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Fiona Murie is the Director of Occupational Health, Safety, and the Environment for the Building Workers International (BWI), one of the labour movement's Global Union Federations

Editor: Kevin Skerrett

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**BWI strategies to promote decent  
work through procurement:  
The example of the Bujagali Dam  
project in Uganda**

Fiona Murie

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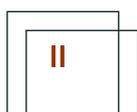
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## INTRODUCTION

This paper is intended to provide an overview of progress made by the Building and Woodworkers International in the promotion of the Decent Work agenda in the construction industry. The paper looks at recent efforts to improve employment and working conditions through the insertion of Labour Clauses in procurement and contract documents. Such mechanisms represent one part of the strategy adopted by the BWI to promote the social aspects of construction, sound industrial policy and Trade Union participation in economic development.

For many years, the BWI has been working to convince the International Financial Institutions (IFIs) and their clients in both the public and private sectors of the need for effective Labour Clauses in procurement. Given that labour legislation is often poorly enforced on building sites, the addition of labour clauses in procurement and contract documents can help enforce labour laws, with contract compliance as the mechanism for implementation and monitoring. Public labour inspection, of course, should continue to play its traditional enforcement role.

While labour clauses in procurement documents can cover a number of important social objectives, BWI considers labour clauses recognising trade union rights to be of fundamental importance. These clauses can help to secure collective bargaining agreements and trade union participation on construction sites, both of which are essential to ensuring that workers can demand full protection of labour rights and working conditions.

Using a case study from Uganda, where the International Finance Corporation provided the loan for construction of a large hydro electric dam at Bujagali Falls, this paper looks at the impact of labour clauses in IFC contract documents on workers' rights at the Bujagali dam construction site, and the wider implications of such clauses.

# 1. SOCIAL DEVELOPMENT AND CHARACTERISTICS OF THE CONSTRUCTION INDUSTRY AND BWI'S ENGAGEMENT WITH THE INTERNATIONAL FINANCIAL INSTITUTIONS

The construction industry worldwide is a USD\$5 trillion<sup>1</sup> giant, accounting for around 10 per cent of the world's Gross Domestic Product and employing up to 180 million people, or 7 per cent of all global employment.<sup>2</sup> Increasingly, new construction is occurring in developing countries, where some 60% of the world's fastest growing cities are located. Developing countries' collective share of world construction activity was 10% in 1965, 29% in 1998, and it is still growing today.<sup>3</sup> Three quarters of the world's building workers are to be found in low income and developing nations.

In a number of these countries, factors such as informal, forced and child labour and an absence of effective enforcement of employment and labour laws means that good working conditions and respect for health and safety standards are rare or non-existent. Worldwide, construction offers primarily low status, low paid, short-term, unregistered, informal and hazardous jobs in a highly fragmented industry. The industry is dominated by micro enterprises, with 90% of firms world-wide employing less than ten people, and in Europe, 97% of construction companies have less than 20 employees.<sup>4</sup> This highly fragmented employer base and workforce, with virtually no direct employment, combined with the temporary and mobile nature of construction work, poses serious challenges for trade union recruitment and representation.

Furthermore, construction is often a hazardous industry: workers' exposure to chemicals, dust, manual handling, as well as both physical and psychosocial hazards is routine and excessive. According to the ILO, construction accounts for 30–40 per cent of the world's fatal injuries. Yet it is very common to find that even large construction projects have no safety policy or prevention program, no safety officer, no project specific health and safety plan, no information or training on prevention, no collective measures to prevent accidents or ill health, and not even the most basic personal protective equipment. Basic amenities such as clean drinking water, latrines, and first aid are rarely provided on-site. Migrant workers often have no alternative but to live rough on the roadside or on the site because proper accommodation is lacking. Malnutrition and diseases such as

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<sup>1</sup> International Federation of Consulting Engineers (FIDIC) 2008

<sup>2</sup> WRI/UNEP/WBCSD (2002) Tomorrow's Markets: Global Trends and Their Implications for Business. Paris.

<sup>3</sup> UNEP/CIB/CSIRCIDB (2002) Agenda 21 for Sustainable Construction in Developing Countries. Pretoria.

<sup>4</sup> International Labour Office (2001) The Construction Industry in the 21st Century: Its Image, Employment Prospects and Skill Requirements. Geneva.

malaria, dengue, cholera and tuberculosis often affect construction workers and their families, and HIV/AIDS infection runs high among construction workers moving around large construction projects, often far from home.

Despite the difficult conditions in the industry, construction can play an important role in social development. There are two main areas of social development opportunity in construction: Firstly, the product itself. That is, the benefits to society through the provision of much needed infrastructure, which may be roads, housing, schools, markets, hospitals, power and transportation. Secondly, the construction process, which provides desperately needed jobs. There are clear opportunities during the project construction and operation to expand both the number and the quality of jobs in the sector, and to improve the quality of labour practices to provide decent employment and working conditions. Aside from the typical technical specifications included in contracts such as payment of wages, working hours, overtime, working conditions, health, safety and welfare, social security and training opportunities, procurement can also be used to meet other social objectives, from addressing human rights to underpinning welfare systems. Targeted procurement can act as a vehicle for employment policies to address unemployment, young workers, apprenticeships, and equality of opportunities for disadvantaged groups. Ideally, procurement policies should generate attention to these social objectives by awarding contracts using criteria that give priority to contractors who demonstrate good Industrial Relations policies and compliance with Labour Standards.

Construction has huge potential for poverty reduction, and the implementation of internationally recognized labour standards has significant potential within strategies to improve living and working conditions. The objective should be to establish a rules based framework that will result in real, practical improvements in living and working conditions, and address immediate needs pertaining to shelter, food and water, childcare, education, health and, above all, employment and decent work.

Too often, the competitive nature of the construction industry means that contractors win bids simply by lowering their costs, of which labour is a major component. Thus the winning tender may well be the one which pays the lowest wages, does not provide safety equipment or have coverage for accidents, and which has the largest proportion of informal workers, for whom no tax or social security is paid, and who are not covered in practice by any legal or social protection. Weak enforcement of existing labour legislation in many countries compounds these problems.

Seeking to avoid the lowest price culture and the evasion economy created by informal employment and by exploitative labour practices in the sector, trade unions in the construction sector advocate for the inclusion of labour and social clauses in procurement documents and contracts. The Building and Woodworkers International, jointly with the International Organisation of Construction Contractors Associations (CICA), have developed several joint approaches to Labour Clauses in Public Contracts. The World Bank and its private

sector arm, the International Finance Corporation, have adopted labour clauses in their contracts as well, aiming to ensure that risks of construction projects are minimized, while the social benefits are increased.

### **International Labour Standards**

The ILO Declaration of Fundamental Principles and Rights at Work, adopted in 1998, recognizes that economic growth alone is not enough to ensure equity, social progress, and the eradication of poverty. The 1998 Declaration concerns the “Core Labour Standards” (CLS), defined in eight International Labour Organization (ILO) Conventions, which cover four areas: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. ILO Member States must respect and promote these principles and rights, whether or not they have ratified the relevant Conventions and regardless of the level of economic development. Increasingly, multilateral and bilateral development organizations, as well as private sector companies, are recognizing that implementation of the CLS is a key step towards fulfilling development objectives.

The thrust of BWI’s work with affiliates on Trade Union development, with Framework Agreements with Transnational Companies and with the International Financial Institutions is to promote implementation of the Core Conventions, but also implementation of other key International Labour Standards (ILS) that form a key part of the ILO’s “Decent Work” agenda. That is to say, payment of the prevailing wage, establishment of working hours and overtime payments, safe and healthy working conditions, and equitable opportunity for employment are considered to be basic elements of any credible poverty reduction strategy. Many of the problems typically faced by workers in the construction industry are, at least to some extent, addressed by the International Labour Standards of the ILO.

International health and safety standards and industry specific International Labour Standards, such as ILO Convention 167 Safety and Health in Construction (1988) and Convention No. 94, the Labour Clauses (Public Procurement) Convention, set out basic principles to ensure health and safety of construction workers and protect wages and working hours of those working under public contracts. In the absence of suitable national laws or enforcement measures, these standards, together with the core labour standards, are frequently used by BWI and its affiliates as a minimum rights baseline in contract, industry and government level negotiations.

Furthermore, even where national labour legislation is in place, meaningful recognition of and respect for these standards on construction sites is typically poor. Therefore, making linkages between employment law and procurement law represents one strategy to improve enforcement of labour standards through contract compliance. The insertion of labour standards clauses in the bidding and contract documents for construction projects is a mechanism by which labour

laws and procurement laws mutually reinforce each other by making compliance with minimum labour standards a condition of the contract.

### **International Labour Standards in World Bank and International Finance Corporation infrastructure projects**

In the 2001 ILO Tripartite meeting on the Construction Industry it was agreed that:

“Governments and international financing agencies should encourage socially responsible business practices that promote and protect workers’ rights in accordance with the ILO Declaration on Fundamental Principles and Rights at Work. The ILO can help to bring this about by providing a platform for social dialogue and for discussions with financial institutions such as the World Bank. In this connection, consideration should be given to the Labour Clauses (Public Contracts) Convention, 1949 (No. 94).”<sup>5</sup>

Following this ILO meeting, the BWI decided to devote particular attention to this agreement by actively promoting labour clauses in bidding and contract documents with the Multilateral Development Banks (MDBs) in both the Public and Private sector lending operations. Annual infrastructure investment by MDBs in recent years is over \$80 billion, according to 2008 figures from FIDIC.

An expert from BWI spent two months at the World Bank in 2004, preparing and presenting detailed recommendations<sup>6</sup> for the insertion of new labour clauses into the Bank’s Standard Bidding Documents (SBDs) for the Procurement of Works. Previously, the World Bank’s contracts had contained no provisions on Core Labour Standards (CLS). During this period, the BWI also advised the private sector lending wing of the World Bank, the International Finance Corporation (IFC), on clauses covering the key internationally recognized labour standards for their proposed Performance Standards, consisting of policies on social and environmental impact of their clients’ projects across all sectors.

The World Bank’s executive board adopted the new IFC Policy and Performance Standards on Social and Environmental Sustainability in February 2006 and began to apply them to all new IFC loans and investments in May 2006. In addition to making observance of CLS an obligation for all projects, the IFC’s “Performance Standard 2: Labour and Working Conditions” (PS 2) requires that borrowers meet other basic labour conditions on human resources management, retrenchment, occupational health and safety and supply chain management<sup>7</sup>.

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<sup>5</sup> TMCIT/2001/12 ILO Sectoral Activities Programme. Note on the Proceedings. Tripartite Meeting on The Construction Industry in The Twenty-first Century

<sup>6</sup> See: [siteresources.worldbank.org/INTABCDESLO2007/Resources/Paper2.pdf](http://siteresources.worldbank.org/INTABCDESLO2007/Resources/Paper2.pdf)

<sup>7</sup> Areas covered by the IFC PS2 include: freedom of association and collective bargaining; Non-discrimination and equality of opportunity; Freedom from child labour; Freedom from forced labour; Retrenchment –required to have a retrenchment plan; Working relations – documentation and communication of conditions; Working conditions – compliance with collective bargaining and national law on pay, hours, OSH; Grievance mechanisms – must be in place for worker; and Human resource policy - the client is also expected to have a human resource policy in place.

The policy applies to non-employee workers, contract labour, sub contractors and suppliers.

Even as early as 2005, the World Bank's Procurement Department had begun to include the first labour clauses in the standard bidding documents for the Procurement of Works, as recommended by the BWI. In 2007, these Labour Clauses were harmonised among all the Multilateral Development Banks (MDBs). That is, all 13 Banks adopted these Standards. However, only the Labour Clauses on Child Labour, Forced Labour, Health and Safety, and Record Keeping were mandatory, while the two standards on Workers Organisations and on Non Discrimination were encouraged but not required. An HIV/AIDS policy was also among the non-mandatory conditions.

In early 2009, the World Bank announced it would include all four Core Labour Standards as mandatory requirements in the General Conditions of Contract in its bidding documents. It announced as well that all of the Multilateral Development Banks would adopt the same standards in March 2009, which would come into force in July 2009. Furthermore, the Bank has announced its intention to apply the labour clauses as mandatory in the Bidding Documents for Smaller Works, which apply to projects with a value of less than \$10 million, meaning that all World Bank-funded infrastructure projects would apply the CLS. This was a long standing concern and subject of recommendations from the BWI.<sup>8</sup>

The BWI and the other Global Unions consider the adoption and implementation of the IFC's CLS requirements for all loans and the inclusion of the CLS clauses in the World Bank's contracts to be a major advance. However, important challenges remain in ensuring that the standards are effectively applied in all projects. The BWI is keenly interested in supporting its Trade Union affiliates in their efforts to make use of these new commitments by the International Financial Institutions. It found the first opportunity to do so in 2007 in Uganda.

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<sup>8</sup> These Labour Clauses are now contained in the Bank's Standard Bidding Document for the Procurement of Works:

- 6.1 Engagement of Staff and Labour
- 6.2 Rates of Wages and Conditions of Labour
- 6.5 Working Hours
- 6.6 Facilities for Staff and Labour
- 6.7 Health and Safety (and HIV AIDS)
- 6.20 Prohibition of Forced/ Compulsory Labour
- 6.21 Prohibition of Harmful Child Labour
- 6.22 Employment Records of Workers
- 6.23 Workers' Organizations:
- 6.24 Non-Discrimination and Equal Opportunity

## 2. UGANDA AND THE BUJAGALI DAM. BACKGROUND AND ACTIVITIES REPORT

The Building and Woodworkers International is active in promoting the ILO's Decent Work agenda in the construction industry worldwide. Recognizing that one important mechanism for achieving this objective was the inclusion of key internationally recognized labour standards in contract agreements for projects supported by the World Bank and the IFC, the BWI identified a dam construction project Uganda in March 2007<sup>9</sup> as a pilot project. BWI had four objectives with the project:

- To generate examples of good practice in implementation of the requirements of PS2 and national standards
- To support its affiliate union in Uganda in their efforts to organise at the Bujagali site
- To document experiences from the Bujagali Dam project and monitor implementation of labour standards
- To create awareness of IFC PS2 and World Bank labour clauses and popularise organizing initiatives in IFI funded projects amongst trade unions at national and international level

The project consisted of the construction and maintenance of a large hydro electric dam at Bujagali Falls on the Nile river in Jinja. Between 600 and 2000 construction workers would be required on site during the different stages of construction, including approximately 400 expatriate workers from neighbouring countries. The construction phase of the project was scheduled to last for 44 months.

After initial research and analysis of the social and environmental assessment reports, taken from publicly available IFC documents, the first phase of the Trade Union organising work focused on communications and joint planning between BWI and the affiliated Trade Union in Uganda, the Uganda Building Workers Union (UBWU).

The following section explains, in detail, the steps that BWI and UBWU undertook to realize their objectives on the Bujagali project.

### STEP ONE: Identify a potential project

#### February 2007 notification of the Bujagali Dam Project Proposal

The BWI receives regular updates on IFC project proposals from the Global Unions Office in Washington, based on publicly available 'Summary of Proposed Investment' (SPI) documents from the IFC website.<sup>10</sup>

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<sup>9</sup> (Bujagali project IFC number 24408).

<sup>10</sup> For Bujagali, this is a three page overview of the proposed project:

<http://www.ifc.org/ifcext/spiwebsite1.nsf/b7a881f3733a2d0785256a550073ff0f/21e1f67a14f119e28525724a00667e87?opendocument>

This basic information on the sector, the country, the client and the characteristics of the project, is enough to identify any project that may be of interest. The key points to consider in selecting a project from the Global Union point of view include whether:

- a. The country and the sector are a priority for organizing
- b. Affiliates are actively organizing and are interested in organizing in the area
- c. Affiliates are reliable in communicating with the Global Union at the regional or HQ level
- d. There is an enabling or an inhibiting environment in terms of the legislative and industrial relations context
- e. The schedule of the project cycle makes organizing feasible for the Global Union Federation (GUF) and its Trade Union affiliate.

### **STEP TWO: Research the Project**

Using the project number BWI obtained more detailed information can be obtained on the IFC Projects Database ([www.ifc.org/projects](http://www.ifc.org/projects)) on the Bujagali project, including a 15-page Environmental and Social Review. IFC classifies projects as category A, B, or C depending on whether they have “significant, limited or minimal potential adverse social or environmental risks”. Category A includes Construction, Extractive industries, projects in EPZs and some manufacturing. Unless the project is in category C, then the client must submit a Social and Environmental Assessment and Action Plan to say how they will mitigate potential risks and impacts.

Another key document, also available on the IFC website, is: **The Social and Environmental Assessment (SEA)**. This must be prepared by the borrowing client, in this case, Bujagali Energy Ltd. (BEL). The Bujagali SEA is a document of 515 pages, with separate annexes containing all the maps and plans for the works to be carried out. Much of the information contained within the document, such as key environmental and social conditions, descriptions of the required labour force and where it would be accommodated, labour issues and working conditions, and the plan for public consultation, were directly relevant to the union. In particular, the Social Action Plan, which refers to the IFC Performance Standard 2 and the ILO Conventions within it, discusses the detailed calendar of the project, the number of unskilled, semiskilled and skilled workers that will be needed and where the labour force will be drawn from, and gives details of opportunities for local employment and anticipated numbers of foreign workers.

### **STEP THREE: Contact the Trade Union**

After researching and evaluating the project, BWI contacted its affiliate, the Uganda Building Workers Union UBWU to see if they were interested in organizing on the new dam project. The Union was aware that the Dam Project was going to be starting up in the near future, and they were very interested in

the information that the BWI had been able to provide. The union leadership was keen to take up the opportunity for organising and agreed to proceed.

Together, BWI and its local affiliate assessed the enabling and inhibiting factors for the project. Among the positives:

- The local trade union was enthusiastic. It has a modest, but growing, membership of 2,500 workers, an active relationship with the BWI, good organising and training capacity, a good relationship with the national trade union centre and with Workers' Party MPs. It also had institutional capacity with contacts in relevant government administrations, Labour, Public Works, bargaining experience with a number of Collective Bargaining Agreements, and contact with the Employers Confederation and with the Contractors Association.
- There was a favourable legislative framework and Uganda had ratified all of the core ILO Conventions, as well as Convention 94<sup>11</sup> on Labour Clauses in Public contracts.
- There was a positive attitude towards maximising implementation of labour laws and improving working conditions in construction from the Ministry of Labour, the Labour Inspectorate and the Health and Safety Department in the Ministry.
- The ILO Construction Action Programme was already active (with strong BWI support) in Tanzania and was soon to be extended to Kenya and Uganda. A national tripartite forum for the construction industry in Uganda had recently been created, giving top priority to the promotion of decent work and health and safety standards.

Among the negative factors:

- While there was a very positive attitude from government authorities, very capable staff and a good legislative framework, there was no plan to promote (nor enforce) compliance with all the new and recent legislation in place. As is the case in many countries, there was a lack of resources available to the Ministry of Labour and the Labour Inspectorate.
- No minimum wage exists.
- There is no national industry system of collective bargaining, nor is there an enterprise model. In construction, bargaining is done project by project.
- There are no reliable employment statistics for construction. No proper statistics exist for occupational accidents and diseases and there have never been any prosecutions for infractions of the health and safety legislation.
- Procurement is still weak in the sense that there is a lowest price culture in bidding, despite Uganda's ratification of ILO Convention 94 on Labour

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<sup>11</sup> C94 Labour Clauses (Public Contracts) Convention 1949

Clauses in Public Contracts.<sup>12</sup> Shortcomings in the procurement system arise mainly in the enforcement of the rules and in the collection of data to monitor the performance of the procurement system.

- The typical conditions exist in construction in Uganda, unemployment, under-employment, poverty and informal work. The Labour Ministry estimates that at least 70% of workers in construction are informal.
- Capacity building is required in the construction industry as a whole, and relationships between the various actors in the construction sector need to be established and improved.
- Jinja, the site of the dam project, is about 100km from the Trade Union offices in Kampala, so transport, accommodation and communications had to be addressed in the organizing plan.

#### **STEP FOUR: Establish the Action Plan**

In March 2007, the BWI invited the General Secretary of the Uganda Building Workers Union to come to Geneva for discussions on strategy and to agree to an action plan, included on the agenda were:

- Briefing on International Labour Standards and visit to ILO
- Briefing on IFC Performance Standard 2 and World Bank Labour Clauses
- Examination of Uganda Legislative framework, existing Collective Bargaining Agreements and context for organizing
- Examination of the Bujagali Project documents from the IFC website
- Assessment of organizing strategy and agreement of plan of action for organizing on the site.

#### **STEP FIVE: Initial steps and contacts for organizing April – June 2007**

The BWI informed the Global Unions Office in Washington of its intention to work with UBWU in organizing the site and monitoring the IFC's Performance Standard 2. The BWI contacted the IFC in Washington to establish contact with the IFC staff responsible for the project in Uganda, so it could discuss the timetable of the project and the respective roles of the client, Bujagali Electricity Ltd. (BEL) and the main contractor in implementation of PS2 with the IFC. At this stage, the main construction contract had only just been awarded to the Italian multinational Salini, Costruttori. The final approval by the IFC for the Project to proceed was to be given on April 19<sup>th</sup>, and it was anticipated that work on clearing the bush could begin in June. IFC explained that Bujagali Energy Limited (BEL) had undertaken to transmit to Salini all requirements of the contract, including PS2.

The Uganda Building Workers Union, armed with the necessary contacts and information, wrote to the client (BEL) in Kampala to ask for a meeting. BEL declined to meet with the union, referring them instead to Salini, the Prime Contractor for the project. Salini also declined to meet with the union, explaining

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<sup>12</sup> According to C94: In Public Sector Infrastructure projects or public works, or where a public authority is involved in the award of the contract, wages, working hours and health and safety should be clarified before the contract is awarded

on the first occasion that they had not yet signed the contract with BEL. The union persisted in seeking a meeting, but Salini twice more informed the trade union that they could not meet with them. The reason given on the second attempt was that the head office in Italy had not yet appointed a project manager. Finally, Salini replied that their intention was to invite "all stakeholders" to a meeting as soon as the project was ready to start.

Salini's refusal to meet with the union was a violation of the IFC Performance Standard 2, which is clear on the role of "Workers Organisations" and the client's obligation to engage with them.

It appeared that Salini was seeking to avoid meeting its obligation under PS 2 by substituting a "stakeholders consultation" in the place of its requirement to engage with workers' representatives, ignoring the role of the trade union in employment law, industrial relations, OHS and collective bargaining. Although the Union did attend the stakeholders meeting in June, where BEL and Salini presented plans for the project, there was no discussion of labour rights. There was some discussion of opportunities for local employment, in particular for people from eight villages to be displaced by the dam project.

Meanwhile, the union contacted the District Labour Office and local politicians for information on the progress of the project, at that time still in its preliminary stages, and they made several visits to Bujagali to speak with workers coming on and off the site. The UBWU already had a Collective Bargaining Agreement with Salini on another large infrastructure project, the Northern Bypass, in Kampala. Staff from this project were liaising with Salini on the Bujagali project, so the union had a source of information and assistance.

BEL and Salini soon contacted the union for help in communicating with the large numbers of people (two to three hundred) camped outside the gates of the project, looking for work. In this way, dialogue began between the site management and the union. Finally, the union wrote to BEL again and was able to arrange a meeting for early July, to coincide with the visit of BWI officers from Geneva and the Regional Office in Johannesburg.

### **STEP SIX: Involving all stakeholders in the project**

In July 2007, BWI officers spent seven days working with the UBWU. Training for union organizers was carried out for trade union officers by the BWI, and a three-day meeting of the BWI Africa Trade Unions in Construction network meeting was held in Jinja. Affiliated Trade Unions from a number of neighbouring countries also participated in order to learn how to take up opportunities for organizing on World Bank Group funded projects. Strategies for recruitment and organizing members were discussed, and a number of Collective Bargaining Agreements were examined and opportunities for negotiating improved clauses were discussed. The participating unions felt that the IFI commitments on freedom of association and collective bargaining were a definite "door opener" for unions.

### **i) Government**

BWI and the UBWU leadership also met with the Minister of Labour to discuss the construction industry in Uganda, World Bank funded projects, procurement, public contracts, management of Health and Safety and skills training, and the role of trade unions and collective bargaining. Further very positive meetings were held with the Department of Health and Safety and with the government's Senior Specialist Labour Inspector for Construction. The Labour Minister himself and colleagues from the Labour Ministry participated in the Construction Network meeting, travelling to Jinja in order to participate.

### **ii) The World Bank and the International Finance Corporation**

The IFC officer met with the union in Kampala and accompanied them to meetings there with BEL as well as at the World Bank offices to discuss infrastructure projects currently under way. There was a very cooperative attitude shown by the IFC and World Bank officers towards the Trade Union, and a clear understanding of the role of the Trade Union in achieving implementation and monitoring of strong labour standards on site.

### **iii) Bujagali Energy Ltd. (BEL)**

BWI and the Ugandan Building Workers Union met with the construction manager to explain that they had been unable to obtain a date for a meeting and site visit with Salini. The construction manager assured the union that Salini was simply too busy to entertain a visit from the trade union at this time, and that it was too early to be discussing anything with the union, since construction work would not begin until October. The unions suspected that BEL had very little appreciation or understanding of the role of a trade union, or indeed of the labour relations requirements of PS2. Based on their meeting, they drew the conclusion that BEL saw Performance Standard 2 as a public relations rather than a human resources commitment. However, it was clear that the unions' main organising focus was not the IFC client, BEL, but its main contractor, Salini.

### **iv) Salini and the Bujagali site**

The union encountered considerable difficulty in arranging a visit to the site, but persisted even though Salini was still declining to meet with the trade union. Meanwhile, the union was hearing disturbing news of the Bujagali site: that a worker had been killed; that approximately one hundred casual workers had been taken on to clear the bush and that they were working in poor conditions. The union was also informed that only two bids had been received for the dam project and that Salini's bid was significantly cheaper.

Finally, a meeting and site visit took place with the Project Manager for Salini Constructors, the Human Resources manager, the Environment officer, and the Health and Safety officer. BWI and the UBWU explained their roles. Salini expressed interest in the union's offer of assistance and training on health and

safety for workers and in trade union participation in the Health and Safety Committee.

When the union inquired about the worker who had died on the site, the Project Manager said that in fact three workers had been killed. To date, the Trade Union has been unable to find any information about two of the three fatal accidents.

### **STEP SEVEN: UBWU Organising activity in Uganda**

While the construction project was still in its preparatory phases, the union made a number of visits to the site to talk to workers as they came in and out, and began to build up contact with the workers on site. The National Executive Committee of the UBWU took the decision to employ a trade union organizer in Jinja to support the Bujagali organizing efforts, and to take up the post when construction work would begin in the month of October. The first trade union members were being recruited during this period.

### **STEP EIGHT: Meetings and Training in Uganda with BWI**

After the visit of the BWI representatives to Uganda, the UBWU asked for BWI's support for project-specific training for Bujagali site union organizers and for training of the site Safety Committee, once it was established. BWI officers returned to Uganda in October to jointly host a meeting with UBWU on the ILO Construction Action Programme (CAP) in Uganda, which brought together government ministries, private sector contractors, employers association, and trade unions from Uganda and neighbouring countries. There was substantial discussion of Labour Clauses in Construction Contracts, particularly in Public Contracts, and the new provisions included in the lending requirements of the World Bank Group.

The conclusions and recommendations of the meeting were incorporated into the CAP action plan for Uganda, and adopted by the national steering committee.

During the same visit, BWI presented its health and safety training course to shop stewards, safety representatives and organisers. Participants also undertook visits to large construction sites in and around Kampala for practical health and safety inspections and interviews with management and workers.

Following the trainings, there was a meeting with management and the UBWU. Immediately afterwards, at the end of the working day, the first on site organizing meeting took place. The Union was able to address a mass meeting of approximately 250 workers to present the trade union and to invite membership.

## **STEP NINE: Ongoing organizing activity in Uganda October 2007 – June 2008**

### **Recruitment of workers into membership of the trade union**

Approximately 270 workers joined the Uganda Building Workers Union in October—all of the unskilled and semi skilled workers on site at the time. Shop stewards and Safety representatives were elected and appointed.

By July 2008, trade union membership stood at 840, representing almost the entire eligible workforce, apart from management grades. Membership continues to grow, and increasing numbers of workers are due to come on site as work progresses over the next three years, to approximately 1,600 people. The Union has an equipped office on site, a chief shop steward and a team of shop stewards representing workers on the various areas and shifts.

The Executive Committee of the UBWU also took the decision to appoint a new Trade Union organizer in Jinja, who is able to support the shop stewards at Bujagali, but also cover other building projects, quarries and building materials plants in the geographical area, with the result that the trade union presence is growing steadily.

### **Recognition Agreement and Collective Bargaining Agreement**

After organizing the union, the next step was the negotiation of the Collective Bargaining Agreement. The basis for the negotiations was agreed by both parties to be the CBA already negotiated between Salini and the UBWU and still current for the Northern Bypass Site in Kampala.

In Bujagali, workers were being paid a lower basic rate and allowances, and were obliged to work a 60 hour week. The standard working week, under the Employment Act 2006, is 48 hours. Extra hours are to be considered as overtime and are to be paid at 150% and on Sundays and public holidays at 200%. Overtime should be voluntary, not compulsory. The legal maximum working week is 56 hours. Clearly, wages and hours of work are key areas to be addressed in the CBA.

There is no legal minimum wage in Uganda. There is, however, a prevailing wage rate for similar work in the area. The wage rates agreed in the existing CBA with Salini for the Northern Bypass workers were taken as the baseline.

A Memorandum of Recognition and Procedure Agreement between the UBWU and Salini was drawn up and signed in October 2007. This agreement recognized the union as the representative body for the workers.

The union aimed to conclude the CBA within two months, and the agreement was successfully negotiated and signed at the start of December 2007. The CBA sets out all terms and conditions of employment, pay, working hours, rest periods, benefits, deductions and allowances, rights to representation and grievance procedures. The CBA is considered to be of a high standard.

### 3. INITIAL EVALUATION

In June 2008, the BWI and the Uganda Building Union organized a seminar in Kampala to share experiences on the organizing work at Bujagali, and to examine the implementation and monitoring of IFC Performance Standard 2. Speaking during the official opening session the Member of Parliament for the Workers Party, the Hon. Teopista Sentongo, stated that "Workers through their trade unions have the duty to act as watch dogs to ensure the implementation of the IFC PS 2 and other legal frameworks that have been put into place to promote good working and living conditions". She added that this is key since "some employers, particularly employers from the construction sector, do not consider labour laws and OHS issues to be issues of priority."

Reporting at the seminar on the union's experiences in monitoring the International Finance Corporation (IFC) funded Bujagali project, the union General Secretary, Oloka Mesilamu observed: "Had it not been for the strong collaboration that exists between BWI and its affiliates this project was going to come and go without the union knowing about the existence of IFC PS 2." He said he appreciated BWI's role in providing union leaders with capacity and relevant networks needed for monitoring the implementation of IFC PS 2.

He went on to report on the union's achievements to date, outlining the union's successes in recruiting and organising close to 850 of the 1000 workers on site, and negotiating a collective bargaining agreement that addresses a number of key issues that will lead to the improvement of living and working conditions. Wages are higher than in other construction sites nationally and there are medical benefits that cover all workers including subcontracted workers, transport and housing allowances and good Health and Safety arrangements. The union has elected shop stewards and has a union office on site. He noted, though, that there is a general tendency on the part of employers not to respect the contents of CBAs, and that the Bujagali site was no different in that sense.

Though the UBWU had many positive comments on the Bujagali project, many areas for improvement have been identified. They recommended establishing a tripartite joint expert team, with the Labour Inspectorate, to address issues in a tripartite fashion, and to increase trade union activity on Health and Safety on site. They stressed the importance of ongoing training for workers and in particular the union and management members of the Health and Safety committee. They also urged continued discussion between the Trade union and BEL and Salini on implementation of Labour Standards contained in Performance Standard 2, the Social and Environmental Assessment, and the Collective Bargaining Agreement.

The union recognizes that it achieved significant gains that it would not have achieved without the backing that comes from Performance Standard 2. However, even with a good Collective Bargaining Agreement, the union felt that the company still tries to limit the rights of the workers. They saw a gap between the company's commitment on paper to implementing PS2 and its behaviour in practice.

According to the Trade Union, the company has put together all of the documents necessary for them to satisfy BEL (the IFC client) that it has met its commitments. Nonetheless, there remains significant work for the union to do to resolve the outstanding grievances and some persistent industrial relations problems that have been highlighted during this evaluation work.

Future work should focus on improving cooperation and trade union participation in some key areas, and there are a number of proposals and recommendations that will be taken up by the union now.

#### Key Conclusions for the Uganda Building Workers Union, December 2008

- It has now been demonstrated that it is possible to translate requirements of performance standard 2 (PS2) into significant improvements in practice if all the crucial stakeholders perform their rightful roles. Performance standard 2 (PS2) requirements added to the lending Agreement of Bujagali Hydropower Project have opened a new chapter in the construction industry in Uganda and indeed in the East Africa sub-region compared with the general context of industrial relations in Uganda. These achievements can be credited to the fact that the PS2 opened up opportunities for trade union recognition and collective bargaining, required compliance with existing labour laws, and established labour relations standards that were superior to the norm in the construction sector;
- Salini Construction SPA has complied with the requirements of PS2;
- Workers have been allowed the freedom to form a union of their choice;
- Union organizers have been able to sensitize workers on their rights and the obligations under the Ugandan labour laws;
- Workers are given training and equipment on health and Safety at the workplace;
- General medical tests for workers are performed in the on site clinic;
- Workers are issued with appointment letters;
- Workers, through their representatives, have negotiated a high standard Collective Bargaining Agreement;
- There is a procedure for grievance handling;
- There is an Established Occupational Health and Safety Department with worker participation on the Health and Safety Committee;
- Salini Construction pays the highest wages compared to other construction companies in Uganda.

These achievements have been made possible by the fact that the IFCS PS2 performance standards were made a requirement for the Bujagali Hydropower project.

### **BWI observations on Bujagali**

The advantage of having the IFC Performance Standard 2 is that it brings labour legislation from the statute books to the workplace through procurement and contractual commitments acquired by the client, the main contractor and other contractors on site. In Uganda there is very modern and helpful labour legislation, but the context in construction is one where there is very poor implementation even on large sites. It is clear that social performance at the Bujagali site during the construction phase is comparatively very good.

For the BWI, the crucial point of this exercise is union building. The Union has been able to increase membership and to have good participation in day to day work on site. They have also opened a new branch in Jinja, the town where the project is located, allowing them to increase trade union density in other workplaces in the area. The quality of the Collective Bargaining Agreement provides a good benchmark for new agreements with other employers.

However, despite the existence of PS2 and the corresponding planning in the Social and Environmental Assessment documents for Bujagali, it was extremely difficult for the union to be involved at an early stage. The BWI would like the trade unions to be involved in developing plans for implementation of social and environmental standards from a much earlier stage in the project cycle, rather than coming in during the construction phase and struggling for recognition. It seems that in the early stages of the project, Performance Standard 2 was viewed as an aspect of the employer's public relations with a wide range of stakeholders, rather than as a key element of labour relations with a trade union as a partner for implementation and monitoring of labour standards. BEL passed on their labour commitments to the main contractor for implementation, and declined direct communication with the trade union. Dialogue between the client and the Trade Union at an earlier stage could have helped facilitate improved industrial relations with the main contractor.

Direct communications with the union from the IFC officer in East Africa responsible for Bujagali ceased, unfortunately, after a very cooperative start in July 2007. Since that time it proved impossible to obtain a reply to any inquiries and invitations directed to the IFC Officer. The IFC was invited to participate in meetings in October 2007, and June 2008, without the courtesy of a reply. All documentation for the initial evaluation was sent to the IFC officer, and an invitation was extended to participate in the evaluation workshop, but there was no response.

In short, the Bujagali Dam Project is a typical organizing activity for the union, although it is an unusually high profile and large scale project. The union had to work out their organizing strategy in the usual way and persevere to get a foothold once the main contractor was on site and the construction phase was under way. Thereafter, there were protracted discussions in order to conclude a Collective Bargaining Agreement, and there is still ample room for improvement

in industrial relations on site. The union certainly values the established framework provided by PS2 in the face of opposition to union organizing on the part of the project management.

In the light of this case study, it is clear that trade union rights are essentially negative rights, in the sense that the only credible evidence of compliance on any site is (once management have been approached by a properly constituted trade union) the presence of trade union members and representatives in the workforce and the existence of a functioning Collective Bargaining Agreement.<sup>13</sup> Complaints of violations of Freedom of Association may be taken under the Trade Union Act and The Employment Act in Uganda, although this is a frustratingly inefficient mechanism, with long delays in labour tribunals. The PS2 provides an additional complaints mechanism in the case of opposition to, or interference with, Freedom of Association or the right to organize and to Collective Bargaining, since this is an explicit contractual obligation. Nonetheless, in the Bujagali case the Trade Union has preferred to register their complaint on a case of interference with Freedom of Association (affecting some 16 workers in the H&S Department at Bujagali) with the District Labour Office rather than asking the IFC to intervene. Despite the offer from the BWI to assist with a complaint to the IFC, the Trade Union remains unconvinced of the benefits of that approach for the moment.

By any standard, the progress of the on site organizing campaign by the Uganda Building Workers Union is significant. Management is clearly making efforts to comply with their Labour Standards commitments, and is cooperating with the trade union.

In the coming months, the Union and management at Bujagali will continue to work on implementation and monitoring activities. The initial evaluation has revealed some defects and these can now be addressed for corrective action. It has also highlighted areas for strengthening cooperation and for increased trade union participation, such as prevention of accidents and ill health, where the union can make a positive contribution.

The BWI, meanwhile, will continue to support the Union in their organizing efforts through further training and advice, and to monitor progress for the duration of the project.

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<sup>13</sup> The IFC has the following guidelines for verification:

IFC Broad compliance standards on freedom of association and collective bargaining

- Workers should have the right to join organizations of their own choosing without previous authorization.
- The employer will not dismiss, discipline, or otherwise threaten workers who are trying to form, join or participate in workers' organizations.
- Employers should not interfere with the right to freedom of association by seeking to control workers' organizations or by favouring one workers' organization over another.
- Workers' organizations have the right to elect their representatives and conduct their activities without employer or state interference.
- Employers should negotiate in good faith with any union that has been recognized, by law or agreement between the employer and that union.

Both employers and employees should honour the term of any collective bargaining agreement they sign. Employees should be able to raise issues about whether an employer is complying with the agreement without fear of retaliation.

## 4. FUTURE WORK FOR THE BWI ON DECENT WORK IN CONSTRUCTION

### (i) Future work at Bujagali

Continuing challenges identified by the Uganda Building Workers Trade Union:

- There is still fear among some trade union leaders at the site about their assertion of trade union and workers' rights;
- Some managers continue to intimidate workers who exercise their rights under the CBA;
- Political interference continues, as the project is very sensitive to government agendas and influence;
- A majority of the expatriates involved in the project are ignorant about the provisions of the CBA;

The BWI will continue to assist the union during the three year period of work dedicated to this project. The IFC has now established an Environmental and Social Review Procedure that will evaluate implementation on a number of IFC funded projects in 2009. The Bujagali project will be included in this review, and the report will be made public by the IFC.

### (ii) National work in Uganda, recommendations from the union to the BWI

- The ratified convention No. 94 should be brought into Uganda's own Public Procurement and Disposal of Assets Act, 2003, and incorporated into Uganda's ILO Decent Work Country Programme (DWCP);
- ILO Convention No. 94 provisions should be incorporated into Uganda's basic guidelines to public procurement and disposal booklets and be given maximum publicity at all districts, municipal and township councils and unions through education and training sessions;
- The World bank (IFC) PS2 requirements should be extended to all levels of government;
- Unions should continue to educate members on the World Bank (IFC) PS2 requirements, and share information on the subject with other unions from other sectors;

While the Government of Uganda has ratified many international treaties including ILO Conventions, and has incorporated them into the national constitution and into laws to protect and promote human and trade union rights, the problem remains compliance, observance, and implementation by the state and its agencies (including local governments). Problems also include anti-union employers and investors who pursue strategies of reducing the cost of doing business that result in violations of workers' rights.

Finally, there is also continuing fear among workers themselves, such that they are inhibited from asserting their rights. This reality is made worse by high

unemployment in the country and the creation of a multiplicity of unions, whose rivalry can sometimes weaken established, stronger unions.

**(iii) Future work for the BWI on promoting Decent Work through Procurement**

Effective enforcement of policies on International Labour Standards remains a challenge for trade unions. The Global Unions have a key role to play in applying pressure on the International Financial Institutions to improve implementation and enforcement of their ILS commitments. In parallel with this global advocacy work, the principal area of activity for the Global Unions is to support affiliated trade unions in their efforts to organize workers at IFI-funded projects, and to demonstrate the benefits of respect for International Labour Standards, and of positive industrial relations in general.

For the BWI, most of the work on labour standards language with the World Bank Group has been completed, and in 2007/8 we entered the implementation and monitoring phase. The expectation is that this approach can raise standards in the industry more generally, in particular within public contracts. In order to promote the effective participation of trade unions in improving working and living conditions in the construction industry nationally, it is necessary to convince the partners and decision makers in the sector of the need for and the benefits of this approach.

The BWI has been promoting precisely this kind of capacity building work with the actors in the construction sector in a number of countries in recent years. In some cases this work has been launched under the auspices of the ILO Construction Action Programme, but in all cases the approach has focused primarily on the construction client and, in particular, on governments in their dual role as client and employer on the one hand, and as regulator and enforcer on the other.

It is evident that attempting to “tack on” good labour standards during the construction phase is simply not feasible. No contractor can pay for labour provisions that are not required by the client in the bidding phase and included as requirements in the contract. The BWI, therefore, is focusing on Labour Standards in Public Procurement as a vehicle for implementing social and labour policy objectives through contract compliance.

There is a need for capacity building in the area of national procurement policies and procedures, and in the construction industry more broadly, since the capacity to implement legislative requirements and good contract compliance is often very weak among clients, employers, contractors and engineers. International Labour Standards and national laws may be in place, but their content needs to be promoted and applied in practice. Compliance with labour clauses included in public contracts can be used in addition to other regulatory approaches to reinforce social objectives. Training will be required for site supervision staff to ensure that labour clauses are observed. This requires broad capacity building, in

the construction sector generally. There is a need to convince all those involved of the benefits of compliance. This can be done by means of stakeholder workshops, training, and the availability of tools for implementation, including working examples of contract documents, checklists, indicators and guidance documents.

### **The ILO Construction Action Programme and Convention No. 94 – Labour Clauses in Public Contracts Convention (1949)**

At the International Labour Conference (ILC) in June 2008 there a surprisingly controversial discussion of ILO Convention No. 94 Labour Clauses in Public Contracts took place within the Committee on Application of Standards. Strenuous objections were raised by the employers group to any proposed activity to promote the ratification or implementation of the content of the instrument. This aggressive attitude, disqualifying Convention No. 94 as “outdated, irrelevant and damaging”, is completely at odds with the current thinking and practice in the procurement of works in both industrialised and developing countries. It also reflects a very different approach from that of the employer representatives engaged in activities of the ILO’s Department for Sectoral Activities.

ILO Convention No. 94 on Government Procurement is of very specific relevance to procurement in the construction sector. The aim of this Convention is to ensure minimum labour standards in the execution of public contracts through the inclusion of appropriate labour clauses. However, much has changed in the construction industry over the last 60 years since Convention No. 94 was adopted, particularly in regards to the erosion of direct employment.

Convention No. 94 offers a set of straightforward standards that encourage socially responsible public contracting by prohibiting the reference to labour costs as an element of competition among bidders. The Convention requires that all bidders meet the highest of locally established working conditions. Article 2 of the Convention requires that every bidding contract shall include clauses ensuring workers are provided with “wages (including allowances), hours of work and other conditions of labor which are not less favourable than those . . . for work of the same character in the trade or industry concerned in the district where the work is carried on”, such wages being established via (1) collective agreement (2) arbitration award, or (3) national laws or regulations. This approach to procurement first gained currency in the post-WWII reconstruction period and remains relevant today. For example, two recent cases in the European Court of Justice confirm that “social dumping”, or more accurately, “wage dumping”, remains a critical issue and needs to be addressed.

The BWI believes that Convention No. 94 is an important and under-appreciated instrument, and that the priority now should be to promote its ratification. (Over sixty countries have already ratified.) The promotional activities supporting this Convention should include discussion of Public Procurement and Labour Clauses in Public Contracts, at the national and regional levels.

Capacity building for the construction industry at national level is greatly needed, and is particularly urgent given the current economic crisis, which is giving rise to an increase in Public Works as part of the national fiscal stimulus plans adopted by many national governments.

Consideration should be given to the possibility of additional labour clauses to be introduced into Convention No. 94, in the form of a Protocol to that Convention that would enhance its impact in achieving Decent Work objectives. Such additional labour clauses would relate to the Core Conventions of the ILO and to the key International Labour Standards on Occupational Health and Safety and Social Security.

Procurement is also a central element of the strategy of the ILO Construction Action Programme for improving implementation of Labour Standards. National initiatives of the Construction Action Programme, coupled with BWI sponsored activities, are supporting national capacity building on Decent Work in construction. The focus is on establishment of sustainable structures for social dialogue in the sector and the approach is to reach agreements on:

- The bidding phase, including evaluation of tenders to include social performance, and the inclusion of labour clauses in bidding and contract documents.
- Implementation and monitoring of labour clauses in the construction phase, including the importance of sound industrial relations.
- Improving capacity on health and safety management and skills certification.

**Activities involve industry partners**

- Departments of Labour, including the Health and Safety Authority and the Department of Social Security
- Relevant government ministries departments and agencies, namely Ministries of Public Works and Procurement entities who award contracts for infrastructure, housing, roads and other works.
- Contractors' associations, and employers organisations, in the public and the private sector, including associations of small contractors and community contractors
- Construction and Building Materials Trade Unions
- Professional institutions, universities and training colleges. It is important to broaden the capacity of the consulting and supervising engineers, who monitor contract compliance, to include labour standards.

The determination as to which risks are most important and which labour standards most need to be prioritized can be made through industry stakeholder workshops with industry partners. Such workshops can be used to gather stakeholders' assessments of the legislative and policy framework, relevant agreements, as well as current site practices. It is important to determine and

agree upon relevant labour standards, procedures for enforcement and mechanisms for collaboration at an early stage of the construction project.

Once this has been agreed, specific clauses relating to labour standards and conditions of work can be included in the contract language. Because contract clauses frequently express only an intention to do something, more details and specifications must be provided in other documents that form part of the contract, such as the technical specifications and the Bill of Quantities. This can make safety and other employment provisions legally enforceable through the contract. Detailed specifications are needed to accurately cost and implement standards and verify compliance. The fact is that there is currently very little experience in pricing and bidding to take into account effective implementation of Labour Standards, so the intention is to generate some models.

One recent example is that of Tanzania, where the BWI assisted in the Construction Action Programme with the provision of workshops and training for the industry partners. Tanzania now has a newly formed Public Procurement Regulatory Authority (PPRA) which is cooperating with the Occupational Safety and Health Administration, the contractors association and the trade union on reinforcing construction workers' rights through procurement procedures and contract documents. The UK based organisation Engineers Against Poverty obtained funding in 2008 to continue development work with a particular emphasis on working conditions over the coming five years. This experience can now be shared with Uganda and Kenya through the extension of the ILO Construction Action Programme.

### **Taking costs out of competition**

The costs of implementing labour standards can include: protective measures such as the provision of collective and individual protection from accidents and ill health; protective clothing; provision of basic services such as water and sanitation; social security and insurance costs; capacity building and training; consultation, facilitation and promotion costs; equal opportunity and transactional costs; and dialogue and verification.

The increased costs associated with improved wages, working hours, health and safety provisions and social security contributions for all workers must be accepted by the client as an integral part of the costs of the project from the design phase. These provisions should be reflected in the bidding phase in the form of labour clauses in the bidding documents and instructions to bidders. Similarly, indirect costs associated with meetings, training and record keeping can be incorporated as prime, base budget costs. By including these costs in the overall budget for the project and making them part of the project specifications, they are taken out of competition.

It is also important to have a robust monitoring system, with clear roles and responsibilities. Workers need to be informed about the rights and benefits to which they are entitled. A clause in the contract should require the contractor to

display notices informing workers of the rights and conditions of work stipulated in the contract. Site meetings should include a review of on-the-ground compliance.

### **International Labour Standards improve project management and contract compliance**

- Labour standards should be included in the Bidding Documents, the Works Contracts, Standard Contract Documents and Technical Specifications Documents prepared nationally in procurement law.
- Procuring entities must ensure that labour clauses on fair wages, health and safety, and social security are incorporated into works contracts and enforced by contract managers. The draft standard tender documents should contain these provisions.
- There should be a clause on the desirability of using labour intensive contracts wherever technically feasible and cost effective.
- Costs associated with the inclusion of Labour Standards should be taken out of competition and addressed as prime costs in the contract and itemized in the Bill of Quantities.
- Develop procurement manuals based on national procurement laws and Standard Bidding Documents (SBDs) and contract documents should be available for use by ministries, departments and agencies. Guidelines for good, modernized SBDs are essential tools to apply the law and for effective contract compliance and project management.

### **The construction contract as a tool for improved health and safety**

As has been pointed out, there is cut-throat competition for contracts in the construction industry. The resulting lowest price culture in competitive bidding is quite incompatible with good social performance, and compliance with employment and health and safety legislation.

Labour clauses in contracts can address this imbalance, placing formal responsibility on the contractor to ensure that employment and safety measures meet required standards. It is important to develop a process around the contract, which involves awareness raising for the client, contractor and employer, as well as for the workers, and which puts in place agreed mechanisms for monitoring compliance.

Selection criteria for tenders should include previous performance on occupational health and safety (OHS) and the client's current approach. This should include not only the number of accidents, but also: the volume and type of past output; OHS policy, budget, and resources; the system and structure for managing health and safety; a reporting system that includes near misses and statistics on accident performance; and worker training, participation and consultation.

All bids should present a detailed health and safety plan before work starts. Project specific health and safety proposals should be required for addressing

points in the tender. This should include a requirement to create and maintain a Health and Safety File, which includes the health and safety policy, risk assessments and performance data. For example in Tanzania, as a result of the Construction Action Programme, OSHA in Tanzania has developed a “Pre-tender Occupational Safety and Health Qualification Criteria.”

### **Trade union safety representatives**

Trained trade union representatives are aware of the risks in the workplace, and can work closely with workers and management to promote a working environment where hazards are identified, removed or properly controlled before problems occur.

The legal or agreed functions of these trade union safety representatives typically include:

- Participation in the joint Health and Safety Committee and cooperation with the employer to promote the health and safety policy
- Inspections, surveys, documentation, reports and recommendations
- Promotion of safe systems of work
- Investigation of accidents and ill health
- Information, training and communication with workers on health hazards and the risks of accidents, and the prevention measures to be taken, including the provision of basic induction training for new workers coming on site.
- Representation of workers’ interests, including upholding the right to refuse dangerous work without penalty;

### **(iv) Further activities in the East Africa Region**

#### **ILO Construction Action Programme**

As noted above, the ILO Construction Action Programme (CAP) has been extended from Tanzania to also cover Kenya and Uganda. The BWI has run several CAP workshops and training meetings in Tanzania since 2004, and is well placed to work with construction industry partners in East Africa.

The BWI’s current plan of action is as follows:

- a) Constitute a sub-regional steering committee after establishing functional national committees (appoint national focal points). The sub-regional steering committee meets to discuss progress of CAP and the decent work program, and to develop a Sub-Regional Action Plan (funding, institutionalizing OHS in procurement regulations, harmonisation of country policies on OHS, Code of Practice, preparation of construction inspection checklist, mainstreaming OSH & gender issues in the construction sector, exchange and dissemination of information, etc.).

- b) Initiate CAP (capacity building, data collection, enforcement, awareness, training, employment generation, etc) in Uganda and Kenya. Tanzania progresses to phase two to sustain CAP.
- c) Hold sub-regional meeting of stakeholders to build consensus and concretize action plans and propose implementation strategy.
- d) Review the ILO Decent work program and incorporate OHS in the construction sector. Push for incorporation of OSH clauses in procurement guidelines as a standard for Health and Safety in contract documents. Encourage the use of ILO OSH management system at enterprise and national levels.
- e) Prepare a harmonized construction code of practice, inspection checklist and reporting systems.
- f) Develop a programme targeting the informal construction sector in the respective countries as a priority.
- g) Implementation, monitoring and review in respective countries and hold joint sub-regional evaluation meetings.

## CONCLUSION – BUILDING A BWI/AFRICAN TRADE UNIONS CONSTRUCTION NETWORK

The work of the BWI and its construction sector affiliates in East Africa has laid a strong basis for continuing work and trade union networking in the region and across Africa. In July 2008, an Africa Trade Unions Construction Network meeting was held in Nairobi and attended by construction unions from Ethiopia, Kenya, Ghana, Nigeria, Malawi, South Africa and Uganda including some representatives from the Kenya Federation of Employers and Central Organization of Trade Unions of Kenya (KOTU).

The general objective was to take stock of the various trade union strategies on how to achieve recognition, organize and negotiate CBAs. The Uganda Building Workers' Union outlined how the International Finance Corporation (IFC) Performance Standard 2 (PS 2) can be a useful tool for organizing and negotiating.

Unions from Tanzania and Ghana reported on their experiences during their participation in the just concluded phase of the (2003-2006) ILO Construction Action Programme (CAP) and how the unions are ensuring sustainability of the skills and networks developed. These lessons are important for the Kenya and Uganda construction unions as new players in this phase (2008-2010) of ILO CAP.

In conclusion this nascent network agreed to continue to focus on the following priorities:

- Collective bargaining systems and the need to achieve clauses that will lead to decent work and how unions can exert upward pressure on the content of CBA through monitoring the respect for IFC and World Bank social clauses.
- Social dialogue and institutional participation with Ministry of Labour, Ministry of Public Works and construction employers to develop proposals that can improve policies and CBAs in the construction sector.
- ILO/BWI cooperation on National Action Plans (ILO/CAP) to improve working conditions and OHS in construction.
- World Bank funded infrastructure projects in the region for organising campaigns

The BWI will continue to identify infrastructure projects funded by the Multilateral Development Banks in all Regions and to work with affiliated trade unions wanting to organize around these projects.

**Information:** Bureau for Workers' Activities  
International Labour Office  
4, route des Morillons  
CH-1211 Geneva 22  
Switzerland

Tel.: +41 22 799-7448  
Fax: +41 22 799-6570  
[researchnet@ilo.org](mailto:researchnet@ilo.org)  
[www.gurn.info](http://www.gurn.info)