specific mention of labor standards and core labor standards.

IPSA and SPRSS

In the IPSA document, a large number of stakeholders are mentioned but workers and trade unions have been left out. IPSA mentions that there could be an adverse impact on women and the project can widen gender inequality.

IPSA flags of Core Labour Standards and reports that “Due diligence on the compliance for core labor standards will be conducted during the design stage and mitigation measures will be put in place”. In terms of the impact, the IPSA states that “The construction contractor's contract will include core labor

standard. The labor camp will be provided with basic facilities (drinking water and sanitation); no child labor will be used; equal pay for men and women laborer for similar work”.

The SPRSS rates the issues related to unemployment, underemployment, labor retrenchment and core labor standards as low to high. The CLS is flagged as a medium.

The SPRSS also mentions that to ensure local employment capture and decrease risk of beneficiary exclusion, the preferential target of 50% local hire for unskilled jobs will be included

in contracts of civil works contractors, in addition to the clause on adherence to core labor standards.

The IPSA and SPRSS of the project, with regards to labor, have used a much-improved language and a set of words when referring to labor standards and core labor standards. This should be considered as a good practice and should be followed and improved in other projects and across region and countries.

However, how far this translates into concrete obligations and guarantees will be clear once the loan agreement is signed since the PAM does not refer to core labour standards and related obligations at all and the compliance monitoring points do not include labour standards, adherence to core labour standards and national labour laws or health and safety issues.

AMU BUKHARA IRRIGATION SYSTEM REHABILITATION PROJECT, UZBEKISTAN

The sector overview of the project as published in the RRP notes that “Irrigated agriculture is a key economic sector in Uzbekistan, accounting for 90% of agricultural production which employs about 27% of country’s total labor force, and is the main source of livelihood in rural communities. More than 48% of the country’s people live in rural areas and depend on irrigated agriculture for their livelihood.... Improving irrigation and drainage (I&D) is critical to better agriculture productivity and competitiveness, and to sound environmental management.”

The RRP also states that “Although production is declining, cotton remains a major agricultural crop. Adherence to international core labor standards is a concern; the government is cooperating with the International Labour Organization (ILO) to address the situation”.

Again under poverty and social sub-head, the RRP admits that “*There are concerns about core labor standards, particularly during the harvest. ADB is committed to supporting adherence to the core labor standards. Suitable loan covenants have been included to ensure such adherence in relation to project activities, and will be monitored during project implementation. ADB will also closely interact with the government, including through policy dialogue, the ILO, and other institutions on this matter.*”

These concerns acknowledge the Human Rights Watch January 2013 report – The 2012 Cotton Harvest: Forced Labour of Children and Adults - exposing the incidence of forced labor in Uzbek cotton fields and beatings of cotton pickers – the very cotton fields that this ADB funded project

refers to and is undertaken to irrigate these cotton fields.

In a letter to the then ADB President, Takehiko Nakao, dated September 3, 2013, Jessica Evans, senior researcher for Human Rights Watch and Mathew M Fischer-Daly, Coordinator, Cotton Campaign, expressed serious concerns regarding the system of employing forced labour in the Uzbek cotton fields and urged the ADB President and Board of Directors to refrain from approving the Irrigation System Rehabilitation Project. The project was, though, approved by the Board on 25 September 2013 and the loan agreement was signed between the Government of Uzbekistan and ADB on 21 November 2013.

Apart from the above two paras, there was nothing in the RRP to indicate that ADB was concerned about the reports on forced labor and has taken strict mitigation measures in the project design and implementation phase on adherence to CLS, including forced labor with strong monitoring and review activities.

The RRP, under its subhead “Assurances and Conditions”, merely stated that “The government, the MAWR, and the Ministry of Finance have assured ADB that implementation of the project shall conform to all applicable ADB policies including those concerning anticorruption measures, safeguards, gender, procurement, consulting services, and disbursement, as described in detail in the project administration manual and loan documents”, and that the government, the MAWR, and Ministry of Finance have agreed with ADB on certain covenants for the project, which are set forth in the loan agreements.

THE IPSA AND SPRSS

The IPSA for the project was prepared in November 2011. The stakeholders as stated in the IPSA included relevant NGOs amongst others such as local governments, Uzbekistan Communal Services Agency, the PMU, water users associations etc.

The IPSA recommended consultation with stakeholders and collaborative decision making. A Consultation and Participation Plan was also required.

The Initial Social Analysis done for the IPSA does refer to ‘low salary and irregular payment to sector employees’.

IPSA also mentioned that to promote gender equality a gender development plan will be prepared.

Very surprisingly, the IPSA does not flag any of the labor-related issues such as employment opportunities or core labor standards; impact is said to be unknown and mitigation activities are noted as uncertain.

Results from poverty and social analysis as documented in the SPRSS of the project mentions:

- (i) irrigated agriculture accounts for 90% of agricultural production;
- (ii) more than 48% of the country’s people live in rural areas and depend on irrigated agriculture;
- (iii) about 50% of national labor force in rural areas have been employed in agricultural activities; and
- (iv) irrigated agriculture covers 4.3 million hectares (ha) of the country, the improvement of irrigated agriculture is important for poverty reduction.

It also mentions that the project’s primary beneficiaries will be farmers and rural communities.

The SPRSS flags CSO participation in project implementation and in the context of gender and development, envisaged activities with respect to:

- (i) Campaigns and awareness program on gender and development.
- (ii) Women’s participation in decision-making.
- (iii) The inclusion of gender and development issues in project implementation.
- (iv) Monitoring and evaluation of gender indicators in the DMF.

Despite concerns voiced on the incidence of forced labor and violation of CLS, the SPRSS, under Risks in the labor market, has rated the issue of ‘CLS as low, if effectively mitigated’. In the same vein, it also adds that “*The government is committed to upholding core labor standards in cooperation with the International Labour Organization.*”

THE LOAN AGREEMENT AND PAM

The loan agreement does not include Schedule 5 which carries covenant and obligation to adhere to CLS in civil contracts and agreement with the contractor.

Under Gender and Social Dimensions, para 90 the PAM states:

MAWR will ensure that the project monitors the social impacts throughout the implementation financed by the Loan, in consultation with local

governments, local communities, and nongovernment organizations. In this respect, MAWR will ensure that all civil works contractors including turnkey contractors:

- (i) comply with all applicable labor laws and do not employ child labor for construction and maintenance activities, and provide appropriate facilities for children in construction campsites if required;
- (ii) use their best efforts to set employment targets for poor and vulnerable people, particularly women, for all construction and maintenance activities, require contractors to use local unskilled labor;
- (iii) disseminate information at worksites on health safety for those employed during construction;
- (iv) maintain equal pay to men and women for work of equal type;
- (v) provide safe working conditions and separate culturally appropriate facilities for male and female workers; and
- (vi) abstain from child labor. A specific clause shall be included in bidding documents, and compliance shall be strictly monitored during project implementation.

Social Compliance Audit Report, published in May 2013 did not cover due diligence on any aspect covering the issues of labor standards and CLS.

There is no information and data in the project document to suggest that a thorough study was undertaken to understand the labor legislations and standards existing in Uzbekistan and the system of labor enforcement. Also, the information on the incidence of child labor, forced labor and trade union rights to collective bargaining and freedom of association is missing.

TRANSLATING ADB'S COMMITMENT TO CLS IN ITS OPERATIONAL CYCLE: MAJOR ADVOCACY POINTS

PROMOTE, OPERATIONALISE AND IMPLEMENT CLS

Asian Development Bank was the first multilateral development bank in 2001 to commit (a) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards; (b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation and Core Labor Standards and as part of its regular loan reviews,

ADB will monitor that (a) and (b) are complied with.

But since 2001 and the adoption of the Social Protection Strategy (SPS), to many, including the workers' organizations and global trade unions and CSOs monitoring MDBs, the ADB management, during the last fifteen years, has not been able to integrate and include to a full extent the CLS in to its operational framework. This act of omission goes against ADB's strategy of poverty reduction and inclusive growth.

Despite its commitments and reaffirming the importance of ensuring full protection of workers and communities against potential harm or exploitation arising out of the activities it supports and funds. Violations of the rights of workers and trade unions in ADB projects persist. Workers directly employed by ADB contractors and sub-contractors continue to work and live under poor conditions and have very little means to bring their plight to the ADB for appropriate action.

ADB does not have a specific department/desk dedicated to deal with complaints and issues of violations of labor conditions in the projects it finances. The role of the ADB in holding contractors responsible for labor rights violations is likewise undefined and ambiguous. As a result, a particular national government's labor laws are often the only regulations which shape or dictate the contractors' accountability; although, at times, the government is itself the project contractor – effectively having the role of “judge, jury and executioner.” Violations in ADB projects often occur in countries which have little history of fair and swift delivery of justice for cases and hearings on industrial relations.

The Global Union Federations (GUFs) believe that in order for the Asian Development Bank to meet its policy of reducing poverty in Asia through inclusive growth, environmentally sustainable growth

and regional integration, it must commit to actively promoting and implementing the CLS in all ADB activities.

MOVING BEYOND ADB-ILO MOU

In 2002, ADB and ILO signed an MoU to cooperate and strengthen their cooperation in safeguarding the rights of workers and trade unions through promoting decent work and the 1998 Declaration on the Fundamental Principles of Rights at Work Place including the Core Labour Standards.

²⁶Project Administration Manual, August 2013, ADB.
²⁷Labour Desk Handbook, Building and Wood Workers' International, APRO, Kuala Lumpur, May 2011

But beyond initial meetings and workshops and a joint publication, that collaboration really did not take off. Most of the ADB country missions have no collaborative program with the respective ILO offices. ILO specialists are not inducted or invited to be part of project teams to guide the ADB design or implementation team or monitoring and review missions on issues related labor market assessment, protection of workers' rights, health and safety and CLS.

ILO is perhaps the most effective UN body to collaborate with ADB in organizing capacity building and training workshops for the members of the ADB project team. In essence, ADB lacks labor specialists in its rank and file and ILO can plug that gap.

In light of the ADB's renewed commitment to poverty reduction and inclusive growth, ADB should revive its cooperation and collaboration with ILO. ADB should move beyond – from rhetoric to action.

OPERATIONAL MANUAL C3 IS NOT ENOUGH

OM C3 (the old AM 47) is responsible for operationalising SPS and ADB's social protection policy. It is, therefore, also responsible for operationalising labor issues including CLS.

OM C3:

- (i) encourages consultation with and participation by stakeholders (including the government, executing and implementing agencies, clients and/or beneficiaries, people affected by ADB-supported projects); provides them with opportunities to engage in key stages of the country strategy formulation, programming, and project cycles;
- (ii) addresses gender considerations in relevant aspects of ADB operations, including macroeconomic, sector strategy, country strategy formulation, and programming work, and in key stages of the project cycle; and proposes strategies to promote social inclusion and gender equality and to empower women;
- (iii) integrates social analysis in preparing country partnership strategies and regional strategies and programs; identifies potential social issues during project preparation to ensure that the project design maximizes social benefits and avoids or minimizes social risks, particularly for vulnerable and marginalized groups; and
- (iv) ensures that project design and implementation arrangements include actions to enhance benefits and to monitor and evaluate the distribution of the benefits of the

project, with performance targets and indicators for monitoring and evaluating benefits included in the design and monitoring framework of the project performance management system.

As far as SPS is concerned, broadly, this OM is fine, But, if we go by the response of the ADB SPU team dissociating CLS and trade union proposed labour issues from the Safeguard Policy Statement and treating CLS under SPS, then this OM must be revisited and updated where issues related to labour and CLS , workers and trade unions as stakeholders need to be given particular attention in all aspects of ADB activities, programs, and projects. The OM should include phrases commensurate to ADB's commitment to core labor standards in its operational procedures and guidelines.

INTEGRATED SOCIAL SAFEGUARDS OR SEPARATE LABOUR SAFEGUARDS

Which brings us to the issue of whether ADB should increasingly think of adopting labor safeguards as standalone where the relevant OM is currently not covering the CLS and the issue of labor standards or adopt an integrated social safeguards approach where all the safeguards are integrated into a single document as is done by the ADB.

CLS SHOULD BE A CLEAR MANDATE FOR ADB

Within the broad framework of Social Protection, it is evident the place of CLS and labor issues is becoming less clear and defined. CLS is no longer identified as an explicit operational priority and either SPS or OM C3 does not provide clear operational guidance.

ADB, therefore, has to emphasize through a separate set of operational procedures and guidelines a clear mandate in favor of complying with CLS in its activities and operations.

INTEGRATING CLS IN OPERATIONAL DOCUMENTS

Studies indicate that labor issues and CLS are somewhat and partially recognized and integrated within the realm of project concept papers, and various design tools and instruments like the IPSA and SPRSS. But that same level of recognition and integration is absent when we consider the operational documents related to project agreement, loan agreement, and project administration manual, bidding document, civil works contracts, agreement with contractors,

monitoring, review, and evaluation. CLS is not explicitly mentioned in the agreements and bidding documents and both labor issues and CLS are kept out of the purview of monitoring, review and evaluation process. It is thus important to include CLS in the scope of monitoring, review, and evaluation of projects.

ADB should be held responsible for its commitment to and compliance with CLS

It is the ADB which has clearly stated its commitment to comply with CLS in ADB operations. But, shifting the direct responsibility of adhering to and implementation of the CLS to the EA and the borrower does not absolve ADB for any violation of CLS. ADB has to increasingly own responsibility to labor violations and non-implementation of CLS to put in turn enough pressure on the EA and the borrower to implement CLS or face consequences for labor violations.

ADB, EA, and the borrower seemed to be quite lax in their response to labor violations and non-implementation of CLS since they are not considered as project risks compared to other safeguards like environment, displacement, and indigenous peoples' rights. The CLS never figures in ADB's risk assessment and management matrix nor is it important in the context of result framework matrix.

LACK OF SPECIALIST AND STAFFING PATTERN

IED findings indicate gradual depletion of staff expertise on social protection as well as the lack of incentives for staff to engage in social protection issues. And within that, one can imagine the lack of specialization to deal with specific labor issues and CLS. Various documents indicate that there are two sets of specialists or consultants engaged by the ADB. One is referred to as safeguard specialist who deals with the issues within the Safeguard Policy Statement and further segmented into environment, resettlement and indigenous peoples issues, the other ones are referred to as gender and social specialists or social protection specialists.

The project design and operational documents are mainly prepared by consultants whose reports are reviewed by these specialists at their desks. The IED is also correct when it says that ADB's social protection programs have been particularly successful when staff is engaged in the field.

If inducting enough specialists become a financial burden then ADB can always seek ILO's collaboration in this regard.

Review and evaluate ADB's compliance with CLS and consolidate various policies and guidelines into a coherent labor framework

Labour issues and CLS have so far being left out of ADB's sector evaluation, especially pertaining to the infrastructure projects. It's high time that after 15 years, ADB should embark on a review and evaluation of its compliance with CLS and other labor standards. Especially when it is being kept out of the purview of IED's special evaluation study of the Social Protection Strategy. It is also not correct for ADB to come out with a Social Protection Operational Plan (2014) without such a review and evaluation.

Such a review and evaluation should be followed up with strengthening the compliance and implementation of CLS through preparing a labor framework consolidating with all the relevant policies and strategies. A new operational guideline should be introduced to mandate Labour Impact Assessment and translate the otherwise excellent guidelines incorporated into ADB published Handbook on Poverty and Social Analysis, Social Protection, Labour Issues and ADB-ILO published Handbook on Core Labour Standards into operational guidelines.

THE MANDATE IS TO COMPLY WITH INTERNATIONAL LABOUR STANDARDS AND CLS

Where the country safeguard systems do not conform to internationally agreed labor standards and CLS, and national labor legislations are inadequate to protect workers rights, ADB should respect upward harmonization of labor standards and continue to commit itself to internationally recognized CLS.

WORKERS AND TRADE UNIONS AS STAKEHOLDERS AT PROJECT LEVEL

ADB's SPS considers a broad range of stakeholders from the project beneficiaries and affected to women and vulnerable groups to CSOs, EAs, PMU and other government officials. Such a broad range submerges and subsumes the distinct identities of workers and trade unions as significant stakeholders at the project level and the need to consult them at every stage of the project cycle and ensure their participation in the decision-making process. This also entails making the consultants, EAs, PMU members aware of the significance of

²⁸ Special Evaluation Study, Asian Development Bank Social Protection Strategy 2001, Independent Evaluation Department, ADB, Manila, October 2012

ADB's commitment to CLS and the importance of its implementation.

BOTH PUBLIC COMMUNICATION POLICY AND ACCOUNTABILITY MECHANISM OF ADB SHOULD BE MADE COHERENT TO COMPLY WITH CLS

ADB's PCP discloses IPSA of a project only after the RRP is submitted to the Board for approval. The RRP includes SPRSS as a core appendix. SPRSS is only relevant and its suggested actions and mitigation measures can only be verified if one has access to IPSA. Therefore, it is important that IPSA is disclosed before or along with the disclosure of RRP. Similarly, the loan agreement, bidding documents, contractor's agreement are important operational documents relevant to the implementation of CLS. For private sector projects loan agreements and for all other projects bidding documents and contractor's agreement are not liable to be disclosed as per the exemption clauses in the PCP-related to business information. In absence of such disclosure, it is difficult to verify externally whether CLS clauses and related covenants are indeed part of these documents or not.

Filing a complaint under AM on noncompliance of labor issue and CLS is rare and perhaps not a single complaint has been filed till date. ADB needs to find out why that has happened. The criteria and eligibility for filing such a complaint are perhaps

difficult with the existing realm of AM. One is that the workers on contract and migrant workers are not aware of such a mechanism; second is that even if they are aware of they will be not comfortable to file such a complaint being afraid of losing their job; thirdly, both migrant and contract workers do not work at the same site for a long period of time, they move out to different sites often with different contractors. Therefore, they will be difficult to trace once the fact-finding starts and compliance team makes site visits or want to meet them.

The trade unions and their members cannot file complaints on behalf of such workers as they will be difficult to trace after some time. The employees of the EA or the organization taking up the project will be afraid to file any complaint to avoid victimization, even if they are members of trade unions.

In these circumstances, ADB's AM team has to find out other ways to confirm the criteria and eligibility of the complaint and the complainant's and perhaps depend on complaints filed with and reports of the local or national labor enforcement machinery. Also, trade unions representing such workers should be allowed to file the complaint on behalf of the workers and employees with documentary evidence.

Lastly, borrowing the words of ADB's IED, there is an immediate need to identify CLS and compliance with CLS as the important component of its corporate strategy to fulfill its long-term strategy of poverty reduction and promoting inclusive growth.

CONCLUSION

Asian Development Bank was the first multilateral development bank in 2001 to commit that in the design, and formulation of its loans, and implementation of its projects, ADB will comply with the internationally recognized core labor standards. But, to many, including the workers' organizations and global trade unions and CSOs monitoring MDBs, the ADB management, during the last fifteen years, has not been able to integrate and include to a full extent the CLS into its operational framework. Violations of the rights of workers and trade unions in ADB projects persist. Workers directly employed by ADB contractors and sub-contractors continue to work and live under poor conditions and have very little means to bring their plight to the ADB for appropriate action. This act of omission goes against ADB's strategy of poverty reduction and inclusive growth.

In ADB funded projects, especially for the infrastructure projects, workers are first and direct beneficiaries in terms of employment generation, decent wages, gender equality, decent working and living conditions and reduction of poverty. But, workers issues are relegated under Other Social Issues in operational terms and treated differently from other safeguard issues like the environment, resettlement, and indigenous rights. Is it because workers' issues and core labor standards are not considered potential risks enough for the non-implementation of projects or projects getting delayed? The absence of CLS in Risk Assessment and Risk Management matrix and that of Results Framework surely point out to this significant aspect.

Through the advocacy approach paper, we have tried to point out where the problem lies and what more is needed on the part of the ADB management to translate its commitment to the compliance to CLS and labor issues to a regime of full compliance.

On the eve of 50 years of its establishment, ADB should come out clear, be transparent, commit to due diligence in upholding the rights of the workers and fulfill its commitments to fully implement core labor standards in its operations. Noncompliance with core labor standards stands between ADB's long-term strategy of poverty reduction and inclusive growth and achieving that objective.



Holdinz ADB accountable since 1992

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