

## ***Trade Union Technical Submission to the IFC's Sustainability Framework Review***

*Submitted by the ITUC/ Global Unions Washington Office on behalf of the Building and Wood Workers' International (BWI), Education International, IndustriALL, the International Trade Union Confederation, the International Transport Workers' Federation, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (IUF), UNI Global Union*

5 November 2025

### *Introduction*

The International Trade Union Confederation (ITUC) is a confederation of trade union national centers representing nearly 200 million workers in 190 countries that promotes and defends workers' rights and interests through international cooperation between trade unions, global campaigning and advocacy within the major global institutions.<sup>1</sup>

The global union federations are made up of unions in a particular sector of the economy. Many of our affiliated unions represent or have represented workers on IFC projects, whether in the garment, industrial, hospitality, construction, or education sectors. Affiliates who have sought to represent workers using the legal mechanisms prescribed in their national labor law have encountered significant obstacles - refusal to meet or engage with the affiliate, retaliation against union activists, inadequate engagement with existing unions, and so forth - and this despite clients' requirement to adhere to national law and the Performance Standards. We believe a further strengthening of the Performance Standards will go a long way toward achieving development impact and improved respect for workers' rights in project countries.

Our affiliate unions provide invaluable input and information on labor rights in their sectors and within their national contexts. The ITUC and global union federations were instrumental in advocating for the creation of the Performance Standards, and have

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<sup>1</sup> <https://www.ituc-csi.org/>

subsequently informed their evolution through constructive engagement with the IFC.<sup>2</sup> Our organizations were also involved in the 2012 Performance Standard revision process, which introduced important improvements. We welcome the opportunity to once again submit recommendations for the current review of the IFC's Sustainability Framework.

Over the last decade, our organizations have published multiple reports and articles, and submitted complaints - whether through Compliance Advisor Ombudsman (CAO) or grievance mechanisms - to the IFC over the shortcomings of Performance Standard 2 in addressing workers' rights violations.<sup>3</sup>

In 2024 the ITUC published a report that considered successes and failures in the implementation of the IFC's labor safeguards in the course of their application, with a focus on three emblematic cases in different sectors: Bujagali Dam, Avianca, and the Sheraton Grand Conakry.<sup>4</sup>

Though our engagement with the IFC has covered a fraction of IFC projects worldwide, wherever we have looked, we have identified violations; our engagement has repeatedly demonstrated that violations of workers' fundamental rights persist and are

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<sup>2</sup> The ITUC's Washington Office Director meets regularly with IFC representatives in compliance and risk functions.

<sup>3</sup> See e.g. *Office of the Compliance Advisor Ombudsman (CAO) for the International Finance Corporation (IFC), Compliance Investigation Report Regarding Workers' Complaint about IFC's Hotel Investment in Palma Guinée S.A., Guinea, IFC Project No. 32408* (June 28, 2024), <https://www.cao-ombudsman.org/sites/default/files/downloads/CAO-AppraisalReport-Palma-Guinee-Guinea-June-2024pdf.pdf>; CAO, *Compliance Appraisal of Complaint Regarding IFC's Investment in Karot Power Company Ltd. (KPCL), Pakistan, IFC Projects Nos. 36008 and 34062* (December 2024) <https://www.cao-ombudsman.org/sites/default/files/downloads/CAO-ComplianceAppraisalReport-PakistanKarot04-Dec2024-ENG.pdf>; Int'l Union of Food, Agric., Hotel, Rest., Catering, Tobacco & Allied Workers' Ass'ns (IUF) & Glob. Labor Just.-Int'l Labor Rts. F. (GLJ-ILRF), *Hotel Workers' Rights in Development Finance: Realizing Performance Standard 2* (2023), <https://accountabledevelopmentfinance.iuf.org/media/uploads/2024/10/Hotel-Workers-Rights-in-Development-Finance.pdf> (In February 2023, the IUF published a report with GLJ-ILRF on the failures of the IFC to enforce the due diligence and labor rights standards required of its clients and outlines a proposed "Compliance Accountability Policy" for IFC clients); Int'l Trade Union Confed. (ITUC), *ITUC Report 13* (Nov. 2011), [https://www.ituc-csi.org/IMG/pdf/Labour\\_StandardsEN\\_2011\\_web.pdf](https://www.ituc-csi.org/IMG/pdf/Labour_StandardsEN_2011_web.pdf).

<sup>4</sup> International Trade Union Confederation, *The IFC at a Crossroads: Labour Rights for Development Impact* (2024) [https://www.ituc-csi.org/IMG/pdf/en\\_ifc\\_safeguards\\_report\\_v3.pdf?41781/7ffd08e9f3483b61b4fb76f9fac43fb976f1cac87a66456ef4eb6f8cd2761d0](https://www.ituc-csi.org/IMG/pdf/en_ifc_safeguards_report_v3.pdf?41781/7ffd08e9f3483b61b4fb76f9fac43fb976f1cac87a66456ef4eb6f8cd2761d0).

ongoing. We believe that strengthening Performance Standard 2 (PS2) can go a long way toward protecting workers' rights on IFC projects.

This submission is divided into five parts:

- 1) Recommendations on PS1, Page 4
- 2) Recommendations on PS2, Page 12
- 3) Recommendations on the Access to Information Policy, Page 35
- 4) Recommendation for IFC Exclusion List, Page 37
- 5) Annex: European Bank for Reconstruction and Development's Environmental and Social Requirement 4, Page 38

*A note on formatting*

Throughout this document we provide a brief explanation of the issue we seek to address followed by the section from the performance standard that touches upon the issue. All writing in blue italics is original IFC language, all edits in red and underlined are proposed changes, or new language being proposed. Where we propose striking out current IFC language, we have left it in blue and struck through. Where we have proposed adoptions of other standards, such as those from the World Bank or the European Bank for Reconstruction and Development, the new paragraph is in red and underlined as proposed new text with our suggestions additionally in bold.

## ***Part I - Recommendations on Performance Standard I***

In this section we propose changes to better align the Performance Standards with international law, due diligence guidelines, and ILO standards.<sup>5</sup> A fundamental gap in PS1 is the treatment of stakeholder engagement as a discrete, phase-limited activity rather than as a continuous, iterative process that must be embedded throughout the entire project lifecycle. International human rights standards require meaningful participation of affected rights-holders in all stages of identifying, preventing, mitigating, and remediating adverse impacts.

We recommend edits to PS1 to align with due diligence expectations under the UN Guiding Principles for Business and Human Rights (UNGPs), the OECD *Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD *Guidelines*) and the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Recognizing that the adoption of the UN Guiding Principles in 2011 came immediately before the 2012 IFC Performance Standards, the IFC PS1 is now markedly out of step with the consolidated consensus among business, governments, and rights-holders about the accepted framework for addressing impacts from business activities like those IFC finances. IFC PS1 should align with these authoritative standards.

In addition, we recommend a concrete model for operationalizing these principles through an enhanced framework for early engagement with worker representatives in projects that present high risk under PS2. By requiring negotiated agreements with legitimate worker representatives before financing proceeds, the proposal shifts IFC

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<sup>5</sup> See, e.g., ILO, *Freedom of Association and Protection of the Right to Organise Convention*, C.87 (1948); ILO, *Right to Organise and Collective Bargaining Convention*, C.98 (1949); ILO, *Occupational Safety and Health Convention*, C.155 (1981); ILO, *Migrant Workers Recommendation*, R.197 (1975); ILO, *Human Rights Due Diligence in support of Decent Work (HRDD4DW)* (2024), <https://www.ilo.org/projects-and-partnerships/projects/human-rights-due-diligence-support-decent-work-hrdd4dw>; Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence, 2024 O.J. (L 176) 1 (EU); Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (Fr.); Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (Lieferkettengesetz) (Ger.).

from reactive remediation to proactive prevention, fulfilling the core objectives of human rights due diligence.

The recommendations below propose specific textual amendments to strengthen PS1's alignment with international frameworks, transforming stakeholder consultation from a procedural requirement into genuine partnership with affected communities and workers in managing human rights risks and impacts. These changes are essential not only for compliance with international standards but also for mitigating operational, reputational, legal, and financial risks inherent in development finance. We recommend the following amendments:

### *Introduction*

**Paragraph 3** - While PS1 Paragraph 3 acknowledges human rights, it lacks the comprehensive human rights due diligence framework required by the UNGPs and OECD *Guidelines*. We recommend replacing the current text in Paragraph 3 with the following:

3. Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause, contribute to, or be directly linked to through business relationships. Each of the Performance Standards has elements related to human rights dimensions. Clients must conduct human rights due diligence as an integral part of their Environmental and Social Management System, including: (a) identifying and assessing actual and potential human rights impacts; (b) integrating findings and taking appropriate action; (c) tracking responses; (d) communicating how impacts are addressed; and (e) ensuring access to remedy.

### *Environmental and Social Assessment and Management System*

**Paragraph 5** — PS1's consultation requirements (Paragraphs 30-31) are limited to specific phases and fall short of the UNGPs and OECD *Guidelines* expectations for continuous, meaningful engagement with potentially affected rights-holders

throughout the entire project lifecycle. We recommend the following amendments to Paragraph 5 to add stakeholder engagement as a core, continuous element:

*5. The ESMS will incorporate the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) continuous meaningful stakeholder engagement throughout all project phases; (vii) monitoring and review. Stakeholder engagement must be integrated into each element of the ESMS, not treated as a separate or one-time activity."*

**New Paragraph** - Additionally, PS1 does not provide a process for potential IFC clients in sectors with high-risk under PS2 to mitigate the risk in a proposed ESMS prior to IFC Board approval of financing. Given well-documented risks to PS2 compliance in certain sectors and the expectation under the UNGPs and OECD *Guidelines* of meaningful consultation with potentially affected stakeholders and engagement with workers' representatives on preventing adverse impacts, a framework for early engagement prior to board approval strengthens an ESMS to improve development outcomes. We recommend an additional paragraph following Paragraph 5 that states:

When IFC determines that a project with high risk under PS2 is likely to be disclosed and presented for Board approval, IFC will promptly notify the ITUC or global trade union federation (GUF) representing workers in the project sector. The ITUC or GUF will notify independent unions representing workers in the relevant sector and country and the client will engage them in the development of an ESMS. If no such unions exist, the relevant GUF or ITUC will be engaged in the same manner as worker representatives. Risk mitigation will only be considered to have been completed if the worker representatives and potential client achieve agreement on specific steps to implement IFC safeguards throughout project duration.

## *Policy*

**Paragraph 6** — PS1 requires an environmental and social policy but does not mandate the specific human rights policy commitment required by UNGP Principle 16 and the OECD *Guidelines*. We recommend replacing the current paragraph with the following:

6. The policy must include an explicit commitment to respect internationally recognized human rights as defined in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. This commitment must be: (i) approved at the most senior level; (ii) informed by relevant expertise; (iii) stipulate human rights expectations for personnel, business partners, and parties directly linked to operations; (iv) publicly available; and (v) embedded throughout operational policies and procedures.

## *Identification of Risks and Impacts*

**Paragraph 8** — PS1's scope of assessment is narrower than the UNGPs and OECD *Guidelines* requirements for assessing impacts across all business relationships. We recommend revising the bullet points in Paragraph 8 to include:

- Adverse impacts that may be directly linked to project operations, products, or services through business relationships, including contractors, suppliers, and joint venture partners
- Human rights impacts across the entire value chain where the client has leverage to influence practices.

**Paragraph 10** — PS1 should align with the UNGPs regarding supply chains and be amended to include the following:

10. The client will conduct risk-based due diligence on supply chains and key business relationships to identify actual and potential adverse human rights impacts. Where impacts are identified, the client will: (a) use leverage to prevent

or mitigate impacts; (b) consider enhancing leverage through collaboration; (c) where impacts persist, consider responsible disengagement; and (d) provide or cooperate in remediation where the client has contributed to impacts.

**Paragraph 11** — PS1 does not require enhanced due diligence in conflict-affected or high-risk areas as specified in UNGPs, the OECD's *Guidelines*, and ILO Recommendation 205. We recommend adding the following to Paragraph 11:

11. In conflict-affected areas, areas of weak governance, or contexts with systematic human rights violations, the client will conduct enhanced human rights due diligence including: (i) conflict analysis and sensitivity assessment; (ii) heightened scrutiny of security arrangements; (iii) assessment of complicity risks; (iv) enhanced stakeholder engagement with particular attention to protection risks; and (v) consideration of whether responsible business is possible in the context.

**Paragraph 12** — PS1 does not provide for stakeholder engagement consistent with current business and human rights frameworks. We recommend adding a section after Paragraph 12 that describes meaningful two-way engagement consistent with the UNGPs and provides guidance to clients about appropriate conduct. We recommend adding the following:

12. The identification and assessment of risks and impacts must actively involve potentially affected stakeholders through participatory assessment methods (such as joint risk assessments and stakeholder identification of impacts and indicators for their measurement) and stakeholder validation of findings (requiring draft assessment findings be shared with potentially affected workers and communities for validation, worker and community feedback is be documented and responded to, disagreements about impacts is transparently documented).

## Consultation

**Paragraph 30** — Throughout this paragraph, we recommend replacing "consultation" with "meaningful engagement" and expanding the scope of engagement to be consistent with the UNGPs and OECD *Guidelines*. This includes defining meaningful stakeholder engagement as a two-way and ongoing process throughout the project lifecycle, including:

*When Affected Communities are subject to identified risks and adverse impacts from a project, the client will undertake a process of ~~consultation~~ meaningful engagement in a manner that provides the Affected Communities with opportunities to express their views on project risks, impacts and mitigation measures, and allows the client to consider and respond to them. The extent and degree of engagement required by the ~~consultation~~ meaningful engagement process should be commensurate with the project's risks and adverse impacts and with the concerns raised by the Affected Communities. Effective ~~consultation~~ meaningful engagement is a two-way process that should: (i) begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise; (ii) be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to Affected Communities; (iii) focus inclusive engagement on those directly affected as opposed to those not directly affected; (iv) be free of external manipulation, interference, coercion, or intimidation; (v) enable meaningful participation, where applicable; and (vi) be documented. The client will tailor its ~~consultation~~ process to the language preferences of the Affected Communities, their decision-making process, and the needs of disadvantaged or vulnerable groups. If clients have already engaged in such a process, they will provide adequate documented evidence of such engagement.*

The meaningful engagement process should take place across all phases as follows:

### **During Assessment Phase:**

- Early engagement within the ESMS to understand stakeholder concerns
- Participatory impact assessments involving affected workers communities in identifying potential impacts
- Joint fact-finding missions with worker and community representatives;

### **During Planning and Design:**

- Co-development of mitigation measures with affected stakeholders
- Collaborative design of monitoring indicators;

### **During Implementation:**

- Regular dialogue forums and feedback mechanisms
- Participatory monitoring with worker and community involvement
- Adaptive management based on stakeholder input;

### **During Operations:**

- Regular review meetings on performance and impacts
- Joint problem-solving when issues arise.

### *Grievance Mechanism for Affected Communities*

**Paragraph 35** — PS1 does not make reference to the effectiveness criteria from UNGP Principle 31, and the paragraph should be amended to require any grievance mechanism to comply with those requirements.

**New paragraph** — PS1 lacks provisions to protect stakeholders, particularly human rights defenders, from reprisals for raising concerns. We propose adding a new paragraph to prevent retaliation:

The client must refrain from and take steps to prevent reprisals against any persons or groups that investigate, raise concerns about, or oppose project activities based on potential adverse impacts. This includes: (a) prohibiting

intimidation, threats, or retaliation by security forces, contractors, or employers; (b) creating safe channels for raising concerns; (c) investigating alleged reprisals promptly; and (d) providing effective remedy when reprisals occur.

## **Part II - Recommendations on Performance Standard II**

The proposals below will bring PS2 into line with established international due diligence standards and the leading edge of multilateral development bank standards. These proposals address among other things employer obligations to workers, improved protections around gender-based violence and harassment after the adoption of ILO Convention 190, trade union rights and the right to robust freedom of association, and protections for supply chain workers and national and international migrant workers.

**A new, standalone standard for OSH** – In the IFC’s 2012 Performance Standards, Occupational Safety and Health (OSH) issues are covered only by a small paragraph (Paragraph 23), but as multilateral banks have subsequently released their own policies, some have given occupational safety and health its own standard (See the EBRD’s PR4 and now ESR4, and the ADB’s ESS4). This is particularly important considering the ILO’s decision in 2022 to include the right to “a safe and healthy working environment” among its fundamental principles and rights at work.”<sup>6</sup>

The IFC should adopt a robust Occupational Safety and Health Standard, and we suggest using the EBRD’s newly adopted Environmental and Social Requirement 4 as a model because of the EBRD’s historic leadership on OSH issues.<sup>7</sup> We have included the text of ESR4 as an annex, but there are a few issues that require special attention outlined below.

**New Paragraph** – An OSH Performance Standard should provide for a mandatory health and safety committee with balanced representation elected by the workforce, as well as workers’ safety representatives elected by the workforce. We propose that the

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<sup>6</sup> International Labour Organization, *A Safe and Healthy Working Environment as a Fundamental Principle and Right at Work*, 110th Session, Geneva (June 2022), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed\\_dialogue/%40lab\\_admin/documents/publication/wcms\\_850673.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_dialogue/%40lab_admin/documents/publication/wcms_850673.pdf).

<sup>7</sup> See European Bank for Reconstruction and Development, *Environmental and Social Policy*, Economic and Social Requirement 4: Health, Safety and security <https://www.ebrd.com/home/news-and-events/publications/institutional-documents/environmental-and-social-policy-2024.html> .

IFC adopt the EBRD's newest language on the topic (Environmental and Social Requirement 4, Paragraph 16), but with a proposed addition in bold:

The client will establish a workplace OSH committee with a balanced representation of management and elected workplace representatives that is diverse and inclusive and does not undermine any existing OSH committees or any existing collective bargaining agreements. The OSH committee will communicate, coordinate and cooperate on OSH matters in the workplace and this will include, but not be limited to, accident investigation, risk assessment, development of safe systems of work and selection of work equipment to manage OSH risks in accordance with the hierarchy of risk controls. **If an elected committee or trade union already exists, this should not undermine their work or any existing collective bargaining agreement.**

**New Paragraph** - Workers must be able to refuse work that presents an imminent or serious risk to health. This protection intersects with PS2 with respect to retaliation and non-discrimination. We propose that the IFC adopt World Bank's ESS2 Paragraph 27, which has a strong approach to this issue, though we propose changing "negative action" to "undue consequences" because even well-intentioned actions such as a job transfer could result in deterioration in pay, shifts, or other working conditions. Our proposal aligns more closely with ILO Convention 155, Article 13. The suggested paragraph includes the change to ESS2 Paragraph 27 with our addition in bold:

Workplace processes will be put in place for project workers to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health. Project workers who remove themselves from such situations will not be required to return to work until necessary remedial action to correct the situation has been taken. Project workers will not be retaliated against or otherwise subject to reprisal or ~~negative action~~ **undue consequences** for such reporting or removal.

**New Paragraph** - Overtime and excessive hours present not only a safety hazard but also a forced labour issue and should be regulated by the performance standard. To that end we suggest incorporating the following paragraph into an OSH performance standard:

At any time overtime work is required, it needs to be limited, voluntary, officially agreed to by workers with written confirmation, and not exceed national standards. Workers need to be provided adequate notice, and excessive overtime, including consistent overtime scheduling, should never be permitted.

**Biological Hazards** – Particularly in light of the ILO’s adoption of a Convention on Biological Hazards this year, the IFC should go beyond the EBRD’s text and ensure the provision of appropriate and adequate preventive measures to address biological hazards in the working environment, including the facilitation of vaccination, immunization, chemoprophylaxis and testing to all workers free of charge and on a voluntary basis.

### *Objectives*

The IFC has worked closely and productively with the International Labor Organization in investigating labor rights violations and implementing advisory programs to train clients on ILO standards.<sup>8</sup> In light of these developments, we propose updating the language in the “Objectives” and “Scope” sections at the opening of PS2 in order to better align with international standards and practice.

While the “Introduction” to PS2 makes reference to workers’ “fundamental rights” these are not specified in the “Objectives”. In their standards both the Inter-American Development Bank (IDB) and Asian Development Bank (ADB) specifically reference

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<sup>8</sup> See, e.g., Better Work, *The ILO-IFC Partnership*, Better Work, <https://betterwork.org/the-ilo-ifc-partnership/>.

freedom of association.<sup>9</sup> We propose the IFC adopt similar language ensuring this fundamental right is contained in the “Objectives” section:

- To support the rights of freedom of association and collective bargaining of project workers.
- To align requirements with the ILO’s Fundamental Principles and Rights at Work

**Paragraph 2** - In addition, the following portion of Paragraph 2 can be strengthened by asserting the centrality of ILO conventions in the shaping of the Performance Standards:

2. The requirements set out in this Performance Standard ~~have been in part~~ promote and respect ~~guided by~~ a number of international conventions and instruments, including those of the International Labour Organization (ILO) and the United Nations (UN).

#### *Scope of Application*

**Paragraphs 3-6** - ILO standards and human rights due diligence norms recognize that workers are increasingly employed using non-standard forms of employment and that many of these alternative forms of employment lead to greater risks of exploitation of workers and labor rights violations.<sup>10</sup> To reflect this reality we recommend updating the scope of application text in Paragraphs 3-6 as follows:

4. The scope of application of this Performance Standard depends on the type of employment relationship between the client and the worker. It applies to workers who are directly engaged by the client (direct workers), and those workers who are engaged through third parties to perform work related to ~~core business~~

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<sup>9</sup> Inter-American Dev. Bank, *Guidelines for the Environmental and Social Policy Framework* 57-58 (Sept. 2021), <https://www.iadb.org/en/who-we-are/topics/environmental-and-social-solutions/environmental-and-social-policy-framework>; Asian Dev. Bank, *Environmental and Social Framework*, at 46 (Dec. 2024), <http://dx.doi.org/10.22617/SPR240632-2>.

<sup>10</sup> See International Labour Organization, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (2016), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_534326.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_534326.pdf).

~~processes of the project for a substantial duration (contracted workers),~~ as well as workers engaged by the client's primary suppliers (supply chain workers)

#### Direct Workers and Contracted Workers

5. With respect to direct workers and contracted workers, the client will apply the requirements of paragraphs 8-23 of this Performance Standard

**New Paragraph** - New technologies and corporate relationships have dramatically increased the dangers of disguised employment—or alternative employment relationships designed to leave workers outside of the protection of labour laws and of the Performance Standards. To combat these attempts to undermine workers' protections we propose that the IFC incorporate language into the Scope of Application section of the Performance Standards addressing disguised employment from the Inter-American Development Bank's Economic and Social Policy Framework (Paragraph 2):

The Borrower and third parties shall refrain from entering into disguised employment relationships, such as (i) contractual arrangements that hide the true legal status of the employment relationship and/or (ii) contractual arrangements that have the effect of depriving workers of the protection they are due.

**New paragraph** - When the IFC has included workers' organizations in discussions at the early stages of a project proposal or approval and throughout the cycle of a project, both working conditions and development impact have improved.<sup>11</sup> We propose the IFC adopt language based on the African Development Bank's ISS and the World Bank's Guidance Note for ESS2 in defining the scope of application and groups consulted by adding an additional paragraph within the section on the Scope of Application<sup>12</sup>:

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<sup>11</sup> See, e.g., Int'l Trade Union Confederation, *The IFC at a Crossroads: Labour Rights for Development Impact* 8-11 (Dec. 2024) (discussing the ITUC-IFC collaboration on the Sheraton Grand Conakry campaign and efforts to raise wages across the hotel sector in Guinea), [https://www.ituc-csi.org/IMG/pdf/en\\_ifc\\_safeguards\\_report\\_v3.pdf](https://www.ituc-csi.org/IMG/pdf/en_ifc_safeguards_report_v3.pdf); But see also IUF, *Guinea: Hotel Workers in Conakry Continue to Fight and Build the Movement*, <https://www.iuf.org/news/guinea-hotel-workers-in-conakry-continue-to-fight-and-build-the-movement/> (noting that collaborative efforts still need to be made to realize successful wage increase implementation).

<sup>12</sup> African Development Bank OS2, Note 107; World Bank Guidance Note for Borrowers, ESS2: Labor and Working Conditions.

In conducting the environmental and social assessment the views of representative workers' and employers' organizations shall be sought.

**New Paragraph** - Furthermore, we propose IFC adopt robust language such as has been incorporated in the European Bank for Reconstruction and Development's (EBRD) "General Requirements" of ESR2, ensuring the highest standard of labor compliance on its projects.<sup>13</sup> We recommend adding an additional paragraph within the scope of application that states:

Projects are required to comply with whichever of the following provides the greater degree of protection:

(i) national labour, employment and social security law, (ii) the principles and standards embodied in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (1998 as amended in 2022), and (iii) this Performance Standard.

**New Paragraph** - The Performance Standards use national law as the basis or standard for assessing workers' rights violations. Unfortunately, as outlined in numerous complaints, national law in many project countries is inadequate, and in some cases inferior to provisions contained in the performance standards.<sup>14</sup>

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<sup>13</sup> Eur. Bank for Reconstr. & Dev., *Environmental and Social Requirement 2: Labour and Working Conditions* 39 (2024) ("Projects are required to comply with whichever of the following provides the greater degree of protection: (i) national labour, employment and social security law, (ii) the principles and standards embodied in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (1998 as amended in 2022) and (iii) this ESR"), [https://www.ebrd.com/content/dam/ebd\\_dxp/assets/pdfs/environment---sustainability/environmental-and-social-policy-esp/esp-2024/EBRD-Environmental-and-Social-Policy-2024-ESR-2.pdf](https://www.ebrd.com/content/dam/ebd_dxp/assets/pdfs/environment---sustainability/environmental-and-social-policy-esp/esp-2024/EBRD-Environmental-and-Social-Policy-2024-ESR-2.pdf).

<sup>14</sup> See, e.g., Office of the Compliance Advisor Ombudsman for the International Finance Corporation (IFC), *Compliance Investigation: IFC Investment in Bilt Paper B.V. (Project #34602), Malaysia Complaint 02*, at 15 (Apr. 13, 2018) ("In principle, Malaysia's labor laws provide equality of treatment for registered migrants with nationals in terms of wages, work hours, holidays, terminations, non-discrimination, freedom of association, access to complaint mechanisms and other protections. In practice, however, labour laws are often ineffectively enforced for migrant workers.") (quoting ILO, *Review of Labour Migration Policy in Malaysia* 5 (2016), <https://goo.gl/gEAZVU>) <https://www.cao-ombudsman.org/sites/default/files/downloads/BiltInvestigationReportApril132018.pdf>; Office of the Compliance Advisor Ombudsman for the IFC, *Compliance Investigation Report Regarding Workers' Complaint about IFC's Hotel Investment in Palma Guinée S.A., Guinea (Project #32408)*, at 3 (June 2024) ("In the broader context, worker organizations in Guinea have been described as not operating independently of government or political party interference, and businesses have not always respect[ed] freedom of association and the right to collective bargaining. In general, in relation to the hospitality

We propose a new overarching paragraph relating to the scope of application of PS2, in line with robust language adopted by other development banks, such as the African Development Bank<sup>15</sup> and more in line with international standards,<sup>16</sup> which would establish the performance standard as the basis for workers' rights on IFC projects.

The provisions of national law are minimum requirements for compliance by the Borrower: they shall not be construed as a ceiling on project workers' terms and conditions of employment, including those specified in the labor-management procedures. The requirements, whether herein or in national law, that are the most protective of workers shall apply unless the application of requirements herein would violate national law.

### *Human Resources Policies and Procedures*

**Paragraph 9** - We have identified a number of cases where workers said they were employed without written contracts or are employed under illegal contracts.<sup>17</sup> Workers who do not have contracts have no rights and are often summarily terminated or never called back to work. Workers on illegal contracts -

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sector, the ILO has noted concerns regarding decent work deficits, such as the prevalence of informality, variable and long working hours, low wages, limited access to social protection, gender-based discrimination, poor occupational health and safety practices and weak regulation, enforcement, and organization of labor”), <https://www.cao-ombudsman.org/sites/default/files/downloads/CAO-AppraisalReport-Palma-Guinee-Guinea-June-2024pdf.pdf>.

<sup>15</sup> See African Development Bank Group, *Integrated Safeguards System* 46 n.114 (2023) (“...The provisions of national law are the minimum requirements for compliance by the Borrower: they shall not be construed as a ceiling on project workers' terms and conditions of employment, including those specified in the LMPs. The requirements, whether herein or in national law, that are the most protective of workers shall apply unless the application of requirements herein would violate national law”), [https://www.mfiseash.org/sites/default/files/2024-03/final\\_-\\_updated\\_integrated\\_safeguards\\_system\\_en.pdf](https://www.mfiseash.org/sites/default/files/2024-03/final_-_updated_integrated_safeguards_system_en.pdf).

<sup>16</sup> See, e.g., Eur. Bank for Reconstr. & Dev., *Environmental and Social Requirement 2: Labour and Working Conditions* 39 (2024), *supra* note 13.

<sup>17</sup> See, e.g., Office of the Compliance Advisor Ombudsman for the IFC, *CAO Assessment Report: Bidco-04 (Thika, Kenya)*, at 2 (Feb. 2018) (“The Complainants also allege that, during their employment with the Company, they were subjected to poor working conditions and prevented from joining a trade union. They worked very long hours in contravention of the labor laws. Although they were called ‘casual workers’, they worked every day, just like permanent workers, but without employment contracts and benefits,”), <https://www.cao-ombudsman.org/sites/default/files/downloads/CAOBidco4AssessmentReport-February2018.pdf>.

such as day laborer contracts when they are in fact working full time and in an ongoing manner, or contracts that are temporary in nature even if they've worked for the client for several years - cannot access their fundamental rights or advocate for improvements for fear of reprisals.<sup>18</sup> Additionally, where workers are not paid their wages, are not paid for all hours worked, or are paid weeks or months after work is completed, development impact suffers. To resolve both these issues, we recommend the following change to Paragraph 9:

*9. The client will provide workers with valid written employment contracts. The client will provide workers with documented information in their national/native language that is clear and understandable, regarding their rights under national labor and employment law and any applicable collective agreements and Performance Standard 2, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur. The client will remedy failure to pay wages by making workers whole through the repayment in full of all lost wages. All overtime must be voluntary.*

### *Working Conditions and Terms of Employment*

**Paragraph 10** - While many IFC clients are required to engage in collective bargaining with trade unions, in certain cases they fail to meet with the union and bargain in good faith.<sup>19</sup> Many PS2 compliance issues could be resolved through a robust labor management relationship at the worksite level. In cases where workers are not represented by a labor union, but have requested to meet with a union, or where a union has requested to meet with workers, these requests

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<sup>18</sup> Id.

<sup>19</sup> See, e.g., Office of the Compliance Advisor Ombudsman for the IFC, *CAO Compliance Investigation Report: Bilt Paper B.V. (Malaysia)*, at 24 (Apr. 13, 2018) (Wherein the IFC's client continually stalled union recognition and failed to engage in good faith collective bargaining), <https://www.cao-ombudsman.org/sites/default/files/downloads/BiltInvestigationReportApril132018.pdf>.

have been denied.<sup>20</sup> We propose the following addition to PP10 to ensure clients negotiate with the workers' organizations representing their workforce:

*10. Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected and the client will meet regularly with the workers' organization to cooperate on implementation. Where there is a workers' organization but the client is not a party to a collective bargaining agreement, the client will meet with the union on a mutually agreed regular basis to engage in collective bargaining.* *Where such agreements do not exist, or do not address working conditions and terms of employment, the client will provide reasonable working conditions and terms of employment. Wages, benefits and conditions of work offered across their operations should not be less favourable to the workers than those offered by comparable employers in the project country. Where comparable employers may not exist, clients should provide the best possible wages, benefits, and conditions of work, within the framework of government policies and relevant international standards. These should be adequate to satisfy the basic needs of the workers and their families.*

**Paragraph 11** - The ILO estimated that there were 167.7 million international migrants in the labor force in 2022.<sup>21</sup> Many more migrants are internal migrants, particularly from rural to urban areas. While there are no accurate statistics, a

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<sup>20</sup> See, e.g., Building and Wood Workers International (BWI) & Pakistan Federation of Building and Wood Workers (PFBWW), *Complaint Regarding IFC Investment in Karot Hydro (#36008), Pakistan*, at 7 (A letter from BWI and PFBWW concerning inability for organizers to speak to workers on an IFC client's site, saying "... PFBWW organisers are unable to access the site at all, as they are stopped by military security, and even when meetings are arranged security procedures are so cumbersome that it takes hours to even meet. While there are no doubt legitimate security concerns, the same security concerns existed on the World Bank-funded Tarbela-IV site, and PFBWW union officials were able to access the site and meet with workers without difficulty. A solution to this issue can and must be found,"), <https://www.cao-ombudsman.org/sites/default/files/downloads/KarotComplaint03072020.pdf>.

<sup>21</sup> International Labour Organization, *ILO Global Estimates on International Migrant Workers*, at xv (2024), <https://www.ilo.org/sites/default/files/2025-09/MIGRANT%E2%80%93ILO%20Global%20Estimates%20on%20International%20Migrant%20Workers.pdf>.

2009 UNDP report estimated a conservative 740 million internal migrants.<sup>22</sup> Looking only at internally displaced persons, estimates from 2023 include 68.3 million people displaced within their own country as a result of conflict and violence.<sup>23</sup> Internal migrants often face similar situations of vulnerability to international migrants as their distance from home can increase their risks and they often have their mobility tied to a specific employer.<sup>24</sup> The ILO has recognized that internal migrants face particular vulnerabilities due to exploitation in the recruitment process and that they often end up in sectors of work that are particularly exploitative.<sup>25</sup> Guidance Note 28 refers to “internal or “international” migrant workers, which we believe should be incorporated into the main text so that all migrant workers are protected.<sup>26</sup> Migrant workers should have the same rights as other workers under fundamental principles of non-discrimination. The ILO is clear that no recruitment fees or related costs should be charged to workers or jobseekers.<sup>27</sup> Therefore, we recommend these changes to Paragraph 11:

11. *The client will identify internal or international migrant workers and ensure that they are engaged on substantially equivalent terms and conditions to non-migrant workers ~~carrying out similar work~~. Clients shall*

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<sup>22</sup> International Organization for Migration, *Migration Data Portal: Internal Migration*, <https://www.iom.int/migration-data>.

<sup>23</sup> Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2024*, at 8 (2024), [https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf?\\_gl=1\\*1fq2gsw\\*\\_ga\\*NDq5MjUwNjEyLjE3NjAxMjc0NDc.\\*\\_ga\\_PKVS5L6N8V\\*czE3NjAxMjc0NDcckbzEkZzEkdDE3NjAxMjc0NjQkajQzJGwwJGgw](https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf?_gl=1*1fq2gsw*_ga*NDq5MjUwNjEyLjE3NjAxMjc0NDc.*_ga_PKVS5L6N8V*czE3NjAxMjc0NDcckbzEkZzEkdDE3NjAxMjc0NjQkajQzJGwwJGgw).

<sup>24</sup> See, e.g., International Labour Organization, *Road Map for Developing a Policy Framework for the Inclusion of Internal Migrant Workers in India*, at 12 (2020), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40asia/%40ro-bangkok/%40sro-new-delhi/documents/publication/wcms\\_763352.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40asia/%40ro-bangkok/%40sro-new-delhi/documents/publication/wcms_763352.pdf).

<sup>25</sup> See, e.g., International Labour Organization, *Developing International and Internal Labour Migration Governance in Myanmar* (2016), <https://www.ilo.org/projects-and-partnerships/projects/developing-international-and-internal-labour-migration-governance-myanmar>.

<sup>26</sup> International Finance Corporation, *Guidance Note 2: Labor and Working Conditions*, at 7 (Jan. 1, 2012), <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-ps-guidance-note-2-en.pdf>.

<sup>27</sup> International Labour Organization, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*, at 7 (2019), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed\\_protect/%40protrav/%40migrant/documents/publication/wcms\\_703485.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_protect/%40protrav/%40migrant/documents/publication/wcms_703485.pdf).

ensure that migrant workers recruited for a project are not charged fees, including recruitment fees, in order to work.

**Paragraph 12** - Worker accommodations should be required to meet minimum standards, and at a minimum national law and ILO standards should be explicitly upheld. To avoid confusion, protections for both worker accommodations and worker welfare facilities should be specific. We recommend that the IFC incorporate additional language from the EBRD's ESR4 (drawn from paragraphs 55 and 56) into Paragraph 12:

*12. Where accommodation services are provided to workers covered by the scope of this Performance Standard, the client will put in place and implement policies on the quality and management of the accommodation and provision of basic services. Welfare and accommodation facilities need to ensure structural safety and reasonable levels of decency, hygiene and comfort. Project workers will have access to safe and hygienically clean facilities for different genders, in accordance with good international industry practice, where they can rest, eat and wash. Worker welfare and accommodation arrangements, including sleeping accommodations, will be durable, well ventilated, offer protection from extreme temperatures with suitable and safe arrangements for temperature control, and be appropriately maintained. Welfare and accommodation arrangements will also include free and unrestricted access to wholesome drinking water to all project workers. The accommodation services will be provided in a manner consistent with the principles of non-discrimination and equal opportunity, including safeguards against sexual harassment and other forms of gender-based violence and harassment (GBVH). Workers' accommodation arrangements should not restrict workers' freedom of movement or freedom of association.*

## *Workers' Organizations*

Workers' fundamental right to Freedom of Association and Collective Bargaining is cited in several sections of the Performance Standards.<sup>28</sup> While the IFC has made significant strides in addressing violations of these fundamental rights through efforts to inform, educate, and train clients, in many cases, violations persist.<sup>29</sup> Improvement in the PS2 language surrounding Freedom of Association and Collective Bargaining would improve compliance. We propose a number of edits to Paragraphs 13 and 14 to strengthen PS2 and bring it in line with international standards.

**Paragraph 13** - In sections pertaining to forced labor, child labor, and non-discrimination, the IFC's Performance Standard clearly states the client requirements that must be met. In the section pertaining to the Freedom of Association, however, Paragraph 13 begins with a general reference to national law as a basis for assessing client compliance with the principle. We have addressed the role of national law as a minimum standard above. Here, we recommend the following edits to Paragraph 13 to strengthen and emphasize the priority of Freedom of Association as an enabling right and to follow the AfDB's recognition of the right to take collective action:<sup>30</sup>

**13. Clients will not violate workers' rights to the freedom of association and collective bargaining, including interfering with the formation of**

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<sup>28</sup> See Int'l Finance Corp., *Performance Standards on Environmental and Social Sustainability* (Jan. 1, 2012), <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf>.

<sup>29</sup> See, e.g., Office of the Compliance Advisor Ombudsman for the IFC, *Compliance Investigation: Bridge International Academies, Kenya*, (Dec. 2023) (finding that "while IFC's supervision of water, sanitation, food hygiene standards, and labor and working conditions risks and impacts improved over the years, its supervision efforts fell short of bringing its client into compliance with the IFC Performance Standards (PS)."), <https://www.cao-ombudsman.org/case/kenya-bridge-international-academies-01kenya>; Office of the Compliance Advisor Ombudsman for the IFC, *Compliance Investigation: Alto Maipo Hydroelectric Project, Chile*, 76 (May 2021) (finding that "IFC's supervision did not ensure that the client took measures to prevent and address harassment, intimidation, and/or exploitation, especially in regards to women as required by PS2."), [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplianceInvestigation\\_AltoMaipo\\_Chile\\_Final\\_000.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOComplianceInvestigation_AltoMaipo_Chile_Final_000.pdf).

<sup>30</sup> African Development Bank E&S Operational Safeguard 2: Labor and Working Conditions, Paragraph 10

workers' organizations in any manner or with the right to take collective action in support of their joint requests and grievances. ~~In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the client will comply with national law. Where national law substantially restricts workers' organizations, the client will not restrict workers from developing alternative mechanisms to express their grievances and protect their rights regarding working conditions and terms of employment. The client should not seek to influence or control these mechanisms.~~

**Paragraph 14** - Among the principal concerns of trade unions has been the lack of accountability for the unlawful termination of union activists and leaders under the Performance Standard.<sup>31</sup> Several trade union federations have submitted complaints, across a variety of sectors, pointing to cases in which workers have faced retaliation for submitting grievances—up to and often including termination.<sup>32</sup> When such cases are brought to the client and/or IFC, the response has been to pursue legal action, and that national law would be followed. This is an inadequate process, given that national law in many project countries will almost never provide workers with remedy, let alone reinstatement,

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<sup>31</sup> See, e.g., IUF & GLJ-ILRF, *supra* note 4, at pp. 9-10, 32-46, 53-54, 58, 63 (documenting associational retaliation, illegal terminations, and persistent PS2 violations across hotel projects in Guinea, Côte d'Ivoire, Zambia, and Mexico); See also ITUC, *supra* note 4, at 7 (Avianca case).

<sup>32</sup> See, e.g., International Labour Organization, *Individual Case (CAS) – Discussion: Forced Labour Convention, 1930 (No. 29) – Qatar (Ratification: 1998)*, 104th ILC Session (2015), [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=1000:13101:0::NO:13101:P13101\\_COMMENT\\_ID:4062895](https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4062895); International Labour Organization, *Complaint Concerning Non-Observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, made by delegates to the 99th Session (2010) of the International Labour Conference under Article 26 of the ILO Constitution, at 1 (Oct. 24, 2012), <https://www.ilo.org/resource/conference-paper/gb/316/complaint-concerning-non-observance-myanmar-freedom-association-and>

in the case of an unjust termination. As a result, and given these numerous cases, we recommend the following for Paragraph 14:<sup>33</sup>

*14. In either case described in paragraph 13 of this Performance Standard, and where national law is silent, the client will not discourage workers from electing worker representatives, forming or joining workers' organizations of their choosing, or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and collective bargaining. The client will engage with such workers' representatives and workers' organizations, and provide them with information needed for meaningful negotiation in a timely manner. ~~Workers' organizations are expected to fairly represent the workers in the workforce.~~ The client shall not seek to control or otherwise dominate any workers' organization in its establishment. The client shall refrain from intimidating, coercing, threatening, or retaliating against workers on the basis of any form of union activity or collective action including but not limited to verbal threats of discipline or termination, changes in working conditions including employment status as a direct employee or employee of a third-party, and promises of reward. Workers who are suspended or terminated in retaliation for exercising their rights will be immediately reinstated unless and until the relevant tribunal finds they were suspended or terminated for cause. Reinstated workers shall be paid lost wages and made whole.*

**New Paragraph** - In many instances, organizations seeking to meet with or represent workers in their workplace have been prohibited, restricted, or discouraged from engaging with workers in any way. The right of workers' organizations to meet with workers they seek to represent is not only required in national law in many cases, it is also fundamental to their right to the freedom of

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<sup>33</sup>For more on this recommendation, see International Finance Corporation, *Guidance Note 40: Labor and Working Conditions*, at 7 (Jan. 1, 2012), <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-ps-guidance-note-2-en.pdf>.

association as expressed in ILO Convention 87.<sup>34</sup> As such, we recommend **adding** the following as a new paragraph within the section on “Workers’ Organizations”<sup>35</sup>:

Where workers are not represented by a workers’ organization, organizations seeking to represent project workers shall, upon request, be provided access and a meeting place on project premises in order to meet with workers. Such meetings shall be attended only by workers the organization seeks to represent.

Where workers are represented by a workers’ organization, clients should provide access and a dedicated space for representatives of workers’ organizations to meet the workers they represent. Workers should be free to meet and discuss workplace issues on the premises during scheduled breaks, and before and after work. Furthermore, workers should be allowed, without interference or influence, to choose representatives to speak with management, inspect working conditions in an appropriate manner and in a way that does not disrupt productivity, and carry out other organizing activities.

### *Non-Discrimination and Equal Opportunity*

**Paragraph 15** - The protections around non-discrimination are a central tenet of all human rights law and should not be relegated to a footnote. We recommend moving the text from footnote 9 into paragraph 15 with modifications to

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<sup>34</sup> See, e.g., International Labour Organization, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, at 297 (6th ed. 2018) (“Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization”), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_norm/@normes/documents/publication/wcms\\_632659.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_632659.pdf); this illustrates the nexus between freedom of association and union access to the workplace, showing that meaningful exercise of union rights requires the ability to reach and engage workers directly.

<sup>35</sup> The following language is drawn primarily from IFC Guidance Note 38. International Finance Corporation, *Guidance Note 2: Labor and Working Conditions*, at 7 (Jan. 1, 2012), <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-ps-guidance-note-2-en.pdf>.

specifically protect union members from retaliation and discrimination. We have identified numerous cases of “blacklisting” or client refusal to hire or rehire former union members or union activists.<sup>36</sup> National law in most countries prohibits discrimination against employees on the basis of their union membership. The IFC has already recognized the importance of integrating an analysis of gender identity protections in its investment strategies and we think it is important to explicitly highlight those protections here.<sup>37</sup> As such, we propose the IFC add language to Paragraph 15 from Guidance Note 37:

*15. The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements, such as gender, race, nationality, ethnic, social and indigenous origin, religion or belief, union membership, migration status, disability, age, or sexual orientation and gender identity.” The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to any aspects of the employment relationship, such as recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment including status as a direct employee or contractor, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices. ~~The client will take measures to prevent and,~~*

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<sup>36</sup> Two examples come from the hotel sector. First, in the case of Kasada Hospitality Fund (Project #44585), IUF filed complaints over workers’ rights violations and raised concerns over the reopening of a formerly unionized hotel in Rwanda. Second, in December 2024, IUF filed a complaint through the grievance mechanism portal concerning IFC’s investment in the African hotel chain, Azalaï Hotels (Project #49019). Azalaï Hotels is a five-time IFC client with a documented record of workers’ rights violations, the IFC and IUF are in discussions on ensuring workers are not discriminated against at a recently opened Azalaï hotel in Burkina Faso. The violations have been shared privately with the IFC. See, e.g., Int’l Union of Food, Agric., Hotel, Rest., Catering, Tobacco & Allied Workers’ Ass’ns (IUF) & Glob. Labor Just.-Int’l Labor Rts. F. (GLJ-ILRF), *Hotel Workers’ Rights in Development Finance: Realizing Performance Standard 2* 47-49, 50-51 (2023), <https://accountabledevelopmentfinance.iuf.org/media/uploads/2024/10/Hotel-Workers-Rights-in-Development-Finance.pdf>.

<sup>37</sup> See, e.g., International Finance Corporation, *Investing for Inclusion: Exploring an LGBTI Lens: A Guide for Investors*, at 1 (Oct. 31, 2023), <https://www.ifc.org/en/insights-reports/2023/investing-for-inclusion-exploring-lgbti-lens>.

~~address and remediate harassment, intimidation, and/or exploitation, especially in regard to women. The principles of non-discrimination apply to migrant workers.~~ Refusing to hire workers who have been members or leaders of workers' organizations at other firms (for reasons unrelated to qualifications or job performance) would constitute discrimination.

In line with ILO C190 - Violence and Harassment Convention, we recommend separating out and strengthening the provision from Paragraph 15 as a new paragraph on violence and harassment. The IFC has noted the impacts that GBVH has on individual workers can also negatively impact business including through impacts on productivity, absenteeism, recruitment, staff turnover, and promotions, all of which connect to the right to non-discrimination and equal opportunity. The IFC, along with EBRD and CDC, has also recognized the need to address GBVH in the private sector. In line with these clear industry and international standards, there should be a new paragraph:

The client will provide a work environment free of violence and harassment for all workers and other persons in the world of work regardless of contractual status, including persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer. The protections against violence and harassment cover all times, places, and manners of harassment that occur in the course of work, or are linked with work, or arise out of work including during break times or commutes. Violence and harassment covers a range of behaviors and practices, or threats thereof, defined by ILO Convention 190 , and includes gender-based violence and harassment. The client shall, in consultation with workers' representatives or workers' organizations, i) adopt a policy preventing violence and harassment; ii) adopt an implementation strategy for the policy including enforcement and monitoring mechanisms, iii) ensure access to remedy and support for victims, iv) provide for sanctions for violations.

**Paragraph 16** - We recommend removing paragraph 16 as its principles are covered by our recommended cross cutting paragraph on national law as a minimum standard proposed above.

### *Retrenchment*

**Paragraph 18** - Retrenchment is sometimes used to target and retaliate against union members and leaders under the guise of broader restructuring and as such needs to include recognition of the potential freedom of association impacts and the role of workers' organizations in supporting workers and mitigating adverse impacts. The IFC has a longstanding understanding of the importance of a properly executed retrenchment process that minimizes risks through consultation with trade unions and avoiding misinformation.<sup>38</sup> The ILO and the IFC have jointly put out guidelines on retrenchment that include a consultation process with key stakeholders, including workers' representatives and organizations, in advance of retrenchment to allow space for joint problem-solving and to consider alternatives.<sup>39</sup> The OECD *Guidelines* (Chapter 5.6) include the obligation of providing notice to workers' organizations with the purpose of providing a space for cooperation and to mitigate adverse effects on workers. The ILO also notes that notification of workers' representatives is a very common requirement in national law, with many countries also requiring prior consultations, and some requiring approval by the trade union.<sup>40</sup> Informing and involving workers and their organizations is part of the continual, iterative engagement with key stakeholders that should be part of the client's obligations. We recommend the following additions to Paragraph 18:

*18. Prior to implementing any collective dismissals, the client will carry out an analysis of alternatives to retrenchment. The client will negotiate or discuss*

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<sup>38</sup> See, e.g., International Finance Corporation, *Good Practice Note: Managing Retrenchment*, at 1 (Aug. 2005), <https://www.ifc.org/content/dam/ifc/doc/mgrt/retrenchment.pdf>.

<sup>39</sup> International Labour Organization & International Finance Corporation, *Better Work: Managing Transitions and Retrenchments Guidelines, Version 2.0* (2020), [https://betterwork.org/wp-content/uploads/Managing-transitions-and-retrenchments\\_v3-CLEAN-22.04.2021.pdf](https://betterwork.org/wp-content/uploads/Managing-transitions-and-retrenchments_v3-CLEAN-22.04.2021.pdf).

<sup>40</sup> International Labour Organization, *Procedural Requirements for Collective Dismissals*, <https://eplex.ilo.org/en/procedures-for-collective-dismissal>.

alternatives and will provide the workers' representatives with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. *If the analysis does not identify viable alternatives to retrenchment, a retrenchment plan will be developed and implemented to minimize the terminations and reduce the adverse impacts of retrenchment on workers, such as finding alternative employment. The retrenchment plan will be based on the principle of non-discrimination and will reflect the client's consultation with workers, their organizations, and, where appropriate, the government, and comply with collective bargaining agreements if they exist. The client will comply with all legal and contractual requirements related to notification of public authorities, and provision of information to, and consultation with workers and their organizations.*

### *Protecting the Work Force*

**Paragraph 21** - The ILO has adopted a nuanced definition of child labor to provide space for work in a family business or earning pocket money as opportunities that do not affect their health and personal development. However, these are not the type of enterprises the IFC engages with. Instead, in the service of clarity and ease of operation for clients as well as clear and strong protections for children, we propose a straightforward ban on employing children.

*21. The client will not employ persons under the age of 18. ~~children in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. The client will identify the presence of all persons under the age of 18. Where national laws have provisions for the employment of minors, the client will follow those laws applicable to the client. Children under the age of 18 will not be employed in hazardous work. All work of persons under the age of 18 will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.~~*

**Paragraph 23** – Ultimately this paragraph should be incorporated into the new performance standard specific to occupational safety and health. Parts of Paragraph 23 will be incorporated into the subsections of the new standard, however to align with best practices the new standard must commit employers to manage hazards in accordance with the hierarchy of risk control and ensure the provision of workers’ injury compensation as well as reference and commit to implement fundamental ILO Conventions 155 and 187 as well as relevant sectoral conventions and hazard-specific conventions.

### *Workers Engaged by Third Parties*

ILO standards and human rights due diligence norms recognize that workers are increasingly employed using non-standard forms of employment and that many of these alternative forms of employment lead to greater risks of exploitation of workers and labor rights violations.<sup>41</sup> It is important that the IFC’s Performance Standards guarantee basic protections to all workers along that spectrum with attention given to disparities in client leverage.<sup>42</sup> To that end we propose changes to Paragraphs 24-26 to strengthen protections for contracted workers, and bring the IFC into alignment with the best practices of other banks.

**Paragraph 24** - The specific exemption of contracted workers from retrenchment policies has proven problematic, as contractors often disappear and leave their employees without pay and without recourse. This is particularly problematic in sectors like construction where large portions of the workforce are employed by contractors.

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<sup>41</sup> See International Labour Organization, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (2016), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_534326.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_534326.pdf).

<sup>42</sup> See Int’l Finance Corp., *Labor Standards Performance in Your Supply Chain 71* (“You need to make it clear to your suppliers that you expect them to adhere to the relevant requirements of PS2 [including for sub-contractors].”), <https://www.ifc.org/content/dam/ifc/doc/mgrt/sai-ifc-laborhandbook-ch6.pdf>.

The African Development Bank's ISS does not exclude contracted workers from its retrenchment policy, and we suggest that the IFC follow its lead.<sup>43</sup>

To that end, in line with our proposed changes to the scope of application and the paragraph on retrenchment, we recommend the following change to Paragraph 24:

*24. ~~With respect to contracted workers the client will take commercially reasonable efforts to ascertain~~ must ensure that the third parties who engage these workers are reputable and legitimate enterprises ~~and have an appropriate ESMS that will allow them to operate in a manner consistent with the requirements of this Performance Standard, except for paragraphs 18–19, and 27–29.~~ It is the client's responsibility to ensure its contractors operate in a manner consistent with the requirements of this Performance Standard.*

**Paragraphs 25 and 26** - In addition, to strengthen implementation of protections for contracted workers and bring the Performance Standards into closer alignment with the World Bank's Environmental and Social Framework,<sup>44</sup> we propose the following changes to Paragraphs 25 and 26:

*25. ~~The client will establish policies and procedures for managing and monitoring the performance of such third party employers in relation to the requirements of this Performance Standard. In addition, the client will use commercially reasonable efforts to incorporate these requirements in contractual agreements with such third party employers.~~*

*26. ~~The client will ensure that contracted workers, covered in paragraphs 24–25 of this Performance Standard, have access to a grievance mechanism. In cases where the third party is not able to provide a grievance mechanism the client will extend its own grievance mechanism to serve workers engaged by the third~~*

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<sup>43</sup> African Development Bank Environmental and Social Operational Safeguard 2: Labour and Working Conditions <https://www.afdb.org/en/documents/african-development-bank-groups-integrated-safeguards-system-2023>

<sup>44</sup> World Bank Environmental and Social Framework ESS2: Labor and Working Conditions, Paragraphs 31-33 <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=45&zoom=80>

~~party.~~ The client will ensure that workers employed by the third party are granted access to and knowledge of the client's own grievance mechanism. In the event of violations of the Performance Standard, the client will meet with affected project workers and their representatives. Where there is a workers' organization but not a grievance mechanism, the client will engage in bargaining to create one jointly with the workers' representatives.

### *Supply Chain*

Political will, technical capacity, and regulatory requirements to monitor supply chains have grown dramatically since the IFC last updated its Sustainability Framework. Considering these shifts, the IFC should update its Sustainability Framework to ensure that the suite of fundamental workers' rights is extended to contract workers and to workers across the supply chain. The ILO's Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), notably revised and expanded in 2017, should provide the IFC with key guidance on this question.<sup>45</sup>

While it is positive that the IFC is concerned with child labour and forced labour in supply chains, the approach of the current Performance Standards is inadequate and misses the interconnected nature of fundamental labour rights. Without safeguards for other rights such as freedom of association and occupational safety and health, it is impossible to meaningfully protect against forced labour and child labour.

**Paragraph 27** - The IFC's definition of "primary supply chain" as "those suppliers who, on an ongoing basis, provide goods or materials essential for the core business processes of the IFC client's project" contains terms that are themselves undefined and invites evasion on the basis of what constitutes an "ongoing basis" or "core business processes." We propose the following change to PS2:

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<sup>45</sup> International Labour Organization, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy \(MNE Declaration\) | International Labour Organization](#)

*27. Where there is a ~~high risk of child labor or forced labor~~ risk of fundamental labor rights violations in the ~~primary~~ supply chain, the client will identify and assess those risks ~~consistent with paragraphs 21 and 22 above~~. If ~~child labor or forced labor cases~~ such risks are identified, the client will take appropriate steps ~~to remedy them~~ prevent or mitigate those risks as appropriate. Where an adverse impact has occurred, the client will provide an adequate remedy to the affected workers. The client will monitor its primary supply chain on an ongoing basis in order to identify any significant changes in its supply chain and if new risks or incidents of ~~child and/or forced labor~~ such risks are identified, the client will take appropriate steps to remedy them.*

**Paragraph 28** - The term “Significant safety issues” is a wholly inadequate to address occupational safety and health, and this paragraph must incorporate the expanded set of policies focused on OSH already reflected in the performance standards:

*28. Additionally, where there is a high risk of ~~significant safety~~ occupational safety and health issues related to supply chain workers, the client will introduce procedures and mitigation measures to ensure that primary suppliers within the supply chain are taking steps to prevent or to correct life-threatening situations and comply with performance standards concerning occupational safety and health.*

**Paragraph 29** – To strengthen accountability along the supply chain, we propose the following edits:

*29. The ability of the client to fully address these risks will depend upon the client’s level of management control or influence over its ~~primary~~ suppliers. Where remedy is not possible, the client will shift the project’s ~~primary supply chain over time~~ as soon as practicable to suppliers that can demonstrate that they are complying with this Performance Standard.*

### **Part III - Access to Information**

We propose changes that address the need for more transparency in the Access to Information Policy, project disclosures, and early engagement with trade unions on projects with heightened labour compliance risk, particularly in fragile and conflict-affected areas.<sup>46</sup>

#### *Delayed Disclosure*

The IFC's Access to Information Policy (AIP), which currently grants extremely broad latitude to delay disclosure of project information. As a result, many projects are not disclosed until after they have been approved by the Board, thus preventing Affected Communities from engaging on them. In some cases, disclosure even comes after funds are already disbursed or the project has begun.

The delayed disclosure policy should be limited to situations in which information cannot be disclosed for legal or regulatory reasons. The IFC should disclose all available data for projects even when certain pieces of information must be withheld for legal or regulatory purposes. Legally protected information can be redacted from broader disclosures. We further propose that "market conditions" be removed as a rationale for delayed disclosure. We propose the following changes to PP14:

14. **Delayed Disclosure.** *IFC may delay the disclosure of certain information that it would otherwise make publicly available because of ~~market conditions~~, legal or other regulatory requirements such as timing requirements relating to securities offerings, equity investments in publicly listed companies, purchases of shares in a private placement or a financial restructuring. This prerogative may be exercised by the director responsible for the project, with respect to such information. The delayed disclosure of certain pieces of information must not prevent the disclosure of other project details. Portions of the Summary of Investment Information*

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<sup>46</sup> The ITUC has endorsed the CSO Submission sent to the IFC by the Centre for Law And Democracy in October 2025.

and Environmental and Social Review Summaries that do not contain sensitive information should be disclosed.

### *Summary of Investment Information*

While the Summary of Investment Information is a key resource for Affected Communities, it lacks specificity on the duration of loans. Without this information, Affected Communities, workers, and their representatives are unable to assess the full scope of the project and the time period for which it will affect their livelihood or working conditions. We propose the following edit to Paragraph 30 subsection f:

*30. Summary of Investment Information (SII). For each proposed investment, IFC will disclose an SII, which provides a factual summary of the main elements of the potential investment, and will include the following information:*

...

*(f) the amount and nature of IFC's investment, including projected loan duration;*

### *Environmental and Social Information*

While many projects outline a comprehensive Environmental and Social Action Plan (ESAP), these are rarely updated or reviewed.<sup>47</sup> As a result, it becomes impossible to assess whether clients have met obligations set forth in the ESAP. ESAP benchmarks are crucial to satisfying specific labor rights requirements such as creating and implementing human resources policies, conducting

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<sup>47</sup> ESAPs are rarely updated and often left with fields reading “null” even months or years after a project has been approved. The CGU group, and most recently IUF, has raised this concern on numerous occasions, including in quarterly meetings held by ITUC, IUF and GLJ with IFC leadership. See, e.g., Int'l Union of Food, Agric., Hotel, Rest., Catering, Tobacco & Allied Workers' Ass'ns (IUF) & Glob. Labor Just.-Int'l Labor Rts. F. (GLJ-ILRF), *Hotel Workers' Rights in Development Finance: Realizing Performance Standard 2* (2023) (noting the need for robust Environmental and Social Action Plans (ESAPs) and proper follow-up to ensure IFC clients meet labor standards), <https://accountabledevelopmentfinance.iuf.org/media/uploads/2024/10/Hotel-Workers-Rights-in-Development-Finance.pdf>.

training on health and safety, and ensuring worker contracts are legally compliant. In accordance with these needs, we propose the following edit to Paragraph 41:

*41. Environmental and Social Information. For each investment, other than those expected to have minimal or no environmental or social adverse risks and/or impacts, IFC will regularly and in a timely manner update the ESRS or SII with the following environmental and social information, as it becomes available *while continuing to disclose previous versions.**

## **Part IV – Exclusion List**

### *Asbestos and the Exclusion List*

The IFC’s Exclusion List, updated in 2007, permits the purchase and use of bonded asbestos cement sheeting and other products where the asbestos content is less than 20%. That exemption should be removed, and all asbestos should be prohibited.

The European Bank for Reconstruction and Development, the Asian Development Bank, and the Asian Infrastructure Investment Bank have all removed the cement sheeting exemption in recent years.<sup>48</sup>

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<sup>48</sup> Asian Development Bank, *Prohibited Investment Activities List*, <https://www.adb.org/documents/environmental-social-framework>; European Bank for Reconstruction and Development, Environmental and Social Exclusion List, <https://www.ebrd.com/home/news-and-events/publications/institutional-documents/environmental-and-social-policy-2024.html>; Asian Infrastructure Investment Bank, Environmental and Social Framework, <https://www.aiib.org/en/policies-strategies/framework-agreements/environmental-social-framework.html>

## **Annex: The EBRD's Environmental and Social Requirement 4**

The European Bank for Reconstruction and Development's OSH safeguard has provided meaningful protections for project workers throughout a relatively long operational history, and as we encourage the IFC to create a standalone safeguard for OSH it should look to the EBRD's Environmental and Social Requirement 4, the most recent iteration of its policy adopted in 2024, as a starting point.

In the document above we outline particular changes or additions that we suggest to ESR4, but we have included the base text of ESR4 below as a reference. For simplicity we have not transposed citations and notes; however in line with the rest of our submission we stress the value of direct citations to multilateral authorities including the ILO and UN agencies and oppose the deletion of citations included by the EBRD.

### ***Introduction***

1. This Environmental and Social Requirement (ESR) recognises the importance of managing health, safety and security risks to project workers, project-affected communities and consumers associated with project activities, in accordance with the hierarchy of risk controls. When providing project workers with safe, healthy and secure working environments, clients will respect and promote the fundamental principles and rights of workers, thus creating tangible benefits, such as enhancing the efficiency and productivity of their operations.
2. Project activities, equipment and infrastructure may increase the potential for worker and community exposure to health, safety and security risks, including those associated with mobilisation, construction, commissioning, operation, maintenance, decommissioning or closure, reinstatement, and the transport of goods and services.
3. The client has the primary responsibility for cooperating with key stakeholders and providing safe and healthy working environments for project workers and for informing, instructing, training, supervising and consulting project workers on health and safety. Project workers are responsible for cooperating actively with their employer and taking care of their own health and safety and the health and safety of others.

4. While acknowledging the role of the relevant authorities in protecting and promoting the health and safety of the public, the client has the duty of managing health, safety and security risks to project-affected communities.

### ***Objectives***

5. The objectives of this ESR are to:

- protect and promote the health, safety and security of project workers by ensuring safe, healthy and secure working environments and implementing a management system appropriate and proportionate to the risks associated with the project
- identify, assess and manage health, safety and security risks to project-affected communities and consumers during the project lifecycle from both routine and non-routine activities and to incorporate health and safety at the earliest opportunity into the project design.

### ***Scope of application***

6. This ESR applies to all projects financed by the EBRD as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this ESR and how they will be addressed and managed throughout the project lifecycle. The potential risks to project workers and project-affected communities may vary according to the stage, size and nature of the project, including mobilisation, construction, commissioning, operation, maintenance, decommissioning or closure, and reinstatement.

Implementation of the actions necessary to meet the requirements of this ESR is managed as an integral part of the client's overall environmental and social management system (ESMS) and/or the project-specific environmental and social management plan (ESMP), as set out in ESR 1.

7. Detailed requirements for the prevention and control of risks to human health and impacts on the environment due to the release of pollution are found in ESR 3.

## **General Requirements**

### *General requirements for health and safety management*

8. The client will adopt measures to identify hazards, assess risks and prevent accidents, injury and ill-health to project workers and project-affected communities occurring in, arising from or associated with carrying out project activities. Supported by qualified and trained health and safety advice that is proportionate to the risks, the client will prepare and implement preventative and protective measures and plans to manage health and safety risks in accordance with the hierarchy of risk controls and in accordance with good international practice (GIP).

9. The client will provide project workers and project-affected communities with relevant information, instruction and training on health and safety hazards, risks, protective and preventative measures, and emergency arrangements necessary for their health and safety throughout the project.

10. Where any accidents, injury, harassment (including gender-based violence and harassment [GBVH]) and ill-health occur in the course of works associated with the project, or there is the potential for such an incident, the client will investigate, document, analyse the findings, identify learning opportunities, adopt measures to prevent recurrence and, where required by law, notify and cooperate with the relevant authorities. The client will ensure appropriate financial compensation and support for any persons suffering injury or ill-health caused by project activities. Where the client has identified high risks to project workers and where there are gaps in coverage, benefits or access to national insurance systems, the client will implement group personal accident insurance.

11. As part of project performance monitoring, the client will ensure health and safety measures are included in relevant monitoring and reporting processes.

### *Occupational safety and health*

12. The client will provide all project workers with a safe and healthy working environment, taking into account inherent and foreseeable risks in its particular sector

and specific classes of hazard that may be present, and also considering working conditions (including excessive or erratic work hours and overtime) that may contribute to a safety risk. The client will identify the safety and health hazards, assess risks and implement preventative control measures appropriate to the stage, size and nature of the project, in accordance with relevant substantive EU occupational safety and health (OSH) standards and GIP. The client will undertake an assessment commensurate with the level of risk and develop a project specific OSH plan, where appropriate, that will be integrated into the ESMS. The plan will be in place prior to the start of any work and periodically reviewed to evaluate its effectiveness to confirm it remains appropriate to addressing related risks.

13. The client will plan and implement OSH arrangements with the assistance of a person responsible for OSH. Following the hierarchy of risk controls and where personal protective equipment has been identified as part of any preventative control measures, the client will provide gender-appropriate personal protective equipment (PPE) at no cost to project workers. The client will enable and require all project workers engaged to work on project sites or to perform work directly related to the core functions of the project to comply with the OSH plan.

14. During the course of any work activity, the client will ensure that all project workers have appropriate physical fitness to undertake their appointed job roles and are provided with: (i) a continued and appropriate level of supervision to ensure they do not place themselves or others at risk; (ii) safe work equipment; and (iii) OSH procedures, work instructions, information, appropriate training and workplace rules that are implemented and enforced. Where project workers place themselves or others at risk, the client will take proportionate disciplinary action to enforce workplace rules and, where necessary, ensure that they are immediately removed from the workplace until they are no longer a risk to themselves or others. The client will not impose financial penalties on workers for health and safety infringements.

15. The client will monitor the physical and mental health and wellbeing of its project workers using appropriate management arrangements and consult with project workers on OSH arrangements. The client will inform project workers of their rights, allow project

workers to stop work in situations of danger to life or health, and will not require project workers to return to work until corrective action has been taken and is no longer a danger to life or health. The client will put in place procedures for workers to report any unsafe acts and unsafe conditions in the workplace to their immediate supervisor or other person with the relevant authority to take action. The client will not tolerate any form of retaliation or reprisal for reporting or stopping work.

16. The client will establish a workplace OSH committee with a balanced representation of management and elected workplace representatives that is diverse and inclusive and does not undermine any existing OSH committees or any existing collective bargaining agreements. The OSH committee will communicate, coordinate and cooperate on OSH matters in the workplace and this will include, but not be limited to, accident investigation, risk assessment, development of safe systems of work and selection of work equipment to manage OSH risks in accordance with the hierarchy of risk controls.

17. Where there are specific risks associated with certain work activities or work locations that could result in adverse effects on the health, safety and wellbeing of any vulnerable project workers based on age, sex, gender, sexual orientation, gender identity, gender expression and/or sex characteristics, disability or short- or long-term health conditions, the client will carry out more detailed risk assessments and make reasonable adjustments to prevent any vulnerability becoming worse or increasing the risk of injury and ill-health. The client will implement adjustments consistent with ESR 2 requirements on non-discrimination and equal opportunity.

18. The client will identify and assess gender-related risks that have specific physical, physiological and psychological effects on project workers. OSH hazards created by work activities, work equipment, tools and personal protective equipment because of a worker's gender are to be controlled in accordance with the hierarchy of risk controls, so that project workers are not at any greater risk of injury or ill health.

#### *Community health and safety*

19. The client will identify and assess project-related risks to and likely adverse impacts on the physical health and safety of project-affected communities and will develop

detection, protection, prevention and mitigation measures in accordance with the hierarchy of risk controls, proportionate to the impacts and risks, and appropriate to the stage, size and nature of the project. The client will communicate with project-affected communities and other relevant stakeholders, as appropriate, on prevention and mitigation measures and plans. These measures will be consistent with the hierarchy of risk control and GIP.

20. Measures to avoid or mitigate impacts of the project on community health and safety may be the responsibility of the relevant public authorities. Under these circumstances, the client will clarify its role and its responsibility to notify, coordinate and cooperate with the relevant authorities and put in place appropriate arrangements.

#### *Gender-based violence and harassment and child sexual abuse*

21. The client will assess project-related risks of gender-based violence and harassment (GBVH) and risks of child sexual abuse to project workers and project-affected persons and communities. Measures to assess, mitigate, monitor and respond to GBVH and child sexual abuse will be based on the principles that (i) all forms of sexual exploitation, abuse and harassment (SEAH) are prohibited, and (ii) there is no tolerance for inaction to prevent, report or respond to SEAH, and no tolerance for retaliation against survivors or witnesses. These measures should be integrated into existing processes and systems of occupational and community health and safety, as well as stakeholder engagement and grievance management. The client will adopt specific measures to prevent and address these risks, based on the needs of women, children and other at-risk groups. Such measures will be informed by relevant stakeholders and may include consultation with project workers and communities, the provision of information, training and confidential channels for reporting incidents in safe and accessible formats, including by children, codes of conduct for project workers, and the provision of support in a manner consistent with paragraph 19, above.

22. When responding to incidents or allegations of GBVH and child sexual abuse, the client will adopt a survivor-centred approach that prioritises the rights, needs and wishes of the person who has experienced GBVH and/or child sexual abuse, as well as their safety. The client will provide survivors with or refer survivors to appropriate medical,

psychosocial and judicial support services. Incidents and allegations of sexual exploitation and abuse associated with the project will be reported to the EBRD and addressed in a timely manner.

### ***Specific requirements for health and safety management***

#### ***Contractor and sub-contractor management***

23. The client will assess the OSH standards and past OSH performance of contractors proposed to carry out work on the project site or those performing any work directly related to the construction and operation of the project. This will include confirming that the contractor has developed an OSH plan that identifies appropriate capacity, resources and arrangements to safely plan, manage, implement and monitor work under the project.

24. The client will periodically review and assess, through physical site visits, the contractors' OSH performance and the ongoing suitability of their OSH plans. The review and assessment will confirm that arrangements have been implemented in accordance with the hierarchy of risk controls, remain in compliance with this ESR and ESR 2, and remain appropriate to managing current health and safety risks. The client will include appropriate provisions in contracts that will; (i) permit the suspension of the contractor's work in the event of immediate danger to the life or health of any worker or project-affected communities, and (ii) require the contractor to make the workplace safe before works may be resumed.

#### ***Infrastructure, building, and equipment design and safety***

25. The client will undertake a risk assessment appropriate to the stage, size, nature and complexity of the project and incorporate health, safety and climate change considerations into structural elements or components during project design, construction, commissioning, operation, maintenance and decommissioning, in accordance with the hierarchy of risk controls and GIP. Structural elements or components will be designed and constructed by client-appointed, qualified and trained professionals and, where possible, hazards will be eliminated at the initial design stage.

26. Independent life- and fire-safety audits will be undertaken at the design stage for all new public buildings, areas of public gathering, such as transport hubs, and major refurbishments prior to their commissioning or use.

27. The construction and major refurbishment of buildings used for communal purposes will be designed in accordance with the concept of the principles of universal design<sup>50</sup> and made inclusive and accessible to all.

28. When structural elements or components of critical infrastructure are situated in high-risk locations and their failure or malfunction may threaten the health and safety of project workers and communities, the client will appoint one or more qualified and trained professionals with relevant and recognised experience in similar projects, independent of the design and construction teams. They will conduct a review as early as possible in the project development phase and throughout the project design, construction, operation and commissioning stages to confirm the safety and structural integrity of such structural elements or components.

#### *Hazardous materials safety*

29. The client will prevent or, where it is not practicable to prevent the risk completely, reduce the potential for worker and project-affected community exposure to hazardous materials that may be released by the project by controlling exposure and adopting the hierarchy of risk controls.

30. Where there is the risk of any intentional or unintentional release of chemicals, energy or other potentially dangerous materials that will result in serious risk to project workers or project-affected communities during project implementation, the client will carry out a risk assessment at the initial design stage to eliminate the risk of release. The risk assessment will identify process safety concerns and address these through GIP and good engineering design prior to construction

31. Where hazardous materials are part of existing facilities or operations associated with the project, the client will exercise due care and implement appropriate measures to prevent, prepare, respond and learn when conducting commissioning, operating, maintenance and decommissioning activities in order to prevent the exposure of

workers and project-affected communities to such hazardous materials. Where the use of such materials cannot be avoided, the client will take the necessary measures for safe handling, labelling, storage, transport and disposal in accordance with GIP.

#### *Product safety*

32. Where the project involves production of and/or trade in consumer products, the client will ensure product safety through good design and manufacturing processes, as well as safe handling, labelling, storage, transport and end-of-life disposal. GIP will be followed, including general safety requirements specific to product safety standards and codes of practice in a given business sector and country.

33. The client will identify and continually evaluate health and safety risks to all consumers associated with its products throughout their lifecycle. The approach to product safety will adhere to the hierarchy of risk control and ensure that adequate information on the product's health and safety risks is provided to consumers. For situations involving products that may pose serious health or safety threats, the client will ensure that product recall and product withdrawal policies and procedures are in place.

#### *Psychosocial risks*

34. The client will identify and assess potential psychosocial risks to project workers that may occur due to exposure to project-related activities and locations and, where appropriate, identify opportunities to prevent potential negative impacts on workers' mental health. The client will adopt appropriate measures to manage any negative mental health concerns raised by project workers and provide confidential mechanisms to report concerns. The client will implement methods to support and promote mental health and wellbeing to project workers through a workplace mental health awareness plan.

#### *Health and safety risks in community services*

35. Where the project involves the provision of services to communities, the client will ensure the safety and quality of such services for all community members, taking into

consideration the distinct needs of vulnerable people, and implement appropriate quality management systems to make sure that such services do not pose risks to project workers or community health and safety.

36. Where the project involves the provision of public services, to the extent possible, the client will incorporate the principles of universal design.

37. Where the project involves the provision of health services and/or the production, distribution and use of antimicrobials, the client will incorporate antimicrobial stewardship to minimise antimicrobial resistance.

#### *Traffic and road safety*

38. The client will identify, assess, manage and monitor traffic and road safety risks and health impacts on project workers and project-affected communities throughout the project lifecycle and, where appropriate, develop and implement measures and plans to address them. The client will pay particular attention to the risks created by the project to vulnerable road users, including children, cyclists, the elderly and people with disabilities, and the need to engage with these vulnerable users at the project planning phase.

39. The client will take into consideration relevant EU road and traffic safety management standards. Where appropriate, the client will carry out a road safety impact assessment, road safety audits and road safety inspections at relevant stages of the project, identify road safety measures for both motorised and nonmotorised road users and incorporate technically and economically feasible and cost-effective road safety components into the project design to mitigate potential road safety impacts on local affected communities. The client will routinely monitor incident and collision reports to identify and resolve problems or negative safety trends.

40. For projects with vehicles or fleets of vehicles (owned or leased), the client will introduce GIP arrangements to manage road and traffic risks and will proactively prevent the risk of road traffic collisions. The client will ensure regular maintenance of all project vehicles, monitor driving standards and put appropriate systems and processes in place to identify and manage unsafe driving behaviour. Where vehicles or fleets

include goods or passenger vehicles, the client will implement specific driver safety training programmes and introduce measures to monitor driving hours and proactively prevent driver fatigue, consistent with GIP. For all new vehicles to be used on the project, the client will include safety performance as a criterion for selection. For existing vehicles, a robust maintenance and inspection programme will be implemented to ensure continued roadworthiness, alongside any related plan for fleet retirement.

41. The client will ensure the safe and secure transport of hazardous materials, including wastes, and will implement measures to avoid or reduce project-affected community exposure.

#### *Natural and climate change hazards*

42. The client will identify natural hazards and assess the potential risks caused by those hazards, such as earthquakes, droughts, landslides or floods as they relate to the project, as well as any associated risks to workers. This may require the client to undertake an assessment of the vulnerability of the project to risks caused by climate change and to identify OSH prevention and control strategies and appropriate climate resilience and adaptation measures to be integrated into the project design.

43. The client will avoid and/or minimise risks caused by natural hazards or land use changes to which project activities may contribute.

#### *Exposure to disease*

44. To help prevent or minimise the potential for worker and project-affected community exposure to disease, taking into account differentiated exposure and the higher sensitivity of vulnerable people, the client will develop appropriate mitigation in consultation with the relevant authorities. The client will take measures to avoid or minimise the transmission and spread of communicable diseases that may be associated with the influx of temporary and/or permanent project workers and diseases influenced by other environmental factors.

45. Where specific diseases are endemic in project-affected communities, the client is encouraged to identify opportunities throughout the project life-cycle to improve

conditions that could help reduce their incidence, both among project workers and project-affected communities. The client will take measures to avoid or minimise the transmission of communicable diseases and prevent gender-based risks that may be associated with the influx of temporary and/or permanent project labour.

#### *Emergency preparedness and response*

46. The client will be prepared to prevent, respond to and recover and learn from incidents, accidents and emergency situations in a manner appropriate to the operational risks associated with the project and the need to prevent or reduce their potential adverse impacts, in accordance with applicable regulatory requirements and GIP.

47. The client will identify and assess major-accident hazards and take all necessary measures to prevent major accidents or limit such risks to workers, project-affected communities – including a particular focus on vulnerable persons – and the environment, with a view to ensuring high levels of protection for people and the environment in a consistent and effective manner. These measures will be identified in a major-accident prevention/emergency preparedness policy and an appropriate management plan, integrated into the client's overall ESMS. The plan will include organisational structures, responsibilities, procedures, communications, training, resources and other aspects required to implement such a policy to ensure that the client has the capacity to respond effectively to emergencies associated with project hazards in accordance with GIP.

48. For projects where major-accident hazards are present, the client will assist and cooperate with the relevant authorities and the project-affected community in their preparations to respond effectively to emergency situations. If local authorities or responders have little or no capacity to respond effectively, the client will play an active role in preparing for and responding to emergencies associated with the project, and will provide adequate evidence to demonstrate its capacity to respond to foreseeable incidents, either directly or indirectly.

## **Security**

49. The client will identify and assess project security threats to project workers and project-affected communities. Where risks have been identified, adequate security management arrangements and contingency plans to protect the integrity of project operations from security incidents or changes to the operating environment will be implemented in accordance with GIP. In the event of a serious deterioration in the operating environment due to elevated security or safety risks, the client will implement changes to project operations, as required, to ensure the safety of project workers and project-affected communities.

50. When the client retains or changes security services to safeguard its project workers and property, it will assess risks posed by these security arrangements to those within and outside the project site. The assessment will consider the risks of gender-based discrimination, violence and harassment, and child sexual abuse and exploitation, both in the workplace and in project-affected communities. In making such arrangements, the client will be guided by the principle of proportionality, GIP and applicable laws in terms of rules of conduct and in hiring, training, equipping and monitoring the conduct of such project workers. The client will not sanction any use of force except when used for preventative and defensive purposes in proportion to the nature and extent of the threat. The client will make clear that any retaliation against people by security contractors will not be tolerated. If the security services retained by the project change from private actors to actors under the responsibility of the relevant governmental authority, the client will report the change to project workers, the community, and the Bank. The client will prevent the use of security services to restrict the exercise of freedom of association or other protections under ESR 2 and ESR 4 and will not sanction the use of force to intervene in labour disputes, including work stoppages.

51. If security services are the responsibility of relevant governmental authorities, the client will collaborate, to the extent permitted, with the responsible government authority to achieve outcomes consistent with this ESR. The client will identify and assess potential risks arising from such use, communicate to the relevant public authorities its intent that security personnel act in a manner consistent with paragraph 48 above, and

encourage the relevant public authorities to disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns.

52. The client will (i) make reasonable inquiries to verify that the employees or contracted project workers retained by the client to provide security are not implicated in past abuses, including GBVH and child sexual abuse and exploitation; (ii) train them adequately (or determine that they are properly trained) in the use of force (and, where applicable, firearms) and in appropriate conduct towards project workers and project-affected communities; and (iii) require them to act within the applicable law and any requirements set out in ESR 2 and any other ESRs as specified by the client.

53. The client will establish and maintain an effective grievance mechanism to allow the affected community and project workers to express concerns about security arrangements and the actions of security personnel, including adequate provisions to respond to reports of GBVH and child sexual abuse and exploitation, and will inform communities and project workers of the availability and use of grievance mechanisms, in accordance with this ESR and ESR 10.

54. The client will investigate any allegations of unlawful or abusive acts by security personnel, take action (or urge appropriate parties to take action) to prevent recurrence and, where necessary, report unlawful and abusive acts to the public authorities and the EBRD.

### ***Worker welfare and accommodation***

55. The client will identify and make available appropriate worker welfare and accommodation arrangements relevant to the work being undertaken and the hazards to which project workers are exposed throughout the project lifecycle. Project workers will have access to safe and hygienically clean facilities for different genders, in accordance with GIP, where they can rest, eat and wash. Worker welfare and accommodation arrangements will be well ventilated, offer protection from extreme temperatures and be appropriately maintained. Welfare and accommodation arrangements will also include free and unrestricted access to wholesome drinking water for all project workers.

56. Where a client provides sleeping accommodation for project workers and visitors, the client will put in place and implement policies governing the quality and management of the accommodation arrangements and provision of services. The welfare and accommodation services need to ensure structural safety and reasonable levels of decency, hygiene and comfort. The accommodation facilities will be well ventilated, have suitable and safe arrangements for temperature control and be appropriately maintained. The accommodation will be provided in accordance with GIP and in a manner consistent with the principles of non-discrimination and equal opportunity, including safeguards against sexual harassment and other forms of GBVH. Workers' freedom of movement to and from the employer-provided welfare and accommodation will not be unreasonably restricted.