

**HOTEL WORKERS' RIGHTS IN
DEVELOPMENT FINANCE:**

**Realizing
Performance
Standard 2**



International Union of Food, Agricultural, Hotel, Restaurant,
Catering, Tobacco and Allied Workers' Associations





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Glossary.

AMHL	A.M. Hotels Limited
CAP	Compliance Accountability Policy
CAO	IFC Office of the Compliance Advisor Ombudsman
CROC	Confederación Revolucionaria de Obreros y Campesinos
E&S	Environmental and Social Policy
ERF	Emergency Relief Fund
ESAP	Environmental and Safety Action Plan
ESMS	Environmental and Social Management System
ESRS	Environmental and Social Review Summary
FHTRC	Fédération de l'Hotellerie, Touristique, Restauration et Branches Connexes
GLJ-ILRF	Global Labor Justice-International Labor Rights Forum
GUF	Global Union Federation
HCTAWUZ	Hotel, Catering, Tourism, and Allied Workers Union of Zambia
HMP	Hotel Mazdoor Panchayat
HPSSSA	Hotel and Personal Services Senior Staff Association
IFC	International Finance Corporation
ILO	International Labour Organization
ICFTU	International Confederation of Free Trade Unions
ITUC	International Trade Union Confederation
ITGLWF	International Textile, Garment, and Leather Workers' Federation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
KHF	Kasada Hospitality Fund LP
MIGA	Multilateral Investment Guarantee Agency
MPL	Moorhouse Properties Limited
NUHPSW	National Union of Hotels and Personal Services Workers
OHAA	Onomo Hotel Abidjan Airport
ONSLG	Organisation Nationale des Syndicats Libres de Guinée

Foreword.

The International Finance Corporation is the world's largest development bank focused on financing private activity. With its *Performance Standards on Environmental and Social Sustainability*, the bank has led the financial industry towards recognition of its obligations to workers, communities, and the environment. For development banks, many of whom have adopted the IFC's policy, the Performance Standards play a key role in driving development impact and ensuring that financing creates quality employment, not poverty jobs.

Today, however, as we approach the twenty-year anniversary of the IFC Performance Standards, we must raise the alarm about their implementation. To our dismay, our organizations discovered numerous unremedied violations of the Standards at IFC-financed hotels, leaving wronged workers, harmed communities, and lost development impact and poverty in their wake.

For more than five years, our organizations have sought to realize the promise of the Performance Standards for workers at IFC-financed hotels. To that end, we have investigated 50 IFC-financed hotels in twelve countries, consulted their workforces, and sought to engage the IFC and its business partners in dialogue with workers. While we have found success on occasion when IFC's business partners have engaged in collaborative problem-solving, we have also found that violations of the Performance Standards, national law, and the internationally recognized rights of workers persist in the form of anti-union retaliation, illegal underpayment, unsafe workplaces, and other abuses.

This report shares our work to realize the full promise of the Performance Standards for workers at IFC-financed hotels and the bank's mission to alleviate poverty. We hope the unfortunate facts we reveal make the need for a new IFC approach to implementing the Performance Standards unmistakably clear. Drawing on the IFC's policy framework and our experiences of successful engagement, we propose a new procedure for implementing the Performance Standards at IFC-financed hotels, one that protects workers by strengthening the IFC's due diligence and supporting clients' compliance efforts.

We propose to incorporate engagement with workers and their unions in the IFC's investment process as a matter of course. Implementing the Performance Standard's vision of stakeholder engagement-focused risk assessment and impact mitigation, the Compliance Accountability Policy grants the IFC and its hotel clients access to the knowledge, expertise, and experience of the global labor movement. The Policy, in our view, is the single most important step the IFC can take, not only towards meeting its responsibility to hotel workers, but also to realizing the development potential of its investments.

We look forward to working with our colleagues at the IFC towards the realization of the promise of the Performance Standards for the bank's development mission and the workers who make IFC-financed hotels a success.

Sue Longley
General Secretary
IUF



Jennifer (JJ) Rosenbaum
Executive Director
GLJ-ILRF



Executive Summary.

Owned by the governments of the world, the International Finance Corporation (IFC) is the world's largest bank dedicated to promoting shared prosperity through investment in private activity. The IFC requires that the activities it finances comply with the *Performance Standards on Environmental and Social Stability*, which have become the "gold standard" among development banks, who rely on the rules not only to fulfill their human rights obligations, but also to advance their development missions. The Performance Standards promise to protect the decent, rights-respecting work that is essential for generating "shared prosperity" in the hotel sector.

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the global trade union federation for hotel workers and Global Labor Justice and International Labor Rights Forum (GLJ-ILRF) see significant potential in the Standards. Properly implemented, Performance Standard 1 (PS1) would require the early-stage labor-management engagement so crucial to avoiding later violations, and Performance Standard 2 (PS2) would ensure that respect for workers' rights and role is built into the project's foundations.

Our efforts to engage the IFC and investigate its projects over the last five years, however, reveal a disturbing gap between the promises of the Performance Standards and the realities IFC hotel workers face. At 50 IFC-financed hotels in twelve countries, we found severe due diligence failures, profound violations of the Performance Standards, and few resources to remedy or correct the resulting harms.

The managers of IFC-financed hotels violated the Performance Standards with impunity. Financing recipients have refused to conduct the risk assessment and stakeholder engagement PS1 prescribes, while subjecting workers to anti-union discrimination, illegal underpayment, unsafe and unhealthy working conditions, unlawful mass terminations, and more, in violation of PS2. The IFC has proven unable to anticipate or redress these violations. Flawed implementation of the Performance Standards transformed what could have been quality jobs into precarious, oppressive, and poverty-wage positions, deeply undercutting projects' development effects and the IFC's contribution to shared prosperity.

This report details the challenges workers faced at IFC-financed hotels, describes our efforts to achieve the promises of the Performance Standards, and proposes a concrete path forward. As we have learned through our long engagement, PS2 compliance issues are most successfully addressed when hotel managers and trade unions engage early in the IFC's investment process, just as PS1 envisions, to discuss implementation in detail. The *Compliance Accountability Policy (CAP)* we present here makes this engagement a matter of course, bringing the voices of workers into the IFC's processes in a tested and familiar policy framework.

The CAP proposes dialogue between the entities responsible for implementing PS2 and trade unions, early in the IFC's investment process, to discuss PS2 risks and plan for compliance. If implemented, the CAP would strengthen IFC's due diligence process and backstop its project supervision, helping the IFC realize its policy of only financing activity that complies with the Performance Standards while driving development impact forward.

KEY FINDINGS:

▲ **The flawed implementation of the Performance Standards undermines the development impact of IFC hotel projects.**

As the IFC recognizes, quality jobs are the key to achieving development impact and promoting shared prosperity through its investments in hotels. In turn, IFC hotel projects employ and invest in the training of a workforce that is typically more female and younger, providing key opportunities to groups often ill-served by labor markets. Violations of the Performance Standards, however, undercut this crucial contribution to shared prosperity. Workers who are promised stable, long-term jobs that respect their rights must instead endure the costs of violations of the Performance Standards and national law, violations that undercut their incomes, undermine their job and health security, and weaken their collective power to bargain for fair working conditions.

▲ **Since 2018, unions and advocates have tried to engage the IFC and secure the benefits of PS2 for hotel workers at 50 IFC-financed hotels.**

Through the potential of Performance Standards, the IUF, GLJ-ILRF and the ITUC have sought to engage the IFC and its clients to resolve the legitimate complaints of IFC-financed hotel workers. Since 2018, GLJ-ILRF, the IUF, and IUF affiliates, with the advice and support of the ITUC, have submitted complaints concerning 50 IFC-financed hotels in twelve countries across Africa, Asia, the Caribbean and in Mexico. The IUF and GLJ-ILRF have sent numerous missions to hotel project sites to document rights violations, in collaboration with allies and affiliates. The IUF, GLJ-ILRF, and the ITUC consistently shared their findings with IFC staff and offered to discuss paths forward with the IFC and its clients.

▲ **The IFC's current due diligence model is unable to identify red flags or anticipate PS2 violations.**

Although required to invest only in activity that will comply with the Performance Standards, the IFC has routinely done otherwise. Hampered by a lack of in-house labour expertise and engagement with workers, IFC due diligence has failed to detect ongoing, publicized labour disputes and rights violations at prospective hotel projects. As disclosed, the IFC bases its due diligence on the global policies of hotel operators, while overlooking the experiences of workers, regional labour rights risks, and contractual structures that impede PS2 compliance. As a result, IFC evaluations of prospective projects fail to note workers' concerns that, after project approval and funding disbursement, then mature into PS2 violations.

▲ **PS2 violations regularly occur, and the IFC is unable to detect, stop, or remedy the violations: workers suffer rights violations, and managers enjoy impunity.**

Even when PS2 violations are identified and brought to the IFC's attention, the organization has yet to find a means to correct PS2-violating conduct at the hotels it finances, unless loan recipients voluntarily take measures. While the IFC asserts that it will exercise contractual remedies against stubborn Performance Standard violators, that power has never been used on a hotel sector project, to our knowledge.

Moreover, the IFC does not notify the public or other development banks about violations, as it does in cases of corruption or fraud, ensuring that Performance Standard violations result in no reputational damage or financing consequences for those responsible.

▲ **Despite the principles and requirements of PS1, the IFC and its clients do not regularly engage workers, hampering due diligence and E&S planning.**

Despite the gaps in its due diligence methods, its inadequate expertise, and the declarations of PS1, the IFC does not engage workers when evaluating the risks of its projects. In no situation have IFC due diligence staff sought the opinions of the IUF, the IUF's affiliates, GLJ-ILRF, or the ITUC in assessing the risks posed by its hotel projects.

Clients also do not seek out workers' voices. While PS1 orders project leaders to conduct stakeholder engagement, there is little evidence to suggest that they do conduct any stakeholder engagement around most IFC project hotels. Those limited consultations that do occur do not include unions.

COMPLIANCE ACCOUNTABILITY POLICY:

▲ **We propose the Compliance Accountability Policy to improve project preparations and promote PS2 compliance.**

As the global trade union federation for hotel workers and allied advocates for hotel workers' rights, we propose the Compliance Accountability Policy (CAP) to make the aspirations of PS1 and PS2 a reality for the workers who staff IFC-financed hotels.

▲ **The proposed Compliance Accountability Policy embeds engagement workers in the IFC hotel investment process to ensure compliance with PS2.**

As PS1 recognizes, stakeholder engagement is a critical part of risk management, and stakeholders must be consulted substantively and early for the engagement to be effective. The CAP embeds workers' voices early in IFC processes so PS2 risks can be identified and addressed. By adopting the CAP, the IFC would formalize the substantive, informed, and effective stakeholder engagement that PS1 requires, while reinforcing PS2's commitment to the rights of workers.

▲ **The Compliance Accountability Policy strengthens IFC due diligence and clients' compliance plans.**

By inserting workers into the pre-approval investment process, the CAP benefits the IFC, its clients, and projects' development impacts. For the IFC, the CAP would enhance due diligence procedures. As observed, the IFC lacks labour expertise and frequently has little visibility into employment practices in the hotel industry. The CAP addresses these flaws by drawing upon the expertise, experience, and knowledge of trade unions into IFC's process for reviewing investments. With the CAP, the IFC would no longer invest in hotels or clients known to violate workers' rights, as the voices of the victimized workers would already be at the table.

For IFC clients, many of whom lack experience in the hotel industry, the CAP provides an experienced hotel industry partner with knowledge of local law, employment practices, and industry norms. Enabling PS2 compliance, the CAP supports the environmental and social efforts of IFC clients at the vital pre-disbursement stage, ensuring they understand their obligations, acknowledge the risks, and have adequate systems to address them before they commit to the Performance Standards.

▲ **The PS2 Compliance Accountability Policy draws on a long tradition of labour-management agreements that protect social goals.**

The CAP follows the form of labour peace, project labour, and community benefits agreement policies, which formalize stakeholders' roles to protect social values in commercial operations. Like the CAP, these policies require companies seeking business to engage with trade unions to set ground rules for operations, establish productive labour-management relationships and ensure that projects do not impose costs on workers and communities. Adopted by governments and companies the world over, including in the hotel sector, these arrangements encourage productive engagement, enhance E&S evaluations, and provide business a key relationship needed for addressing E&S risks.

▲ **The PS2 Compliance Accountability Policy secures development impact.**

For too long, Performance Standard violations have undermined the development impact of IFC hotel investments and the rights of hotel workers. Grounded in extensive experience with the IFC, the CAP addresses these failures by elaborating on the IFC's own policies and values. We urge the IFC to embrace the Compliance Accountability Policy to achieve its Performance Standard commitments, strengthen its due diligence, promote development impact, and advance shared prosperity.



“Jobs are much more than monetary income; they are the cornerstone of development. Jobs boost living standards, raise productivity, and foster social cohesion, and they are the main path out of poverty.”

Jobs Study, IFC (2013)

The International Finance Corporation in the Global Hotel Industry.

The International Finance Corporation (IFC) is the private sector financing arm of the World Bank Group. Established in 1956, the IFC is the world’s largest international institution focused on advancing development in the private sector, with approximately \$105 billion USD in total assets. Through a range of channels, including loans for the construction and operation of hotels, the IFC finances economic activity in the developing world.¹ This “work supports the World Bank Group’s twin goals of ending extreme poverty and boosting shared prosperity.”²

Financing employment creation is a key part of the way the IFC’s projects produce development impact and contribute to shared prosperity. As the IFC’s 2013 Jobs Study report recognizes, “Jobs are much more than monetary income; they are the cornerstone of development. Jobs boost living standards, raise productivity, and foster social cohesion, and they are the main path out of poverty.”³

-
- 1 This report concerns the IFC’s project-based financing, including debt and equity investments, in the hotel industry. The IFC also invests through financial intermediaries and issues a range of financial products. See [IFC, *Our Products and Services* \(accessed Jan. 20, 2023\)](#)
 - 2 IFC, [About IFC](#) (accessed Jan. 20, 2023); IFC, [Articles of Agreement Art. II](#) (2020); IFC, [Our People & Practices](#) 84 (2016)
 - 3 IFC, [IFC Jobs Study: Assessing Private Sector Contributions to Job Creation and Poverty Reduction](#) 130 (2013)

As that report recognized, however, “[i]t is not just the number of jobs created that counts; *quality matters*”:

The quality of jobs matters not only for the worker who receives fair wages on time, or the worker who has the correct protective mask—quality jobs are important for all workers and their families, everywhere. This is because a job is a critical pathway out of poverty for most people. Jobs that are good for development contribute to fundamental changes in society by raising living standards and improving social cohesion and productivity. Such societies are conducive to a healthy business environment, which in turn creates good jobs.⁴

Quality jobs are not only a crucial component of the IFC’s development impact, the report continued, but also key to the business success of IFC projects:

Furthermore, quality jobs are most effective at maximizing companies’ productivity and efficiency. The emerging business case for compliance with labor standards finds increased profits, sustainable growth, and new market opportunities for compliant firms. Furthermore, compliance improves worker productivity, which results in increased loyalty and low turnover rates, collaborative team dynamics, and reduced workplace accidents and injuries.⁵

In recent years, the IFC has found numerous opportunities for development in the “highly labor intensive” tourism and hospitality industries.⁶ Approximately \$2 billion USD in project-based finance has flowed from IFC to the hospitality sector since 2011,⁷ excluding IFC’s investments in hotels through financial intermediaries.⁸ Recent IFC projects have financed the acquisition, construction, renovation, and/or operation of hotels in Bangladesh, Cameroon, Côte d’Ivoire, Guinea, Haiti, India, Nigeria, Senegal, and Zambia, among other countries.

Jobs are critical to the overall development impact of the IFC’s investments in the hotel industry. Throughout its materials, the IFC lists job creation as first among the development impacts of its hotel investment.⁹ In the 2016 report *A Hotel is not Just a Place to Sleep*, the IFC emphasized that hotel jobs are often quite productive, in part because hotels invest in their workers and build so-called human capital in the host country:

Hotels invest in training their employees at all levels, on a regular basis. They are often a point of entry for unskilled workers, who are then trained. Investing in training supports the local economy as employees take on new positions or establish their own businesses. This supports obvious benefits to hotel employees in terms of their skills development, but also to other firms or hotels within the local economy to the extent that employees took on positions elsewhere.¹⁰

4 Id.

5 Id.

6 IFC, *Anticipated Impact Measurement and Monitoring Sector Framework Brief: Tourism* (Feb. 2019)

7 This figure is calculated from IFC disclosures relating to hotel investments posted at disclosures.ifc.org

8 IFC, *IFC: The First Six Decades: Leading the Way in Private Sector Development* 25 (2nd ed.)

9 IFC, *Anticipated Impact Measurement and Monitoring Sector Framework Brief: Tourism* (Feb. 2019); IFC, *A Hotel is not Just a Place to Sleep: IFC Investments in High-Quality Hotels: Promoting Jobs, Business Infrastructure, Tax Revenues, and Local Supply Chains* (2016); IFC, *Anticipated Impact Measurement and Monitoring Sector Framework Brief: Tourism* (Feb. 2019).

10 IFC, *A Hotel is not Just a Place to Sleep: IFC Investments in High-Quality Hotels: Promoting Jobs, Business Infrastructure, Tax Revenues, and Local Supply Chains 2* (2016)



Hotels invest in training their employees at all levels, on a regular basis... This supports obvious benefits to hotel employees in terms of their skills development, but also to other firms or hotels within the local economy to the extent that employees took on positions elsewhere.

A Hotel is not Just a Place to Sleep, IFC (2016)

This crucial investment in host country workers often benefits those who have the fewest opportunities elsewhere in the economy, the IFC noted, recognizing that hotels often employ a majority-female workforce, with greater representation of youth than is otherwise the norm.¹¹

History of the Performance Standards and the IFC's E&S Leadership

The IFC recognizes that creating quality jobs is the key to development in the hotel sector, but IFC-financed projects have often been the site of severe violations of workers' rights—with predictable consequences for job quality, the development impact of IFC projects, the progress towards shared prosperity in host communities, and the rule of law in IFC member states. With its allies, the global labour movement has consistently brought these abuses to development banks' attention, demanding they not only seek to promote decent jobs, but act affirmatively to prevent abuses of workers' rights.

The IFC Performance Standards on Environmental and Social Sustainability emerged in the wake of the Grupo M crisis in Haiti, which laid bare the costs of the IFC's approach for workers,

communities, and development impact. The IFC-financed Grupo M garment factory in Haiti first dismissed twenty workers who asked for improved conditions, then terminated hundreds in retaliation for protesting management's refusal to recognize or negotiate with the union that most employees had joined, as documented by the global union federations ICFTU and ITGLWF.¹² In the wake of this crisis, in 2006, the IFC first adopted the Performance Standards.¹³

The Performance Standards are a body of rules and procedures governing the conduct of IFC-financed activity. Implementing the IFC's and its clients' human rights obligations, the Performance Standards prohibit a range of activities that violate internationally recognized rights and impose economic, social, and environmental costs on communities. The Performance Standards demand that project managers use specific tools, like grievance mechanisms, and methods, like stakeholder engagement, to address what the Standards call environmental and social (E&S) risks and impacts.

Since their adoption, the IFC Performance Standards have proven tremendously influential. The "IFC PS has almost become the gold standard among [multilateral development banks]/[international financial institutions] as they developed their own internal tools and standards,"¹⁴ according to one survey of safeguards. A June 2022 report of the UN Office of the High Commissioner of Human Rights read: "The IFC performance standards have served as the default E&S risk management framework for private sector DFIs, Equator banks and other financial institutions worldwide, and have also influenced recent revisions of sovereign lenders' safeguards."¹⁵

11 Id.

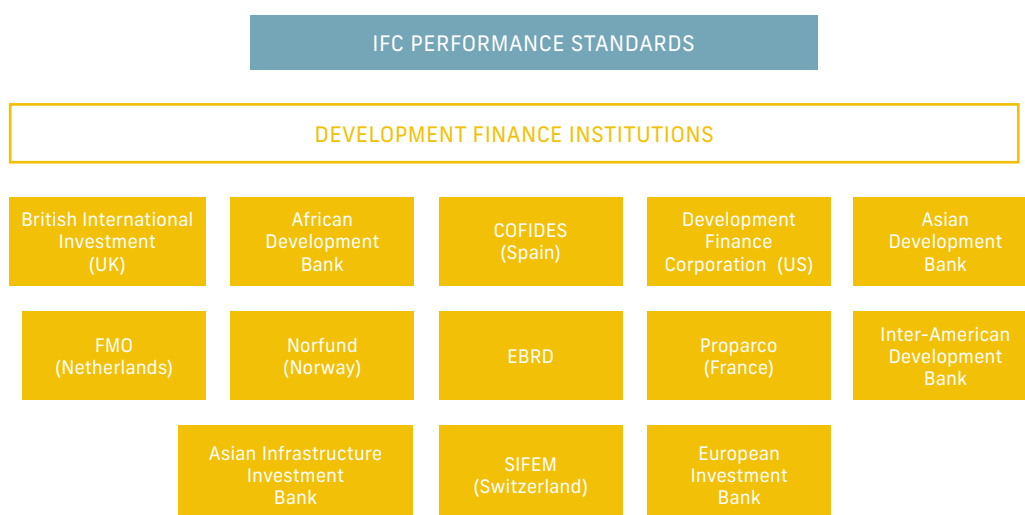
12 ITUC, *Labour Standards in World Bank Group Lending: Lessons Learned and Next Steps* 22 (2011)

13 Bretton Woods Project, *Haitian Workers' Rights Violated as IFC Decision Looms* (Oct. 1, 2003)

14 Zsolt Lengyel, Deutsche Gesellschaft für Internationale Zusammenarbeit, *Comparing Sustainable Infrastructure Standards* 12 (2021)

15 UN Office of the High Commissioner for Human Rights, *Benchmarking Study of Development Finance Institutions' Safeguard Policies* 7 (June 7, 2022); see also id. at 10.

TABLE 1 — SOME DFIs THAT HAVE PERFORMANCE STANDARDS INFLUENCED BY IFC



The Performance Standards have been adopted in whole or in part by the largest international finance institutions,¹⁶ multilateral and bilateral development banks,¹⁷ export credit agencies,¹⁸ and private financiers.¹⁹ The Performance Standard for workers' rights, *Performance Standard 2: Labor and Working Conditions* (PS2) has been particularly influential. The first detailed workers' rights policy in development finance,²⁰ PS2 currently serves as the model for the Asian Development Bank's (ADB) ongoing labour safeguard revisions,²¹ as PS2 has done for World Bank,²² the Inter-American Development Bank (IADB),²³ the European Bank for Reconstruction and Development (EBRD),²⁴ the U.S. International Development Finance Corporation,²⁵ the Dutch Entrepreneurial Development Bank (FMO),²⁶ and other development finance institutions.

- 16 Some of these include the African Development Bank, the Asian Development Bank, the European Investment Bank, and the World Bank itself. World Bank Group, *Comparative Review of Multilateral Development Bank Safeguards Systems* (May 2015)
- 17 Oesterreichische Entwicklungsbank, *Environmental, Social and Tax Standards*; Belgian Investment Company for Developing Countries, *Lessons Learned from the 2021 External Study "The Belgian Company for Investment in Developing Countries (BIO) as a Sustainable Development Actor"* 5, 11 (2022); Development Finance Institute Canada, *E&S Policy Implementation Report 2022* 1 n.1 (2022); FinnFund, *IFC Environmental and Social Performance Standards*; Proparco, *An Institution Committed to Promoting a Responsible Private Sector in the South*; KfW (Kreditanstalt für Wiederaufbau), *Environmental and Social Impact Assessments*; Cassa Depositi e Prestiti, *Sustainability Framework* 8 (2020); FMO, *Our Investment Approach*; Norfund, *Norfund Environmental, Social and Governance Policy* 1 (2020); COFIDES (Compañía Española de Financiación del Desarrollo), *Operating Principles for Impact Management* 3 (2021); Swedfund, *Disclosure Statement: the Operating Principles for Impact Management* 7 (2022); SIFEM (Swiss Investment Fund for Emerging Markets), *Investing Responsibly*; British International Investment (formerly CDC Group), *Code of Responsible Investing* 1; Overseas Private Investment Corporation, *Environmental and Social Policy Statement* 2 (2010)
- 18 32 export credit agencies of the Organisation for Economic Co-operation and Development countries have agreed to benchmark project risks against the IFC Performance Standards. Working Party on Export Credits and Credit Guarantees, *Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence* 10 (§21) (2016)
- 19 As members of the Equator Principles Association, the following private financial institutions have employ the Performance Standards in certain investment activities: Banco Bilbao Vizcaya Argentaria (BBVA) Banco do Brasil, Banco Santander, Bank of America, Bank of Montreal, Barclays, BNP Paribas, Citigroup, Commonwealth Bank, Crédit Agricole, Credit Suisse, DNB (Norway), DZ Bank, Fidelity, HSBC, ING, Intesa Sanpaolo, JPMorgan Chase, La Banque Postale, Lloyds, Mizuho Bank, NatWest, Nordea Bank, the Norinchukin Bank, Rabobank, Royal Bank of Canada, Scotiabank, Shinhan Bank, Société Générale, Standard Chartered, Sumitomo Mitsui Banking Corporation and Trust Bank, Svenska Handelsbanken, UniCredit, Wells Fargo, and Westpac. Equator Principles Association, *Members and Reporting*
- 20 Carnegie Endowment for International Peace, *Labour Standards in Development Finance: Recent Breakthroughs* (Apr. 18, 2005)
- 21 International Trade Union Confederation, et al., *Promoting and respecting international labour standards in Asian Development Bank operations: A binding safeguard and beyond* 13 (Feb. 9, 2021)
- 22 World Bank, *Environmental and Social Framework* (Oct. 1, 2018); World Bank, *OP 4.03 – Performance Standards for Private Sector Activities* (May 2013)
- 23 Inter-American Development Bank, *The IBD's New Environmental and Social Policy Framework in a Nutshell* (Nov. 1, 2021)
- 24 Franz Christian Ebert, *The Integration of Labour Standards Concerns into the Environmental and Social Policy of the International Finance Corporation*, 47 *Law and Politics in Africa, Asia, and Latin America* 229, 233 (2014).
- 25 U.S. International Development Finance Corporation, *Environmental and Social Policy and Procedures* 3 (§ 1.5) (2020)
- 26 FMO, *Sustainability Policy* 9 (2022)

The implementation of the Performance Standards, particularly PS2, has repeatedly come up short, again drawing the attention of the global labour movement. The IFC revised the Performance Standards in 2012, after its investment in Aerovías del Continente Americano S.A. (Avianca)—one of the largest airlines in Latin America and the largest in Colombia—resulted in another round of egregious violations of the freedom of association, which the ITUC and its Colombian affiliates brought to the IFC’s and the International Labour Organization’s (ILO) attention.²⁷ Global union federations continue to seek improvements in the substance and implementation IFC’s and other development banks’ safeguards.²⁸

The 2012 revision of the Performance Standards sought to bring the IFC in line with a developing consensus on the human rights responsibilities of businesses and financiers, but the IFC has fallen behind in key respects. For example, the IFC still has not proposed any remedy policy to satisfy its United Nations Guiding Principles on Business and Human Rights (UNGP) obligation to “Protect, Respect, and Remedy.”²⁹

The current version of the Performance Standards, adopted in 2012, consist of eight specific standards:

- ▲ Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts
- ▲ Performance Standard 2: Labor and Working Conditions
- ▲ Performance Standard 3: Resource Efficiency and Pollution Prevention
- ▲ Performance Standard 4: Community Health, Safety, and Security
- ▲ Performance Standard 5: Land Acquisition and Involuntary Resettlement
- ▲ Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- ▲ Performance Standard 7: Indigenous Peoples; and
- ▲ Performance Standard 8: Cultural Heritage.

Since the revision, however, the IFC Office of the Compliance Advisor Ombudsman (CAO), and the IFC’s own external review teams have found that the same issues persist. The revision initiatives point to IFC’s willingness to make improvements to the Performance Standards; however, as this research shows, the implementation gap leaves their promise significantly unmet for hotel workers.

27 IFC, *Summary of Investment Information: Avianca* (2009); Accountability Counsel et al., *Glass Half Full?: The State of Accountability in Development Finance* 75–79 (2016); Compliance Advisor Ombudsman, *CAO Investigation of IFC Investment in Avianca, S.A., Colombia* 8 (2015); ILO Committee on Freedom of Association, Case No. 2362 (2004)

28 See, e.g., Jess Whelligan, The Women’s Department of the International Transport Workers’ Federation, *The Labour and Gender Related Safeguard Frameworks of International Financial Institutions: A Trade Union Guide* (Nov. 2021); Building and Wood Workers’ International, *BWI to IFC: Explain Mass Termination at Pakistani Hydropower Project* (Dec. 23, 2020); Letter of Sharan Burrow, General Secretary of the ITUC, to Philippe Le Houérou, CEO of IFC (Mar. 25, 2020); *The Labour and Gender Related Safeguard Frameworks of International Financial Institutions - A Trade Union Guide*; Building and Wood Workers’ International, *Dirty Loan: When the IFC Knowingly Breached its own Labour Standards at SFI* (Oct. 2018)

29 The United Nations Guiding Principles on Business and Human Rights lists access to remedy as one of its three fundamental principles, encompassing both state-based remedies and non-state remedies. However, as the IFC’s own analysis concluded, the Performance Standards do not guarantee access to any remedy. IFC, *UN Guiding Principles on Business and Human Rights and IFC Sustainability Framework* 14–15 (2012). The IFC announced the development of a remedy policy to be released in the late summer of 2022, but the release of the policy has since been delayed, and no new release date has been provided. IFC, *External Review: IFC/MIGA Update of a Remedial Actions Framework* (April 2022)



Under the Performance Standards, IFC clients must “avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to.”

The Policy of the Performance Standards.

The centerpiece of the IFC’s E&S policy framework, the Performance Standards prohibit a wide range of conduct that infringes on human rights and imposes costs on communities. Under the Performance Standards, IFC clients must “avoid infringing on the human rights of others and ... address adverse human rights impacts business may cause or contribute to.”³⁰

In the IFC’s policy framework, the Performance Standards play two key roles. The Performance Standards apply to all IFC-financed activity.³¹ For IFC hotel projects, this requires, among other things, compliance with PS1 and PS2. IFC hotel managers must establish the environmental and social risk and impacts systems, rooted in stakeholder engagement, prescribed by *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts*. The IFC’s hotel clients must also employ workers in a manner consistent with *Performance Standard 2: Labor and Working Conditions*, while ensuring their contractors do the same.

For the IFC, the Performance Standards shape the Corporation’s choice of projects, its due diligence, and its contractual relationship with clients. These processes implement the Corporation’s commitment to only finance projects that can comply with the Performance Standards within a reasonable time.

30 IFC, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* 1 (¶3) (2012)

31 IFC, *Performance Standards on Environmental and Social Sustainability* ii (¶4)

IFC Performance Standards



The Performance Standards in IFC Operations: Due Diligence, Contracting, and Ensuring Compliance.

The IFC “will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time,” the Performance Standards declare.³² In theory, IFC due diligence procedures implement this rule, filtering out those prospective clients who are unable or unwilling to comply with the Performance Standards. After projects are approved, the IFC’s supervisory or monitoring activities aim to detect deviations from the Performance Standards and assess investment impact.

To guide pre-approval due diligence and post-approval compliance, the IFC relies on a risk rating system to allocate review resources among projects. During IFC’s appraisal process, E&S staff classify projects as either category A, B, or C, depending on the level of risk presented, with C being the highest risk category and A the lowest. The most attention and resources are allocated to due diligence and supervision of Category C projects, and the least to Category A projects.

All the hotel projects discussed in the case studies below received a Category B rating, no matter the local context or the backgrounds of the managers involved. Category B encompasses “[b]usiness activities with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.”³³

During project appraisal, IFC staff conduct the risk review, allocating greater resources where the assessed risk is greatest. The Lead E&S Specialist analyzes which Performance Standards apply to the project, identifies performance gaps, and determines the key actions needed to mitigate those gaps. This analysis may form the basis of clients’ Environmental and Social Action Plans (ESAPs), which detail specific steps for achieving or maintaining Performance Standard compliance and to which the client must agree.³⁴

After the IFC Board approves the project, IFC policy prescribes continuous supervisory operations over its projects until the projects close.³⁵ As with due diligence, resources for ensuring ongoing compliance with the performance standards are allocated according to a project’s A-to-C risk rating.³⁶

32 IFC, *Policy on Environmental and Social Sustainability* 5 (¶22) (2012)

33 IFC, *Environmental and Social Review Procedures Manual* § 2, ¶ 2.6 (2016)

34 *Id.* § 3, ¶¶ 2.2–2.5.

35 *Id.* § 6, ¶ 2.14.

36 *Id.* § 2, ¶ 2.6.



The IFC does not disclose details about these visits or their findings, making it impossible to evaluate how accurately the policy describes IFC practice. The IFC frequently employs consultants to assess labour conditions on its projects but does not generally disclose their findings or require its consultants to engage directly with independent trade unions.

IFC clients are contractually bound to comply with the Performance Standards through their loan agreements with the IFC.³⁷ “If the client fails to comply with its environmental and social commitments as expressed in the legal agreements and associated documents,” the IFC Environmental and Social Sustainability Policy warns, “IFC will work with the client to bring it back into compliance, and if the client fails to re-establish compliance, IFC will exercise its rights and remedies, as appropriate.”³⁸

Critically, the IFC does not typically obtain or seek contractual commitments to comply with the Performance Standards from the other entities involved in executing the IFC-financed activity. This is a particular limitation in the hotel industry, where business models fissure the roles of hotel owner, operator, manager, and employer. In hotel investments, the IFC client may not be the employer of the workforce or may subcontract management of its own employees to an operating brand. Because of these arrangements, the IFC client may not even have the right to intervene to remedy labour rights violations by the entities it contracts with. This IFC practice can severely hamper efforts to realize PS2.

The IFC frequently employs consultants to assess labour conditions on its projects but does not generally disclose their findings or require its consultants to engage directly with independent trade unions.

▲ Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts.

The global trade union movement sought more substantive engagement with the IFC and its clients to protect the rights of workers on IFC-financed projects following the repeated failure of IFC due diligence to anticipate risks and impacts well known to the global labour movement.³⁹ Heeding that call, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* directs IFC hotel managers to engage stakeholders to assess risks, monitor impacts, and assess outcomes: “Performance Standard 1 applies to all projects that have environmental and social risks and impacts.”⁴⁰

The core of PS1 is the Environmental and Social Management System (ESMS), a framework for addressing environmental and social risks. To promote Performance Standard compliance and achieve environmental and social goals, an ESMS incorporates environmental and social risk management policies, risk and impact identification procedures, operational capacities and resources, and monitoring and review procedures.

Stakeholder engagement is central to PS1’s risk management methodology, as embodied in the ESMS. Per PS1, stakeholder engagement is a key part of the management of environmental and social risk. “Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project’s environmental and social impacts.”⁴¹ Stakeholders’ input helps project teams identify and understand risks and impacts while aiding in managing them. Per PS1, the ESMS “involves engagement between the client, its workers, local communities directly affected by the project (the Affected Communities) and, where appropriate, other stakeholders.”

37 IFC, *Policy on Environmental and Social Sustainability* 5 (¶24) (2012)

38 Id.

39 Bretton Woods Project, *IFIs Admit Failure to Put Jobs at the Centre* (Nov. 21, 2011)

40 IFC, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* ii (¶4) (2012)

41 Id. at 8 (¶30).

PS1 also contains provisions that promote effective and substantive engagement. “Effective consultation is a two-way process that should begin early” in the risk assessment process” and continue on an ongoing basis as risks and impacts arise.”⁴² Early engagement is especially important. The IFC’s leverage is greatest in the earlier stages of the project, during which time very consequential decisions can be made. IFC clients’ contracts, especially with hotel management companies, may erect serious obstacles to Performance Standard compliance if not carefully managed.

To support quality engagement, outreach to stakeholders by IFC clients “should be based in the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to Affected Communities.”⁴³ Clients should update stakeholders, according to PS1, on at least an annual basis.⁴⁴

This stakeholder engagement is vital for the E&S assessment and planning process that results in clients’ Environmental and Social Action Plans (ESAP). Prior to the public disclosure of an investment project, IFC policy prescribes a period of IFC review and consultation regarding the environmental and social aspects of potential projects, in which potential IFC clients must make certain showings to be approved for IFC financing.⁴⁵ Under PS1, clients must demonstrate their capacity to manage environmental and social risks.⁴⁶ In turn, the IFC reviews clients’ documentation and generates ESAPs. ESAPs direct clients to fill gaps in Performance Standard compliance, and clients must agree to them.⁴⁷ Along with these policies and plans, clients must maintain the organizational capacities needed to implement their commitments.⁴⁸

▲ Performance Standard 2: Labor and Working Conditions.

Guided by international human and labour rights law,⁴⁹ PS2 defines clients’ obligations to their workforces, promoting decent, rights-respecting employment and thereby enhancing development impact.

To summarize PS2’s requirements, IFC-financed activity must provide lawful, reasonable terms of employment, documented in writing. PS2 demands clients maintain a safe and healthy working environment free of discrimination, child labour, and forced labour. Workers’ rights to associate, organize, and bargain collectively must be respected. Where national labour law recognizes the full freedom of association, clients must comply with both national law and PS2’s more specific directives. Clients may neither discourage union activity nor retaliate against those who seek to participate in it. As to collective bargaining, PS2 orders clients to engage with trade unions in a substantive and informed manner, to honor and negotiate collective agreements.

42 Id. at 9 (¶36).

43 Id. at 8 (¶30).

44 Id. at 9 (¶36).

45 Where applicable, Performance Standard 1 requires that clients adopt an Environmental and Social Management System (ESMS), a multifaceted methodology for continuous anticipation, mitigation, and monitoring of environmental and social risks, in part through engaging with the communities affected by IFC projects. Id. at i–ii. Alongside the ESMS, “[t]he client will establish an overarching policy defining the social and environmental objectives and principles that guide the project” in conformity with the client’s legal obligations and the Performance Standards. Id. at 2 (¶6).

46 Performance Standard 1 requires IFC clients to develop an Environmental and Social Management System (ESMS). “The ESMS will incorporate the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review.” Id. at 2 (¶5).

47 IFC, *Environmental and Social Review Procedures Manual* § 3, ¶¶ 2.2.1, 2.3. (2016)

48 IFC clients will “establish and maintain, and strengthen as necessary an organizational structure that defines roles, responsibilities, and authority to implement the ESMS. Specific personnel, including management representative(s), with clear lines of responsibility and authority should be designated... Sufficient management sponsorship and human and financial resources will be provided on an ongoing basis to achieve effective and continuous environmental and social performance.” IFC, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* 5 (¶17) (2012)

49 IFC, *Performance Standard 2: Labor and Working Conditions* 1 (¶9) & n.2 (2012)



The protections of PS2 apply in full to “workers directly engaged by the client.” Contracted workers, or “workers engaged through third parties to perform work related to core business processes of the project for a substantial duration,” enjoy the same protections, except those governing mass retrenchments.⁵⁰ When the IFC client is not the employer of contracted workers, the client nevertheless shall “take commercially reasonable efforts to ascertain that the third parties who engage these workers are reputable and legitimate enterprises” with “an appropriate [Environmental and Social Management System] that will allow them to operate in a manner consistent with the requirements of [PS2].”⁵¹ IFC clients must “use commercially reasonable efforts to incorporate [PS2’s] requirements in contractual agreements with third party employers,” whom the client must monitor for compliance.⁵²

No child or forced labour is permitted in project supply chains. The hotel supply chain, by way of illustration, encompasses those who provide food and beverage, supply and launder linens, deliver equipment for maintenance, and so forth.

Where national labour law recognizes the full freedom of association, clients must comply with both national law and PS2’s more specific directives. Clients may neither discourage union activity nor retaliate against those who seek to participate in it.

PS2

Terms and Conditions of Employment.

PS2 regulates the terms and conditions of employment⁵³ for direct and contracted workers on IFC projects. PS2 obliges IFC clients to abide by collective agreements, and absent such an agreement, “the client will provide reasonable working conditions and terms of employment.”⁵⁴ According to PS2, industry norms, collective agreements, arbitration awards, and the requirements of national law may be used to assess the reasonability of working conditions.⁵⁵

Occupational Safety and Health.

PS2 supplements the general requirement of reasonable terms and conditions of employment with specific rules that guard against common worksite hazards, such as occupational injury. PS2 obliges IFC clients to “provide a safe and healthy work environment” and take steps to minimize the risks of accident, injury, and disease “as far as reasonably practicable.”⁵⁶ Consistent with international best practices, clients are obliged to identify safety risks, establish preventative and protective measures, train workers, document accidents, and provide for emergency preparedness.⁵⁷

Recognizing the vital importance of occupational health and safety, especially in the pandemic era, the ILO raised workers’ right to a “safe and healthy working environment” to the status of a fundamental right in June 2022.⁵⁸ Accordingly, all ILO member states are required to abide by the two occupational health and safety conventions even if they have not ratified those conventions.⁵⁹

50 Id. at 1–2 (¶¶4–6).

51 Id. at 5 (¶¶24–26).

52 Id. at 5 (¶25).

53 Id. at 2 n.5 (“Working conditions and terms of employment examples are wages and benefits; wage deductions; hours of work; overtime arrangements and overtime compensation; breaks; rest days; and leave for illness, maternity, vacation or holiday.”).

54 Id. at 2 (¶10).

55 Id. at 2 n.6 (“Reasonable working conditions and terms of employment could be assessed by reference to (i) conditions established for work of the same character in the trade or industry concerned in the area/region where the work is carried out; (ii) collective agreement or other recognized negotiation between other organizations of employers and workers’ representatives in the trade or industry concerned; (iii) arbitration award; or (iv) conditions established by national law.”).

56 Id. at 5 (¶23).

57 Id. at 5 (¶23).

58 ILO, *OSH as a Fundamental Principle and Right at Work* (accessed Jan. 23, 2023); ILO, *Declaration on Fundamental Principles and Rights at Work* § 2(e) (2022)

59 ILO *Occupational Health and Safety Convention, N. 155* (1981); ILO, *Promotional Framework for Occupational Safety and Health Convention, No. 187* (2006)



The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements," including migration status,⁶¹ but will instead "base the employment relationship on the principle of equal opportunity and fair treatment.

PS2

Employment Documentation.

Although PS2 does not require written employment contracts, the Standard nevertheless demands that workers be informed of their rights in writing, by their employer. When the working relationship begins and "when any material changes occur," "the client will provide workers with documented information that is clear and understandable, regarding their rights under national law and employment law and any applicable agreements."⁶⁰

Discrimination and Equal Opportunity.

PS2 forbids employment discrimination and requires action to prevent harassment of the project workforce. "The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements," including migration status,⁶¹ but will instead "base the employment relationship on the principle of equal opportunity and fair treatment."⁶² From hiring to retrenchment, discrimination on unrelated grounds is explicitly prohibited by PS2.⁶³ Additionally, "[t]he client will take measures to prevent and address harassment, intimidation, and/or exploitation, especially in regard to women."⁶⁴

Retrenchment.

PS2 safeguards the rights of workers when clients consider retrenchment. Before any collective dismissals,⁶⁵ IFC clients must consider alternatives to retrenchment and may only proceed to collective dismissal "[i]f the analysis does not identify viable alternatives to retrenchment."⁶⁶ In that case, a non-discriminatory retrenchment plan must be implemented that reduces adverse impacts on workers,⁶⁷ and clients must consult with workers and their organizations in developing the plan.⁶⁸ IFC clients' actions, in case of retrenchment, must comply with any collective agreements and applicable laws.⁶⁹ Workers are entitled to notice and any severance benefits granted by law or contract, according to PS2.⁷⁰

Trade Union Rights: National Labour Law.

Drawing on the ILO core labour standards,⁷¹ PS2 protects fundamental trade union rights, including the rights to associate and to bargain collectively. PS2 does so in part by incorporating the national labour law of the project country as a minimum standard for IFC clients, and in part by mandating the use of alternatives to national processes where national laws impede the exercise of trade union rights.

60 IFC, *Performance Standard 2: Labor and Working Conditions* 2 (¶9) (2012)

61 Id. at 3 (¶15).

62 Id. at 3 (¶15).

63 Id. at 3 (¶17) ("Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job will not be deemed as discrimination, provided they are consistent with national law.")

64 Id. at 3 (¶15).

65 Id. at 4 n.10 ("Collective dismissals cover all multiple dismissals that are a result of an economic, technical, or organizational reason; or other reasons that are not related to performance or other personal reasons.")

66 Id. at 4 (¶18).

67 Id. at 4 (¶18).

68 Id. at 4 (¶18).

69 Id. at 4 (¶18).

70 Id. at 4 (¶19).

71 Id. at i n.1.



In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, **the client will comply with national law.** Where national law substantially restricts workers' organizations, the client will not restrict workers from developing alternative mechanisms to express their grievances and protect their rights regarding working conditions and terms of employment.⁷²

Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected.

PS2

Where incorporated into PS2, national law does not displace clients' PS2 obligations. National law is only a minimum standard. If the provisions of PS2 are more stringent than national law, clients must comply with the more stringent provisions of PS2.⁷³ Clients' other PS2 obligations, such as their duty not to discourage the exercise of trade union rights, are unaffected by national law.

Trade Union Rights: Collective Bargaining.

PS2 requires IFC clients to negotiate and honor collective agreements. "Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected."⁷⁴ The client may not discourage workers from bargaining collectively nor discriminate or retaliate against workers who choose to exercise that right.⁷⁵ Rather, "[t]he client will engage with such workers' representatives and workers' organizations, and provide them with information needed for meaningful negotiation in a timely manner."⁷⁶ If collective agreements are in effect, IFC clients are obliged to inform workers of their rights under the agreements.⁷⁷

Trade Union Rights: No Discouragement, Discrimination, or Retaliation.

No matter the stance of national law, PS2 forbids IFC clients from interfering in workers' exercise of their rights to associate and bargain. Under PS2, IFC clients may not seek to discourage the exercise of trade union rights or discriminate and retaliate against those who seek to exercise those rights:

[T]he client will not discourage workers from electing worker representatives, forming or joining workers' organizations of their choosing, or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and collective bargaining.⁷⁸

IFC clients must respect the independence of independent trade unions, according to the terms of PS2. "The client should not seek to influence or control" the mechanisms for expressing and representing workers' views.⁷⁹

72 Id. at 3 (¶13).

73 IFC, *Guidance Note 2: Labor and Working Conditions 2* (GN2) (2012)

74 IFC, *Performance Standard 2: Labor and Working Conditions 2* (¶10) (2012)

75 Id. at 3 (¶¶13–14).

76 Id. at 3 (¶14).

77 Id. at 2 (¶9).

78 Id. at 3 (¶14).

79 Id. at 3 (¶13)



To facilitate dialogue between workers and management, PS2 requires that clients provide an “easily accessible” grievance mechanism for workers and their organizations, separate from the grievance mechanism specified in PS1.

Worker Accommodations.

Where the client provides accommodations to workers, PS2 requires that the client do so in a manner that respects workers’ rights and needs. “[T]he client will put in place and implement policies on the quality and management of the accommodation and provision of basic services,”⁸⁰ including policies on the provision of adequate space, water, sanitary facilities, cooking facilities, and protection against weather, among others.⁸¹ Workers’ housing arrangements “will be provided in a manner consistent with the principle of non-discrimination and equal opportunity. Workers’ accommodation arrangements should not restrict workers’ freedom of movement or of association.”⁸²

Grievance Mechanism.

To facilitate dialogue between workers and management, PS2 requires that clients provide an “easily accessible” grievance mechanism for workers and their organizations, separate from the grievance mechanism specified in PS1.⁸³ “The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution.”⁸⁴

Child and Forced Labour.

IFC clients may not employ child or forced labourers as direct or contracted workers, according to PS2.⁸⁵ Further, PS2 obliges IFC clients to keep forced labour and child labour out of their supply chains.⁸⁶

PS2 restricts IFC clients’ ability to hire workers under the age of eighteen, forbidding work that is economically exploitative, physically hazardous, or harmful to children’s development. IFC clients must abide by national laws applicable to the employment of minors and, if they employ persons under eighteen, continuously monitor the workers’ health, working conditions, and hours.⁸⁷

PS2 forbids the use of forced labour on IFC-financed projects. According to PS2, forced labour “consists of any work or service not voluntarily performed that is extracted from an individual under threat of force or penalty,” a definition which “covers any kind of involuntary or compulsory labour, such as indentured labour, bonded labour, or similar labour-contracting arrangements.”⁸⁸ Additionally, “[t]he client will not employ trafficked persons.”⁸⁹

80 Id. at 3 (¶13).

81 Id. at 3 n.8.

82 Id. at 3 (¶12).

83 Id. at 4 (¶20).

84 Id.

85 Id. at 4–5 (¶¶21–22).

86 Id. at 6 (¶¶27–29).

87 Id. at 4 (¶21).

88 Id. at 5 (¶22).

89 Id.; id. at 5 n.13.



Complaints of Performance Standard Violations.

Until recently, IFC/[Multilateral Investment Guarantee Agency] had no systematic way for receiving, tracking, or responding to complaints.

External Review, IFC (2021)

The IFC receives complaints through the Communication Form for Issues under PS2, known informally as “the labour portal.” This complaint portal allows trade unions to submit information regarding, among other things, “actions taken by the company considered to be in non-compliance with provisions under PS2.”⁹⁰ The IFC committed to acknowledging receipt of labour portal complaints within five days but defined no further timeline for response or action. All but one of the case studies below involves a complaint delivered through the labour portal.

IFC’s process for receiving and resolving these complaints is developing, albeit slowly. “Until recently, IFC/[Multilateral Investment Guarantee Agency] had no systematic way for receiving, tracking, or responding to complaints,”⁹¹ according to an external review published in August 2020. Around that time, IFC established the Stakeholder Grievance Response team, “a five-person team dedicated to supporting investment team responses to complaints about IFC projects/investments.”⁹² The IFC has announced that the development of “an IFC/MIGA approach for enabling remedial solutions,” but no policy has yet been disclosed.⁹³

In addition to the IFC’s internal complaint receipt mechanisms, the Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for projects supported by the IFC and the Multilateral Investment Guarantee Agency (MIGA), both members of the World Bank Group. Established in 1999, the CAO’s three-part mission is to address the concerns of individuals or communities affected by IFC projects, enhance the social and environmental outcomes of IFC projects, and foster greater public accountability of IFC. CAO reports, as well as the IFC’s 2022 external review, corroborate the below conclusions concerning ineffective due diligence, inadequate implementation of the Performance Standards, and impunity for Performance Standard violators.⁹⁴

90 ITUC, *The Labour Standards of the Multilateral Development Banks: A Trade Union Guide* 43 (Dec. 2019)

91 IFC, *External Review of IFC/MIGA E&S Accountability, including CAO’s Role and Effectiveness: Report and Recommendations* 27 (¶183) (June 2020)

92 Id.

93 IFC, *External Review: IFC/MIGA Update of a Remedial Actions Framework* (April 2022)

94 Id.; see e.g., CAO, *CAO Investigation of IFC Investment in Avianca S.A., Colombia: Audit Report* (2015)



Often, the due diligence that is disclosed on labour rights issues is little more than a summary of a hotel management company's global policies.

The Performance Standards in Practice: IFC Hotel Projects.

The following case studies show that neither the IFC nor its projects meet the standards laid out in IFC policy. As a result, workers are deprived of their rights, IFC projects are deprived of much of their development impact, and IFC policy is deprived of consequence. In a handful of cases, however, the IUF and GLJ-ILRF have established the foundations of PS2 compliance through early and substantive engagement with IFC hotel managers, suggesting a novel approach that we elaborate on in the final section.

▲ IFC hotel projects violate the Performance Standards with impunity, with violations going unpunished and harms unremedied.

IFC hotel projects violate PS2 with impunity, leaving behind unpunished violations and unremedied harms. IFC offers no effective mechanism for addressing workers' concerns, convening clients and workers for negotiation, stopping PS2 violations, or remedying the resulting harms.

▲ The IFC has no response to Performance Standard violators who do not voluntarily alter their practices or provide remedies.

The IFC has no response to clients who will not voluntarily address noncompliance with the Performance Standards. While IFC policy suggests that the Corporation will exercise contract remedies when the Performance Standards are violated, the Corporation has never used its contractual powers in the hotel sector to correct noncompliance, to our knowledge. Because the IFC does not disclose the text of its contracts, stakeholders cannot assess the IFC's contractual enforcement options.



In the cases described below, the hotel workers on IFC projects remain without remedies – such as backpay, damages, reinstatement, or the reversal of disciplinary actions – that are recognized by national law and international labour standards. Nor has the IFC embraced situational opportunities for creative problem solving even when the opportunities presented a win-win proposition for workers' welfare and development impact. For example, when the IUF offered to share the cost of providing financial support to workers at the Sheraton Grand Conakry, the IFC was unable to commit its own resources or bring its client into a serious dialogue.

In the cases described below, the hotel workers on IFC projects remain without remedies – such as backpay, damages, reinstatement, or the reversal of disciplinary actions – that are recognized by national law and international labour standards.

Performance Standard violators also face no consequences for their actions. Violations continue, and harms deepen daily. As described below, Moorhouse Properties Limited, in whose equity IFC invested \$15 million USD in 2011, deducted hotel workers' union dues, but did not pay them to the union or return them to the workers until several months following a complaint filed by IUF and GLJ-ILRF. Moorhouse continues to be in violation of PS2 at other IFC-funded properties in Nigeria.

The IFC enforces other rules with vigor, but not those relating to the Performance Standards. The IFC debars clients who engage in fraud or corruption and publicly lists its decisions to inform other financiers, several of whom are party to a reciprocal cross-debarment regime.⁹⁵ However, the IFC does not disclose when clients violate the Performance Standards or provide other financiers information about violations, to our knowledge. So far as we are aware, no debarment has ever occurred over violations of E&S requirements and commitments.

▲ **The IFC's systems for implementing the Performance Standards—its framework for due diligence and ensuring ongoing compliance with labour standards—routinely fail.**

As disclosed, the IFC's due diligence amounts to only a superficial inquiry into the labour practices of proposed projects. Often, the due diligence that is disclosed on labour rights issues is little more than a summary of a hotel management company's global policies. Companies' actual practices under those policies are not discussed, even when those same policies are violated on other IFC projects. No mention is made of local, national, and even regional labour rights risks. That every hotel project discussed in this report received the same risk rating indicates the unserious nature of the IFC's project evaluations.

Given the IFC due diligence's focus on global policy, it is perhaps unsurprising that the IFC regularly fails to note red flags regarding labour violations. The IFC has failed to note active labour disputes, including ongoing strikes, at hotels where it invests.

Reflecting this deficient basis of information, the ESAPs the IFC agrees to with its clients rarely address serious risks and impacts. Post-approval efforts to resolve gaps in due diligence and E&S planning led to enforcement difficulties that could be avoided with more upfront attention.

And in some cases, for example the Protea by Marriott hotel chain in Zambia, the IFC failed to detect ongoing Performance Standard violations and rewarded their author with new financing repeatedly.

95 IFC, *Frequently Asked Questions-Cross Debarment*; IFC, *Sanctions Procedures* (2012)

▲ **The IFC lacks the expertise to understand, manage, and address labour rights risks and impacts.**

When the IFC does receive information concerning labour rights risks and abuses, the organization lacks the expertise to understand and mitigate the issues. Almost all E&S staff are environmental specialists, which explains why anti-union talking points occasionally find their way into IFC disclosures. The consultants the IFC turns to for help in understanding labour rights often have little subject matter expertise, scant experience interfacing with workers, and marginal—if any—connection to the region.

▲ **Neither the IFC nor its hotel project managers engage with stakeholders to anticipate or address Performance Standard violations.**

Despite the deficiencies of its due diligence mechanisms, its inadequate expertise, and the declarations of PS1, the IFC does not engage stakeholders when evaluating the risks of its projects. In no case have IFC due diligence staff sought the opinions of the IUF, the IUF's affiliates or GLJ-ILRF in assessing the risks posed by its hotel projects. Unsurprisingly, the IFC's due diligence disclosures reflect little understanding of the risks its hotel projects are likely to encounter.

While PS1 orders IFC hotel project managers to conduct stakeholder engagement, there is little evidence to suggest that they conduct stakeholder engagement around most IFC project hotels.

▲ **IFC hotel projects routinely violate the Performance Standards and national law.**

As the following case studies will demonstrate, IFC hotel projects routinely violate the Performance Standards and, where the Standards incorporate it, national law. Core components of the approach to E&S risk that PS1 prescribes, such as stakeholder engagement in the E&S planning process, are left undone. Likewise, many IFC projects simply do not observe PS2's requirements or those of national law, even when incorporated into PS2. Project teams do not implement foundational features of PS2; IFC's own evaluations have shown that many clients never even establish a grievance mechanism, a core feature of the labour-management relationship PS2 requires.⁹⁶

▲ **IFC project hotels underpay wages and misclassify workers.**

In violation of the Performance Standards, IFC hotel projects have paid unreasonably and unlawfully poor wages and benefits. The IFC's hotel projects have played host to various forms of illegal underpayment and misclassification, depriving projects of their contribution to shared prosperity and trapping workers in poverty-wage jobs.

At the Marriott Port-au-Prince, in Haiti, “apprentices” worked for up to one year without pay to earn a position on staff. Employer deception and withholding of wages during the purported apprenticeship period satisfy two of the International Labour Organization's (ILO) indicators of forced labour.⁹⁷

When the IFC proposed to finance the Kasada Hospitality Fund's acquisition of eight hotels, the Corporation unknowingly proposed to finance illegal wage practices at four Ivorian hotels and three Senegalese hotels.

96 IFC, *External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness: Report and Recommendations* xi (¶129), 6 (¶195), 84–86 (¶¶359–64) (June 2020)

97 ILO, *ILO Indicators of Forced Labor* (2012)



Surveys of workers employed in the 27 Indian Marriott and Accor hotels that are part of the SAMHI Hotels project revealed that many workers received wages well below legal minimums, and that many performed core hotel functions but were illegally classified as contract workers for long periods of time, in violation of national law. By hiring contract workers, management was avoided providing them the protections due to permanent employees.

At the Sheraton Grand Conakry in Guinea, management paid wages late and sometimes not at all, while illegally deducting wages during periods of illness and illegally failing to provide health insurance. Management initially refused to pay any form of premium pay, despite the law's requirements for overtime and nightshift work. Sheraton management also hired temporary workers to undermine the workers' union and threaten workers' job security.

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▲ IFC hotel projects provide unsafe and unhealthy workplaces and workers' accommodations.

At multiple IFC hotel projects and despite the commands of PS2, workers' fundamental right⁹⁸ to a safe and healthy working environment was violated. In the era of COVID-19 and following the ILO's recognition of a fundamental right to a safe workplace, the inadequate implementation of PS2's Occupational Safety and Health (OSH) provisions requires urgent remediation.

At the Sheraton Grand Conakry, workers were served expired food in the employee cafeteria and asked to work through the COVID-19 pandemic without the health benefits the law entitled them to. SGC worker Mariam Camara passed away in a hospital in April 2020; her family, and her fellow workers, paid the bill.

At Protea Chisamba, a hotel located on a game reserve, management provided workers unsafe and unsanitary accommodations. Employer-provided accommodations were overcrowded and underequipped, with only four showers for 200 individuals, and unhygienic pit latrines. When the pandemic struck, workers were asked to remain at the hotel, to share rooms, and to share beds.

▲ IFC project hotels terminate workers en masse, without legally required severance, and without consultation or consideration of alternatives.

PS2 requires that workers be consulted regarding future loss of employment and that clients analyze alternatives to terminations before proceeding to retrenchment. Only if there are no viable alternatives to retrenchment may the client proceed to a develop a retrenchment plan, in consultation with workers and their collective organizations.

In two cases, IFC project hotels conducted mass terminations without performing an assessment of alternatives, consultation with workers, or compliance with severance laws that PS2 requires. After a legally required bargaining process which management conducted in bad faith, with only superficial exploration of alternatives by management, over 150 workers were terminated at the Sheraton Grand Conakry in August 2022 with almost no assurance of reemployment at the hotel. It is reported that the hotel may be undergoing renovations soon.

At two of Moorhouse Properties Limited's hotels, Mercure Moorhouse Ikoyi Lagos by Sofitel and the Novotel Port Harcourt, the entire workforce was terminated in April 2020. When the hotels later reopened, new employees joined, and only a small number of previously terminated workers were rehired. For months, Moorhouse refused to engage with the union to discuss overdue severance payments, or any other outstanding worker issues.

98 ILO, *Declaration on Fundamental Principles and Rights at Work* § 2(e) (2022)



At the Sheraton Grand Conakry, throughout the Protea Zambia chain, and at several other IFC project hotels in the region, management waged vicious anti-union campaigns to obstruct workers' efforts to organize themselves.

▲ IFC hotel projects obstruct union elections and access in violation of law.

PS2 forbids discouraging union activity on IFC-financed projects, but IFC clients have routinely obstructed union organizing. In many countries, the law requires employers to facilitate elections and allow union access to employees to campaign. Despite those commands, and PS2's prohibition on discouraging union activity, managers at IFC project hotels have obstructed union elections and limited union access to the workforce.

At the Sheraton Grand Conakry, management delayed the election of a union for over two years, while waging a campaign of misinformation and intimidation to dissuade workers from organizing. A similar campaign unfolded at the IFC-financed Protea Arcades, where management either prevented workers from attending union informational sessions or sent numerous managers

to surveil the workers who did participate. At Protea Chingola, another IFC financed hotel in Zambia, where the union received sufficient support for union recognition, workers sent letters withdrawing their prior support, citing concerns about management's reaction and their job security.

▲ IFC hotel project managers attack trade unions, target their leaders, and discriminate against union activists.

Although PS2 forbids IFC clients from "discourage[ing]" union activity, IFC clients have regularly done so or failed to prevent their business partners from doing so. IFC hotel project managers have attacked trade unions, targeted their leaders for retaliation, discriminated against union members in work assignments, and attempted to intimidate their workforces into forsaking their right to associate.

At the Sheraton Grand Conakry, throughout the Protea Zambia chain, and at several other IFC project hotels in the region, management waged vicious anti-union campaigns to obstruct workers' efforts to organize themselves.

The top two union delegates at the Sheraton Grand Conakry and the principal union delegate at the Onomo Hotel Abidjan Airport were terminated in retaliation for their union activities, the latter despite the explicit command of local labour authorities not to terminate the delegate. In August 2022, the management of the Sheraton Grand Conakry sought to terminate four of six union delegates without the Labour Inspectorate's permission, as the law requires.

At the IFC-financed Protea Chingola over 43 workers chose to join the Hotel, Catering, Tourism, and Allied Workers Union of Zambia (HCTAWUZ). The Protea Zambia headquarters intervened to intimidate the electorate. Most of the workers at Protea Chingola then sent letters to the union and authorities withdrawing from the union, citing concerns about the security of their jobs.

When workers at the IFC-financed Protea Arcades raised concerns about their working conditions to government authorities, two workers were suspended. The HR manager allegedly dictated letters, meant for the government authorities, in which workers recanted their concerns. The workers signed the letters out of fear and concern for the security of their jobs.

▲ IFC project hotels refuse to bargain and comply with binding collective agreements.

While PS2 demands that IFC hotel project managers engage in substantive negotiation with trade unions and comply with collective agreements, managers of IFC-financed hotels have consistently refused to engage with unions, bargain in good faith, or comply with binding collective bargains. Two IFC-financed Moorhouse hotels in Nigeria refused to bargain a new collective agreement for more than ten years after the expiry of the prior agreement. For six years, the IFC-financed Onomo Hotel Abidjan Airport refused to bargain with its newly elected union. At the Sheraton Grand Conakry, over two years have passed since the union's election without good faith negotiation.

TABLE OF VIOLATIONS

Project	Hotels	Location	Approved	Note	Retaliatory Terminations	Refusal to Bargain	Anti-Union Harassment	Wage Theft	Unlawful Retrenchments	Unsafe/Unhealthy Workplaces	
Sheraton Grand Conakry	1	Guinea	2013/06/03		Y	Y	Y	Y	Y	Y	
Kasada Hospitality Fund	8+	West Africa	2021/04/30			Y	Y	Y			
Moorhouse Properties Limited	4	Nigeria	2011/05/13		Y	Y	Y		Y		
Onomo	21	Pan-Africa	2021/05/27		Y	Y	Y	Y		Y	
Protea by Marriott Zambia	4	Zambia	1997-2019 (4 projects)			Y	Y			Y	
Port-Au-Prince Marriott	1	Haiti	2013/06/13				Y	Y			
Xcaret Hotels	2	Mexico	2020/12/07	Another \$100m loan has been proposed but not yet approved.	Y		Y	Y	Y	Y	
SAMHI	27	India	2014/06/30				Y	Y			
Ananta	1	Bangladesh	-	Project not approved							

▲ Guinea: The Sheraton Grand Conakry (IFC Project No. 32408).

Date Approved: June 3, 2013 | Value of investment: \$15 million USD

Summary of PS2 violations:

- Unlawful withholding of wages and benefits.
- Multiyear obstruction of effort to administer union election.
- Persistent anti-union threats and harassment.
- Unsafe and unhealthy work environment.
- Violation of binding collective agreement.
- Refusal to negotiate or bargain with union.
- Retaliatory termination of union activists and leaders.
- Mass retrenchment in violation of PS2, Guinean law.

Status: Workforce retrenched in violation of PS2.

On June 3, 2013, the IFC approved an investment in the construction and operation of the Sheraton Grand Conakry. The project consisted in a \$15 million USD A loan and an \$11 million USD B loan, funded by the FMO,⁹⁹ to finance the construction and operation of the Sheraton Grand Conakry (SGC), a 186-room, five-star hotel in Conakry, Guinea owned by the IFC's client, Palma Guinée, S.A, also known as Palma Guinea. The hotel opened in December 2016 under an operating services agreement with Sheraton, which Marriott International had acquired in September 2016.¹⁰⁰



A key component of the project's expected development impact, according to IFC disclosures, was "employment generation: The investment will create significant local direct employment of about 400 and indirect employment in the supply value chain."¹⁰¹ Management terminated 158 of 189 SGC employees in August and September 2022 and stated its intent to repay its IFC loan in October 2022.

The IFC's investment in the Sheraton Grand Conakry reveals the deficiencies of IFC's processes for implementing PS2 and the depth of the harm PS2 violations cause workers and their families.

After opening in 2016, SGC management delayed holding a legally required election of union delegates until 2020, in the meantime waging a vicious anti-union campaign replete with two retaliatory terminations, intensive surveillance, and consistent anti-union harassment. In February 2020, after the union won its election, management recommitted to its course of PS2 violations. Management retaliated against the top two leaders of the SGC workers' union, terminating them and attempting to intimidate their colleagues with illegal threats and harassment.

SGC management refused to bargain with the union, and instead unlawfully and unilaterally altered working conditions repeatedly throughout this multiyear conflict, failing to fix long-running violations of both PS2 and Guinean law. Management withheld wages by

99 FMO, *Disclosure: Palma Guinée S.A.* (disclosed Apr. 17, 2014)

100 IFC, *Summary of Investment Information: Palma Guinée* (2013)

101 *Id.*

denying workers overtime, night shift, and sick pay. Despite a legal obligation to do so, management never fully paid for employees' health care, even after an employee died of unknown causes at the height of the pandemic. And, despite the Performance Standards' commitments to occupational health and safety, management forced workers to quarantine in shared rooms, even in shared beds, while serving workers rotten and expired food in the cafeteria.

Over the years, the IUF, GLJ-ILRF, and the ITUC have repeatedly sought to engage IFC, informing the Corporation of severe and ongoing violations of SGC workers' rights and seeking relief for workers and direct discussions with the IFC's client about changes in management practices. However, through the multi-year effort, the IFC's client remained out of compliance with growing aspects of PS2 requirements and refused direct or mediated dialogue with the union to bring about a resolution for the workers.

After months of part-time work and depressed incomes, SGC workers were then subjected to further instability in December 2021, when management closed the hotel due to problems with mold.

In July 2022, Palma Guinée and Marriott initiated the Guinean law process to terminate 158 of the hotel's 190 employees. They opted to terminate 158 of the hotel's 190 employees, rather than continue temporary unemployment payments, or maintain workers on the rolls even without work assignments and salaries.

The SGC workers, the FHTRC-ONLSG, and the IUF repeatedly proposed alternatives to the hotel's planned drastic action, but the hotel's representatives refused to engage with those proposals or disclose further information. Palma Guinée and Marriott also ignored the Guinean Labour Inspector's demands for new proposals, failed to engage with the union's proposals, and refused to disclose further information about its intended actions. In its haste, management then sought to terminate four of the six union delegates without the permission of the Labour Inspector, as required by the labour code.

Management's disrespect for Guinean law exhausted the patience of the Labour Inspector, who ordered management to cease the terminations of delegates on August 31, 2022. Following a meeting, during which management maintained its refusal to negotiate and disclose, the Guinean Labour Inspector demanded that management finally meet the legal minima by September 16, 2022.

Ultimately, the majority of the SGC workforce was terminated with the legal minimum in severance. Repair work on the hotel has not yet begun.

IFC Disclosures (April 2013).

The IFC released a Summary of Investment Information (SII) and Environmental and Social Review Summary (ESRS) for the SGC project on April 10, 2013, disclosing both the Corporation's case for the project's development impact and the results of the IFC's due diligence. The IFC expected its investment would "generat[e]" "direct employment of about 400 and indirect employment in the supply value chain,"¹⁰² while "support[ing] transfer of best international practices to Guinea, especially in such areas as ... business ethics, transparency and integrity in dealing with employees, business partners, authorities and other stakeholders."¹⁰³

102 Id.

103 Id. The IFC also expected the project to encourage other investment in Guinea, attract tourism to the country, and develop Conakry's business infrastructure.

While quality employment was central to the project's anticipated development impact, quality employment was not the focus of the IFC's due diligence or management's project preparations. The ESRS had little to say about the treatment of employees engaged in the operation of the hotel, beyond establishing the matters that their employment contracts must address, and ordering work rules be drafted and communicated to workers. The client and its business partners conducted no stakeholder engagement, to our knowledge.

The ESAP revealed few concrete client commitments to PS2-compliant management. The ESAP's PS2 provisions instructed the IFC's client to develop a human rights policy and a procedure for age verification at hiring by December 31, 2013. No plan to engage workers was disclosed.

The same disclosures that made the weakness of PS2 compliance preparations clear also revealed significant obstacles to addressing these issues after project approval. "During the operation of the hotel, human resources will be managed in compliance with Starwood's Human Resources Policy," the ESRS noted, adding that the operating agreement had not yet been signed.¹⁰⁴ The actual authority to manage the workforce, and therefore to comply with PS2, would be alienated to a third party not bound to the IFC's rules.

No more information about Starwood's employment policies was disclosed. The ESRS still reads: "More information on Human Resources Management during operations will be available after signature of the [Operating Services Agreement]."¹⁰⁵ Marriott International acquired Starwood on September 23, 2016.¹⁰⁶ The ESRS did not disclose any review of Marriott International's employment policies.

The Campaign for a Union Election (2018-2020).

Frustrated by poor working conditions, workers at the SGC commenced efforts to unionize in February 2018. Workers reached out to the Fédération de l'Hôtellerie, Touristique, Restauration et Branches Connexes (FHTRC), an affiliate of the national Guinean trade union confederation Organisation Nationale des Syndicats Libres de Guinée (ONSLG), to help push the election process forward. In turn, FHTRC-ONSLG, an IUF affiliate, requested the IUF's support for their efforts to unionize. On March 15, 2019, the FHTRC-ONSLG made a formal request to begin the union election process under Guinean law.

Because the workplace contained more than the requisite twenty-five people, Guinean law required management to administer an election for workers' representatives shortly after operations began. Indeed, IFC disclosures noted this requirement at the project's inception. However, despite opening in 2016, it would not be until February 2020 that management finally performed its obligation to hold an election.



When workers began publicly seeking an election of workers' representatives, management responded with a campaign of misinformation and intimidation.

Workers' Activism and Complaints (October 2019).

While management refused to meet its obligation to administer an election, management escalated their discrimination against and harassment of those perceived to be sympathetic to the union. Still, the workers continued to exercise their right to associate. On October 15, 2019, hotel workers delivered a petition signed by 150 of approximately 400 workers, demanding an election. On that same day, the IUF and GLJ-ILRF filed a complaint with the IFC's labour

104 IFC, *Environmental and Social Review Summary: Palma Guinea* (2013)

105 Id.; IFC, *Summary of Investment Information: Palma Guinea* (2013)

106 *Marriott International Completes Acquisition of Starwood Hotels & Resorts Worldwide, Creating World's Largest and Best Hotel Company While Providing Unparalleled Guest Experience*, Marriott International (Sept. 23, 2016)

portal, raising concerns about violations of PS2 and ILO Conventions 87 and 98.¹⁰⁷ Over the following years, the labour portal submissions were updated on a regular basis as labour violations and anti-union harassment continued.

After the filing of the complaint, the IFC, the IUF, and SGC management were able to come to an agreement to hold the legally required union election. Management began to arrange the election for October 28, 2019, but promptly canceled. On October 19, 2019, the IFC reported that the election date would again be deferred to February 3, 2020.

Termination of Union Activists and Anti-Union Retaliation (November-December 2019).

Throughout 2019 and early 2020, SGC management stalled the election and sought to influence its outcome through intimidation. In November 2019, as preparations for the election were underway, two workers were terminated on specious grounds, which the remaining workers understood as a threat against those who were perceived to be supportive of the union.

SGC management granted union member Mory Soumaoro leave to attend the funeral of his stepfather. On Mr. Soumaoro's return, a supervisor invited him for a drink and asked for Mr. Soumaoro's views on the union. Mr. Soumaoro affirmed his support for the union. Within a few days, SGC management terminated Mr. Soumaoro, on the false ground that his leave to attend the funeral had not been approved. Another union member, Alhassane Sylla, was falsely accused of stealing hotel food, even though he had informed security that the food was his own, and that he had been unable to eat during his break. Mr. Sylla was terminated and imprisoned for three days because of the accusation made by management. Workers at the hotel understood these terminations to be a demonstration of SGC management's aggressive anti-union stance.

SGC management also held large captive-audience meetings at the hotel, including several department-wide and one hotel-wide meeting in December 2019.¹⁰⁸ At these meetings, management mixed misinformation with harassment and intimidation to discourage workers from exercising their rights.

The Election of the Union (February 2020).

After prolonged negotiations, the election finally took place on February 11, 2020. 72% of the voting workers balloted for the union slate. The workforce elected General Secretary Amadou Diallo and Deputy General Secretary Alhassane Diallo.

After the union's victory, management promptly fired SGC's Human Resources director and hired a new, anti-union director in March 2020.



107 IUF, *Sheraton Grand Conakry: IUF Moves Rights violations Complaints to the ILO* (Feb. 19, 2021)

108 A captive audience meeting is a mandatory meeting held by an employer during work hours to pressure employees not to organize.



In violation of COVID-19 prevention measures and the occupational safety and health provisions of the Performance Standards, management forced workers to not only share the same rooms, but often the same beds.

Bargaining (February 2020-December 2021).

After the election, the SGC workers' union and management established a monthly meeting. The first meeting occurred in mid-March, just as the pandemic arrived in Guinea. Accordingly, union leadership focused on health and safety in the workplace. As before, union delegates found that management would not engage in good faith dialogue and was dismissive of the issues raised by the workers' representatives.

Management Refuses to Comply with Employee Healthcare Law (Bargaining in March 2021).

For SGC workers, healthcare benefits were of central concern even before the pandemic arrived. Union delegates attending the first bargaining meeting repeatedly emphasized the importance of health care benefits, a matter also raised in several SGC workers' petitions. The law required management provide health care, both to employees and their dependents, and sick pay when illness prevented employees from working. The workers were forced to campaign for benefits the law accorded them as a matter of right.

Guinean law requires employers to pay full healthcare costs for employees and up to three dependents residing with them. Initially, management provided no healthcare benefits. Only after the press conference in July 2021, on the anniversary of the death of SGC worker Mariam Camara, did management even begin to provide health insurance cards to employees, although no dependent care was offered.

SGC management also illegally denied sick pay to workers during the pandemic. Guinean law requires management to pay workers' wages during days they are absent for illness, and in case of absence due to long-term illness, to pay 50% of wages (the state pays the remaining 50%). Management did not pay workers' wages for sick leave, whether short or long term.

Management refused to consider altering these conditions in the first bargaining meeting.

Management's Pandemic Response Endangers Workers' Health, Jobs, and Union (Bargaining in March 2021).

With the arrival of the pandemic, the hotel operated with a reduced staff for safety reasons. However, management's response to the pandemic in the first bargaining meetings showed little concern for the safety of its employees, or the rights of their union.

In the early days of the pandemic, management required many employees to quarantine within the hotel. In violation of COVID-19 prevention measures and the occupational safety and health provisions of the Performance Standards, management forced workers to not only share the same rooms, but often the same beds.

SGC management used the interruption in hotel operations to undermine the union and imperil workers' jobs. In mid-March, while workers accepted a reduction in staffing due to health concerns, management began replacing permanent employees in core hotel functions with temporary or seasonal employees, in violation of Guinean law. Workers seen as sympathetic to the union were targeted by these management actions, which undermined their job security.

Management also used the public health crisis to expand workers' job responsibilities. While management cut staffing, employees often had to work in up to three job categories, regardless of whether the workload was reasonable.

Management refused to consider altering these conditions in the first bargaining meeting.

Occupational Health and Safety (Bargaining in March 2021).

In their first negotiations, the SGC workers' union raised longstanding occupational safety and health problems in their workplace. SGC workers handle toxic cleaning solvents in kitchen, laundry, and room cleaning functions. Yet managers provided workers neither masks to protect against respiratory harm, nor gloves to protect against skin damage. Initially, management said that masks were not stocked, but after the pandemic began, masks began to be provided to workers.

Unlawful Withholding of Wages: Management Refuses to Comply with the Labour Law and Hotel Sector Bargaining Agreement (Bargaining in March 2021).

At the first bargaining meeting, in March 2020, union delegates raised concerns about pervasive and unlawful withholding of wages at the hotel. Management illegally withheld workers' wages in a variety of ways in violation of PS2.

For example, Guinean law required management pay higher wages for additional work performed after eight hours on the job. Management paid the regular rate for overtime work. The sectoral bargaining agreement for the Guinean hotel sector also required employees to be paid a higher rate for work performed at night. Management paid workers the standard day rate for night work. Management also illegally deducted wages when workers were absent due to illness. Rather than pay workers' full wage, as required by law during short-term illnesses, or pay half, as required during long-term illnesses, management paid nothing to its unwell employees.

The Death of Mariam Camara (April-June 2020).

As SGC management refused its obligation to pay for workers' health care and declined to engage in good faith bargaining, SGC workers endured the risk and expense of living through a pandemic without health benefits. In April 2020, SGC housekeeper Mariam Camara fell ill at work and was hospitalized. Union delegates met with management, requesting that her medical bills be paid as Guinean law demanded. Management refused to make any payments.

On June 24, 2020, Ms. Camara died in the hospital from unknown causes and without any financial support from her employer. Only after her passing did management provide a token recognition of its obligation to provide for Ms. Camara's health, offering to pay her family 2,000,000 Guinean francs (\$200 USD). This sum was less than half of Ms. Camara's medical costs of 5,140,000 Guinean francs (\$514 USD). Ms. Camara's family, insulted by the delayed and de minimis offer, declined it. Ultimately, SGC workers pooled funds to help Ms. Camara's family pay the costs of Ms. Camara's care.



Management Serves Rotten and Expired Food (May 2020).

In bargaining meetings during May 2020, union delegates raised concerns with management about conditions in the employee cafeteria, where management regularly provided employees with rotten and expired food. When union delegates mentioned the issue and informed their coworkers of the safety risks of eating the cafeteria food, management accused them of plotting a strike.

Retaliatory Termination of Union Leaders and the Arbitrary Termination of a Worker (August-October 2020).

Not long after the union's election victory, management began a campaign of retaliation, discrimination, and harassment against the workers and the newly elected officers of the union. On August 26, 2020, management disciplined SGC worker Mohamed Sampil for accidentally breaking a flowerpot one week prior. Management unlawfully denied Mr. Sampil union representation in his disciplinary meeting. Management then used the controversy over Mr. Sampil's treatment to escalate its attacks on the union and its elected officers.

As the harassment escalated, and to avert an unjust termination, union delegates requested a meeting with management to discuss Mr. Sampil's situation. On August 26, 2020, union delegates Alhassane Diallo, Amadou Diallo, and M'maminata Camara met with the acting general manager of the hotel. The delegates asked that management recognize Mr. Sampil's error had been accidental, was immediately reported, and was not appropriate grounds for termination.

The next day, August 27, 2020, management sent a letter to the local Labour Inspector requesting permission to terminate the union's top two leaders, General Secretary Amadou Diallo and Deputy General Secretary Alhassane Diallo. Management claimed that the delegates had acted aggressively during the meeting the day before. The union delegates denied that allegation entirely and wrote to the Labour Inspector on August 28, 2020, stating that they had not been aggressive, but had simply advocated on behalf of their unjustly disciplined colleague.



Management then suspended General Secretary Amadou Diallo on September 2, 2020, and suspended Deputy General Secretary Alhassane Diallo on September 11, 2020. Shortly afterwards, on September 16, 2020, management terminated Mohamed Sampil for accidentally breaking a flowerpot. In response, the union began circulating a petition demanding the reinstatement of Mr. Sampil and the suspended union leaders, obtaining over 150 workers' signatures between September 25, 2020, and September 28, 2020.

Management sought the Labour Inspector's permission to terminate the union delegates, claiming that the delegates had acted aggressively. The Labour Inspector did not grant the termination, noting that the delegates had no prior history of discipline and that management had not offered any evidence of extreme action on the delegates' part. However, the Labour Inspector reversed himself on September 18, 2020 and authorized the terminations.

The terminated delegates were denied even the pretense of due process in the termination proceedings. The SGC's Director of Human Resources and Acting General Manager visited the Labour Inspectorate several times without notifying the delegates or giving them the opportunity to respond. Following this ex parte advocacy, the Labour Inspector authorized the terminations on September 18, 2020. The Labour Inspector would not provide a copy of his decision to the union's counsel, making it impossible to appeal within the requisite timeframe.



Finally, on October 7, 2020, management terminated the SGC workers' union General Secretary, Mr. Amadou Diallo, and its Deputy General Secretary, Mr. Alhassane Diallo. The pretext for their terminations was their advocacy on behalf of Mr. Sampil, which management falsely claimed was improperly aggressive, as a cover for its anti-union animus. Within hours

of terminating the delegates, management held a captive-audience general meeting for the hotel staff. Management promised to remedy outstanding healthcare, overtime pay, base wage, and other issues. Management refused to take comments, cutting off a union delegate who protested that the terminations were unjust. Management stated the matter would not be discussed further. Workers perceived the meeting as an effort to further undermine their union and distract attention from the unjust terminations.

Workers Stand Up for Terminated Union Leaders and Union Office Vandalized (October-December 2020).

Shortly after the termination of their elected leaders, SGC workers organized a photo petition demanding their reinstatement, reiterating workers' concerns about workplace safety and health insurance. Over one hundred workers joined the photo petition. Later, in February 2021, management used the photo petition to harass workers in captive audience and one-on-one meetings with them. In December 2020, notwithstanding the IFC's eventual hiring of a consultant to conduct a labour assessment, management

continued to harass the union. On December 10, 2020, the union noticeboard and office at the SGC were vandalized and the laptop used for union work was seized. Only management had access to the keys to the union office, which were kept in the hotel's security office.

Workers Complain to the ILO (February 2021).

As management's anti-union campaign increased in intensity, SGC workers turned to the International Labour Organization for support. On February 19, 2021, the IUF filed a complaint with the ILO's Committee on Freedom of Association, asserting violations of ILO Conventions 87 and 98 by the government of Guinea. The complaint recited the above events, situating them in the context of workers' internationally recognized rights to organize and bargain, the same rights that guide PS2.

The complaint related the extent of SGC management's anti-union conduct, in the face of which the government of Guinea had either stood aside or given support to management's cause.

The IUF also made an Article 24¹⁰⁹ representation on that same date, focusing on "the failure of the government of Guinea (GOG) to maintain a functioning labour inspection system, to ensure the timely payment of wages to all workers and to carry out a national policy on the promotion of occupational safety and health," in violation of its obligations under ILO Conventions 81, 85, and 187. These communications were supplemented by an addendum submitted on November 3, 2021, which detailed the ongoing failure of management to engage the union and heed workers' concerns.

Management Steps Up Intimidation and Surveillance Efforts (February 2021).

After the IFC's consultant conducted interviews with workers on the IFC's behalf, workers experienced a further intensification of anti-union hostility. Management began holding multiple captive-audience and one-on-one meetings with workers. Management threatened the workforce with both wholesale replacement and the termination of the workers who appeared in the photo petition. Surveillance cameras were installed in working areas, and plainclothes police were regularly present on hotel grounds—along with the federal security minister—which the workers experienced as anti-union harassment and intimidation.

Management Refuses to Bargain, Unilaterally Announcing Legally Inadequate Benefits (June 2021).

On June 24, 2021, SGC workers held a highly publicized press conference commemorating the one-year anniversary of the death of their colleague, Mariam Camara. There, the workers reiterated the demands they conveyed in three prior petitions provided to management, between December 2019 and February 2021, which specifically requested negotiations on healthcare benefits. Rather than bargaining with the union over terms of employment, as required by PS2 and Guinean law, management decided to change working conditions, unilaterally and unlawfully.

Shortly after the press conference, management began giving employees health insurance cards. The coverage did not comply with Guinean law, as it provided no coverage for dependents, and management did not negotiate with the union concerning the new insurance policy.



109 ILO Constitution Art. 24 (Representations of Non-observance of Conventions)



Management began holding multiple captive-audience and one-on-one meetings with workers. Management threatened the workforce with both wholesale replacement and the termination of the workers who appeared in the photo petition.

On July 16, management held an all-staff meeting in the hotel ballroom. They announced gifts for the employees (one bag of rice and some fabrics), unspecified seniority raises, and an across-the-board 8% pay raise beginning at the end of July. Management also stated that it would begin to pay overtime, although they did not state the overtime rate. This across-the-board raise never materialized. In fact, management later chose to use the promised raise to discourage a strike.

Consultant Workers' Rights Report Completed, not Disclosed (August 2021).

Commissioned in December 2020, the IFC's consultant, Ergon Associates, completed its assessment in August 2021. The IFC did not disclose the report to the workers, the IUF, or GLJ-ILRF. Along with the consultant's findings, the IFC also declined to disclose the corrective action plan it had developed to address SGC management's persistent noncompliance, if any such plan was indeed created.

Management Threatens Workers, Hires Workers without Employment Documentation (October 2021).

Further undermining workers, their job security, and their union, management began replacing workers on permanent contracts with temporary workers, particularly in the housekeeping department. In violation of the sectoral bargaining agreement, SGC management did not demonstrate that laid-off workers had been offered employment before the positions were offered to newly recruited workers.

In June 2021, the housekeeping department had fifteen room attendants on permanent contracts and only one on a temporary contract. Beginning in August 2021, while the hotel remained at under 50% capacity, SGC management hired eighteen "apprentices" through a temporary staffing agency. This doubled the cleaning workforce while cleaning work was halved, suggesting that management's true intention was to undermine permanent workers. New workers were told not to fraternize or associate with permanent workers, explaining that senior employees were "causing problems" and threatening to fire new workers who disobeyed. This was a clear violation of workers' freedom of association.

With respect to its new temporary employees, SGC management still refused to comply with PS2 and Guinean law. The new temporary workers informed the IUF that they had not been given employment documentation, in violation of PS2, Guinean law, and the sectoral bargaining agreement. They had no guarantee of work from one week to the next.



SGC Workers Seek to Strike (October-November 2021).

In response to management's continued efforts to intimidate employees, break their union, and deny their rights, SGC workers submitted a petition to strike on October 26, 2021. On October 27 and 28, a representative of Palma Guinée summoned every union delegate, individually or in pairs, to question their decision to strike. He told the delegates "the authorities

are with us" and "you will see." Meanwhile, in violation of Guinean labour law, the hotel's Director of Human Resources threatened workers with additional violations of Guinean labour law, saying that if workers were to go on strike, they would be fired and replaced, and a hotel-sponsored program of low-interest loans would be canceled.

NOUS SOMMES PRÊT-E-S À FAIRE GRÈVE SELON LA LOI. RÉINTÉGREZ AMADOU ET ALHASSANE MAINTENANT!



Charte de la transition, République de Guinée: "Le droit de grève est garanti"

FHTRC-ONSLG-UITA

At a meeting with the Guinean Labour Inspectorate on November 3, 2021, management presented its first offer. In return for the workers withdrawing their lawsuit seeking to enforce legal minimum employment benefits and publicly announcing the resolution of the issues, SGC management would finally extend the \$50 USD per month raise first promised in July 2021.

Immediately after this meeting, management held a mandatory meeting with workers. There, in an obvious effort to deflate the workers' campaign, the Director of Human Resources falsely claimed that management and the union had reached an agreement and that the union had called off the strike. The union responded by posting a notice stating that no agreement had been reached and the strike was not postponed.

At a meeting of the union, held on November 10, 2021, workers unanimously rejected management's offer, which resolved none of the outstanding PS2 and national law violations.

Showing little desire to come to terms, management again presented the same offer in a meeting with the Labour Inspectorate on November 17—but excluded the \$50 USD raise. Management again met with the union on November 23, 2021, but this time made no proposals save a demand that negotiations be postponed.

Closure of the SGC (December 2021-June 2022).

On Friday, December 10, 2021, SGC management held a general meeting for workers and announced that, due to an unspecified "contamination," the SGC would close for maintenance as of Sunday, December 12, 2021. Workers later learned that the problem was a mold infestation that affecting most rooms. Despite this material change in workers' employment circumstances, such that PS2 required dissemination of new "written information" regarding their employment, for months neither SGC workers nor their union received information about their future work with SGC. Indications are, however, that management knew of the impending closure since mid-October 2021.

In executing its response to the mold problem, management again refused to engage and bargain with the union to develop solutions for the workforce. Instead, management again sought to use its power to break the union and penalize those exercising trade union rights. Management showed contempt for both PS2 and the requirements of Guinean law, forcing Guinean labour authorities to resort to ultimatums to obtain management's compliance.



On October 27 and 28, a representative of Palma Guinée summoned every union delegate, individually or in pairs, to question their decision to strike. He told the delegates "the authorities are with us" and "you will see."



Notwithstanding the disclosure requirements of Guinean labour law and PS2, SGC workers were left in the dark. Management did not inform them of the health consequences of their work in an environment contaminated with mold, nor were they informed about their future employment prospects at the hotel.

SGC's Failure to Inform Workers (December 2021).

Notwithstanding the disclosure requirements of Guinean labour law and PS2, SGC workers were left in the dark. Management did not inform them of the health consequences of their work in an environment contaminated with mold, nor were they informed about their future employment prospects at the hotel. Management did not announce when the hotel would be reopened and held no further meetings to inform workers of their fate for several weeks.

Management's only further communication was an unsigned, undated notice posted on December 17, 2021, which stated that "because of flooding in "a number of areas across the property," "structural renovations" were required. The notice stated workers would receive their December salary and promised further information in the future. Workers on permanent contracts informally learned, primarily through their supervisors, that they would remain employed until the end of December, with a smaller number of workers continuing to work in January of 2022.

During the week beginning December 13, 2021, management informed individual workers on temporary contracts that their contracts would be terminated on December 31, 2021. Some were dismissed earlier, on December 17, and asked to turn over their health insurance cards even as they were left in the dark regarding the health consequences of the mold.

Unilateral Suspension of Second Union Election and Employment Contracts (December 2021).

On December 28, 2021, management posted a second notice stating that SGC would take several unilateral actions with respect to its employees. Importantly, management suspended the union election that would normally have taken place around the conclusion of the prior officers' terms on February 11, 2022. With a few exceptions, management unilaterally suspended all employment contracts with its workforce. Management made no effort to discuss these matters with the workforce, the union, or FHTRC-ONSLG, the federation partly responsible for administering the union election.

Union Delegate Denied Access (January 2022).

When the principal union delegate and Treasurer, M'maminata Camara, visited the hotel on January 4, 2022, to inquire about health and safety measures for workers present in the hotel, and continuing employment for others, Ms. Camara was informed that she could not enter, even in her capacity as a union delegate.

Employment Status in January 2022.

As of January 2022, based on posted schedules, 87 workers were scheduled and authorized to enter the hotel to prepare for an early January event, with the potential to work for the remainder of the month. Management asked these workers to take on new and expanded duties but received little information regarding future operations. One cook was told he should come in for the week and would be paid in cash. Workers not listed on the posted schedules no longer had access to the hotel, and according to a report from a management representative, they were to be denied entry indefinitely.

Anti-Union Discrimination in Rotation System (March 2022).

In early 2022, the IUF learned SGC management instituted a new shift rotation system. In theory, the rotation system would fairly distribute the work that remained at the partially closed hotel. Workers would have the opportunity to earn full pay at least part of the time by sharing hours.



In practice, the rotation system discriminated against union activists, six of whom were completely excluded from it, thus limiting their access to the hotel and depriving them of opportunities to earn income, all in retaliation for protected activity and in violation of PS2.

The SGC workers' union continued to ask for fair recall rights, but hotel management refused to negotiate the matter. The closure did not alter management's aggressively anti-union approach. Management continued to hire employees without first offering employment to previously laid-off workers, as the sectoral bargaining agreement required.

The government of Guinea revoked SGC's license to operate on April 21, 2022, further imperiling workers' livelihoods. In keeping with its past behavior, SGC released little information to the workers about the future of their jobs.

Provisions for Workers Partially Employed or Unemployed.

The government of Guinea revoked SGC's license to operate on April 21, 2022, further imperiling workers' livelihoods. In keeping with its past behavior, SGC released little information to the workers about the future of their jobs. Ultimately, technical unemployment benefits offered by their employer lasted for six months, replacing only a fraction of employees' lost salaries, and expired at the end of June 2022. In August 2022, in response to government inquiries, SGC management made clear that the license revocation had not impacted their decision making with respect to the hotel.

Due to management's resistance, no negotiation took place regarding the terms of employment for the skeleton crew of workers who staffed the partially operating hotel. Management continued to refuse to administer a union election. The SGC worker union's attempts to negotiate on behalf of SGC workers not currently receiving work assignments stalled, due to the unresponsiveness of the hotel owner, Palma Guinée, and the hotel's operator, Marriott.

Management's Unlawful Retrenchment (July-September 2022).

On July 1, 2022, management sent a notice of retrenchment to one union delegate, proposing to terminate 158 of its 189 employees, including 137 permanent workers, eighteen supervisors, and three managers. Under Guinean law, the submission of such a retrenchment plan triggers a process of consultation, subject to a timeline, with the workers and the Labour Inspectorate. However, as management acknowledged, the retrenchment plan was legally inadequate and lacked key information, such as the names of the individuals to be terminated and the severance they would receive.

Management tried again on July 15, 2022, submitting a new retrenchment plan that evinced none of the consideration of alternatives to retrenchment that PS2 requires. The document included a table of three alternatives, but summarily deemed them as "not applicable" or "unlikely."¹¹⁰ A list of workers to be terminated, and the severance to be provided them, was not disclosed either to the union or the labor inspectorate.

Management planned to send workers into poverty with little severance and no job security. According to management's proposed layoff plan, terminated employees would receive 25% of their monthly salary for as many months as the employees had years of service at the hotel. For workers employed since the hotel's opening in 2016, that amounted to approximately \$250 USD.

¹¹⁰ The entire section of the retrenchment plan submitted on July 15 dealing with alternatives to terminations is reproduced in translation from the French original. Note that the document did not include any items numbered one or two:

#	Description	Risks and Opportunities	Viability
3	Retirements	NA	[empty]
4	Reduction in salary or maintaining the unemployment status	Since the 6 months of unemployment mandated by law have ended, it is not legal to extend unemployment, nor is this practical since it would represent too great a financial burden on the employer.	Unlikely
5	Collective resignation with an agreed upon severance	All employees will be paid their entire legally required severance, but since this is a complete closure of the hotel the procedure chosen will be a collective termination.	Unlikely.

Moreover, management did not disclose whether these meager amounts would be garnished to pay off the subsistence loans it had arranged for its workforce. Loan payments, if charged, would consume substantially all the meager severance offered for most workers. Management refused to commit to rehiring current workers, a standard industry practice, upon reopening.

Management and the Union's Retrenchment Proposals (July 2022).

As allowed by Guinean law, the union submitted an information request to management on July 21, 2022, asking for clarification concerning who would be terminated, what they would receive as severance, and the timeline for the hotel's reopening. The union also submitted a request for the engineers' reports on the mold issues at the hotel.

As required by Guinean law, the first of the meetings between SGC management and the union delegates occurred on July 25, 2022. Union delegate Ibrahima Kandet read out the union's proposal for a fund that would sustain workers until the hotel reopened.

The Emergency Relief Fund (ERF), Mr. Kandet explained, aimed to financially support the SGC workforce until the hotel could reopen—essentially extending the terms of the then-existing unemployment benefits as the mold remediation work proceeded. In so doing, the ERF proposal preserved the hotel's well-trained workforce and the project's development impact, avoiding an extended period of poverty not only for the workforce, but for the many others who relied on SGC workers' incomes.

Under the ERF, the 158 workers to be terminated would instead receive a monthly payment of \$140 USD, funded equally by contributions of \$33,390 USD each from the IFC, its client, Marriott, and the IUF. The IUF committed to funding its share at the outset. The total cost of preserving the workforce and providing financial security to workers was \$133,560, a miniscule fraction of the hotel's estimated renovation budget of \$10-12 million USD. Ultimately, neither the IFC, Palma Guinée, or Marriott International matched IUF's commitment; they also declined to participate in a reduced-scope ERF, proposed on August 4, which would have required significantly smaller contributions.

Alongside the ERF, the union proposed a variety of means for preserving the workforce during the renovation of the hotel. By opening up only uncompromised facilities and distributing the work among the workforce, the union proposed, management could maintain its well-trained workforce intact. Management declined to consider any of these options.

Management Refused to Engage with the Union or the Labour Inspectorate's Proposals (August 2022).

On August 4, 2022, management and the union delegates held the second meeting required by the Guinean law of retrenchment.

Despite Palma Guinée's claims of financial hardship, and despite the financial advantages of the ERF over retrenchment, Palma Guinea and Marriott refused to engage substantively with the Emergency Relief Fund proposal. Palma Guinée and Marriott summarily dismissed any efforts to creatively brainstorm alternative sources of revenue. They refused to respond to a cost analysis provided by the union, which demonstrated that preserving the workforce would cost Palma Guinée less than mass retrenchment. Still, none was provided.

Palma Guinée and Marriott also shared no information about the timeline or status of renovations. They also continued to refuse to negotiate a recall agreement that would provide the terminated workers assured priority in hiring when the hotel reopened.



Management's Disregard of Guinean Law and the Labour Inspectorate (August 2022).

As allowed by Guinean law, the Labour Inspector called a third meeting between the union, management, and the Inspectorate to discuss the competing proposals.

Inquiring along the same lines as the union, the Labour Inspector could extract almost no information from Palma Guinée and Marriott. Neither took responsibility for their closure of the hotel or their failure to disclose information. When the Senior Advisor to the Minister of Labour asked what the timeline for renovation work was, the Director of Human Resources denied any knowledge of a work plan and provided no information. The Labour Inspector again requested documents listing which employees were selected for termination and what severance they would receive, which the Inspectorate reserves the right to review. Still, none was provided.

The Labour Inspectorate urged Marriott and Palma Guinée to respond to the union's proposals, while offering its own. Given the extraordinary circumstances, and Marriott and Palma Guinée's declared intention to reopen the hotel, the Labour Inspector suggested extending the period of "technical unemployment" to up to two years, as the Labour Inspector had in other cases. While the law typically mandates a maximum period of six months, the Labour Inspectorate, with permission of the Ministry of Labour, may authorize an exceptional extension of technical unemployment. The Labour Inspector stated explicitly that the employer would not be required to pay the required 30% salary during this extension; workers would forgo salary in exchange for a guaranteed return to work when the hotel reopens. Without deliberation, Marriott and Palma Guinée rejected this proposal.

The Labour Inspector asked multiple times whether management would consider reducing the number of workers slated for retrenchment. Management conceded that they would consider the possibility and would respond to the Labour Inspector in writing. The union never received any modified proposal.

Management Unlawfully Attempted to Terminate Union Delegates (August 2022).

Marriott and Palma Guinée did not provide the information or the proposals they promised to the Labour Inspectorate. Instead, management sought to begin the termination process, without allowing the union to review who was selected for termination or what they would receive.

Management began calling employees on Thursday, August 25, 2022, asking them to come to the hotel to sign their termination paperwork. Management called four of the six union delegates in to meet with the Human Resources Director, Ms. Mariama Camara, and the General Manager, Ms. Rita Ezeani. In the meeting, Ms. Camara and Ms. Ezeani asked the delegates to sign paperwork attesting to their termination and acknowledging the amount of their settlements. The delegates refused to sign, explaining that they had not had a chance to review the list of terminations, severance amounts and whether their seniority had been respected.

Two delegates in particular, Ibrahima Kandet and André Haba, both senior engineers, questioned why less senior employees were being retained. The circumstances suggested a retaliatory motivation for their termination.

The delegates also raised concerns about the settlement funds being garnished by the bank to cover employee bank loans. The Director of Human Resources explained that the insurance on the loan would cover their settlement payments, but she also explained that the question would be resolved between the bank and the insurer. The delegates asked for management to wait until they had an opportunity to explain this process to the workers, but they reported Ms. Ezeani responded "no, we are in the final stage now." Finally, the Ms. Camara explained that "this process must be completed by the 31st." She said that management would wire the settlements to employee bank accounts, regardless of whether the workers signed the paperwork.

While a small number of workers complied with SGC management's request that they sign their termination papers, most workers declined to meet with Human Resources or sign any paperwork, out of concern that their terminations were unjust and legally improper. Those who took out loans were also concerned that their settlements would be garnished by the bank.

The Labour Inspectorate Ordered Terminations Halt (August-September 2022).

Marriott and Palma Guinée's evasive and illegal behavior exhausted the patience of the Guinean Labour Inspectorate. Management did not answer the Labour Inspector's August 24 request for a revised retrenchment proposal. Management did not obtain the Labour Inspector's permission to terminate union delegates, as the law required. Despite the Labour Inspector's demands and the requirements of the labour code, management did not provide the list of employees to be terminated and the severance they would receive.

On August 31, 2022, the Labour Inspector insisted that terminations cease until management disclosed the required information. At a meeting between the Labour Inspector, the union, and management, on September 13, 2022, the Labour Inspector again demanded that management disclose the list of workers to be terminated and their severance packages, including any unpaid PTO, by September 16, 2022, at 2pm. The Labour Inspector reminded management that union delegates may not be terminated without his approval.

The Inspector also insisted on timely payment of severances for the terminated workers. By November 1, 2022, the workers who were terminated had gone three months without receiving the severances they were owed by Guinean law.

Conclusion.

Eventually, workers reported receiving severance payments, without deductions for hotel-sponsored loans. While the hotel plans to reopen at an undisclosed date, terminated workers were given no concrete reassurances of future employment at the SGC. Workers were informed that they would receive "priority for rehire based on qualifications" for a two-year period, but management provided no more specifics or security to the recently terminated workforce.

Management's effort to terminate the union delegates failed due to the Labour Inspector's intervention. While formally employed, the delegates are receiving neither work, wages, nor severance.

On October 6, 2022, the IFC informed complainants that the Corporation's client, Palma Guinée, intended to prepay its loan, allowing the company to escape the PS2 obligations it had so consistently disregarded. Despite years of determined and blatant PS2 violations, Palma Guinée enjoyed the IFC's financial support and suffered no financial consequences for its disregard of its obligations.

On January 19, 2023, the IUF and GLJ-ILRF submitted a complaint to the CAO, on behalf of the current and former workers of the Sheraton Grand Conakry, concerning Palma Guinée and Marriott's continuous and systematic violation of workers' rights. Management's rights violations, including the termination of the majority of the workforce, when viable and financially advantageous alternatives to retrenchment were presented to them, represent the most egregious instance we have yet encountered of a client's disregard for Performance Standards in the hotel sector.



▲ West Africa: Kasada Hospitality Fund (IFC Project No. 44585).

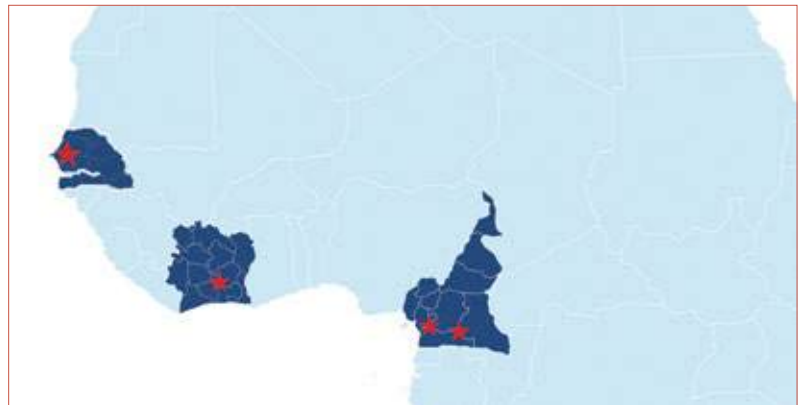
Date Approved: April 30, 2021 | Value of investment: Up to \$160 million

Summary of PS2 issues:

- IFC due diligence fails to detect ongoing labour disputes and workers' rights violations at multiple project hotels.

Status: The IUF is engaging constructively and directly with Kasada; the IUF successfully established a dispute-resolution structure between the IUF, its affiliates, and the IFC client.

On April 30, 2021, the IFC Board approved a loan facility of up to \$160 million USD for the Kasada Hospitality Fund LP (KHF). The loan package was comprised of several discrete subprojects, the first of which was Project Ayaba. Project Ayaba entailed the Fund's acquisition of eight hotels in Abidjan, Côte d'Ivoire (4 hotels); Dakar, Senegal (3 hotels) and Douala, Cameroon (1 hotel), along with operating liquidity injections. The KHF partners acquired these hotels from AccorInvest, in which Accor holds a 30% stake. Further subprojects along with further disbursements were contemplated, but the process for evaluating E&S risks of such subprojects was not fully revealed. Disclosure documents suggested that the E&S review of further acquisitions would be conducted by KHF alone, while noting that KHF had no E&S capacity.¹¹¹



The limited partners in KHF were the Qatar Investment Authority, AccorHotels, and Kasada Capital Management, a hospitality-focused private equity fund led by the former CEO of AccorHotels Middle East and Africa. While ownership of the hotel was to be distributed between Accor and its partners, management of hotel personnel was reserved to Accor. Accor retained an ownership interest through the partnership, perhaps an interest greater than the 30% interest Accor had in the eight hotels' original owner, AccorInvest.

The Kasada investment clearly demonstrates the deficiencies of the IFC's PS2 risk review and the potential of the PS2 Compliance Accountability Policy. IFC due diligence failed to detect active labour disputes at four project hotels and systematic anti-union intimidation at four more, facts which the IUF brought to IFC's attention weeks after the IFC first disclosed the investment. However, despite this difficult beginning, KHF reached out to the IUF shortly after the approval of the investment. The parties were able to establish a structure of regular meetings at various levels of corporate organizations and trade union bodies to address PS2 and other concerns, helping to find progress on existing issues and those yet to come.

¹¹¹ IFC, *Environmental and Social Review Summary: Kasada Hospitality Fund LP* (2021)

Labour Portal Complaint (March 2021).

The IUF and GLJ-ILRF learned of the proposed investment in Kasada Hospitality Fund on March 3, 2021. Immediately, the IUF contacted its affiliates in three countries to discover more about the proposed hotel investments. In that brief time, the IUF assembled a record of serious PS2 gaps at eight of the hotels affected by the proposed KHF investment.

In a complaint submitted on March 17, 2021, the IUF and GLJ-ILRF shared their findings with IFC. Their discoveries showed alarming gaps in the IFC's due diligence.

Côte d'Ivoire (four hotels).

On January 14, 2021, the Novotel Abidjan workers union, an affiliate of SYNTIHCI and UGTCL, notified management and the Ivorian Labour Inspectorate of their intent to strike. Numerous rights violations had given rise to the strike. Management failed to implement the collective agreement, pay overtime wages, or pay for training time.

In January 2021, the labour discord escalated to include all four Accor properties proposed in the KHF investment. Workers at the Novotel, Ibis, and Pullman hotels in Abidjan had all formally notified management and the Labour Inspectorate of their intent to strike.

Cameroon (one hotel).

While the IUF has no hotel union affiliate in Cameroon, IUF representatives were able to meet with workers at the Hotel Ibis Douala through other Cameroonian IUF affiliates. As laid out in the complaint, workers at the hotel expressed profound fear about even being seen talking about the union. In discussions with workers, who refused to speak on the record to avoid retaliation, numerous accounts of violations of their collective bargaining agreement were disclosed.

Senegal (three hotels).

Through its affiliate in Senegal, the IUF obtained information about the three Senegalese hotels included in the KHF proposal and spoke to union activists at each hotel. This brief

research revealed systemic and unresolved compensation issues dating back to 2019, and a culture of surveillance and espionage, which had created a climate of fear in the workplace, dating back to 2017.



Concerns Raised by IFC Disclosures.

Disclosures revealed that the structure of the project would create obstacles to the realization of PS2 not addressed

by IFC due diligence. The IFC's client, with primary responsibility for PS2 compliance, was KHF. However, Accor retained "sole and exclusive control" of actual hotel operations. IFC E&S staff only engaged with Kasada personnel in their review process. IFC did not engage with Accor, which, per disclosures, had "absolute discretion, in relation to all human resource (HR) matters of the hotel employees."¹¹²

112 IFC, *Environmental and Social Review Summary: Kasada Hospitality Fund LP* (2021)

Further subprojects were contemplated and risk review for those hotels was delegated to Kasada, even though Kasada did “not have any E&S management capacity of its own” and did not have control of hotel operations.

When it came to PS2, the disclosed IFC risk review for the Kasada project was based largely on Accor’s global policies, which were taken at face value as assurance of PS2 compliance. Left out of the risk review, as disclosed, were Accor’s actual global human rights practices and the ongoing violation of workers’ rights at all eight project hotels. As IFC relied on Accor’s human rights policies, documented human rights violations were continuing at Accor hotels in Indonesia, Myanmar, and Nigeria, as the IUF and its allies shared in their March 17 complaint.¹¹³

The IFC’s Response and the IUF and GLJ-ILRF’s Continued Engagement.

The IUF and GLJ-ILRF complaint was circulated to the IFC Board, which approved the loan but urged further dialogue acknowledging the complaint’s concerns regarding the gaps in IFC due diligence.

After approval, KHF immediately reached out to the IUF. The IUF’s work with KHF and the operator, Accor, has been productive. The IUF established regular meetings with Kasada and Accor, and regular meetings also began between IUF affiliates and Accor to solve national level workplace issues, including signing collective bargaining agreements, resolving violations of trade union rights, and restoring constructive labour-management relations. The IUF and KHF have established quarterly meetings, as well as monthly meetings between Accor and IUF affiliates, to ensure regular review of labour issues and productive labour-management relations.

This auspicious result—that union, client, and operator convene to address PS2 compliance and engage in concrete problem solving—is what the PS2 Compliance Accountability Policy would make a matter of course.

113 The KHF complaint of March 17, 2022, cited labour rights violations at Accor hotels in Indonesia (four hotels), Nigeria (four hotels), and Myanmar including the violations that hotel management visited on Husni Mubarak, Union Chairperson at the Pullman Jakarta and President of IUF-affiliated FSPM. Mr. Mubarak was terminated in retaliation for collective bargaining activity on July 5, 2018. On May 24, 2018, several weeks earlier, management had unilaterally posted a notice announcing wages and wage structures not agreed to with the union. A joint investigation by the Accor regional team and the IUF resulted in a set of recommendations to address the wrongs done to Mr. Mubarak and ensure better oversight of human rights matters going forward. Accor corporate management did not implement the recommendations, and the issue remains unresolved.

▲ Nigeria: Moorhouse Properties Limited (IFC Project No. 25763).

Date Approved: May 13, 2011. | Value of investment: \$14.9 million

Summary of PS2 issues:

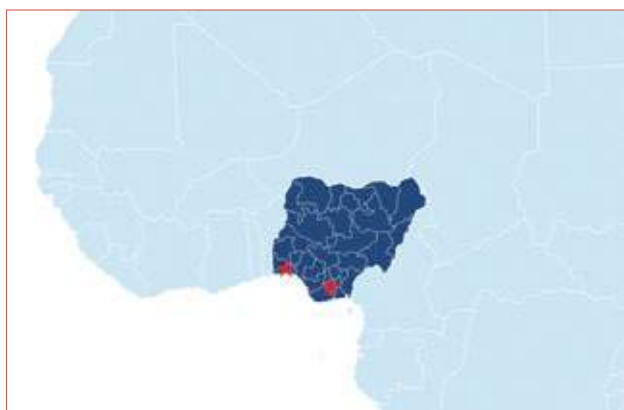
- IFC due diligence failed to detect ongoing labour disputes at project hotels.
- The IFC client withheld union dues from workers but did not provide the dues to the union, amounting to millions of Nigerian Naira of stolen funds.
- Workers were retrenched without consultation or severance, in violation of client's PS2 and national law obligation.

Status: The IUF and GLJ-ILRF continue to seek to engage the IFC around past and ongoing violations.

On May 13, 2011, the IFC Board approved a debt-equity investment in Moorhouse Properties Limited (MPL). The project included the construction of two 3-star hotels in Lagos, Nigeria under an MPL-subsiary known as AMHL, and the construction of two 2-star hotels around Lagos under another subsidiary, MP Budget. The approved project, estimated to cost \$37.4 million USD in total, encompassed debt refinancing and the establishment

of a corporate office for MPL. IFC financing came in the form of a \$7.5 million USD loan to AMHL and an investment of \$7.4 million USD in MPL equity. At the time of the investment, MPL owned equity interests in the Mercure Moorhouse Ikoyi Lagos by Sofitel and the Novotel Port Harcourt. All the hotels, excepting the two-star hotels under the Travel House brand, were Accor-branded and -managed.

Through the project, the IFC would become part owner of hotels that, for more than a decade, repeatedly refused to bargain with their employees, and regularly stole wages, union dues, and severance benefits from workers.



Labour Portal Complaint and Communications with the IFC (May 2021-November 2021).

The IUF had been working with its affiliates to address ongoing rights violations at Accor-managed properties in Nigeria when it learned of the IFC's interest in MPL. The IUF, along with GLJ-ILRF, sought to engage the IFC to assist in resolving clear PS2 violations at MPL hotels, beginning with correspondence sent on May 5, 2021. Only on July 16, 2021, would the IFC follow up with a substantive communication on MPL, agreeing with some concerns and disputing others. The IFC agreed that the most effective next step would be a meeting between the IUF and MPL and stated that such a meeting would be arranged. On July 30, 2021, the IUF agreed to participate. This meeting, however, did not occur.

Severe PS2 Violations at MPL Hotels.

In letters sent in July and November 2021, the IUF and GLJ-ILRF informed the IFC of serious PS2 violations at properties the IFC partly owned through MPL. At both Mercure Moorhouse Ikoyi Lagos by Sofitel and the Novotel Port Harcourt, management had refused to renegotiate conditions of service with the unions. The prior collective agreements expired ten years ago. Despite the commands of PS2, hotel management had not “engaged with” the unions, nor “provide[d the union] with information needed for meaningful negotiation in a timely manner.”¹¹⁴ In the decade following the expiration of the collective bargaining agreement, management made a practice of illegally retaining union dues checked off from workers’ paychecks—moneys the law required be given to the unions.

In abject noncompliance with PS2, all the workers at the Mercure Moorhouse Ikoyi Lagos by Sofitel and the Novotel Port Harcourt were fired in April 2020—at the height of the pandemic—without consultation with their unions or provision of legally required benefits for workers. The IUF sought mediation through the Ministry of Labour, but Accor neither responded to union requests for consultation and dialogue, nor paid amounts owed for non-remitted dues, which number millions of Nigerian Naira. Both hotels soon reopened. No recall priority was given to employees terminated because of the pandemic, although some did return to their jobs.

At the Ibis Lagos Ikeja and Ibis Lagos Airport locations, hotel management ran an anti-union campaign, denied unions access to the hotel, and refused to allow workers to exercise their right to join a union.

The IFC’s Response and the IUF and GLJ-ILRF’s Requests for Engagement (November 2021-Present).

After consultations with MPL, on November 11, 2021, the IFC reiterated its previous agreement and disputes. Among other things, the IFC stated that, due to financial hardship, MPL cannot remit dues money owed to the union or commit to resolving PS2 violations.

Despite consistent correspondence and requests for engagement from GLJ-ILRF, the ITUC, and the IUF, no meeting materialized between the IUF and MPL. Indeed, almost a year after the engagement began, on March 1, 2022, the IUF again requested the IFC convene MPL and the IUF for problem-solving conversations. The IFC still refuses to convene the parties and continues to repeat MPL’s false claims that outstanding PS2 violations have been resolved.

On March 31, 2022, the IFC informed the IUF and the ITUC via email that Moorhouse Ikoyi Lagos and Novotel Port Harcourt had resumed operations, rehiring some employees but only on three-month temporary contracts. The IFC claimed that no union currently existed at the hotels, further asserting that workers were reluctant to join a union and pay dues. The IFC confirmed that MPL still had not repaid the dues it stole from the union, but the IFC said MPL was in negotiations with the union.

On April 7, 2022, the IUF passed along the response of the Hotel and Personal Services Senior Staff Association (HAPSSSA) and the National Union of Hotels and Personal Services Workers (NUHPSW), both IUF affiliates in Nigeria. Following the mass terminations, the unions reported they sought to engage management about numerous outstanding issues, including the replacement of permanent contracts with temporary contracts, the required reestablishment of union representatives, the renegotiation of collective bargaining agreements and management’s outstanding debts to employees who were illegally denied severance benefits and whose contributions to their union were diverted.

114 IFC, *Performance Standard 2: Labor and Working Conditions* 3 (¶14) (2012)

Contrary to the IFC's understanding, MPL would not engage with the union. The unions met with management representatives from Legal and HR on February 15, 2022, where the HR Director agreed to host a broader meeting that included union representatives who had been terminated. As preparations began for that meeting, the HR Director was terminated, and management ceased responding to the unions, referring them to a lawyer who also refused to respond. The unions report that management has sought to harass and intimidate union members into abandoning the organization.

The IFC responded one month later, promising that a visit had been scheduled to the Moorhouse Lagos and that more information would soon be obtained. The visit was later canceled, and no information emerged until HAPSSSA and NUHPSW received a letter from the hotel on June 1, 2022. The letter explained that Moorhouse Lagos management could not meet because the hotel no longer had a general manager and was no longer under Accor management. The IFC's disclosed due diligence relied almost exclusively on Accor policy to conclude that the project was likely to comply with PS2.

Efforts to engage the IFC and its client continue.

▲ Pan-Africa: Onomo (IFC Project No. 43696).

Date Approved: May 27, 2021. | Value of investment: €20.9 million

Summary of PS2 issues:

- IFC due diligence failed to detect ongoing labour disputes at project hotels.
- Management unjustly retaliated against union activists and terminated union leaders, including one terminated in violation of an express order of the Labour Inspector.
- Management illegally underpaid workers and required employees to work mandatory, unpaid overtime.

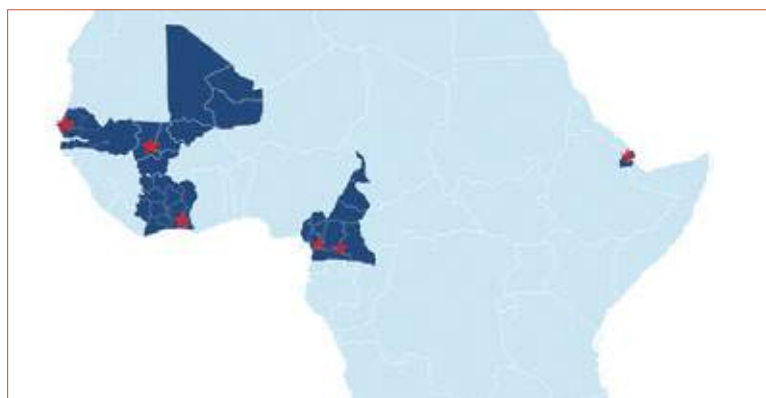
Status: After a long delay, IUF successfully engages with project management, establishing a dispute-resolution structure between IUF, its affiliates, and the IFC client.

On May 27, 2021, the IFC Board approved a €20.9m loan to African Hotel Development Luxembourg SAS (“Onomo”), a pan-African operator of hotels under the Onomo brand. Onomo is co-owned by two investment firms, Batipart International S.A, CDC Group Plc and Crédit Mutuel Capital. A further concessional subordinated loan of up to €15.2m complemented the direct loan. The IFC expected its investment to “increase employment,” generate “demand for goods and services from the relevant Project companies’ suppliers,” and “promote the resilience of the tourism sector by preserving availability and quality of services provided by a pan-African player and improve the local offering of quality hotels for regional business travelers.”¹¹⁵

The project encompassed the renovation, refinancing, and expansion of Onomo’s 21 African hotels. In particular, renovations were proposed at the Onomo Hotel Abidjan Airport (OHAA), the Dakar Onomo Hotel, and the Bamako Onomo Hotel alongside the construction of new Onomo hotels in Yaoundé, Cameroon and Djibouti City, Djibouti.

IFC’s due diligence failed to note serious, ongoing violations of PS2 and clear indications of further violations around the Onomo project. At Onomo’s Abidjan Airport location, hotel management stole wages, required unpaid overtime, and forced workers to labour in unsanitary conditions. At the

time of the investment, OHAA management had refused to negotiate a new collective agreement for six years after the election of union delegates. In retaliation for his protests over employer intimidation, management terminated the principal union delegate — over the objection of local labour authorities. Nevertheless, the IUF and its allies were able to effectively engage with Onomo, after nearly a year-long delay in arranging a meeting between the parties.



115 IFC, *Summary of Investment Information: Onomo Hotels* (Apr. 7, 2021)

Labour Portal Complaint and Efforts to Engage the IFC (May-June 2021).

The IUF learned of the proposed loan on May 2, 2021, and immediately reached out to its affiliates in Cameroon, Côte d'Ivoire, Mali, Senegal, and Djibouti to discover more information. In a month's time, the IUF assembled reports of significant obstacles to the fulfillment of PS2's requirements, none of which were referred to in IFC disclosures. The IUF and GLJ-ILRF submitted their complaint on June 8, 2021, asking the IFC not to disburse funds for the now-approved loan, until there was a formal response to the complaint.

As stated in the complaint, in Côte d'Ivoire, workers led a long campaign to organize a union of Onomo Hotel Abidjan Airport (OHAA) workers. OHAA workers voted to form a union and selected delegates on January 9, 2015. When the IFC approved the investment in 2021, OHAA management still refused to recognize the union and to bargain with its leaders, six years after its obligation to do so arose. In a demonstration of its bitterly anti-union stance, OHAA management also refused to provide the union an on-site meeting room, which the union was entitled to by law.

According to grievances brought by workers and their union and related in the complaint, OHAA's working conditions abounded in PS2 violations. Pay differentials required by law for overtime and night-shift work were not paid, with employees unlawfully forced to work over forty hours a week, without additional pay. Working conditions were neither safe nor lawful. Employee areas, such as locker rooms, were left in unsanitary conditions. Workers were required to stand for hours on end and forbidden from sitting.

Through their union, workers sought to address these PS2 and national law violations through dialogue with management. OHAA management struck back with discriminatory terminations. Aboa N'Cho Romain, a bellman at OHAA since March 2013, and principal union delegate since January 2015, sent a letter to the general manager and the local Labour Inspector asking that the company respond to employees' concerns.

OHAA management sought to terminate Mr. Romain, claiming that Mr. Romain had defamed OHAA in a series of LinkedIn posts about OHAA working conditions and employer intimidation. However, the Labour Inspector denied OHAA's request to terminate Mr. Romain. On February 19, 2020, the Inspector concluded that OHAA had not followed the regulations set forth in the employee handbook, that the defamation allegations were unfounded, and that the termination was unjust. Nevertheless, OHAA terminated Mr. Romain the following day, on February 20, 2020.

Mr. Romain's legal challenge to his termination was sustained, although OHAA is currently appealing on jurisdictional grounds.

The IFC's Response and the IUF and GLJ-ILRF's Continued Engagement (June 2021 to March 2022).

The IFC first responded to the complaint on June 28, 2021, ignoring the request to delay disbursement of loan funds but promising a response by July 15, 2021. Eventually, on July 21, the IFC sent a rebuttal of the complaint's claims but proposed to convene the parties. Disputing the IFC's conclusions, the IUF accepted the proposed convening on July 31, yet the IFC was unable to schedule such a meeting. The IUF queried the IFC about the meeting on October 4, 2021, and on November 11, 2021, the IFC responded, reiterating its prior claims, and again offering to convene the parties. Again, the IUF disagreed with the IFC's findings and accepted the proposed meeting. After further back-and-forth along the same lines, the IFC convened with the IUF and Onomo on March 18, 2022.

The long-delayed meeting was productive. The IUF and Onomo agreed on a problem-solving framework to address ongoing labour rights violations, as well as those that might arise in the future.

▲ Zambia: Protea Zambia

(IFC Project Nos. 7779, 41451, 25605, 10529).

Dates Approved: 1997, 2001, 2007, 2019 | Value of investment: \$12.43 million

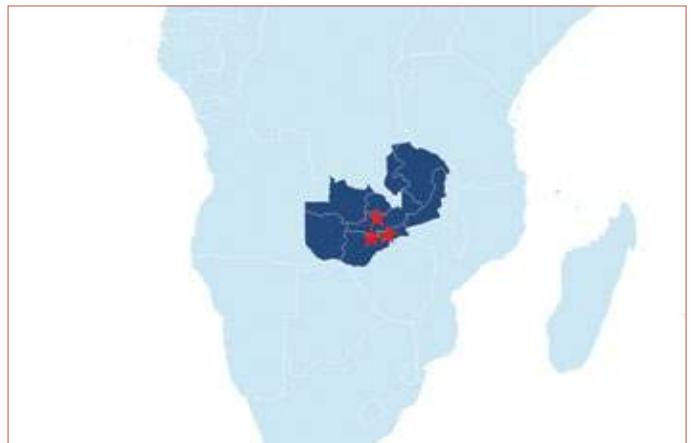
Summary of PS2 issues:

- IFC due diligence failed to detect ongoing violations of PS2 at hotels and granted client new projects despite its unremedied PS2 violations.
- Management orchestrated an anti-union campaign of intimidation and surveillance.
- Management retaliated against workers who sought to express their opinions about working conditions and unionization to government officials.
- Management provided and continues to provide unsafe and overcrowded accommodations to workers.

Status: The IUF and GLJ-ILRF continue to seek engagement with the IFC and the Zambia hotel management team.

Beginning in 1997, the IFC made significant investments in the Zambian hospitality sector through Union Gold Zambia Ltd., an investment holding company that now owns eight hotels operating under the Protea by Marriott brand.¹¹⁶ The most recent project was approved on June 20, 2019, consisting of a \$9 million USD loan for the construction and operation of a greenfield resort hotel in the outskirts of Lusaka, Zambia (P41451). Prior investments include a 1997 IFC investment of \$0.67 million USD in a safari lodge in Chisamba, on the outskirts of Lusaka (P7779). Following that, in 2001, the IFC invested in a Protea hotel in the northern Zambian town of Chingola (P10529), and in 2006, IFC invested \$1.8 million USD in Protea Arcades Hotel, built at the site of a mall of the same name in Lusaka (P25605).

The record of IFC's investments in Protea by Marriott hotels in Zambia is evidence of a major gap in the IFC's due diligence and monitoring apparatuses. Serious issues with Protea Zambia's treatment of workers emerged as early as 1997, but those unresolved issues did not prevent three further investments over subsequent years. At Protea Bonanza (aka Ciela), management routinely violated Zambian labour law, by punishing workers for speaking out, terminating them arbitrarily, and denying them any means to submit grievances. The management of Protea Arcades waged a campaign of anti-union intimidation, which included punishing workers for sharing their concerns with government officials and forcing them to write retractions under threat of losing their jobs. A similar campaign unfolded at Protea Chingola. At Protea Chisamba, management continued to provide workers unsafe, unsanitary, and overcrowded accommodations more than two decades after the IFC invested.



¹¹⁶ The eight Protea by Marriot-branded hotels in Zambia are: Protea Arcades Hotel – Lusaka (Arcades Mall) (“Protea Lusaka”); Protea Arcades Tower – Lusaka (Arcades Mall) (“Protea Lusaka Tower”); Protea Cairo Road – Lusaka (downtown Lusaka); Protea Chisamba – Chisamba (outskirts of Lusaka); Protea Ndola – Ndola (northwest Zambia); Protea Chingola – Chingola (northwestern Zambia); Protea Livingstone – Livingstone (southeastern Zambia); Protea Chipata – Chipata (northeastern Zambia).

Labour Portal Complaint and Efforts to Engage IFC (January 2021-January 2022).

In January 2021, the IUF was contacted by its affiliate Hotel, Catering, Tourism, and Allied Workers Union of Zambia (HCTAWUZ), the hotel workers' union in Zambia, about ongoing rights violations at Protea by Marriott hotels in the country. The IUF sent an officer to Zambia to work with HCTAWUZ, from July to December 2021, to document PS2 violations at the Protea hotels. The IUF shared its findings with the IFC in a complaint submitted with GLJ-ILRF on January 14, 2022, concerning four separate IFC investments granted to the same IFC client.

Protea Bonanza aka Ciela (2019, #41451).

Approved by the IFC in 2019 and renamed Ciela in 2021, the Protea Bonanza was to be branded a "Protea Hotel by Marriott" and included 614 rooms and a golf course, among other amenities. The total project cost was estimated at \$29.6 million USD, with IFC contributing \$9 million USD. The "most significant development impact is on stakeholders," specifically hotel employees and suppliers, claimed the Summary of Investment Information.¹¹⁷

Ciela management routinely violated Zambian labour law and the requirements of PS2, disregarding its obligations to negotiate with the union. On February 5, 2021, the union conducted a recruitment drive at Ciela and obtained forty-two signed dues check-off consent forms. The forty-two forms exceeded the law's 25-signature threshold, establishing management's obligation to sign a recognition agreement with the union under Zambian law. Ciela neither recognized nor negotiated with the union, even after a Labour Inspector ruled in favor of the union and ordered Ciela to begin negotiations on the agreement. After months of delay, management met with the union in November 2021, only to offer unsound legal arguments justifying the continuation of its non-recognition and delay.

Workers at the hotel reported that management made them fear union activity, as management appeared openly anti-union. Reinforcing this perception, the hotel also targeted union activists for discipline. On August 18, 2021, Martin Simbubwe was suspended for three months after expressing his private opinions about the upcoming presidential elections in a news interview, during his off time. He did not mention his current place of employment but did mention his union activism at a former place of employment. Management said the suspension was due to Mr. Simbubwe's "incitement

of fellow employees against an opposition candidate." After a hearing before a Labour Inspector, the charges against Mr. Simbubwe were dismissed, but the signal sent to the workforce about the consequences of speaking up was unmistakable.

Ciela operated without a foundational component of the risk management scheme the Performance Standards prescribe: the company had no grievance system. Although required to have a grievance system open to workers by PS1 and PS2, as well as ESAP provisions 2 and 3, Ciela management had none. Workers had no place to go to contest management's decisions, given that they could neither grieve as individuals nor through a recognized representative.



117 IFC, *Summary of Investment Information: Protea Bonanza* (Sept. 2019)



Several workers were terminated on dubious grounds, but, without a grievance mechanism, they had no cost-effective means of contesting their discharges. Eighteen workers were terminated at the on-site Elements restaurant because of purported theft. However, the union's investigation found that the discharge of five workers was founded merely on suspicion, with management neither alleging nor evidencing the workers' involvement in the purported theft. Two cashiers sought to contest their unfounded discharge, but only one was able to afford legal counsel. For the other cashier, there was no cost-effective grievance mechanism that might allow her to pursue justice. Of the five who were terminated on insufficient grounds, only one was able to contest their termination.

The union worked with management to arrange a recruitment meeting. Management only sent a small number of workers, accompanied by numerous managers, to attend. Those who were able to hear the union's pitch felt surveilled by their supervisors.

Following the IUF and GLJ-ILRF's filing of the labour portal complaint regarding Protea Zambia, on January 14, 2022, there was a significant shift in management's approach to allowing unionization at the Ciela property. As detailed in the complaint, the union had achieved the necessary threshold of signatures for recognition in February 2021, yet management refused to recognize the union as required by law. Following the filing of the complaint, the union succeeded in signing up 77 workers, well beyond the threshold required for recognition, though it was not obliged to do so.

Following these remarkably successful recruitments and perhaps with IFC consulting its client—given the recently submitted complaint—Protea Zambia finally agreed to engage in recognition negotiations, and a recognition agreement was signed on March 2, 2022. The union then recruited an "interim union executive committee" of 8 workers to represent the workforce. On March 10, 2022, the union submitted to management the names of these members. On March 15, 2022, after the recognition was signed, the union also submitted the names of all those who signed up with the union in February, and requested release or leave for the interim committee "for the purpose of preparing for our forthcoming Collective Bargaining meeting."

Though the process of entering into negotiations over a fair and neutral election process per the Performance Standards has taken over a year, the IFC, HCTAWUZ, the IUF and GLJ-ILRF have succeeded in working together to bring the client closer to compliance. Workers at Ciela are likely to hold their elections for a union in the first quarter of 2023. The IUF and GLJ-ILRF continue to follow this case closely, with an eye toward resolving outstanding violations at the other three IFC-funded Protea properties discussed in the following sections.

Protea Arcades (2007, #25605).

The IFC invested in the Protea Arcades project in 2007. The project consisted of a greenfield, four-star, 100-room hotel with two large conference facilities, located in Lusaka, the capital of Zambia. The development impact argument for the Arcades investment, as indicated by the disclosures, centered on the employment effects of the project. Naively repeating management's anti-union talking points, the ESRS noted that there was a union for the hotel sector in Zambia, the Hotel Catering Tourism Allied Workers of Zambia (HCTAWZ), "but members would need to contribute 2% of their wages as a membership fee, and none of the company's staff have reportedly joined this union to date."¹¹⁸

In 2012, management signed recognition agreements covering Protea Arcades, Chisamba, and Cairo Road, which would come into effect once the union reached the required 25-signature threshold. Only at the Cairo Road location, however, would the required threshold be reached, a union established, and bargaining begun.

118 IFC, *Environmental and Social Review Summary: AEF Protea Hotel* (2007)

At Protea Arcades, management showed its workforce the lengths it would go to frustrate their attempts to organize. The union worked with management to arrange a recruitment meeting. Management only sent a small number of workers, accompanied by numerous managers, to attend. Those who were able to hear the union's pitch felt surveilled by their supervisors. The union subsequently tried to arrange further recruitment meetings, hoping to reach the workers who were not brought to the first meeting, but subsequent meetings were either canceled by management or no workers attended.

When workers themselves sought to promote their own interests, management retaliated. When representatives of the Labour Department visited Protea Arcades in March 2017, several employees expressed concerns about working conditions. One of the more vocal employees was written up for "behavior or action which has brought the company name/reputation into disrepute." He and another worker were summoned to a meeting with Protea Hotels Zambia's HR Manager, who dictated letters to them, recanting the criticisms made to the labour inspector. Out of concern for their jobs, both complied. Both were suspended without pay in retaliation for sharing their concerns with the Zambian Labour Inspector.

Protea Chingola (2001, #10529).

Union Gold's second IFC hotel investment, Protea Chingola, is a safari lodge in the northern Zambian city of Chingola, completed in 2001. The union began recruiting members at the hotel in 2018. The union met with Protea Chingola's general manager on May 24, 2018, to arrange a recruitment meeting, which ultimately resulted in over 43 workers submitting stop order forms, which indicate a workers' assent to joining a union. As a result, the union at Protea Chingola should have been immediately recognized under Zambian law.

Management from Protea Hotels Zambia (PHZ) swiftly intervened once they found out about the union's progress at Chingola. The human resources director for PHZ claimed that the union had breached protocol by contacting general managers directly and said he would investigate. Shortly thereafter, letters withdrawing stop order forms poured into the union's offices. Several letters stated that the workers withdrew because of concern about the security of their jobs. Having never experienced such a rapid sequence of withdrawals, HCTAWUZ's General Secretary wrote to the Labour Commissioner to complain of management intimidation. The letters read as follows¹¹⁹:

BT: "This is my personal decision to do so. And I just want my job to be secured because I am on a contract with Protea Hotels by Marriott. This information which you gave the staff was good and sound" (8/4/18)

NC: "The reason being that am on contract hence my decision. I thank you for the information you gave to us (staffs) about the union" (8/4/18)

WC: "I am resigning from the Union that is my membership effective from 4th August 2018 because I don't want to disturb my job because I am on contract with Protea Hotels by Marriott" (8/4/18)

HI: "The reason being that I am on a contract basis hence I have decided to resign from the union. Thank you so much for the information you gave to us (staffs) about the union" (8/4/18)

EN: "I have given it much thought and decided that the best decision for me right now is to withdraw my membership from the union. I believe in having a good working environment which includes cooperation with my supervisors" (8/6/18)

So many workers withdrew from the union that less than the required twenty-five members remained to trigger management's obligation to recognize the union. Accordingly, management refused to recognize the union after the withdrawal letters arrived.

119 Workers are identified here by initials. Letters on file with authors.

Protea Chisamba (1997 #7779).

Protea Chisamba was the first Protea Hotels Zambia property that the IFC funded. Begun in 1997, the project entailed the conversion of a safari lodge into a hotel with a game reserve.

Despite over two decades of operations, Protea Chisamba never came into compliance with the Performance Standards. PS2 obliges the client to “provide a safe and healthy work environment” and, in connection with accommodations given to workers, to provide “basic services.” At Protea Chisamba, worker accommodations have been unsafe, overcrowded, and undersupplied, ever since the construction of the hotel in 2001. Management uses precarious employment arrangements to quell worker dissent.

According to initial disclosures, around fifty employees were to live three kilometers away from the hotel at a fenced compound with electricity, water, and ablution facilities. Currently, however, the facilities service seventy employees and their families – over two hundred people in total. The only running water available in the staff compound is provided in four ablution facilities, two for men and two for women, which cannot meet the needs of two hundred individuals. Bathrooms consist of unhygienic pit latrines, which lack the plumbing needed to dispose of waste. While electricity is available in dwelling spaces, it is provided through exposed wires that run along the ceiling. These abysmal conditions could hardly be said to be reasonable and safe, as the Performance Standards demand.

When IUF staff approached workers regarding their rights and asked whether they had sought to raise issues with management, or even desired to form a union, employees were too afraid to speak on site and would only discuss their grievances at a location miles away from the compound. Employees conveyed the sense that they were imprisoned, as they worked and lived on-site, without any comparable options for employment in that remote area of the country.



The IFC’s Response and the IUF and GLJ-ILRF’s Continued Engagement.

Following the January 14, 2022, complaint, the IFC met with the IUF to discuss its contents on March 25, 2022. The IUF reported the positive news that the union at Protea Bonanza/ Ciela had been recognized but cautioned that there continued to be serious issues around the freedom of association at other properties. The IFC stated it would carry out a site visit to Zambia in April. The IFC did not respond to the IUF’s request that it meet with HCTAWUZ and the workers at the Protea by Marriott hotels, or to the IUF’s request that the IFC convene a meeting between Union Gold, the owner-operator, and the IUF.

In October 2022, HCTAWUZ contacted the HR director for Protea Zambia to schedule a meeting regarding the process for potentially unionizing other Protea properties, outside the two that are currently unionized. Management informed HCTAWUZ that there was no need to meet, as the process—even though incompatible with PS2—would be carried out as it had always been. The IUF and GLJ-ILRF remain committed to dialogue on the respect of freedom of association at Protea Zambia properties. Progress made at Protea’s Ciela location suggests a more co-operative dialogue is possible.

▲ Port-Au-Prince Marriott (IFC Project No. 32421).

Date Approved: June 13, 2013 | Value of investment: \$13.25 million

Summary of PS2 issues:

- Withholding of wages.
- Unpaid, one-year “apprenticeship” raises forced labour indicators.
- Anti-union threats and intimidation.
- Efforts to engage on the project were impeded by hotel operator’s non-responsiveness to IFC.

Status: The IFC’s engagement with the IUF and GLJ-ILRF is stalled due to non-responsiveness of the hotel operator, Marriott.



On June 13, 2013, the IFC Board approved a loan package for the construction of a 175-room, four-star hotel in the Turgeau neighborhood of Port-Au-Prince, Haiti. The IFC provided a \$13.25 million loan. Digicel owned the hotel through its subsidiary, Turgeau Developments S.A. The hotel opened on February 24, 2015.

The IFC’s investment in the Port-Au-Prince Marriott was a failure of due diligence and investment monitoring. When GLJ-ILRF and the IUF initially investigated the

working conditions in 2019, they identified a pattern of violations of workers’ rights. Efforts to achieve compliance with PS2 at the Port-Au-Prince Marriott have been consistently frustrated by management’s surveillance of workers, blanket denials of documented issues, and managerial unwillingness to engage in dialogue about meaningful solutions amid an extremely difficult situation for workers in Haiti.

Labour Portal Complaint and Efforts to Engage the IFC (September 2021).

The IFC’s disclosures revealed a gap in investigation of the Port-au-Prince Marriott project prior to its approval. The section entitled “Environmental and Social Action Plan” simply stated: “Current client performance is aligned with applicable Performance Standards and EHS Guideline requirements. No ESAP is required.” IFC then used boilerplate language from the proposed operator Marriott’s Global Employment Principles and the Marriott International Human Rights Policy Statement, concluding:

These principles and statement serve as human resources policies and procedures and are very closely aligned with the requirements of Performance Standard 2... These statements affirm Marriott’s support for the elimination of discriminatory practices, support for diversity and freedom of association and elimination of all forms of forced, bonded or compulsory labor. Marriott does not employ children. Salaries and other benefits are set on the basis of Marriott salary scales and local salary surveys and are aimed to be locally competitive.¹²⁰

120 IFC, *Environmental and Social Review Summary: Marriott Haiti* (2013)



The IFC did not refer to actual employment conditions or practices within loan recipient Digicel's current operations or within the proposed operator Marriott's hotels. IFC disclosures do not indicate how IFC came to conclude that Marriott's policies provide adequate assurance of the project's PS2 compliance. Marriott, which would operate the hotel, was not the IFC's client, and was bound to the Performance Standards—if at all—only by its agreements with loan recipient Digicel.

Wages were not paid in a timely way, or at all, and workers feared retaliation for even considering the prospect of unionization. "Apprentices" worked for up to one year without pay to earn a position on staff.

In 2019, after hearing numerous reports of PS2 violations, the IUF and GLJ-ILRF undertook multiple missions to Haiti to understand working conditions at the Port-au-Prince Marriott. On these visits, they discovered multiple, severe violations of the Performance Standards. Wages were not paid in a timely way, or at all, and workers feared retaliation for even considering the prospect of unionization. "Apprentices" worked for up to one year *without pay* to earn a position on staff. Deception and withholding of wages during the purported internship period are two of the International Labour Organization's (ILO) indicators of forced labour.

The IFC's Response and Continuing Efforts at Engagement (October 2022-Present).

The IUF and GLJ-ILRF alerted the IFC to these conditions with a complaint, submitted on September 20, 2021, that detailed PS2 issues over a period of several years. The IFC reported that their client summarily denied the PS2 issues detailed in the complaint.

In October 2022, the IUF and GLJ-ILRF sent a follow-up delegation to renew in-person discussions with workers and management, seeking to address ongoing PS2 compliance issues in the difficult context of contemporary Haiti. The delegation highlighted the need for good faith and in-person dialogue, in a place where workers were safe from harassment, intimidation, and retaliation. Many of the workers lived at the hotel.

The IUF and GLJ-ILRF met with the IFC on November 9, 2022. They learned that IFC had commissioned Ergon Associates to perform a labour assessment of the project. The IFC promised to send information regarding the assessment methodology within two weeks. No information was received, although the IUF and GLJ-ILRF have continued to seek engagement on the matter.

The IFC's ability to accurately assess ongoing PS2 compliance, especially regarding matters the freedom of association and collective bargaining, is a test and an opportunity. Protecting these rights is even more critical given limited access to decent work in Haiti amid recent political instability. Consultation with the IUF, GLJ-ILRF, and independent trade unions will be fundamental to this goal. There are no shortcuts.

▲ Mexico: Xcaret Hotels (IFC Project Nos. 46438 and 44383).

Dates: September 21, 2022 (disclosure of second proposed loan) and December 17, 2020 (approval of first proposed loan).

Value of IFC Investment: Up to \$100 million USD; additional \$100 million USD proposed.

Summary of PS2 issues:

- Violation of PS2's protections for the freedom of association, including through the retaliatory termination of 70 workers at Xcaret Arte.
- Multiple important PS compliance deadlines missed but new project proposed with same client.

Status: The project had not been approved as of November 12, 2022; the Board vote has been reset for January 27, 2023.



The IFC's two projects with Xcaret Hotels demonstrate the weakness of the Corporation's current approach to implementing the Performance Standards and the absence of consequences for noncompliance. Xcaret operates nine theme parks, four tours, and three resort hotels in Mexico's Mayan Riviera, where it employs roughly 14,000 workers. On September 21, 2022, the IFC proposed to invest \$100 million USD in the Mexico-based hotel group even as the client missed ESAP deadlines and violated the PS2 conditions of a prior \$100 million USD loan approved in December 2020.¹²¹ The IUF and

GLJ-ILRF gathered information regarding Xcaret's hotel and resort operations and notified the IFC of significant compliance concerns with the second loan on October 28, 2022. The project was scheduled to go before the Board on October 31, 2022, but the IFC chose to defer the vote until 2023.

The First Loan and Xcaret's Termination of 70 Workers in Retaliation for Exercising the Freedom of Association (December 2020-Present).

The IFC first approved financing to Xcaret in December 2020 with a loan of up to \$100 million USD (Project 44383).¹²² Channeled to Xcaret subsidiary Promotora Xcaret, the funds were intended to mitigate the financial impacts of the COVID-19 crisis, allow the client to cover "supplier obligations, employees' salaries, maintenance and repair costs," and pay for the construction of the Xcaret Arte hotel, then almost complete.¹²³ The investment was disclosed on November 17 and approved on December 18, 2020, with the IFC and client signing the loan agreement on May 28, 2021.

121 The IFC and its clients typically agree to Environmental and Social Action Plans before investments are approved. The Plans detail key steps the client will take to achieve compliance with the Performance Standards, often providing deadlines or anticipated completion dates for compliance actions.

122 Ownership stakes are outlined in the disclosed Environmental and Social Review Summary. IFC, *Environmental & Social Review Summary: Grupo Xcaret* (Aug. 3, 2021). Further information on the company founder, Miguel Quintana, can be found here. Alejandra Espinoza Juárez, *Miguel Quintana Pali, el hombre que construyó Xcaret vendiendo sus muebles*, *Expansión* (Oct. 18, 2019)

123 The project was approved December 17, 2020, and invested August 3, 2020. IFC, *Environmental & Social Review Summary: Grupo Xcaret* (Aug. 3, 2021)



Disclosures indicated little appreciation for common obstacles to the exercise of the freedom of association in Mexico. Praising the positive relationship between Xcaret management and several unions, the IFC disclosures failed to evaluate risks of protection unionism.¹²⁴

Xcaret had no grievance system at the time, despite the requirements of the Performance Standards, although the disclosed ESAP anticipated the implementation of a grievance mechanism by June 30, 2022.

In early July 2021, shortly after the first loan agreements were signed, a group of housekeepers and servers at Xcaret Arte approached management to discuss violations of their rights. The workers argued that their tips were seized, and they were required to work overtime and events without pay. Inadequate COVID-19 prevention measures led to what local news called a “chain of positive cases including workers and tourists.”¹²⁵

Over the following days, management terminated 70 of the workers in retaliation for their exercise of the freedom of association, violating Mexican labour law and PS2. Terminated workers were offered only 13,000 Mexican Pesos (USD \$652) settlement, roughly one month of wages in the least compensated job classifications at the hotel.¹²⁶

On July 15, 2021, the terminated employees requested to meet as a group with the Human Resources manager at Xcaret Arte. Rather than receive the employees, management sent security guards to evict them from the premises. The guards confiscated workers’ phones to prevent them from publicizing their mistreatment on social media.¹²⁷



Xcaret had no grievance system at the time, despite the requirements of the Performance Standards, although the disclosed ESAP anticipated the implementation of a grievance mechanism by June 30, 2022.

The IFC disbursed the loan on August 3, 2021, forfeiting much of its leverage to address its client’s behavior.

On October 8, 2021, employees at Hotel Xcaret Mexico convened to vote to legitimate their union contract.¹²⁸ Several employees protested the vote, arguing that certain bargaining demands remained unresolved, particularly the way server tips would be allocated.

Some Hotel Xcaret Mexico workers noted alarming infringements on their freedom to associate, their rights under Mexican labour law, and the voting procedures the law required. Workers who participated in the vote alleged that they were intimidated into voting to ratify the contract on pain of losing their benefits (prestaciones).¹²⁹ Employees said the contract vote was conducted only in the presence of a company-appointed notary rather than Mexican labour authorities. Employees maintained that the number of votes required to ratify the contract was not met.¹³⁰

124 Independent Mexico Labor Expert Board, *Report to the Interagency Labor Committee and U.S. Congress* 4-5 (July 7, 2021); 19 U.S.C. § 4761 et seq. (establishing the Independent Mexico Labor Expert Board).
 125 Given the scope of the mass termination without legal settlement, the case of these employees from Xcaret Arte garnered significant press attention. Lupita Guzmán, *Despiden a 70 trabajadores del Hotel Xcaret Arte*, El Quintanarroense (Jul. 15, 2021); Yajaira Perera, *Denuncia despido masivo en hotel Xcaret Arte*, Canal 12 Quintana Roo (Jul. 2021)
 126 Yolanda Aldana, *70 camaristas denuncian al Hotel Xcaret por despido injustificado*, PorEsto! (July 16, 2021)
 127 *70 house-keeping employees have denounced Hotel Xcaret for unjustified dismissal*, Yucatan Times (Jul. 17, 2021)
 128 In recognition of the pervasive the problems of protection unionism and protection contracts are, Mexican labour law requires all existing collective bargaining agreements be submitted to a free and fair vote of the covered workforce by May 1, 2023. Independent Mexico Labor Expert Board, *Report to the Interagency Labor Committee and U.S. Congress* 20–26 (July 7, 2021)
 129 Victor Flores, *Bajo amenazas someten a legitimación contrato colectivo del hotel Xcaret México*, Sin Reserva (Oct. 7, 2021)
 130 Victor Flores, *Denuncian fraude de la CROC en legitimación de Contrato del hotel Xcaret México*, Sin Reserva (Oct. 11, 2021)

The IFC's Proposed Second Loan (September 2022-Present).

On September 21, 2022, IFC disclosed another proposed \$100 million USD loan to Xcaret (Project 46438). The up-to-\$100 USD million loan, to be channeled through Xcaret subsidiary Destino Xcaret, would partially finance the \$300 million USD expansion of the Hotel Xcaret Mexico from 900 to 1,800 rooms by late 2025. The Hotel Xcaret Mexico played host to the dubious contract legitimization election described above.

The Complaint (October 2022).

Having contacted Xcaret workers and investigated the hotels, the IUF and GLJ-ILRF submitted a complaint on October 28, 2022, asking the IFC to delay consideration of the investment until outstanding compliance issues could be addressed. Warning of further PS2 compliance problems, the complaint highlighted the freedom of association issues discussed above, unreasonably poor working conditions, and delays in key Performance Standard compliance actions, while noting other health and safety and environmental preservation issues.¹³¹

Missed ESAP Deadlines.

Prior to investment, the IFC and its clients agreed on an ESAP, which listed key steps the client will take to comply with the Performance Standards. At the time the complaint was filed, on October 28, 2022, only one of the ESAP objectives had been met on the timelines agreed upon between the client and the IFC. By Tuesday, November 2, 2022, the IFC disclosure had been extensively revised. All "anticipated completion dates" were extended to December 2022 or beyond. The original deadlines, most of which were in June 2022, had been missed. The new due dates were in December 2022 or in subsequent years.¹³²

The ESAP for the Second Proposed Loan.

The ESAP for the second proposed loan indicated that the IFC's due diligence and environmental and social planning processes for the first project were inadequate. Only almost two years after approving the first loan did the IFC, according to the ESAP for the second proposed loan, ask Xcaret to "carry out a gap analysis of their current E&S practices against IFCs PS1-4, 6, and 8 [and WBG EHS guidelines]."¹³³

Working Conditions.

Employees at Xcaret discussed several grievances in October 2022, highlighting serious shortcomings in their working conditions. Employees primarily complained that they were understaffed and overworked. They worked long hours, with erratic schedules, and often performed multiple job duties. They explained that large numbers of employees had resigned, forcing the company to recruit quite frequently.

Employees complained of low wages relative to regional norms that made it difficult to keep up with the increasingly high cost of living in the area. For example, an employee in guest services explained that wages are only slightly above minimum wage. Commissions on sales provide a negligible additional contribution. The employee wondered how wages could be so low, given the exorbitant prices of the parks and rooms at the hotels. In another instance, an employee who complained that the workload was excessive, after working multiple consecutive weeks without a weekend off, was told by a manager: "It's difficult but if you want to succeed you will."

131 The health and safety and environmental preservation sections of the complaint are not discussed here for purposes of brevity.

132 IFC, Environmental and Social Review Summary: Xcaret Hotels (Sept. 21, 2022)

133 IFC, Environmental and Social Review Summary: Xcaret Hotels (Sept. 21, 2022)



Contractualized and Precarious Work.

According to current and former Xcaret employees, large numbers of employees at the parks and hotels work under temporary contracts. The practice of hiring employees under temporary contracts is not uncommon in the region, given seasonal fluctuations in visitor numbers. However, GLJ-ILRF and the IUF discovered that some employees who had been working at Xcaret for five or more years were still working under renewable contracts, and as such, were constantly concerned about their job security.

Within days of the submission of the complaint, the IFC substantially revised the ESAP disclosures for both the first and second Xcaret projects.

One employee expressed frustration that he had contracted to work as a server but was assigned bussing duties for 6 months and only then given the opportunity to transition to the server position. This practice violates Mexican laws limiting probationary periods to only three months for hourly positions, as well as violating the worker's contract of employment.¹³⁴

Gender-Based Violence and Harassment.

At least two female employees expressed concerns over persistent sexual harassment in the workplace. One explained that she raised her concerns to the HR department about being verbally and physically harassed multiple times by her supervisor but saw no change. She alleged that Xcaret took no action, and the supervisor continued to work for the company. Another female employee complained of consistent sexual innuendo and comments in her department with no repercussions. She claimed that such practices were rampant at hotels and in the theme parks.

The IFC expected Xcaret to develop a Gender Equity and Empowerment Plan (GEEP) to mitigate the risk of further harms as part of its ESAP obligations from the first loan by June 30, 2022, according to the original deadlines before they were revised on or around November 2, 2022. As of November 2, 2022, disclosures indicate that Xcaret has yet to develop a GEEP. The due date for the GEEP was revised to December 30, 2022.¹³⁵

The IFC's Response and Ongoing Engagement (October 2022-Present).

The IFC acknowledged receipt of the complaint on October 31, 2022. The IFC's communication acknowledging the complaint did not respond to inquiries about the IFC's investment process with Xcaret or to the complaint's invitation to convene the IUF, GLJ-ILRF, and Xcaret to discuss outstanding PS2 issues from the first loan.

Within days of the submission of the complaint, the IFC substantially revised the ESAP disclosures for both the first and second Xcaret projects, giving rise to new concerns that the complainants flagged with a supplemental submission.

Four of the deadlines that Xcaret had failed to meet had previously been extended to undisclosed dates. A fifth was also extended to an undisclosed date in the new revision. The newly added "Comments" column identified five action items, and stated "Due date revised as agreed with IFC Client." The new due dates were not disclosed. Two further ESAP items are past due, but disclosures do not indicate that deadlines have been extended.

Three new ESAP action items were added with the revision of the ESAP to the original nine, making twelve items overall. The new items are primarily directed towards public health and safety risks, perhaps to address issues that resulted in the death of a child at Xenses Park. Other action item descriptions may have also been revised. The disclosed ESAP for IFC's proposed second project with Xcaret was extensively revised after the complaint was submitted. Anticipated completion dates were formerly absent from the ESAP and added after the submission of the complaint.

134 See *Ley Federal del Trabajo art. 39*

135 IFC, Environmental and Social Review Summary: Xcaret Hotels (Sept. 21, 2022)

The IFC's revision of so many ESAP deadlines to undisclosed dates severely impeded efforts to assess the client's current and future Performance Standard compliance.

More importantly, the newly revised ESAP deepened concerns that the proposed Xcaret project does not yet meet the requirements of the IFC *Policy on Environmental and Social Sustainability*, namely that "IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time."¹³⁶ The IFC first approved an Xcaret project almost two years ago. The multiyear and moving timeframes for implementing basic requirements of the Performance Standards do not conform to that basic rule.

The IUF and GLJ-ILRF shared these concerns with IFC on November 11, 2022. They reiterated their request for a meeting with the project managers to ensure the project complies with PS2 before the IFC Board reviewed the project. After the meeting, the projected board date was deferred to January 27, 2023.

On December 6, 2022, the IUF and GLJ-ILRF met with IFC representatives. In response to concerns about changing due dates, the IFC stated that the IFC disclosure website did not accurately reflect the status of the client's compliance.

IFC announced that they would conduct a site visit the following week and would be "spending the whole week with management, and conducting worker interviews... aiming for interviews with 150 workers." They also proposed meeting with Quintana Roo representatives of Confederación Revolucionaria de Obreros y Campesinos (CROC), the union representing a portion of Xcaret workers, as well as management for the construction companies involved.

The IUF explained that the visit was being conducted too hastily, which left the union without time to meaningfully advise on the visit and engage relevant stakeholders. IFC conceded that they could have provided more than five days' notice but did not agree to postpone or find a way to allow the IUF or GLJ-ILRF to participate in the supervision visit.

The day following the meeting, the IFC responded via email to the concerns raised by providing the proposed methodology for their visit. The one-page proposed methodology did not include any details as to the framework being presented to workers, the questions that would be asked, or provide assurances about the use and safekeeping of workers' responses. The IFC proposed a series of "unstructured conversations" with a sampling of workers, taking place individually and in groups in common areas on the worksite.

Given management's record of retaliation, the IUF and GLJ-ILRF expected that workers would be unwilling to share compromising information about their employer in on-site interviews and feared that workers who did share details would suffer retaliation.

The IUF and GLJ-ILRF sent a letter asking that the site visit should be postponed, given that the methodology provided inadequate assurances to workers and appeared likely to generate low-quality information. The IUF and GLJ-ILRF also offered to promptly commission an expert on Mexican labour rights to revise the methodology, to generate better information and decrease risks to workers.

On December 9, the IFC responded that the IFC's "operations department will look these [our] concerns and revert with a detailed response." No detailed response was sent. The IFC went ahead with the supervision visit.

The concerns in the complaint, which raised the prospect of continued client incursions into the freedom of association and the right to bargain collectively, were left largely unaddressed. The IFC maintained the January 27, 2023 date for Board consideration of the project but then postponed once again to February 15, 2023.

136 IFC, *Policy on Environmental and Social Sustainability* 5 (¶22) (2012)

▲ India: SAMHI Hotels Private Ltd (IFC Project No. 34227).

Date Approved: June 30, 2014 | Value of investment: \$20.95 million

Summary of PS2 issues:

- Hotel management paid unlawfully low wages and unlawfully misclassified long-term workers as contract labourers.
- Hotel management violated workers' freedom of association.

Status: The engagement stalled after IFC refused to connect the IUF and GLJ-ILRF with the client.

The SAMHI project highlights the IFC's failure to adequately respond to credible allegations of working conditions that violate PS2 at the hotels it finances. This is especially important when addressing poverty alleviation goals in investments structured like SAMHI. [Map: India, two cities, amount]



On July 30, 2014, the IFC Board approved an equity investment of \$20.95 million USD in SAMHI Hotels Private Ltd. to fund the development of its portfolio of 27 Indian hotels. At the time, seven hotels were operational, three acquisitions were in process, and seventeen hotels were under development. All the hotels were operated through joint ventures with Marriott or Accor, in which SAMHI remained the majority partner. In disclosures, IFC listed jobs as the first development impact, estimating that the project would “create direct jobs of more than 2,000.”¹³⁷

The IFC's investment in SAMHI exposed the weaknesses of the Corporation's due diligence process. In reviewing PS2 risks, IFC disclosures only analyzed Accor's human rights policies, even though most of the hotels would be operated by Marriott, whose global and local policies were not discussed. According to a 2018 investigation by GLJ-ILRF and the Indian hotel union Hotel Mazdoor Panchayat (HMP Union), workers faced serious PS2 violations including a high level of surveillance and harassment of workers thought to be sympathetic to a union. Wage rates violated national law and PS2. The hotels relied on the long-term use of contract labour in violation of Indian law. Workers were surveilled and harassed for speaking to investigators.

After initial dialogue with the IFC in 2019, the IFC was unable to make their client or the hotel operators available for good faith dialogue. Then, the IFC refused to engage further.

137 IFC, *Summary of Investment Information: SAMHI* (2014)

The IFC's Due Diligence (July 2014).

IFC's disclosures revealed little about SAMHI's PS2 planning. For direct workers, the PS2 section of the ESRS read:

The employees at Formule1 hotels are covered by Barque's/Accor's HR policies which are in line with PS2 requirements. The other hotels being developed by SAMHI will also be operated by reputed international brands. As per public data available, all these brands have adopted Human Rights Policies which cover compliance with applicable laws, prevention of child labour, elimination of forced and bonded labour, non-discrimination, freedom of association and providing a safe and healthy work environment. Therefore, HR policies at these hotels are expected to meet the PS2 requirements.

Relying on paper policies, the IFC made no inquiry into these global brands' practices, their reputations, or their record on important Performance Standard issues. Soon the disclosures would be irrelevant. By September 2018, the operator of most of the hotels was Marriott, rather than Accor's Formule1. The disclosures, which were not updated after the transition of management, mentioned no grievance mechanism for workers.

Labour Portal Complaint and Efforts to Engage the IFC (August 2018-Present).

In August 2018, GLJ-ILRF and HMP Union began outreach to workers at several of the SAMHI hotels covered by the IFC loan to better understand their opportunities and concerns in the industry, articulate their priorities, and develop a collective response. Given a well-documented pattern of reprisals in the sector, GLJ-ILRF alerted the IFC, SAMHI, and Marriott, and requested they monitor management responses, to guard against retaliation in violation of PS2 and national law.

The outreach revealed serious violations of PS2, including improper wage rates, unlawful use of contract labour, and freedom of association violations—in sum, business practices that reduce job quality and jeopardize the project's development impact. The findings were shared with the IFC in a letter sent on September 6, 2018.

Violations of Minimum Wage Law.

The project hotels violated national compensation law by underpaying workers. Workers reported earning less than 15,000 rupees per month, and a substantial number earned less than 10,000 rupees per month. Indian law sets minimum wages in consideration of several factors, including the cost of living and employers' ability to pay, and consensus is that the criteria require a minimum wage level of no less than 18,000 rupees per month in any part of India. This underpayment radically reduced the project's development impact and its contribution to shared prosperity.

Violations of the Contract Labour Act of 1970.

Additionally, reports from workers indicated that many of the jobs "created" by the project were filled by contract labour, to the detriment of the investment's development impact, and in violation of Indian law. Several workers estimated that up to half the jobs at their workplaces were filled by contract labourers, including in core hotel functions like housekeeping, food preparation, landscaping, and security. The Contract Labour Act of 1970 forbids such use of contract labour, and the Act requires that contract workers receive the same terms and conditions of employment as regular employees. Surveyed workers reported that their colleagues on labour contracts were subject to significantly worse terms and conditions of employment.



The IFC's Response and Continuing Efforts to Engage the IFC (November 2019-Present).

After initial receipt of the IFC's response letter in November 2019, which reported SAMHI's position, GLJ-ILRF and HMP Union again urged a more substantive response from the IFC in February 2019, asking for corrective action to remediate the violations and mitigate the chilling effect hotel-level management actions and communications had on the workforce. Following that correspondence, the IFC India country director agreed to an in-person meeting during April 2019 in Delhi, India.

At each point in the dialogue, when labour constituents requested the IFC facilitate direct dialogue with SAMHI and its operators, to discuss patterns and systematic issues, the IFC consistently refused. Also, the IFC failed to take any corrective action in relation to the violations identified at SAMHI; the IFC's representatives instead simply reported SAMHI's positions as fact.

As of June 2022, labour constituents still await the IFC and its client's corrective, timebound action to address the violations. Despite their requests, GLJ-ILRF and HMP Union still wait for the IFC to schedule a facilitated dialogue with the loan recipient and independent trade unions, which the stakeholders first sought to open in 2018.

The outreach revealed serious violations of PS2, including improper wage rates, unlawful use of contract labour, and freedom of association violations—in sum, business practices that reduce job quality and jeopardize the project's development impact.

▲ Bangladesh: Ananta (IFC Project No. 39231).

Date Approved: May 17, 2018 | Value of investment: Up to \$45 million

Summary of PS2 Issues in the Environmental and Social Action Plan:

- IFC due diligence relies on Marriott’s 2013 human resources policies to address labor rights risks even though those policies do not protect the freedom of association or consider trade unions stakeholders.
- Insufficient attention to risk of gender-based violence and harassment.
- Improper delegation of PS2 responsibilities to operator and contractors without clear means for holding them accountable.
- Failure to incorporate best practices from the Accord on Fire and Building Safety in Bangladesh on health, safety, and labour monitoring.

Status: The project was not approved.

In June 2018, the IUF and GLJ-ILRF learned about the IFC’s proposed investment in Ananta Hotel and Resorts Limited (AHRL). The project’s core was the development of an “upscale business hotel” with 300 rooms and a “branded residential tower,” in Dhaka, Bangladesh. The proposal contemplated that IFC would loan \$45 million USD to AHRL, supplemented by a “parallel loan” of \$22.5 million USD which AHRL would separately secure.¹³⁸

The sponsors of AHRL are also the majority owners and sponsors of Ananta Apparels Limited (AAL), one of the leading manufacturers and exporters of ready-made garments in Bangladesh and an IFC portfolio client (Projects #32376, #39379). While the IFC disclosures alleged AAL’s performance on economic and social issues has been satisfactory, as an argument for supporting the skeletal ESRS for the related hotels entity, this assessment omitted a serious safety violation by Ananta Apparels documented by the Accord on Fire and Building Safety in Bangladesh (the Accord).

Specifically, in April 2017, the Ananta Fashion & Apparels Workers Union (AFAWU), the trade union in Ananta’s Dhaka factory, invoked the complaint mechanism established by the Accord on Fire and Building Safety in Bangladesh (the Accord). AFAWU expressed concern about structural damage to the fifteen-story building where AAL employs 3,000 workers.

The Accord issued a temporary suspension of production, notified brands with production contracts at the Ananta facility, and monitored remediation effort in coordination with the AFAWU.¹³⁹

IFC’s disclosures omitted the incident and failed to account for the critical role of independent monitoring and compliance mechanisms, as well as trade union stakeholders, in ensuring safety and decent work for AALS garment sector employees. A similar infrastructure for the protection of workers’ rights and interests does not exist in the Bangladeshi hotel sector, heightening the risk of adverse human rights impacts.

¹³⁸ IFC, *Environmental and Social Review Summary: Ananta Mixed Use* (2018). Only the hotel and residences were considered part of the IFC project, and both were to be operated by Marriott International, Inc.

¹³⁹ IndustriALL, *Notification of Accord Investigation and Inspection of Structural Safety Complaint of Ananta Apparels Ltd.* (Apr. 9, 2017); IndustriALL, *Union Action Prevents Potential Repetition of Rana Plaza Tragedy in Bangladesh* (Apr. 18, 2017)

The IFC's proposed investment in Ananta again shows the deficiencies of IFC's due diligence and the need for closer engagement with trade unions to supplement it. IFC due diligence did not raise Ananta's record of serious occupational safety and health issues or its continued efforts to prevent its workforce from exercising their right to associate. Instead, the review focused on written global Marriott policies—themselves threadbare assurances of PS2 compliance. Additionally, Marriott planned to contract out much of the hotel's work, raising concerns about worker misclassification and responsibility for PS2 compliance. The client, although responsible to IFC for PS2 compliance, did not appear to have the legal right to intervene in workforce management.

GLJ-ILRF Investigation and Defects in IFC Due Diligence.

GLJ-ILRF reached out to unions in the garment sector about Ananta's labour practices and found further E&S risks not identified by the IFC's due diligence. Those unions raised concerns regarding health and safety conditions and the freedom of association, concerns confirmed by a citation issued to Ananta Apparels by the Accord.¹⁴⁰

Specifically, in April 2017, the Ananta Fashion & Apparels Workers Union (AFAWU), the trade union in Ananta's Dhaka factory, invoked the complaint mechanism for the Accord, expressing concern about structural damage in a building where AAL employed 3,000 workers.¹⁴¹ The ground floor of the 15-storey building that housed the garment factory collapsed on April 5, 2017 at around 5pm. Management sought to reopen the factory on April 10, just days after the collapse. Only after a demonstration by the AFAWU did the government eventually order the factory closed for structural repair, during which displaced workers received social protection payments. Trade union actions to elevate this critical safety issue, together with the independent monitoring and remediation process provided by the Accord, were fundamental components of worker protection.

Marriott's role in this potential hotel sector investment raised additional concerns, given Marriott's failure to ensure protections for workers against gender-based violence and sexual harassment in their hotels. Marriott has refused to engage with the IUF to work toward effective remedies on the global level.

As with Kasada, the structure of the anticipated operations created significant obstacles to Performance Standard compliance. The IFC acknowledged that, while AHRL was the client, and thus primarily responsible for PS compliance, "[c]urrently, the company does not have any E&S policy or management systems. However, the hotel and residences will be operated by Marriott which has well defined sustainability principles, disclosed publicly in their sustainability report."¹⁴²

However, the Marriott policies the IFC relied on were an inadequate assurance of PS2 compliance. As noted in correspondence sent to the IFC, the Marriott Global Employment Principles included little protection for the freedom of association, a core component of PS2, beyond a vague gesture towards the concept.¹⁴³ Marriott's plan to contract out much of the core work of the hotel—including housekeeping and security—created a large disconnect between the requirements of PS2 and Marriott policy. Marriott provided no assurances that the freedom of association of contracted workers would be respected, even though their status as "contracted workers" entitled them to substantially all the benefits of PS2. Furthermore, safeguards against gender-based harassment were weak. The Marriott Global Employment Policy made no mention of discrimination or gender-based harassment.

140 The Accord is an independent, legally binding agreement between brands and trade unions designed to work towards a safe and healthy Bangladeshi Ready-Made Garment Industry. Our purpose is to enable a working environment in which no worker needs to fear fires, building collapses, and other occupational safety and health hazards. See Workers Rights Consortium, *Bangladesh Accord*

141 IndustriALL, *Union Action Prevents Potential Repetition of Rana Plaza Tragedy in Bangladesh* (Apr. 18, 2017)

142 IFC, *Environmental and Social Review Summary: Anata Mixed Use* (2018)

143 Marriott International, *Principles of Responsible Business 2* (2012)

Labour Portal Complaint and Efforts to Engage the IFC (July 2018-November 2019).

In July 2018, the IUF and GLJ-ILRF raised these issues through the IFC's labour portal and requested specific changes to the Environmental and Social Action Plan (ESAP), and a clarification of the allocation of PS2 compliance responsibilities between the owner and operator before the loan was approved.

Dialogue with the IFC ensued over the next one-and-a-half years during which the IUF and GLJ-ILRF highlighted the serious gaps in due diligence. This ultimately resulted in a multi-day joint stakeholder consultation in November 2019, held in Dhaka, Bangladesh, to inform potential ESAP amendments. For the first time, this included constructive consultations between the IFC and labour constituents in the hotel and garment sectors. The IFC also facilitated dialogue with Ananta, the IFC, the IUF and GLJ-ILRF.

GLJ-ILRF raised concerns about Ananta's occupational health and safety practices, its bitter anti-unionization efforts, and the prevalence of gender-based violence in its operations. The representatives discussed concrete plans for PS2 compliance if the loan moved forward, noting the labour constituents' recommendation, supported by multiple Bangladeshi stakeholders, that IFC should initiate a policy and practice of implementing pre-loan agreements with independent trade unions to ensure PS2 compliance.

The IUF and GLJ-ILRF were encouraged by the initial engagement with the IFC and Ananta. However, additional follow-up steps were paused given that that Ananta's additional financing became unavailable. These joint IFC, IUF, and GLJ-ILRF consultations with labour constituents inform the CAP agreement proposal discussed further below.





The PS2 Compliance Accountability Policy.

The IUF, as the global trade union federation for hotel workers, and GLJ-ILRF, an advocate for worker rights throughout the international hotel sector, propose that the IFC adopt the new PS2 Compliance Accountability Policy in its hotel project financing. Requiring no changes to the Performance Standards, the CAP is rooted in the values of Performance Standards 1 and 2, in our past experiences of effective engagement detailed in this report, and in the traditional practices of the global labour movement. The CAP would strengthen IFC due diligence and promote ongoing compliance with PS2.

The CAP would require a process of pre-investment engagement between the IFC financing recipient(s) for a given IFC hotel project, other PS2 implementing entities,¹⁴⁴ and the IUF and hotel workers' unions. Through the CAP process, they would jointly assess obstacles to workers' accessing PS2's protections and establish a roadmap for achieving PS2 compliance. Under the Compliance Accountability Policy, the experience, expertise, and networks of the global trade union and labour rights movement would contribute to and improve both IFC due diligence and client-side risk management. In turn, the CAP would help the IFC, financing recipients, and workers avoid the pitfalls of past projects, achieve greater development impacts, and contribute more towards shared prosperity.

¹⁴⁴ The phrase "PS2 implementing entities" refers to all identified entities that do or will employ or manage direct or contracted workers subject to PS2 on a given IFC hotel project. As the above case studies show, the contractual right to manage the project workforce in compliance with PS2 is often shared between multiple entities.

▲ The CAP Process.

1. If the IFC determines that a hotel project is likely to be disclosed to the public and presented for Board approval, the IFC will timely notify the IUF, and the IUF's designees (the "labour constituents"), as well as GLJ-ILRF and the ITUC. The notification will include the PS2 implementing entities' contact information and sufficient information about the project and the entities involved to allow labour constituents to conduct independent due diligence.
2. On receipt of the notification, the IUF, GLJ-ILRF, and the ITUC will exercise best efforts to notify independent unions that represent hotel workers at more than one hotel and more than one hotel management company in the project jurisdiction, within a reasonable time. The IUF, along with any such union, may participate in the CAP negotiations as labour constituents. GLJ-ILRF shall be an observer to the CAP processes, and the labour constituent(s) may designate allies with relevant expertise to serve as observers.
3. The labour constituent(s) will meet with representatives of the proposed financing recipient along with all identified entities that do or will employ direct or contracted workers on a given IFC hotel project ("PS2 implementing entities"), to discuss the PS2 risks and impacts the project raises, and the PS2 implementing entities' plans for compliance. The labour constituent(s) will provide input based on their experiences with sectoral and market best practices, along with regional, national, and local experience on working conditions in the local hotel sector.
4. The labour constituent(s) and the PS2 implementing entities seek to come to an agreement ("the CAP Agreement") that details the specific steps the PS2 implementing entities will take to comply with PS2.
5. The CAP Agreement will be included as part of the financing package and disclosed on the project's IFC disclosure page. The CAP agreement will also be included in IFC Board briefing information.
6. The labour constituent(s) and the PS2 implementing entities will notify the IFC if they are able or unable to reach a good faith agreement within a reasonable time.
7. If the labour constituent(s) and the PS2 implementing entities notify the IFC that they are unable to reach an agreement, the project will not be presented to the Board. The labour constituent(s) may submit to the IFC an explanation of why an agreement was not reached and relate any PS2 compliance concerns. The IFC will provide that communication to the Board and publish it on the project's disclosure page.

▲ Foundations of the CAP.

Grounded in PS1, the Compliance Accountability Policy (CAP) draws on several long-standing traditions that require engagement with workers or communities to create frameworks that protect social and environmental values. The CAP incorporates elements of common public and private sector policies requiring community benefits agreements, labour peace agreements, and project labour agreements, common in the hospitality context and elsewhere. Like these policy frameworks, the CAP generates plans for protecting the rights of stakeholders by ensuring they are meaningfully consulted in project risk management.

The CAP would incorporate information sharing, dialogue, and forward-looking commitments in the IFC's pre-approval processes. In so doing, the CAP draws on a range of agreements investors, employers, public authorities, and unions use to mitigate E&S risk in project finance. The CAP, like the three types of agreements referenced below, would establish a framework for translating high-level commitments to good corporate behavior into concrete operational plans. As investors, municipalities, project managers, and others have found, these policies and the interactions they bring about result in better outcomes



for workers, communities, and projects. These processes facilitate E&S planning, promote the exchange of information key to compliance, and establish clear lines of communication, along with avenues for dispute resolution, to avoid later disruptions.

The CAP agreement does not replace or intrude upon union recognition and collective bargaining processes established by the law of the project's host jurisdiction and international labour standards. The agreements formed in CAP negotiations are not collective bargaining agreements. Collective bargaining agreements are agreements between an employer or multiple employers and the trade union(s) representing their employees. In CAP negotiations, the workers may not yet be identified or hired, as the hotel may not yet have been built, and a bargaining relationship may not yet exist. CAP agreements are not recognition agreements. Participation in CAP negotiations does not imply or demand recognition of any union. Such agreements are left to national and international labour law.

The CAP would establish a framework for translating high-level commitments to good corporate behavior into concrete operational plans. As investors, municipalities, project managers, and others have found, these policies and the interactions they bring about result in better outcomes for workers, communities, and projects.

Intended to promote efficient and stable operations, **labour peace agreement (LPA) policies** require businesses to make agreements, with any labour organization seeking to represent their employees. For example:

When the City of Washington, D.C. has a proprietary interest in a hotel development project, district contracts "related to that project shall include a provision requiring any employer on the project to enter into a labour peace agreement with a labour organization that requests a labour peace agreement and which represents, or reasonably might represent, workers on the project, as essential consideration for the District entering into the contract."¹⁴⁵

Intended to provide economy and efficiency, typically in large-scale construction projects, **project labour agreement (PLA) policies** require collective bargaining agreements,¹⁴⁶ negotiated between labour organizations and the entity commissioning the project, which set out terms and conditions of employment for a not-yet-identified workforce on the project. Companies participating in the project must sign the agreement, which does not require or imply recognition of any labour organization. Like a PLA, the CAP would ensure that a workforce not yet hired, as in greenfield hotel projects, still has a voice in crucial project decisions.

Typically required in either city financing or city land use processes, "[a] **Community Benefits Agreement (CBA)** is a project-specific agreement between a developer and a broad community coalition that details the project's contributions to the community and ensures community support for the project. Addressing a range of community issues, properly structured CBAs are legally binding and directly enforceable by the signatories."¹⁴⁷

145 *Code of the District of Columbia, § 32-852(b)(1)*

146 Project labour agreements are collective bargaining agreements because the union contracts them as a representative of a not-yet-hired workforce. Project labour agreements thus solve the problem of workers' interests not being represented in project discussions not because they lack an interest in the project's execution, but because they will only be identified later in time, after many crucial decisions have been made.

147 PowerSwitch Action, *Policy Toolkit: Community Benefits Agreements*



The involvement of hotel worker representatives, with their knowledge of applicable labour policies, sectoral agreements, and trends in E&S risks that the project will need to address, gives PS2 implementing entities access to the information they need to understand their obligations and how to perform them.

▲ The CAP Negotiations and Agreements.

The purpose of the CAP and the associated dialogue and agreements is to promote PS2 compliance, which the CAP does by bringing project managers and worker representatives together for substantive engagement. The substance of these discussions will depend on the project, its stage in the development process, the individuals involved, and their experience in the industry.

In all cases, the CAP discussions facilitate the exchange of key information between PS2 implementing entities and stakeholders. These conversations allow IFC financing recipients and those they contract with on matters affecting PS2 implementation, to plan with the assistance of the labour movement's global networks, local knowledge, and sectoral expertise. The involvement of hotel worker representatives, with their knowledge of applicable labour policies, sectoral agreements, and trends in E&S risks that the project will need to address, gives PS2 implementing entities access to the information they need to understand their obligations and how to perform them.

Beginning the labour-management engagement PS1 deems so valuable to successful E&S management, the CAP negotiations establish this relationship early on, providing a foundation for addressing the E&S impacts over the life of the project.

This information and these relationships are especially necessary considering IFC clients' varying levels of experience working in the hotel business and in the project location. Many of the IFC's hotel projects involve individuals and entities that have never constructed or operated a hotel, let alone operated a business or employed workers in the project country. Embodying the insights of PS1, the CAP discussions promote stakeholder engagement to ensure that PS2 implementing entities have all the information they need to anticipate, mitigate, and redress their social risks and impacts.

The specific terms of a CAP agreement will depend on, among other things, when the hotel is to become operational. When greenfield hotel projects are still far from operation, the CAP negotiations might concern the selection of hotel operators and franchisors, or the means for ensuring that subsequent agreements promote PS2 compliance and permit constructive engagement. PS2 implementing entities' plans will benefit from the insights of trade unions, who may point out unacknowledged risks and raise crucial information.

At brownfield hotels, which might be renovated or acquired during an IFC project, the CAP negotiations might concern the resolution of ongoing noncompliance with national and/or international labour laws, or measures to mitigate any interruption in operations caused by construction work. CAP agreements may set the terms outlining how management will perform its national law obligations to facilitate the freedom of association. CAP agreements may also specify how and when hotel managers will provide unions access to the workforce, or how and when managers will comply with laws requiring them to administer a workplace election.

▲ The Benefits of the CAP.

The CAP strengthens the IFC's due diligence process, positions PS2 implementing entities for successful PS2 compliance, and aids in monitoring compliance over the life of the project. By buttressing PS2's protections for job quality, the CAP helps the IFC ensure that its investments respect workers and their rights, which is critical to creating the quality jobs that IFC recognizes are the "cornerstone of development."¹⁴⁸

148 IFC, *IFC Jobs Study: Assessing Private Sector Contributions to Job Creation and Poverty Reduction* 130 (2013)

The CAP Strengthens the IFC's Due Diligence.

As we have seen, IFC due diligence on issues has frequently failed to detect major risks of PS2 compliance. The pre-financing approval process has not ensured that IFC clients understand, take seriously, and prepare to comply with their PS2 obligations. Among other difficulties, the IFC itself has difficulty obtaining information about the workplace practices of given hotel operators, brands, and franchises. The IFC has little visibility into the laws, customs, and working conditions of a given region's hotel sector.

Given this information gap, the IFC often relies on the policy statements of global hotel operators to assure itself that hotel projects will comply with PS2, even where practice regularly contradicts policy. The IFC has, as a result, invested in projects where workers' rights are routinely violated, and the Corporation's policies are flouted.

The CAP compensates for the IFC's lack of information about hotel working conditions and lack of expertise in labour matters by drawing on the networks of the IUF, the global union federation for hotel workers, and allied labour rights organizations. The hotel workers' unions affiliated with the IUF not only offer access to the workplace experiences of their members, but also the knowledge of local labour law and industry custom that PS2 implementing entities need to have to effectively comply with their PS2 obligations.

Global trade union federations, such as the IUF, and their national union affiliates, have unique access to the landscape of national work law and policy, and understand what fidelity to PS2 requires in each context. Through their worker members, unions aggregate workplace expertise and firsthand experience, allowing them to outline the chief challenges in local application of PS2 in the project context.

Through worker members, unions aggregate workplace expertise and firsthand experience. In the right circumstances, those assets could drive development impact and protect workers' rights on IFC hotel investments.

The provisions of the CAP concerned with the sharing of information with the IFC Board will aid Board members in assessing both project risks, poverty alleviation impacts, and the views of some of the most impacted stakeholders. By prioritizing the information flowing through CAP channels, the Board disclosure provisions ensure that knowledge of Performance Standards violations is highlighted before all at the IFC, including its investment staff, to ensure long-term improvements in compliance.

The CAP Brings the Knowledge and Experience of the Global Labour Movement to IFC Due Diligence and Client Impact Planning and Management.

The IUF and its affiliates, coordinated in a process with labour rights organizations like GLJ-ILRF, bring a great deal of relevant knowledge and expertise to this task. The IUF brings extensive experience working directly with the global hotel groups; the union has signed global framework agreements with Accor, AccorInvest, Club Med, Meliá, and RIU Hotels. The IUF's affiliates and their members, who work for and bargain with hotels, bring their experiences on the ground in these hotels, along with insight about participants in the regional hotel industry, their problems, and their practices. Many such unions have participated in the community benefits, labour peace, and project labour agreements processes described above, equipping them to productively engage in the CAP process. Together, the IUF, its affiliates, and their partners can provide accurate assessments of what IFC hotel projects must do to realize PS2, given their knowledge of hotel sector workplaces, employers, policies, and practices.

The CAP Equips IFC Clients for PS2 Compliance.

Many of the IFC's hotel projects are led by clients who have not done similar work before. In several cases, the IFC's clients in hotel projects have no experience in the hotel industry or in the project host country. Accordingly, clients may lack familiarity with employing workers under the country's laws or in collaboration with hotel operators and franchisors, whose track record as employers might also be unknown to clients. Given this lack of information, clients may not appreciate the importance of PS2 compliance or see a path to achieving it. Indeed, clients may erect obstacles to PS2 compliance without meaning to. Relying on the statements of global hotel operators as the IFC does, clients may unintentionally contract away their power to seek PS2 compliance in hotel operations or engage with stakeholders, including their hotel's workers and the IFC, to address PS2 risks and violations.

The CAP Establishes a Relationship Key to PS2 Compliance.

As the case studies show, the PS2 compliance of a given project often depends on whether and when independent trade unions can establish lines of communication with the PS2 implementing entities. Early engagement enables PS2 implementing entities to establish problem-solving frameworks with independent trade unions, ensuring that the various problems that inevitably arise in the operation of a hotel are promptly addressed. PS1 recognizes that early engagement with stakeholders, supported by disclosure, is essential to effective risk identification and management. However, lines of communication that are opened too late are frequently ineffective, hampered by the IFC's lack of leverage over disbursement and the inertia of established plans. These delays obstruct the formation of the productive labour-management relationship PS2 envisions. The CAP avoids these timing problems by setting projects on the right course from the very beginning.



Conclusion.

The PS2 Compliance Accountability Policy and resulting agreements build on a long tradition of worker-management agreements that mitigate E&S risk, ensure commercial projects respect social and environmental goals, promote development impact, and create value for investors. Like labour peace or community benefits agreements, the CAP promotes engagement with affected stakeholders and allows them to advocate for their interests in hotel development projects. And, like project labour agreements, the CAP ensures that the interests of a not-yet-hired workforce are protected by a trade union. While making these improvements and bringing IFC hotel projects into closer alignment with international labour standards, the CAP preserves PS2 unchanged.

Performance Standard 2 has been an unrealized aspiration, but we propose to make it a reality for IFC project hotel workers through the Compliance Accountability Policy. We urge the IFC to adopt this Policy, not only to fulfill its obligation to respect the rights of workers, but to also fulfill its mission to promote development and generate shared prosperity.



International Union of Food, Agricultural, Hotel, Restaurant,
Catering, Tobacco and Allied Workers' Associations



This report shares our work to realize the full promise of the Performance Standards for workers at IFC-financed hotels and the bank's mission to alleviate poverty. We hope the unfortunate facts we reveal make the need for a new IFC approach to implementing the Performance Standards unmistakably clear. Drawing on the IFC's policy framework and our experiences of successful engagement, we propose a new procedure for implementing the Performance Standards at IFC-financed hotels, one that protects workers by strengthening the IFC's due diligence and supporting clients' compliance efforts.