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Applying ADB's Social Protection Requirements in Private Sector Projects: Case Studies on ADB Supervision, Monitoring and Reporting

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ADB



Policy Requirements

- Social Protection Strategy 2001
 - In the design and formulation of its loans ADB will
 - (i) comply with internationally recognized core labor standards
 - (ii) ensure that for ADB-financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation and CLS
 - monitor that (i) and (ii) are complied with as part of regular loan reviews,
- Safeguards Policy Statement 2009
 - SR5 Prohibited Investment Activities List - The following do not qualify for ADB financing:
 - production or activities involving harmful or exploitative forms of forced labor or child labor

PSOD operates in all regions and follows a risk-based approach in applying these requirements across sectors, large or small scale, and all types of financing modalities.

PSOD Social Team is responsible for reviewing project compliance to ADB's social protection requirements.



PSOD's Approach

Due Diligence (Processing Stage)

Financing Modality	Documentation	New for Solar Power Projects
Project Finance	ESIA/IESE, E&S audits (existing facilities) ESMP, CAP	Solar PV Supply Chain Due Diligence (SCDD)
Corporate Finance	ESMS Audit +CAP and Subproject ESIA/IESE	
Financial Intermediaries: Banks, Funds, Nonbanks	ESMS and Subproject/Portfolio Company Audit + CAP	

Legal Documentation Financing Agreements

- CLS provisions in ADB facility agreement, common terms agreement (all lenders), E&S side letter agreement in shareholders agreement (equity investments)
- Conditions for disbursement : ESMP subplans – labor management plan, local procurement plan
- Requirement for CAP in case of noncompliance
- Monitoring and Reporting – labor section in ESMR, external monitoring, labor audits

Project Administration

- Borrower/Clients' Annual/Semi-annual ESMP/AESPR
- ADB Safeguard and Social Review Missions, LESC/LTA , Labor Audits
- Approach for monitoring compliance with labor law for Cat C projects.



Case Study: A Hydropower Project



Project Background

- Construction and operation of a 147 MW run-of-the-river hydroelectric power generation plant

Financiers: ADB and other IFIs

Project Safeguards: ENV and IR category A, IP cat C

Board approved in **October 2011**

Construction commenced in Jan 2013 but was delayed due to some design change.

Operational since November 2017.

ADB



2014 ADB, other Lenders and the Lenders' Technical Advisor received complaints from 3 workers organizations

- [Project Name] Action Committee
- Employees and Workers Union,
- Union CBA of [Project Name] Hydro Power Project

Labor issues raised/allegations:

1. Locals excluded from employment opportunities
2. Hiring process is not transparent, full of nepotism/favoritism
3. Workers salaries, benefits and accommodations are inadequate
4. Workers wages during holidays are not paid
5. Workers who have formed a union were unjustly terminated
6. Some foreign workers are allegedly forced to stay against their will – passports withheld



ADB – fielded Safeguard Review Missions in Aug and Nov 2015

Recommendations

- Key corrective actions to be implemented immediately
- Conduct external labor audit
- Owner's engineer hire own labor/HR expert to conduct internal audit
- Mission verified that there are no foreign workers held against their will



Corrective Action Plan

ADB/IFC Post Mission CAP



(OHS) Workers' accommodation and facilities were improved through provision of ventilation in canteens and filtration tanks for drinking water supply



(Wages) Two subcontractors (and subcontractors under them) instructed to:

Pay mandated minimum wages retroactively
Issue payslips to workers, specify overtime/holiday pay
Provide contracts to workers working for 90 days or more



(CLS, OHS) EPC agreed to ensure that overtime work hours should be within the mandates of the law, should be voluntary and that consent of workers should be obtained.



(CLS) EPC and subcontractors to include in their human resources policy the promotion of freedom of association and include in their orientation programs workers' labor rights.



(CLS) EPC added labor rights in their induction program and volunteered to form grievance redress committees that would include workers' representatives.

External Labor Audit CAP



Amend contracts of guards to reflect payment of minimum wages



Amend contracts of workers to qualify that the ban are only imposed on illegal strikes and reflect conditions of employment



Provision of mandatory insurance policies



Implement work hours only to 48 hours a week, 9 hours a day



Overtime should be rendered with double pay and with worker's consent.



Case Example: Another Hydropower Project



The Project: A run-of-river scheme HPP which generates power by diverting flow short-cutting a bend in the river.

The project company will build, own, operate and transfer the project to the government at the end of the 30-year concession period.

The Borrower: An independent power producer (IPP) set up as a special purpose vehicle that has the right to develop the project.

Financiers: ADB and other IFIs

Project Safeguards: ENV and IR category A, IP cat C.

Board approved in 2015

Operational since March 2020

Documentation

- RRP document -social dimensions (recognized adherence to CLS)- compliance with ADB's Social Protection Strategy
- A labor management plan was prepared covering CLS, compliance with labor laws, IFC PS2

Monitoring Arrangements

- Semi-annual monitoring reports
- Project Company Lenders E&S Advisor – quarterly monitoring during project construction, annual during operations phase
- Lenders supervision missions
- Semi-annual monitoring
- External Labor Audits

EHSS Capacity

- MPL's Owner Engineer - Social Safeguard officer monitor social and labor issues
- EPCC EHSS Team
- Owner Engineer - Social Safeguard officer monitor social and labor issues,



Labor Issue: Subcontractor Management

External Labor Audit Findings

- External Labor Audit found non-compliances with labor law and CLS gaps in policies and contracts, weak subcontractor management
 - (Law) Some subcontractors underpay their workers, do not pay OT
 - (Law) Not all workers have signed contracts
 - (Law, CLS) insurance benefits are not same and does not cover all workers
 - (CLS) Workplace events are not open to all workers
 - (CLS) EPCC contracts with subcontractors - no clauses prohibiting child and forced labor
- Under country's Labor Law, the Project Company is liable for activities of its contractors and subcontractors.
- *Under the financing agreements, noncompliance by EPCC and its subcontractors are noncompliances of the Borrower.*

"Labor Action plan"

- EPCC agreed that legitimate claims of underpaid workers will be paid by EPCC until 2 years after project completion
- Cascading EPCC's HR policy down to the contract agreement with subcontractors
- Providing workers insurance benefits for daily wage workers.
- EPCC checks and ensure all subcontractors' workers have contracts. Contracts should be explained to illiterate workers
- All workplace events should be open to all workers regardless of gender.
- Contracts with subcontractors revised to have clauses prohibiting FL/CL
- Workers Council – quarterly meetings
- Workers Grievance Mechanism - Workers Grievance Database - EPCC and Subcontractors to communicate the new labour grievance mechanism to all workers through new worker induction, toolbox talks and other training opportunities.



Case Example: Airport Project



The Project: PPP concession agreement with winning consortium for (i) construction of new passenger terminal; (ii) rehabilitation of existing terminal; (iii) construction of apron for new passenger terminal; and (iv) operation, maintenance and management of old and new passenger terminals

The Borrower: SPV established (by winning consortium) to implement the project

Financiers: ADB

Project Safeguards: ENV-B, IR/IP-C

Board approved in December 2014

Operational since July 2018 (Terminal 1)

Documentation

- IESE with ESCA
- RRP document -social dimensions (recognized adherence to CLS)- compliance with ADB's Social Protection Strategy

Monitoring Arrangements

- Semi-annual environmental and social monitoring report
- LTA monitoring report

EHSS Capacity

- HR officer monitors labor compliance of contractors/ subcontractors

Labor/CLS Issue: Subcontractor Management; Workforce Restructuring

Monitoring/Supervision Findings

A. Labor non-compliance of subcontractor

- One fatality involving one of the subcontractors recorded during construction.
- Non-remittance of social insurance premiums by subcontractors during construction

B. Workforce restructuring due to COVID-19 economic impacts during operation stage

- salary reduction due to fewer workdays
- floating status without pay
- voluntary separation program
- redundancy

Corrective Actions

- Borrower undertook labor audit of its EPC contractor and subcontractors;
- Required contractors/subcontractors to submit (on monthly basis) evidence of social insurance remittance and compliance with prescribed minimum wage (e.g payroll)
- Required contractors/subcontractors to submit certification of no pending case issued by authorized labor agency

Labor management measures undertaken:

- Workforce restructuring schemes carried out following consultation with affected employees and in accordance with national labor laws
- Continuation of social security benefits for employees on floating status
- Company-initiated financial assistance and extension of health and life insurance benefits in addition to statutory severance pay for terminated employees



Case Example:
Solar Power Project



The Project: Operation of 240MW solar PV power plant

The Borrower: Originally a JV between Thai power generation company and national conglomerate but later restructured to 100%- owned Thai company

Financiers: ADB

Project Safeguards: ENV/IR – B, IP-C

Board approved in June 2021

Operational since June 2019

Documentation

- ESCA
- RRP document -social dimensions (recognized adherence to CLS)- compliance with ADB’s Social Protection Strategy

Monitoring Arrangements

- Semi-Annual Monitoring Reports

EHSS Capacity

- EHS Officer is responsible for ensuring health and safety compliance of contractors/ sub-contactors



Labor/CLS Issue: Contractor/ Subcontractor Management

Monitoring/Supervision Findings

- High labor risk for subcontracted PV cleaners hired seasonally (6 months)
- No mechanism to monitor labor compliance of contractors/subcontractors

Corrective Actions

- Verification of employment contracts of contracted/subcontracted workers
- Development of labor compliance monitoring checklist
- Requiring contractors/ subcontractors to regularly submit records of payment of social insurance and compliance with prescribed minimum wage
- Making GRM more accessible through development of online channel for workers to submit complaints/ queries



Case Example: Agribusiness project
Climate-Resilient Aquaculture Value Chain Project
By Ranie Catimbang, PSOD/PSTS



- **The Project:** support for the capital expenditure (capex) of a new coated fish feed (floating aquafeed pellets) plant with an installed capacity of 600MT/day.
- **The Borrower:** A company with fully integrated poultry operations and animal feed business.

Financiers: ADB and other IFIs

Project Safeguards: ENV – B, IR/IP-C

Board approved in Sep 2022

Status: When ADB got involved

Facility 1 Operational

Facility 2 Under construction

Documentation

- IEE, ESCAR
- Operations Phase Labor Management Plan

Monitoring Arrangements

- Annual ESMR
- Audit report for contractor/ subcontractor and supplier management

EHSS Capacity

- EHS Officer at each site
- HR officer at each site



Labor/CLS Issue:

Due Diligence Findings

- No mechanism to audit contractors/ subcontractors and suppliers' compliance
- Non-compliances with local labor regulations and CLS gaps in policies and contractor management
 - HR policy does not cover CLS, overtime, clarity on minimum wage, grievance redress
 - no contractor and supplier management and labor management plan
 - no principal employer and interstate migrant workforce registration
- For under-construction facility:
 - Sub-contractors' contracts have no clauses prohibiting child and forced labor
 - Contractors do not have labor licenses, and registration for workers' insurance and provident fund (as required)
 - Under construction site has no building and other construction workers (BOCW) registration
 - Heavy equipment operator did not undergo pre-employment/periodic medical exam
 - Workers in high-hazard activities not wearing proper PPEs (expired)
 - No drinking water facilities on site
- For operational facility:
 - No workplace environment monitoring program (temp & humidity)
 - No age verification system and no child labor prohibition notices on site
 - Overtime work for some workers exceeded regulatory limit of 12 hours
 - No welfare and medical officer present on site, first aid kits not up to standards
 - Staff handling hazardous/biomedical waste not trained and immunized
 - Documentation for leaves, work hours, wage payments etc. not well maintained, ID cards not provided
 - Wage payment inconsistent with the state's minimum wage

Corrective Actions

- Establish a mechanism to audit contractors/ subcontractors and suppliers concerning compliance with applicable national labor laws and core labor standards, as well of utilizing local labour and resources;
- Develop labor management and contractor and supplier management plan as part of ESMS
- Update the HR policies to reflect CLS and other items not covered previously
- Require company to register for labor-related registrations
- For under-construction facility, aside from the DD, a labour audit was conducted separately.
- Since the construction is at the completion stage already, at the time of the audit, less than 20 workers remain on site and some of the requirements from the previous DD are no longer applicable (labor license, registration for worker's insurance and provident fund). The remaining CAP items are the provision of proper PPEs (replacement of expired) and maintenance of overtime records

For the operation facility:

- develop the workplace environment monitoring program
- improve documentation of HR and labour related records/registers
- Provide ID cards and post notices on prohibition of child labor
- Appoint welfare and medical officer, and replenish first aid kits
- Train and immunize staff handling hazardous and biomedical waste
- Improve HR-related documentation and registers
- Align wage payment with the state's minimum wage rates

Lessons Learned

Under country's Labor Law, the Project Company is liable for activities of its contractors and subcontractors – cascading HR policies to EPCC and from EPCC to subcontractors. Sample contracts with lawful terms of employment, CLS provision can be provided.

Enforcement is needed. ADB's role in monitoring compliance is important.

Examples of Measures which can improve compliance:

- CLS integration in ESMP, ESMS, Project Company's HR policies
- Borrower/Client Internal Labor audits
 - Owner's Engineer
 - Involvement of Project Company HR/Labor officer oversight of Contractors
 - Contractors' oversight of its subcontractors – EHSS, HR or industrial relations officer, foreman at construction sites
- Workers grievance committees and document workers' grievances
- HR mandatory orientation during hiring
- Toolbox talks, - code of conduct, workers rights, term of employment
- Requiring a bond (e.g. % of contract cost) to cover unpaid wages, social security benefit contributions
- External E&S Monitor/company or contractor to include labor expertise
- External labor audits
- CLS compliance reporting integrated in ESMR/AESPR submitted to ADB



Resources: Document examples

- Labor Management Plan
 - https://www.adb.org/sites/default/files/project-documents/54211/54211-001-emp-en_15.pdf
- Workers Grievance Mechanism
 - https://www.adb.org/sites/default/files/project-documents/54211/54211-001-emp-en_17.pdf
- Monitoring Reports
 - ESMR - <https://www.adb.org/projects/documents/vie-54211-001-esmr-1>
 - Labor Audit Report - https://www.adb.org/sites/default/files/project-documents/54211/54211-001-esmr-en_50.pdf
- Environmental and Social Compliance Audit Reports
 - https://www.adb.org/sites/default/files/project-documents/54211/54211-001-escar-en_0.pdf



Labor Management Plan – Construction and Operation Phases

Lien Lap, Phong Huy, Phong Nguyen Wind Power Projects

8 June 2021

Project No.: 0552758



Worker Grievance Mechanism



Lien Lap, Phong Huy and Phong Nguyen Wind Power Projects

28 May 2021

Project No.: 0552758