

Inclusion of social benefits in infrastructure: Ensuring social benefits for road workers through implementing labour standards

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Introduction

When considering the social benefits of infrastructure most attention is given either to the benefits that accrue to adjacent populations through increased access to services, markets and public administration, or the short-term benefits of the injection of cash wages into the local economy through the use of local labour. Much less attention has been paid to the *process* of constructing roads and associated social benefits that can be attained by complying with national labour standards that provide protection for workers throughout the road construction process, from procurement to project implementation.

The road construction sector is a large employer of semi-skilled and unskilled workers, the majority of whom work on a temporary or casual basis in Africa, South Asia and Latin America. They are not registered as employees, are not represented by trade unions, and have no formal employment protection or security. Their temporary status and lack of organization means that they have no bargaining power. They cannot negotiate wages, working hours, time off and often endure long delays waiting to be paid. Ministries of Labour and trade unions, the custodians of workers rights, confine their work to large industries and sites, and typically are insufficiently resourced to carry out site inspections outside of the main towns. Thus, there is a trend of low wages, unpaid tax and social security, cutting corners on health and safety, and inadequate or no accident insurance. The situation of women workers is even worse as disparity in wages tends to be the norm and is often institutionalized in government procurement mechanisms.

These problems are equally, if not more, pronounced in road development programmes based on community contracting¹ or self-help schemes using unpaid labour. Generally, national labour legislation does not provide for community employment schemes, there is no inspection or system of regulation, and there is a lack of awareness among community groups of the necessity to apply either the letter or the spirit of national labour laws. Much attention has been given to devolving responsibility for implementing road works to community groups, especially where local authority resources are limited for the development of low volume roads and local access roads. However, little, if any, attention, has been paid to the accompanying responsibility on, and liability of, such groups for the safety and rights of the workers.

The expectation that community members contribute labour on an unpaid basis underpins the approach adopted by many NGOs, and some bilateral and multilateral funded programmes. Communities are increasingly being asked to contribute labour as

¹ The ILO definition of community contracting is used in this paper “an agreement between a community and a contracting authority, whereby the community (or section of the community) is responsible for the implementation of the works and therefore functions as a contractor”, Tournee, J and Van Esch, W. *Community contracts in Urban Infrastructure Works: Practical lessons from Experience*, ILO, 2000.

a way of promoting community ownership and achieving some cost-sharing of infrastructure development. At the same time it is assumed that local participation ensures that the project responds to the community's real needs. Involvement in construction and rehabilitation work is also seen as a way to equip local communities with skills for maintenance. However, in agreeing to forfeit wages, the fundamental issue arises as to whether unpaid workers also implicitly forego other labour rights; and if indeed unpaid workers have labour rights, how these can be exercised, given that most are unskilled casual workers.

Experience shows that even though labour standards are normally used in contexts where there is a clear employment relationship, they can also be applied in community contracting and self-help schemes. Where they are implemented, they can help ensure that social benefits of infrastructure projects accrue to labourers who work on the road, but that failure to do so can result in social costs rather than benefits.

This paper draws on the findings of a recently completed Department for International Development (DFID, UK) funded study on the *Social Aspects of Construction*². This piloted the application of nine labour standards - over a four year period - with the objective of improving the conditions for construction workers. The findings of the study provide an opportunity to learn lessons about how to improve the conditions of construction workers through influencing procedures - for the planning and management of road construction and transport projects. The standards were applied in three different contexts: to a bridge construction programme using conventional contracting in Ghana, to community contracting under the Government of Kerala's decentralization programme³, and to a self-help scheme using unpaid labour in the urban settlements of Lusaka, Zambia.

The study has demonstrated that the contracting framework can be a means to improve the working conditions of semi- and unskilled casual workers. Building in social clauses to the construction contract offers a mechanism for protecting the labour rights of workers and enables the contract to function as an instrument for extending labour and social policy to difficult-to-reach temporary and casual workers. However, it needs to be supported by a process of awareness raising among clients, contractors and workers, voluntary buy-in, and rigorous mechanisms for monitoring compliance.

Labour standards⁴ in infrastructure: What are we talking about?

Labour standards are the norms, rules or laws that govern working conditions. While typically they are set out in various pieces of national legislation, labour standards may also be informal, established through norms and values of the 'living law' of institutions and customs. Workers' rights are central to labour standards. They are claims for decent and fair treatment that workers make on the client (contractor, employer or state) and are deemed to be legitimate by some structure or authority.

² Ladbury, Cotton, Jennings *Implementing Labour Standards in Construction: A Sourcebook*, WEDC, Loughborough University, forthcoming.

³ Kerala is at the forefront of decentralization in India where some 40% of the budget for construction work was devolved to the panchayat level in 2001.

⁴ For more information on the ILO Declaration and international labour standards contact the ILO International Labour Standards Department, email: norms@ilo.org - then click on "Standards and Fundamental Principles".

The ILO's Fundamental Declaration of Principles and Rights at Work, which applies automatically to all countries that have accepted the ILO Constitution, identifies four core labour standards to which all Member governments have pledged to respect, promote and realize. They are:

ILO Core Labour Standards	
1.	Freedom of association and the effective recognition of the right to collective bargaining
2.	The elimination of all forms of forced or compulsory labour
3.	The effective abolition of child labour
4.	The elimination of discrimination in respect of employment and occupation.

In addition to these, DFID has adopted an additional five standards for the construction industry which are based on other international conventions of the ILO and on provisions contained in regional and national law, as follows:

Additional Labour Standards for the Construction Industry adopted by DFID in 1997⁵.	
5.	Health and safety to be addressed
6.	Wages to be paid in full and on time, to meet legal minima and be sufficient for basic needs
7.	Working hours to be limited; overtime to be paid
8.	No repeated casualisation (i.e. re-appointing labourers on a casual basis) to avoid meeting wages and other legal benefits
9.	All relevant social security regimes to be applied.

An elaboration of what each standard means in practice is given in Box 1. Examples have been taken from the Ghana case study.

Box 1. The 9 labour standards: what they mean in a construction context	
Labour standard⁶	Practical implications (and reference to the main ILO conventions)
1. Freedom of Association and the effective recognition of the right to collective bargaining	This means that workers be allowed to establish and join work-based organisations if they wish. They can then use these to negotiate for wages and other working conditions. In practice contractors are expected to have a co-operative attitude to the construction workers' trade union, allow them onto sites to talk to workers, and allow workers to join unions or other work-based

⁵ Although not a labour standard DFID is concerned that HIV/AIDS issues should be addressed in construction projects that it supports, and thus HIV/AIDS is included in *the Social Aspect of Construction Study*.

⁶ For more information on the ILO Declaration and international labour standards contact the ILO International Labour Standards Department, Email: normes@ilo.org Website: www.ilo.org - then click on 'Standards and Fundamental Principles'.

	<p>organisations. Note that this standard does not mean that workers have to join unions, just that they should have the right and opportunity to do so. (C87- Freedom of Association and Protection of the Right to Organise 1948; C98- Right to Organise and Collective Bargaining 1949; also relevant C135 - Worker's Representatives Convention 1971). In some contexts, workers may opt to be represented by a local collective or community group and these should be recognised as legitimate negotiating bodies⁷.</p>
2. The elimination of all forms of forced or compulsory labour ⁸	<p>The ILO definition of forced labour is any work that is extracted under the menace of penalty – or where the people have not offered themselves voluntarily. In practice this can happen when a contractor forces workers to do overtime or a 7 day week without their consent and under threat of penalty, e.g. job loss. (C29- Forced Labour Convention 1930; C105 - Abolition of Forced labour Convention 1957)</p>
3. The effective abolition of child labour	<p>The ILO definition of a child is a person of 14 years or under. If hazardous work is involved then the minimum age is 18 years. In practice child labour can occur if women bring their children to site and they 'help' with a particular activity, e.g. breaking stones. But if stopping this practice prevents women from working then dialogue is vital: it may be that alternative action needs to be taken in order to ensure women themselves do not lose their jobs, e.g. through making alternative child care arrangements available. (C138 – Minimum Age 1973; C182 - Worst Forms of Child Labour 1999)</p>
4. The elimination of discrimination in respect of employment and occupation	<p>Discrimination means denying someone a job or training on the basis of a factor which does not affect their ability to do that job. For example, because they are from a particular region or ethnic group, or because they are a woman. Discrimination is often justified in terms of culture, e.g. 'our women like to carry concrete' implying they will not be considered for other jobs. Such an attitude is discriminatory if it results in limiting employment opportunities for a particular group. (C 100 - Equal Remuneration 1951; C111 – Discrimination (Employment and Occupation) 1958)</p>
5. Health and safety to be addressed	<p>Workplaces must be safe and without risk of injury to employees. National labour law will normally state minimum requirements for protective clothing and safety precautions specific to the industry. In Ghana for example, basic protective clothing for construction includes steel toe-capped boots, overalls, gloves and raincoats for wet weather work. Additional clothing is required for specific tasks. The contractor must also train one employee as safety officer and one to be responsible for first aid (with a properly equipped first aid box). The provision of potable water, latrines on site and emergency procedures in the event of accident are also prescribed in law. Where the law does not provide an adequate standard then the Collective Agreement between the Employers' Association and the trade union is the best point of reference. (C155 - Occupational Health and Safety 1981; C167 – Safety and Health in Construction 1988. There is also an 'ILO Code of Practice on Safety and Health in Construction 1992' which covers safety and health planning, co-ordination and compliance.)</p>

⁷ In many rural areas, there is no trade union representation but workers may form a collective to enhance their bargaining power, and it is important that these local negotiating bodies are recognised.

⁸ There is a connection between forced labour and payment in full and on time (points 2 and 6 of box 1). Failure to pay on time is common and is well documented in some countries (e.g. India, Nepal). It results in workers having to borrow from the labour agents or contractors who employ them. Indebtedness in turn creates obligations and the workers can become, in effect 'bonded' to their employer; a situation which can lead to forced labour.

6. Wages to be paid in full and on time, to meet legal minima and be sufficient for basic needs	Where there is a current national minimum wage then this can be used as a standard. However, high inflation may mean that the rate is out of date. In this case the rate agreed in the relevant Collective Agreement should be applied. If there is no such agreement then the rate used by a local construction company known for good practice may be an alternative reference point. Wages should be paid in cash, not in kind. (C131 - Minimum Wage Fixing Convention ; C95 - Protection of Wages Convention 1949); C94 – Labour Clauses - Public Contracts. Note that C94, ratified by Ghana, also requires that notices be displayed on site to inform workers about their contract conditions.)
7. Working hours to be limited; overtime to be paid.	National law will specify the 'working week' - usually 40 - 42 hours. Overtime should be paid above this rate according to the national legal formula. Regulations should ensure that the use of task-based/piecework does not lead to self-exploitation and workers having to spend longer hours than specified in the legislation. (C14 - Weekly Rest (Industry) 1921, C1 - Hours of Work (Industry) 1919, also C47)
8. No repeated casualisation to avoid meeting wages and other legal benefits ⁹	This standard is to tackle a common practice whereby workers are engaged for months or years on a series of temporary contracts so their employer can avoid paying tax or social security. It means the worker – called a casual but more accurately a 'temporary worker', is typically paid less than permanent workers, and ends up with no pension rights or access to other benefits e.g. accident insurance. (C102 - Social Security (Minimum Standard) 1952; C957 - Maintenance of Social Security - Rights 1982.
9. All relevant social security regimes to be applied.	All countries have laws regarding registration for social security and these should be followed. In Ghana there is a problem as the law does not allow for temporary workers; it states that all workers must be registered for social security no matter how short their period of paid employment. This was very difficult to apply on the Bridges project, not least because those employed for very short periods could not see the point of registering given the 20 year rule to qualify for a pension. As a result of this DFID is funding a study to review, with regulators, how to make regulations on social protection relevant and feasible for all workers. (ILO conventions as above.)
10. HIV/AIDS to be addressed	The ILO's 'Code of Practice' on AIDS recognises HIV/AIDS as a workplace issue and goes beyond awareness raising to include non-discrimination, confidentiality, care and support. ¹⁰ UNAIDS and other agencies produce guidelines of employer good practice with regard to HIV/AIDS. The ideal is to follow the national policy on AIDS if this has been developed. In Ghana, as per national policy, the Ministry of Roads and Transport will apply for funding from the Ghana AIDS Commission to mount an education campaign for contractors, workers and communities. In the meantime, and as a stop-gap activity, contractors must allow health staff to visit sites and inform workers about the risks of HIV/AIDS. Workers are to be paid for time spent on HIV/AIDS awareness.

⁹ It is acknowledged that informal (verbal), short term contracts, without benefits, are the norm in the construction industry in many countries. However, standard number 8 seeks to make a distinction between the true casual worker (hired on a daily basis for a short period) and a temporary worker (hired more or less continually by the same employer for months or years) who is treated as a casual, i.e. with none of the benefits of formal employment. The guidelines seek to encourage employers to 'move' this group of temporary workers into the permanent worker category.

¹⁰ To access the ILO 'Code of Practice' on HIV/AIDS go to www.ilo.org, click on *Technical Programmes*, then *Social Protection*, then *HIV/AIDS and the World of Work*. The full code can be read in English, French or Spanish.

Source: Ladbury, S, Jennings, M, and Cotton, A. *Implementing Labour Standards in Construction: A Sourcebook*. WEDC, University of Loughborough, 2003, forthcoming.

Lessons for formal/conventional contracting

Labour legislation in many countries provides extensive protection to workers in the formal contracting sector and it is incumbent on the contractor to comply with this. A good contractor will have health and safety measures in place, will subscribe to accident insurance/workmen's compensation schemes, pay a fair wage, provide adequate facilities (shelter, drinking water, food) and first aid to workers. However, implementation and monitoring is frequently lacking despite the efforts of over-stretched Labour Departments and trade unions. Moreover, because the commissioning ministry tends to prioritise price over other evaluation criteria, the contract is usually awarded to the lowest bidder. Contractors compete by lowering labour costs and the winning tender is therefore often the one which pays the lowest wages, has the largest proportion of casuals (for whom no tax or social security is paid) and does not provide safety equipment or have insurance cover for accidents. Contractors' desires to avoid complying with wage levels and workers' benefits negotiated through collective agreements lead them to discourage or even prevent, unionisation. Gender discrimination accounts for the almost universal disparity in wages between men and women workers.

With the exception of the ILO, development agencies – bilateral and multilateral – have been slow to capitalise on the potential of the construction industry to contribute to rural and urban livelihoods or to appreciate its human right's potential. The contribution of the industry to employment is recognised but interest tends to stop there. The unspoken assumption seems to have been that any job is better than no job even if the conditions of work are dangerous and discriminatory, and jobs do not pay a living wage. However, this is now beginning to change as the link between poverty reduction and labour standards is better appreciated.

In 1996, DFID proposed that contracts for DFID-assisted infrastructure programmes should be based upon the requirements laid down by ILO international conventions and on other relevant standards. It was proposed that these standards could be encouraged by the insertion of suitable social clauses in the Special Conditions of Contract in FIDIC works contracts. In order to test the viability of this idea the Social Aspects of Construction study began in 1997.

The experience of implementing labour standards in equipment-based bridges and feeder road works was new, but the Ghana case study has demonstrated that a win-win situation can be obtained both for the contractor and the workers. A first step was to review the contract documents and to include social clauses that reflect the nine labour standards¹¹. Thereafter, the main instrument for achieving success was a programme of stakeholder workshops to discuss, resolve and monitor implementation issues, an awareness-training programme for all parties, and regular site monitoring visits. These activities were initially organised by an NGO reporting to the Department of Feeder

¹¹ A review of different conditions of contract and a listing of contract clause wording is presented in Ladbury, Cotton, Jennings *Implementing Labour Standards in Construction: A Sourcebook*, WEDC, Loughborough University, forthcoming.

Roads but were later institutionalised by the feeder roads department (e.g. monitoring labour standards is now regularly dealt with in all site meetings). The case study has shown that whatever the context, implementing labour standards requires a collaborative effort between employers, supervisors, implementers, regulators and workers.

Initially, discussions on labour standards were met with skepticism by contractors. Implementation gave rise to numerous practical questions around, for example, which jobs required protective clothing, what should count as 'standard provision' and how procurement and storage should be dealt with. What should a contractor do when a worker sold the boots s/he had received, or refused to wear someone else's? Did they need to buy women's sizes? There was need to negotiate an acceptable wage rate given that the legal minima was years out of date, and new record keeping systems had to be introduced so that it was possible to determine whether contractors actually paid the rate they said, or complied with agreed working hours. Previously none of the contractors had kept employment records¹². Registering workers for social security continued to be a problem despite much discussion: registration of all workers is required by law in Ghana but since casual workers are unlikely to reach the level of eligibility to qualify for a pension, they are reluctant to register.¹³ A key stakeholder, essential for ensuring workers knew their rights, was the trade union. However, as its staff had no vehicle or funds to travel out of town to rural sites, DFID support had to be provided for these purposes.¹⁴

Implementing labour standards did marginally increase project costs. In Ghana physical provisions (protective measures e.g. clothing, basic services such as latrines, water and sanitation, first aid kits, costs for a part-time record keeper) increased costs by between 2-3% of the contract value. The transactional costs of dialogue and monitoring were more difficult to estimate. It was agreed that, as far as possible, labour standard items should be included in the Bill of Quantities thereby removing any competitive element. This was possible for health and safety related standards but not for others (wage levels, overtime, the right to join a union). Systems of incentives and sanctions were also tested. For example, a percentage bonus was given to contractors deemed to make a good effort to implement labour standards. Such financial incentives proved popular though they were prized more for the status and credibility they gave the contractor than for their monetary value.

Lessons for Community Contracting

One of the perceived benefits of community contracting is that it the road works reflect community priorities, and that communities take responsibility for the input of labour as well as managing the project. However, when works are implemented at the community level, the legal and regulatory framework for protecting workers rights, and responsibility

¹² Workers were sometimes required to work a seven day week with no provision for overtime.

¹³ This issue of social security registration has proven to be a consistent, and so far unresolved, problem as neither employers nor temporary workers see it in their interests to register. Ghana law states that pension benefits can only be claimed if 20 years of social security payments have been made.

¹⁴ The trade unions, because of decreasing membership and therefore funds, are unable to provide the sort of education and protection for workers that they want to, and have done in the past. In Ghana DFID began by providing small amounts of funding to the union for transport to the bridges sites but this was not sustainable. What has been sustainable is the positive relationship established between the Union and the Department of Feeder Roads through the SAC project. Vehicles are shared when possible so that union representatives are now able to visit sites, at least on a monthly basis.

for enforcement or overseeing such rights, is much less clear than in the formal sector. When responsibility for implementing projects is delegated to the community, three fundamentals arise:

- (i) *Implementability*: is it feasible to implement of labour standards in non-formal labour contracting? Will the introduction of labour standards over-complicate the management of a community initiative that by its nature needs to be simple?
- (ii) *Liability*: the key issue is the implications of transferring liability from an organized and regulated construction sector to an inexperienced community structure. Legally, liability lies with the community representatives that sign the contract on behalf of the community, but they are rarely aware of this liability or the mechanisms that can be used to protect themselves and workers.
- (iii) *Accessibility*: how can local labour, most of which is casual and often not practiced in road works, access social protection when they are not members of social security schemes and lack organized representation?

These are complex issues that have received little attention either in the literature or in project implementation around the world. The SAC study has shown that all nine labour standards have relevance to community contracting in the same way as they do for formal contracting, and their implementation affords real social benefits and protection to both the labourers and the community leadership. Once having assessed their application to any particular context, in practice, it may be prudent to address those standards that are identified as priorities by the community.

Wage levels are understandably the main priority of labourers along with health and safety. However, the Kerala case study drew attention to the need to improve three areas as an integral part of social procurement in community contracts. Overwhelmingly, there was need for improved health and safety measures. Out of 21 projects assessed, there were seven accidents, two of which merited hospital treatment. Victims of accidents had to pay medical expenses themselves, there was minimal and often times no first aid available on site and in all 21 cases workers lost income. The existing legal framework did not cover irregular casual workers which meant that casual workers lost out on potential benefits.¹⁵ Disparity in wage levels between men and women were institutionalized both at the cultural level and in terms of wages paid by the Public Works Department. There were no opportunities for women to become skilled construction workers, they are always helpers; wage disparity was then 'justified' in these terms.

Other labour standards were less relevant in the Kerala context: the adjacent communities provided access to drinking water, food and sanitation facilities; wage levels are well above the minimum wage as Kerala has a problem of labour shortage; and child labour was not encountered. However it is expected that these issues may be of concern in community contracting schemes in other states and countries.

Several measures were taken by the Kerala projects to address labour standards. There was a particular focus on accident prevention. A risk index was included in the project proposal which allowed for an assessment of the potential hazardous tasks for which protective measures and clothing would be needed, with only skilled workers

¹⁵ The Government of Kerala is currently considering state-wide accident insurance for casual workers.

permitted to carry out these tasks. In addition, mechanisms to provide accident insurance which protects both the labourer and the community members that have signed the community contract were investigated. The project also allocated specific works to groups of women and trained them for these tasks. A fundamental part of the Kerala response is the development of a training programme for community representatives, labourers, and a community monitoring committee that clearly denotes the parties to the contract and their respective liability, and their roles and responsibilities in relation to the achievement of labour standards.

This case study illustrates that unless workers rights are accepted as a legitimate cost to infrastructure and specific social clauses are included in the contract, the labourer, often unskilled and amongst the poorest, is the one that has to absorb the social and financial costs. Social relationships function as one of the main safeguards for workers in that the parties involved tend to know one another personally. However, even when there is an accident which results in permanent disability pressure can be exerted on individuals not to make claims against community leaders. The overall finding therefore must be that failure to implement workers rights risks reinforcing poverty rather than alleviating it.

Lessons for Self-help schemes (labour unpaid)

Construction of low volume roads and local access roads are often carried out with “community participation” whereby the donor or local authority provides the hardware and the community agrees to contribute their labour free of charge. With regard to unpaid work, the fact that a person offers to forego wages does not mean they are offering to forgo other labour rights. Whether unpaid work is legislated for or not, the dominant incentive for compliance is the local social relationships between those community members in charge of the infrastructure works and those providing labour. It is a disaster for a household if one of its members has a serious accident and there is no provision for medical care or accident insurance. There is also a concern that unpaid labour may sometimes have an element of coercion - typically, low income households provide physical labour while better-off households pay a monetary contribution.

The findings of the Lusaka case study has important implications for all projects that incorporate an element of unpaid work. Community members, mainly women because men were searching for work outside the urban settlements, worked for between six to nine months on an unpaid basis on a water and sanitation programme. This prompted the need to distinguish between short term unpaid work which is likely to be acceptable to communities if worked out in close consultation, and long term unpaid work which can undermine rather than enhance livelihoods by imposing costs to the poor rather than benefits. In the Lusaka context, in the future, long-term work will be carried out using community-contracting schemes.

The case study has also illustrated that a number of other labour standards apply to short-term unpaid work. These include provision for social security and thus accident insurance in the event of serious accident; compliance with health and safety standards including protective measures; the agreement that skilled workers will carry out hazardous tasks; and access to and provision for payment of medical treatment if required. Also, that there will be no forced labour and an agreement should be reached with communities on working hours. Concerns around equality of treatment especially participation of men and women, and child labour should be discussed with the community in advance, and appropriate measures taken. The fact that the project is

being carried out in the interests of the local community should enable work to be scheduled in such a way that it facilitates workers to meet their other responsibilities, and ensures that there is no adverse impact on children's education or workload. Facilities such as drinking water, sanitation, and food are usually obtainable from neighbouring households so are not a problem. However, a strategy needs to be negotiated with communities so that labourers are assured access to these facilities.

Conclusion

Labour standards are an integral part of workers' rights. All workers, whether working on formal, conventional or community contracting or unpaid schemes, have rights. Meeting labour standards can raise productivity through boosting motivation and improving workers' health and safety, whilst good wages and working conditions can reduce wasteful labour turnover, as well as enabling workers to earn a fair wage. Failure to implement labour standards can mean that construction works designed to bring social benefits result in social costs to workers who have no voice or bargaining power.

Building social clauses into the construction contract based on recognised labour standards provides a framework for the better treatment of workers, and enables the contract to function as an instrument of extending labour rights to workers that are excluded from formal protection mechanisms. Compliance also affords protection to the employer against liability and the employee in term of accidents and social benefits. However, even where relevant clauses are inserted in the contract, it needs to be supported by a systematic process of awareness raising among clients, contractors and workers, voluntary buy-in, and agreed mechanisms for monitoring compliance.