

# Dirty loan:

When the IFC knowingly breached its own labour standards at SFI

OCTOBER 2018



- BWI** • Building and Wood Workers' International
- BHI** • Bau- und Holzarbeiter Internationale
- BTI** • Byggnads- och Träarbetar-Internationalen
- IBB** • Internationale des Travailleurs du Bâtiment et du Bois
- ICM** • Internacional de Trabajadores de la Construcción y la Madera

# Introduction

Since 1988 workers at Sabah Forest Industries (SFI) have fought for an independent union and to bargain a collective agreement, but have been consistently denied by their employer. In 2013 the International Financing Corporation (IFC) decided to invest in SFI, despite clear reported violations of workers' rights.

In 2015 the Sabah Timber Industry Employees Union (STIEU) and the Building and Wood Workers' International (BWI) filed a complaint to the Compliance Advisor/Ombudsman (CAO), alleging that IFC had violated its own standards on workers' rights at SFI. After a thorough investigation, CAO published their findings, namely that IFC violated its own labour standards during 1) the pre-investment and appraisal phase, 2) the disclosure and investment phase, and 3) the supervision phase.

The study finds that the IFC engagement in SFI/BILT regarding FoA is characterized by reluctance to act against its non-complying client, a lack of transparency and an ignorant attitude towards workers' right to organise.

## 1. Pre-investment and appraisal

- ESRS labour audit failed to identify ongoing litigation as freedom of association risk
- Supported company initiative to undermine independent trade union formation

## 2. Disclosure and investment

- Pre-investment report to IFC Board concealed SFI's union-busting activities
- Additional report provided clear info that SFI were still refusing to engage with STIEU

## 3. Supervision

- IFC again informed of SFI's anti-union behaviour, FSC publishes report on violations
- IFC suspends supervision for almost a year when, does not seek any remedies

# The long-running battle to form a union at SFI

Malaysia is a major exporter of hardwood products; by 2017 the timber sector had export earnings of 23 billion MYR (US\$ 5.6 billion).[1] In Sabah the industry claims to employ around 20 400 people (although anecdotal evidence indicates high use of undocumented migrant workers), accounting for around 25% of Malaysia's total timber production. [2] The union that organizes wood and forestry workers in Sabah is called the Sabah Timbers Employees Union (STIEU). Its predecessor Sabah Forests Industries Employees Union (SFIEU) was established in 1990. [3]

In 1982, Sabah Forest Industries Sdn. Bhd (SFI) was founded by the Malaysian Government. For decades it has been one of Malaysia's largest timber growers and wood processors, [4] mainly manufacturing pulp and paper, but also products such as sawn timber, veneer and raw plywood. In 1994 it was privatised and purchased by Lion Group, and in March 2007, was sold on to the Indian company Ballarpur Industries Limited (BILT Paper BV), which in turn is owned by Indian conglomerate Avantha Group. Since 2016 BILT has been trying to sell SFI, however, while a 10% deposit has been made by a subsidiary of the

Albukhary Group, BILT remains today the majority owner of SFI. In the spring of 2014 SFI had 2542 direct workers employed and additionally engaged another 1218 workers through subcontractors. [5]

## From SFIEU to STIEU

In 1990 workers formed the in-house Sabah Forest Industry Employees Union (SFIEU), which filed a claim for union recognition, however management refused on the grounds that SFIEU did not represent a majority of SFI workers. Two decades later in 2009 (when BILT had acquired SFI) SFIEU was dissolved, and workers decided to instead join the state-wide Sabah Timber Industries Employees Union (STIEU).

A year later, a majority of workers voted in another secret ballot to be represented by STIEU. By January 2011 the Ministry of Human Resources (MOHR) approved the claim of STIEU to register as a union at SFI, and sent notice to the management to recognise STIEU, effective from October 2009. Two months later, however, SFI filed an application to judicially review the

1. [www.nst.com.my/business/2018/01/327221/malaysias-2017-timber-exports-surpass-rm23b](http://www.nst.com.my/business/2018/01/327221/malaysias-2017-timber-exports-surpass-rm23b)

2. Sabah Forestry Department 2016. Available at: [www.forest.sabah.gov.my/discover/sustainable-management/forest-industry](http://www.forest.sabah.gov.my/discover/sustainable-management/forest-industry)

3. ERS Labor Audit on SFI from June 2014

4. The Avantha Group's description of SFI is available at: [www.avanthagroup.com/downloads/Sabah-Forest-Industries-Sdn-Bhd.pdf](http://www.avanthagroup.com/downloads/Sabah-Forest-Industries-Sdn-Bhd.pdf)

5. ERS Labor Audit on SFI from June 2014

MOHR decision. When this was dismissed by High Court Order, SFI appealed to the Court of Appeal. While awaiting the Court of Appeal's verdict, the High Court granted SFI permission for an interim order. In November 2012 the Court of Appeal decided in favour of SFI, thus rebuffing STIEU's second claim for recognition. [6]

In June 2013 SFI invited its staff to form a "Joint Consultative Committee" (JCC) as platform for dialogue with the workers. Unrelenting, STIEU informed management that it would not support the JCC as an alternative representative mechanism for the workers instead of a trade union of their own choosing. [7]

In March 2014 a third claim for union recognition was filed, which was again rejected by SFI management. A secret ballot was scheduled for September 2014, however SFI requests the secret ballot be postponed, requesting the Sabah Trade Union Department (TUD) to investigate the "competence" of STIEU to represent SFI employees.

In November 2014 SFI management distributed a memorandum to all its employees stating that the company would only support an in-house union and encourages workers representatives to accept this "offer". However, STIEU rejects this call for an in-house union. In January 2015 SFI repeats this offer, but STIEU continues to push its claim for an independent union [8]. In April 2015 MOHR informs SFI on its decision on eligibility of workers secret ballot, whereas SFI files a third judicial review calling the MOHR decision on eligibility "irrational".

In May 2016 the High Court dismisses SFI's call for

## Collective bargaining in Malaysia

Malaysia's industrial relations regime was forged during the Cold War era. To this day it remains extremely restrictive and difficult to form unions and bargain collectively. While Malaysia has ratified the ILO C98 on the Right to Organise and Collective Bargaining Convention. However, it has not ratified the ILO C87 – Freedom of Association and Protection of the Right to Organise Convention from 1948. The fact that Malaysia hasn't ratified C87 ought to serve as an indicator of plausible FoA difficulties.

A 2010 report from the International Trade Union Confederation (ITUC) concludes that "workers have the right to organise and the right to collective bargaining; however, these rights are severely restricted in scope and coverage, both in law and in practice". [13] In that respect, Malaysia should be regarded as a high-risk country in aspects of FoA. A 2012 US State Department Report concurs with this position on Malaysia's Freedom of Association framework, noting that, "The law, including related regulations and statutory instruments, allows for limited freedom of association and for some categories of workers to form and join trade unions, subject to a variety of legal and practical restrictions." [9]

a judicial review. Once again, SFI refuses to accept the verdict of the High Court and files an appeal to the Court of Appeal. The case was subsequently appealed by SFI to the Federal Court, where it was again thrown out by the judge, however a written decision was never provided to the union, who were also inaccurately told that without the written decision a secret ballot date could not be set.



6. CAO Investigation of IFC Environmental and Social Performance in Relation to: Bilt Paper B.V., Malaysia (Bilt-02), Appendix B: Project Line. pp. 51-53

7. Ibid.

8. Id.

9. U.S. Department of State, "Human Rights Reports," available online at: <https://goo.gl/thhcwQ>

# The IFC's labour standards

The International Financing Corporation (IFC) is the private lending arm within the World Bank Group. Its ostensible purpose is to contribute to development and poverty alleviation by encouraging the growth of productive enterprises. [6] Its owners are its 184-member countries, and it is governed by a Board of Governors (one Governor and one alternate Governor appointed for each member country). In turn, the Governors appoint a Board of 25 Directors that serves as the executive power of the IFC.

IFC's lending activities are bound by its "Performance Standards", with Performance Standards 2 ("PS2") covering labour and working conditions at any company that receives IFC funding PS2 "recognizes that the pursuit of economic growth through employment creation and income generation should be accompanied by protection of the fundamental rights of workers". Further, PS2 states that "[t]he requirements set out in this Performance Standard have been in part **guided by** a number of international conventions and instruments, including those of the International Labour Organization (ILO)" [emphasis added].

## ILO Convention 87

ILO Convention 87 covers On freedom of association and the right to organise (C87).

Article 2 clearly states that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation".

Article 3 of the same convention further declares that: "[w]orkers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes", and that "...public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

## Labour Toolkit

As well as PS2, the IFC's "Labour Toolkit" provides specific guidance to IFC staff on risk assessment for freedom of association. Its recommendations include:

In relation to workers' organizations, the Labour Toolkit recommends a risk assessment should:

- determine whether national legislation or practice restrict the right to form workers' organizations;
- review information from sources including ITUC and the ILO; and
- determine whether there is a history of workers' organization conflict.

IFC projects have recourse to an independent mechanism called the Compliance Advisor/Ombudsman (CAO). The objective of CAO is to address concerns of individuals or communities affected by IFC projects, to enhance to social and environmental outcomes of IFC projects and to foster a greater public accountability of IFC.

## Performance Standard 2

PS2's provisions on Workers Organisations are the most important policy statements for the case:

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

14. In either case described in paragraph 13 of this Performance Standard, and where national law is silent, the client will not discourage workers from electing worker representatives, forming or joining workers' organizations of their choosing, or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and collective bargaining. The client will engage with such workers' representatives and workers' organizations and provide them with information needed for meaningful negotiation in a timely manner. Workers' organizations are expected to fairly represent the workers in the workforce."

IFC has held equity investments in BILT since 2003, and in late 2013 IFC was considering investing \$250 million (comprising \$100 million in equity and a \$150 million loan in three tranches) in BILT's subsidiary SFI. The investment was expected to deliver socio-economic benefits, such as modernising technology, to secure ongoing FSC certification, and to support the company restructuring. As it would turn out though, the IFC investment would in fact lead to the opposite outcomes. [10]

## Phase one: Pre-investment and appraisal

The pre-investment review did not identify any FoA-related issues as a significant risk, despite more than two-decade of workers' struggle to form a union at SFI. Neither did it include an analysis of FOA risks associated with the country and sector. Instead it focused explicitly on risks associated to environmental impacts and indigenous rights. In January 2014 the IFC Corporate Operations Committee approved the project to continue to the appraisal stage.[11] According to IFC appraisal procedures a mandatory Environmental and Social Review Summary (ESRS) was undertaken, which included a third-party labour audit by the Indian consultant firm ERM intended to assess potential discrepancies between SFI labour practices and the standards set out in Malaysian law, PS2 and ratified ILO conventions, [12] The ESRS disclosure contained an explicit reference to the FoA-issues at SFI.

When scrutinising the labour audit, CAO notes that the audit identified "ongoing litigation" in relation to union formation and recognition at SFI, concluding that IFC had received evidence that SFI employees had long-sought to form a union without success. The labour audit further discusses the attempt from the SFI management to form the JCC as an alternate mechanism for grievances, noting that the company did not oppose an in-house union, provided that the union was not affiliated to an external union. These observations imply clear violations of the PS2 §13 and §14 by SFI. However, the labour audit did not see this as a violation of PS2, but rather recommended SFI to continue its support for the JCC and await the pending judicial litigation on the union matter. Even more troubling, the auditors does not seem to regard the organised workers themselves as stakeholders worth engaging with. CAO concludes that,

"The labour audit does not engage with the [...] concerns regarding the client's preference for an "internal union". Similarly, it does not engage with the question of whether the client's approach to the union issues contravened the "influence or control"

prohibitions of PS2. While the gap assessment indicates that the auditors had discussions with worker representatives, there is no record of structured engagement with union officials or members as stakeholders". [13]

In May 2014 the BWI met with IFC staff in Washington to brief them on the ongoing freedom of association issues at SFI.

In addition to the ESRS, IFC also created an Environmental and Social Action Plan (ESAP) for the SFI investment. The ESAP is meant to provide a plan for concrete measures how compliance with Performance Standards will be achieved. IFC acknowledged that the client's actions prior to the IFC investment were not consistent with the requirements of PS2, and the ESAP therefore required SFI to not oppose trade union formation and to undertake steps to facilitate it.

In June 2014 SFI accepted and committed to the requirements of the ESAP. However, IFC documentation provides no detail about what this actually meant. In its report, CAO states that it "found no evidence that IFC considered whether the following actions of the client were contrary to the requirements of PS2 §13 and §14: 1) indicating that it would only support an in-house union; 2) promoting the JCC as



10. IFC Summary of Investment Information. Available at [www.disclosures.ifc.org/#/projectDetail/SII/34602](http://www.disclosures.ifc.org/#/projectDetail/SII/34602)

11. See Note 6, pp. 22-23.

12. IFC Project Information Portal

13. Id., pp. 24-26.

an alternative mechanism for the workers; and (3) its track record of initiating judicial reviews challenging union formation”. [14]

## Phase two: Disclosure and Investment

On 28 August the project was approved and on 3 October 2014 the IFC signed a commitment for equity investment of \$100 million in SFI/BILT. Prior to that BWI had once again contacted IFC to raise concerns about the client’s record on freedom of association and informed IFC about SFI’s aggressive engagement with STIEU representatives. Communication continued through August and September 2014 but was nevertheless not taken into consideration when the IFC Board of Directors made its decision to invest in SFI.

The Board received the report of the proposed investment on 13 August. However the report did not discuss the union recognition dispute at SFI, even though the IFC-team was undoubtedly aware of the freedom of association concerns. [15]

On 25 August BWI filed a formal complaint on behalf of STIEU through IFC’s online labour portal. The complaint comprised detailed information on SFI’s position to union formation and the company’s violations of PS2 and international labour conventions. According to IFC procedures the disclosed ESRS

and ESAP should be updated if new information that substantially change the risks or impacts of the project is unveiled. In this case, however, the Board was not presented with this information when deciding to approve the investment. [16]

The lack of information and unclear scope of the investment did make some members of the Board uneasy. The United States chose to abstain the decision to invest for these reasons. When explaining its position, the US Executive Director declares that

“...the project document itself provided scant treatment of development impacts, requiring the reader to try to fill analytical gaps, and making it difficult to weigh the potential development gains against various risks, including, in this case, wide-ranging environmental and social risks. [...] This leaves the United States wondering what, exactly, are the expected development gains from this \$250 million investment, how these gains will be measured and monitored, and why IFC and the funds that it administers are the right source of financing. [17]

In September 2014 (after the investment was approved) a quarterly labour audit was executed by third party-consultants (AECOM) at SFI, intended to provide assurance that the client was implementing the ESAP actions and complying with IFC PS2. The audit report found that SFI did not “want interference from STIEU”, indicating SFI was in fact still not complying with PS2 FoA-requirements. It is unclear



14. Id., pp. 26-28.

15. Id., pp. 29-34.

16. See n14.

17. Statement of US Executive Director, “Proposed International Finance Corporation (IFC) Investment in BILT Paper B.V.; (World Region), August 28, 2014”. Available at: [www.treasury.gov/resource-center/international/development-banks/Documents/IFC%20-%20World%20Region%20-%20BILT%20-%20US%20Position%20-%20Aug%2028%202014.pdf](http://www.treasury.gov/resource-center/international/development-banks/Documents/IFC%20-%20World%20Region%20-%20BILT%20-%20US%20Position%20-%20Aug%2028%202014.pdf)

from this report whether any practical progress was actually being made on the matter of union recognition at the time of the audit. The same month BWI and STIEU filed a complaint to CAO alleging violations at SFI against PS2 and international labour conventions. When investigating the process of IFC disclosure to invest in SFI, CAO finds that:

“approvals of equity subscription were made on the assurance [...] that the client was in material compliance with its E&S commitments. This was

given despite indications, in particular from the September 2014 quarterly audit, that that the client did not want “interference” from STIEU and did not intend to recognize an STIEU affiliated union. This information raised questions as to the client’s intention to meet its ESAP commitment not to oppose but rather to facilitate union formation. Consequently, CAO finds that IFC did not have sufficient basis to clear the investment for subscription”. [18]

## Phase Three: Supervision

According to IFC Sustainability Policy, a client that has received an investment shall be monitored by IFC to ensure that the client is complying with the Performance Standards. If the client fails to comply with its social and environmental commitments IFC will work with the client to establish compliance and exercise appropriate remedies if necessary. [19]

During the supervision phase the struggle for union recognition at SFI continued. In November 2014 SFI management sent a memorandum to all its employees, stating that it would only accept a in-house union. Not long after this IFC visited SFI and met with STIEU representatives to discuss the memorandum and the judicial review process. When confronted by CAO, the IFC noted that their project team strongly advised SFI to accept a union of the workers’ choosing, however there is no evidence nor documentation provided by IFC that suggest that this actually happened.[20]

BWI contacted IFC once again in March 2015, presenting its position that the in-house union memo constituted a violation of PS2 and Malaysian laws, quoting specifically the rights of workers to form a union free from interference. BWI also implored IFC to direct its client to comply with PS2. IFC did not respond to this the email from BWI.[21]

In July 2015 IFC was informed that BILT was intending to sell SFI. Alarming, this notification caused IFC to suspend all of its supervisory action for a whole year. IFC notes that it “scaled down its engagement with SFI at the client’s request. The reason for the request was that the sale was expected to be imminent, and to avoid or minimize any transaction related sensitivities”. [22]

At the same time as IFC decided to pause its supervision of SFI, the Forest Stewardship Council Board accepts a complaint filed by BWI in relation to FoA violations at SFI, starting its own investigation. Its final report on SFI was shared with the parties in December 2015, finding “clear and convincing” evidence that SFI was in fact engaged in FoA-violations. The report recommended that FSC should disassociate from SFI if the company did not: compensate STIEU financially for judicial costs and loss of revenues, recognise a union of the workers choosing and complete a collective agreement and withdrew all of its legal challenges to union recognition. The SFI management considered these conditions unacceptable and refused to comply. Hence, on the 21 July 2016, FSC took the final decision to disassociate from SFI and BILT. IFC was informed that SFI had lost their FSC certificate, but this did not seem to result in any change of IFC’s attitude towards its client.[23]

In June 2016, the proposed sale of SFI was called off and IFC resumed its supervision of the company. In September, when IFC learned that the High Court’s had dismissed SFI’s request for a judicial review, the IFC-team advised SFI to allow the secret ballot to proceed without further delay. SFI declined telling IFC it would in fact file an appeal the decision. CAO found that there is no recorded response from IFC on this decision, and that IFC did not seek to exercise any remedies to compel compliance. CAO finds that:

“IFC’s supervision of the project was insufficient to assess the status of the project’s compliance with PS2 requirements, specifically regarding union and freedom of association issues. Throughout the supervision period, IFC received information relevant to SFI’s conduct with respect to the

18. See note 6, p 34.

19. IFC Sustainability Policy, 2012, §45

20. See note 6, p 36.

21. Id., p. 37.

22. Id., p. 43.

23. Id., p 42.

union and FoA issues from multiple sources, including the client and the complainants. During supervision, workers' efforts toward the recognition of STIEU at SFI were ongoing, as were SFI's efforts to deny recognition".[24]

## Analysis and aftermath

STIEU's struggle for union recognition continues, even though SFI's judicial review claim being summarily dismissed by the Federal Court, Malaysia's highest court. Despite numerous requests STIEU were never furnished with a copy of the written court decision, and both the Sabah and Putrajaya Industrial Relations Departments insisted that a secret ballot could not be arranged without it. Upon discussion with the new Minister of Human Resources this advice was proved to be incorrect.

While the \$150 million loan to BILT was never paid out by the IFC, to this day it still holds an equity share of \$100 million in SFI. The company is now taken under receivership at the petition of creditors and a court has ordered the company to be sold. It is believed that a buyer has been found and a 10% deposit paid, however workers have received no formal confirmation of this.

CAO disclosed its investigation in April 2018, and IFC were also given opportunity to respond. While IFC

agreed with some of CAO's findings, on the majority it does not. [25] While not unexpected considering IFC's actions to date, we find this deeply disappointing. For example, IFC agrees with the CAO finding that the long history of union-busting at SFI and the ongoing struggle to form a union was not assessed when the project was disclosed and presented to the Board for approval. The fears of the US Executive Director that there were analytical gaps in the report presented to the Board was without doubt justified. It is difficult not to question the reasons behind this: Why was this vital information withheld from the Board? Was it due to negligence of the IFC-staff, who did not fully realize the gravity of the FoA-violations at SFI and rather focused on environmental impacts and indigenous rights? Or worse; was IFC in fact aware that this information composed a serious threat to the investment and thus concealed it from the Board? Neither answer is satisfactory.

IFC also agrees that their team did not take any actions to ensure that SFI complied with its commitments in the ESAP after SFI declined IFC's 2016 recommendation to facilitate a union of the workers' choosing. However, IFC defends its decision not to intervene by referring to the company's financial situation. The statement that IFC's main priority since then has been to "facilitate a remediation of the financial distress such that SFI's employees have a sustained employment without which Freedom of Association is moot", is deeply troubling.[26] Should we take this to mean that the Performance Standards



**STIEU emerge victorious from the Kota Kinabalu Federal Court in Sabah, Malaysia. Onward to union recognition!**

24. Id., p 45.

25. IFC Management's Response to the CAO Investigation Report on Bilt Paper B.V., Malaysia. May 15 2018.

26. Id.

27. Id.

28. Id.

29. Id.

are only applicable to companies with strong finances? If so, can companies with clever accounting teams simply devise some evidence of financial stress to escape compliance? The assertion that Freedom of Association is “moot” without employment demonstrates their shallow understanding of these matters: the rights to freedom of association and bargain collectively is never moot for workers, and it has impacts across the industry. It is neither in the interest of workers nor companies to allow union-busting companies to compete on equal terms in the market.

When CAO criticises IFC for not considering labour and FoA risks in Malaysia and the wood and forestry sector, IFC states that “a contextual risk assessment was not considered relevant in this situation”. [27] Why a contextual analysis of FoA in Malaysia, a country where it is both legally and practically difficult to form unions, is not further elaborated in IFC’s response. It ought to be obvious that such an analysis should be mandatory in these cases.

IFC further disagrees with CAO that its pre-investment review and proposed mitigation measures were insufficient to assure PS2-compliance. It refers to the fact that there was an ongoing government-led process underway and that the client had committed to cooperate in this process. [28] The position of IFC is that they considered this commitment from the

client due diligence. There are however no detailed records of what this really meant. Not until the second half of 2016, when IFC explicitly told SFI to accept a union of the workers own choosing, was there actually any pronounced request from IFC that “facilitating the formation of a union” meant SFI should not seek to interfere or control the formation of this union. It seems that prior to 2016 IFC monumentally failed in communicating to SFI that only an independent union of the workers’ own choosing would mean compliance with PS2.

IFC also disagrees in CAO’s critique concerning inadequate supervision post-investment. According to IFC, the project team indeed advised the client that it must accept a lawfully formed union of workers’ choosing “without any limitations”. [29] There is, however, no available records nor other evidence that this correspondence actually took place though. For an institution with so much potential socio-economic impact as IFC, professional documentation of actions taken to ensure compliance with its Performance Standards should not be too much to ask. In this particular case, with so much uncertainty surrounding the IFC-team’s commitment to workers’ rights, the lack of such documentation raises further doubts on this matter.



# Conclusion

From a workers' rights perspective it stands clear that IFC's engagement in SFI/BILT must be considered an embarrassment to the corporation.

The pre-investment review did not sufficiently consider apparent risks regarding Freedom of Association in the country context or at SFI. Further, of reasons yet unknown, vital information of PS2-violations was not presented to the Board of Directors when approving the investment. After its equity investment of \$100 million IFC's supervisory engagement was insufficient at first, thereafter cancelled as BILT tried to sell its subsidiary, and then resumed in the summer of 2016 though still not fruitful in enforcing PS2-compliance.

Throughout the entire case, documentation on stated actions taken by IFC to direct its client towards compliance is non-existing and therefore hard for third party observers to take into account. If the IFC-team fails to show any evidence that clearly suggest that it did in fact try to redirect its client, it should not presume that stakeholders affected by the impact of its investment deem IFC as trustworthy.

There are multiple lessons to be learned from this case. First of all, IFC should not invest in companies with a history of opposing workers' rights to Freedom of Association if there is still an ongoing litigation regarding union formation at such a company. IFC should suspend its intended investment until a union according to PS2 §13 and §14 is formally recognised at the company. Furthermore, an indication that a client intends to sell a company should not cause IFC to pause its supervision of the company, especially not if the client is still not complying with Performance Standards.

# Recommendations

1. IFC's PS2 should incorporate the ILO Core Conventions in their entirety and use the jurisprudence of the Committee of Freedom of Association as the measure for interpreting the rights to freedom of association and collective bargaining.
2. The IFC's pre-investment procedures must be amended to ensure that ESRS labour audits properly highlight risks to workers' rights, including contextual analyses in countries with known risks to workers' rights.
3. During the disclosure and investment phases we recommend a mandatory reporting of labour rights to the IFC Board.
4. Supervision of a loan should not be suspended until the sale and purchase of an asset has been completed.
5. IFC should withdraw their ongoing \$100 million equity shareholding in BILT, and that money should rather be, at least in part, used to compensate workers for the hardship they endured during the period in which IFC investment supported SFI's union-busting activities.
6. That the World Bank Group blacklist SFI and BILT until such a time as they can demonstrate a willingness to comply with its policies.