

Importance of Construction Labour Monitoring as Social Impact Assessment Mitigation in Infrastructure Projects

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Introduction

Social impact assessment (SIA) is the process of analysing, monitoring and managing the social consequences of development (IAIA, 2003). SIAs often predict employment as a positive impact without identifying who benefits and without establishing management measures. SIAs should delve into the distribution of employment generation in more detail so the impacts can be better managed. In countries where there is a recent history of labour rights infractions, or for projects with large work forces or a large proportion of migrant workers, construction labour monitoring should be a routine mitigation measure in SIAs.

Workers are a directly affected stakeholder group in infrastructure projects. If workers do not have contracts, endure poor living and working conditions, receive little health and safety training, or believe they are not being treated with respect then protests or accidents can occur. These outcomes create project delays and increase costs.

Construction labour monitoring can play a key role to ensure that projects comply with national and international requirements that protect the workforce, promote respectful work relationships, and provide safe and healthy working and living conditions. Monitoring helps uphold labour rights and tenets of fair treatment, non discrimination and equal opportunity.

Labour monitoring has its limitations¹ but its use in the infrastructure sector needs to catch up with other sectors. This paper outlines the international standards and current thinking on labour as part of a human rights agenda. It describes construction labour monitoring procedures relevant to infrastructure projects. Using examples, the paper presents opportunities and challenges that construction labour monitoring provides for different project stakeholders. Recommendations are made to design monitoring for positive labour management outcomes.

Labour Rights as Part of a Human Rights Agenda

Labour rights are part of the wider human rights agenda enshrined in the *Universal Declaration of Human Rights* with clauses related to free choice of employment, just and favourable conditions, equal pay for equal work, and the right to form or join unions. Labour rights are also a focus of Ruggie's *Guiding Principles on Business and Human Rights* endorsed by the Human Rights Council in 2011. The Ruggie Principles acknowledge the responsibility of companies to respect internationally recognised human rights including the International Labour Organization's (ILO's) fundamental principles and rights at work.

The ILO has core labour standards related to the abolition of child labour, elimination of all forms of forced or compulsory labour, elimination of discrimination in employment and occupation, and freedom of association and the right to collective bargaining. The ILO supports employment intensive infrastructure investments².

¹ See Section 5.5 in Newitt (2013). Accessed March 19 March 2013 at http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013_bp_Private_Sector_Voluntary_Initiatives.pdf

² See <http://www.ilo.org/emppolicy/units/employment-intensive-investment-unit-empinvest/lang--en/index.htm> and <http://www.ilo.org/public/english/employment/recon/eiip/>. Accessed 11 March 2013.

ILO's core labour standards are reflected in key lending requirements for infrastructure projects. For instance, the Equator Principles encompass the International Finance Corporation's (IFC's) Performance Standard (PS) on Labour and Working Conditions. During the revision process of the IFC PSs, labour management was strengthened in the 2012 version. Development banks like the European Bank for Reconstruction and Development (EBRD) have similar performance or safeguard requirements. The labour conventions to which a country is a signatory, the national labour laws, and the financier's labour performance requirements are identified in the SIA legal framework section.

Labour Rights Application by Financiers and Industries

During the last decade, the introduction of labour and working conditions in financiers' corporate policies has led to the inclusion of labour related management measures in SIAs. In turn, financiers have begun including labour rights requirements in lending contracts as conditions precedent, a project labour statement or commitment, or a workers' rights covenant.

At the same time, and also for reputational risk mitigation, the infrastructure sectors are addressing labour rights and conditions more formally. Sometimes on their own initiative, sometimes to meet financier conditions, and sometimes based on SIA management plans, companies are producing codes of conduct, sustainable supply chain commitments, and labour grievance mechanisms. In comparison to five years ago, more project companies have introduced wider reaching human resource policies to address ethical behaviour, work values, treatment of workers and expectations of on-site behaviour.

Individual companies can join wider industry initiatives that identify business commitments to meet human rights requirements. Examples include³:

- The UN Global Compact, a public-private partnership that advances commitments to human rights, labour, environment and anti-corruption.
- ISO 26000 on Social Responsibility which provides guidance concerning social responsibility including labour practice issues.
- The Ethical Trading Initiative, an alliance of companies, trade unions and voluntary organisations focussing on respect for workers worldwide.
- SA8000 an auditable certification standard based on international workplace norms of the ILO conventions, the Universal Declaration of Human Rights and the UN Convention on the Rights of the Child.

There are also a wide range of industry initiatives that consider worker issues from a management relationship, community context, or occupational health and safety (OHS) perspective, for example the UK Considerate Constructors' Scheme and BuildSafe South Africa⁴.

Often companies have to meet reporting requirements that convey responsibilities related to labour rights. For instance, based on the SIA, financiers often contractually require sustainability reporting. Internationally, the Global Reporting Initiative (GRI) is a leading organization that develops and publishes guidelines for such reporting⁵. The GRI identifies labour indicators related to employment, labour/management relations, OHS, training and education, diversity and equal opportunity, and equal remuneration for men and women.

Construction Labour Monitoring Procedures

Addressing employment impact and labour rights measures in more detail in SIAs and including labour commitments in project contracting are two trends that have encouraged the use of construction labour monitoring. Monitoring is a natural progression from the existence of SIAs, management plans and contract clauses.

³ See <http://www.unglobalcompact.org/> and <http://www.iso.org/iso/home/standards/iso26000.htm>. The ETI base code is available in a range of languages at <http://www.ethicaltrade.org/resources/key-eti-resources/eti-base-code>

⁴ See <http://www.ccscheme.org.uk/index.php> and <http://www.buildsafe.co.za/> respectively.

⁵ See <https://www.globalreporting.org/Pages/default.aspx>

Guidelines for undertaking construction labour monitoring include:

- In 2009, IFC and the European Bank for Reconstruction and Development produced a guidance note “*Workers’ Accommodation: Processes and Standards*”. It includes a checklist on workers’ accommodation which is a useful monitoring tool.
- IFC and Social Accountability International’s 2010 handbook helps SIA practitioners achieve compliance with IFC’s Performance Standard on labour and working conditions.
- Inter American Development Bank’s “*Managing Labor Issues in Infrastructure Projects*” (2006) focuses on determining compliance with the ILO Core Labour Conventions. An annex provides a core labour standards checklist.

To be successful, construction labour monitoring has to collect evidence from various sources to ensure an accurate understanding of a project’s employment relationships. Main sources of evidence are observation of work and living sites, interviews with workers and management, and review of employers’ systems and documents, especially in relation to time keeping and payment.

Construction Labour Monitoring Findings

SIAs should provide employment generation details to effectively identify management measures. Relevant information includes beneficiary profiles, types of skills present in the area to meet the project needs, and how long job contracts are likely to last. Construction labour monitoring requirements should be defined in the SIA, its management plans, and in lenders’ or owners’ engineer monitoring contracts. For countries and projects with significant labour rights risks, regular labour monitoring visits should be scheduled for the entire construction period. In projects where there is less risk, an initial site visit can be planned with the option of returning to address any non-compliances.

Construction labour monitoring presents opportunities and challenges. Practical experience highlights the importance of having documented policies and contracts. On infrastructure projects, it is not uncommon for a human resource department to be in an urban centre and workers at a remote site. Without written contracts and working terms, communication and transparency problems arise. Examples include workers being told they will receive a bonus for finishing work in a certain timeframe that is not reflected on payslips; national contracts that do not include international standard details such as holiday, accommodation and transportation benefits; timesheets not signed off by workers so the wrong hours are paid; and pay slips that are difficult for workers to understand.

Corrective action can include changes to timekeeping sheets and payroll slips as well as more systematisation in human resource (HR) records. For instance, one file per worker and inclusion of appropriate documents such as leave requests, qualification certificates, and next-of-kin details. Changes related to a company’s administrative processes should be aimed at improving HR systems and hence treatment of workers rather than for bureaucratic or box ticking reasons. The trend to e-filing can help systematisation issues.

Requiring contractors to report on the labour force profile (ethnicity, residence of origin, gender and age) as well as overtime use, toolbox talk topics, and labour grievance incidents is useful. Monitoring experience has reinforced that labour profile reporting is important, especially to assess whether labour objectives are being met, for instance in relation to local content or gender equality. Construction labour monitoring helps produce the labour workforce profile at different points in the project schedule. Labour profiling is often required for sustainability reporting.

Monitoring experience has identified overtime and accommodation facilities as key problem areas. Both are considered in more detail below. Other issues that construction labour monitoring helps address but not detailed here are migrant labour socialisation, security staff and property safeguarding, HIV/AIDs in the work place, passport retention, and occupational health and safety.

Monitoring Overtime

Excessive overtime refers to workers’ hours exceeding national regulations on working time and potentially having negative consequences for workers, particularly in relation to safety and health risks

(Seo, 2011). The most common overtime limits are two hours over the normal working time each day, 12 hours per week or 270 hours over an entire year (JOIN, undated).

Excessive overtime use can be real or it can be recorded but not worked. For instance, sometimes subcontractors mark down overtime hours as a means to provide workers with bonus pay. Sometimes subcontractors use normal hours to cover overtime worked. To a monitor reviewing time sheets and payslips, such documents may erroneously suggest use of excessive overtime.

Practical monitoring experience in one project found that a subcontractor's software had one line for overtime although national law had two overtime rates differentiating between working extra on a normal day and on national holidays. Hence workers were being paid insufficiently and illegally. Another monitoring visit found a company had increased the hours worked per day written in workers' contracts beyond the legal limit as means of avoiding paying overtime.

Monitoring Accommodation

Construction labour monitoring includes inspection of worker accommodation. Facilities can range from tents to individual apartments to large custom built or prefabricated dormitories. In countries where use of migrant workers is prevalent or for projects that build temporary accommodation, regular inspection of living facilities is essential.

Main issues with inadequate accommodation are poor hygiene, lack of furniture, overcrowding, and lack of laundry facilities. It is not uncommon to encounter rotting food in communal kitchens, unprotected wiring, blankets pegged for curtains, scavenged mirror pieces, wood pieces hammered together for hanging clothes, and broken standpipes for bathing. At the other end of the spectrum, satisfactory accommodation provides an appropriate number of beds per room and room space, suitable bathing and cooking facilities, adequate cleaning regimes, sufficient safety equipment, an accessible complaints procedure and a recognised management system.

Food is a regular complaint from workers. Monitoring allows visits to kitchens and food storage space without announcement and the chance to eat a meal as well as review menus. Food quality, nutritional value, carbohydrate sufficiency, cultural appropriateness, menu diversity, and food temperature are important considerations. Kitchens should have documentation from visits or approvals by the local health authorities.

Often companies with poor accommodation also have poor site welfare facilities. When projects are linear such as pipelines, roads or transmission lines, the challenges of providing appropriate ablution facilities, shade and water at ambulatory sites is exacerbated. The quality of transportation to and from sites can also be addressed during construction labour monitoring.

Value Added from Labour Monitoring

Often construction of large infrastructure projects is led by a company experienced with working internationally although possibly not familiar with international labour standards. Subcontractors which are used to working in the local context, whether they be international, regional, or national, often have limited knowledge of international labour requirements.

A main benefit of construction labour monitoring is it can be used to transfer and share obligations related to worker management, labour conditions, workers' rights, and workers' accommodation to subcontractors. Construction projects have regular health, safety and environment (HSE) meetings. While HSE Managers are comfortable with discussing OHS matters, they have rarely had to address other labour rights aspects or deal with a documented labour grievance mechanism. As mentioned above HR staff may be distant and although they see the paperwork, they often have little involvement with daily worker management or see the installation or maintenance of procured accommodation furnishings.

Beginning with the project proponent and main contractor, awareness of labour rights and requirements needs to be built into the various tiers of contracting. To help with the learning process, it is useful to

have the first construction labour monitoring visit in the first quarter of the construction phase. This means the emphasis can be on the main contractor and ensuring they have their systems in order, for instance their own HR procedures, a project labour grievance mechanism, a relationship with labour representatives, monitoring staff, and awareness of labour rights and project obligations. Key staff who need to know the project labour rights requirements are managers of OHS, HR, Compliance and Site Managers.

Encouraging the main contractor to provide guidance on key issues several subcontractors face has been effective to address third party direct workers. For one project, guidance topics were produced about non-discrimination and equal opportunity, labour grievance procedures, overtime use and termination/conclusion of contracts. In another project, construction labour monitoring lead to the main contractor deciding to carry out welfare surveys with the workers of a different subcontractor each month. Expanding the questions which focussed on work and accommodation facilities to address workers' rights was recommended to act as an early warning system for delayed payment and other possible rights related breaches.

Recommendations for Positive Labour Management Outcomes

Upholding labour rights is not a costly procedure if done correctly from the beginning with sufficient staff time and documentation. However, when labour rights are not upheld the costs for resolving breaches can be considerable in the form of compensation, redoing work, hiring equipment for longer than anticipated, delays in schedule completions, and additional monitoring and due diligence. The following recommendations can help achieve positive labour management outcomes.

- At all levels (lender to project; project proponent to main contractor, main contractor to subcontractor, subcontractor to their subcontractor), include the project emphasis on upholding labour rights in tender documentation and contract negotiation discussions. This will help companies to price accordingly any additional costs to “work as usual”.
- Require the main contractor to produce easy-to-read summaries of the national labour law or project labour statement to append to subcontractor agreements and to use in toolbox talks or on notice boards.
- For large projects, develop a project wide labour grievance mechanism which subcontractor workers can access. This sounds easy but many lead contractors do not want to get involved in mediating subcontractor worker issues. The unfortunate alternative is a main contractor may end up managing subcontractor workers' strikes or paying wages directly to them to meet a project's labour commitment.
- For large projects with many subcontractors providing temporary accommodation, ensure the main contractor hires an HSE officer responsible for internal monitoring of accommodation and food services.
- Encourage projects to establish a Code of Conduct for all project staff to share responsibilities with regards the working site conditions and interactions.
- Request main contractors to report on labour rights issues in addition to health and welfare which is more common. For instance internal reporting on overtime arrangements, timely payment of wages, brokers/recruitment fee charges, passport control, personal document retention, labour grievance and the use of young workers helps support monitoring.
- Require the main contractor to request their subcontractors to provide regular and written confirmation of timely payment of wages as a preventive measure.

Construction labour monitoring activities are useful to ensure that appropriate informal and formal mechanisms are in place to develop, maintain and improve worker-management relationships and uphold workers' rights. Implementing the above recommendations allows workers to focus on project tasks rather than the employment relationship. Construction labour monitoring should be a natural progressive step from the identification of job creation impacts in the SIA and management measures identified in financing agreements.

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