



Trade Union  
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## Briefing #4

# Implementing the OECD Guidelines to Incentivise Quality Infrastructure Investment

Paris, 9 June 2022

Businesses and Trade Unions have a common interest in promoting harmonious industrial relations, which can be achieved when they collaborate to implement the OECD Guidelines for Multinational Enterprises (“MNEs”) and respect the good offices of National Contact Points (“NCP”).

When enterprises and trade unions collaborate to implement the Guidelines, they can create best practices for inclusive workplaces, resilient business operations, and individual well-being.

*Briefing#4: Implementing the OECD Guidelines to Incentivise Quality Infrastructure Investment* takes stock of worker and trade union experiences with international infrastructure projects and exposes limited effect of labour and environmental certifications applied *after* a project is awarded and contracts are executed.



The OECD Guidelines for Multinational Enterprises provide a framework to achieve project objectives for good governance, human rights due diligence and constructive industrial relations for multinational enterprises involved in a project, whether they be owners, investors, creditors, subcontractors or other service providers.

For infrastructure projects, it is crucial for investors and governments to assess all potential stress factors and related operational risks before contracting. Projects that have frameworks for constructive industrial relations are in the most secure position to prevent operational risks. Those without such frameworks require close scrutiny to deter disruptive tendencies that would strain project delivery and interfere with core project objectives.

## Infrastructure Projects start out disadvantaged in many labour markets

The progressive erosion of labour representation and compression of wage levels and job quality carries a strong risk of undermining the intended economic objectives in infrastructure projects. Extreme uncertainty heightens potential for labour-management disputes. The risk can easily intensify in countries with a low degree of unionisation, creating extreme operational challenges across the project life cycle. (Figure 1)

Governments, especially those relying on company-level bargaining systems, may be able to leverage investments in infrastructure to offset lower labour market resilience.

## Trade unions are part of doing business on infrastructure projects

Trade union rights offer the most effective way for a business to drive a number of related workplace rights, including those around wages, hours, health, and safety. There is also a recognised business case. For example:

- **LEGAL COMPLIANCE:** Respect for trade union rights is a legal requirement in most countries. Additional benefits would be possible for projects incorporating credible frameworks for alternative dispute resolution, such as labour-management grievance mechanisms and the National Contact Points for the OECD.
- **BUSINESS BOTTOM LINE:** project owners suffer heightened operational risks when trade union rights are not respected, including business continuity challenges resulting from labour unrest, work stoppages or preventable safety incidents. Project owners benefit from trade union frameworks that are conducive to their sustainability objectives, being a workplace of choice, including better worker retention and less turnover.
- **INFORMING DUE DILIGENCE:** Many companies rely upon industrial relations frameworks as an indispensable asset for their broader due diligence approach, providing a pathway for engagement with workers as the primary group of affected stakeholders and visibility into workplace conditions throughout the value chain.





## Frameworks ensure compliance at large projects

Business and Trade Unions are well-acquainted with fundamental practices necessary to achieve the objective of constructive industrial relations. ILO research shows the link between labour rights compliance and collective bargaining.<sup>1</sup> In 2021, trade unions observed a culture of improvement through joint inspections conducted by global union representatives and clients or main contractors. Infrastructure examples include the joint inspection work under international framework agreements between BWI and its counterparts, such as ACCIONA and BESIX.

A wide range of industries are involved in infrastructure. Development of transportation, convention centres and large sporting facilities are frequently developed with expectations placed on the enterprise with overall responsibility for the project, including that the standards be passed through to subcontracted operators over the life of the project.

<sup>1</sup> Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery. Geneva: ILO, 2022.

## SC-BWI Achievements in Qatar

As part of its *SC-BWI Joint Working Group* in Qatar, BWI has International Framework Agreements with three multinational companies (Besix, Salini Impregilio, and QDVC/ VINCI) currently operating in Qatar. The frameworks offer several Project benefits:

1. Application of labour laws, occupational safety and health, leadership development covering more than 25,000 workers.
2. Network of 35 “paralegals” trained by BWI who assist migrant workers in filing complaints over employment violations.
3. Remedy in dozens of settlements totalling an estimated 2.5 million QAR. (USD 680,000).
4. Leadership development and training for representatives of the SC’s Workers Welfare Forums and QDVC/VINCI’s Workers Welfare Committees.
5. Community Leaders Forums, direct social dialogue.
6. 16 joint health and safety inspections with the SC and 1 joint audit with QDVC/VINCI.
7. 23 pre-departure trainings for migrant workers leaving for Qatar in India and Nepal in the past three years.
8. BWI has an official member of staff based in Qatar working regularly with the ILO and MADLSA.



## Infrastructure supply chain issues raised at a National Contact Point (“NCP”)

In some cases a trade union requested NCP assistance with labour rights and due diligence issues. Enterprises who accept NCP assistance participate in good faith dialogue that often resolves the issues, while other enterprises who reject the NCP assistance foreclose the possibility of resolving the issues raised by the trade unions. Recent examples include:

- BHP Billiton, SAMARCO, and Vale (Brazil) rejected the offer of NCP assistance and dialogue. No solutions were produced, and there has been no known follow-up to several NCP recommendations on the industrial relations issues that were raised in the context of dam safety and meaningful due diligence.

- Lafarge Holcim (2019) Accepted NCP assistance but the parties did not reach an agreement.
- Heidelberg (2013) Accepted NCP assistance and dialogue resolved issues.
- Tower Semiconductor (2014) Rejected NCP assistance, unresolved issues.
- Deutsche Telekom (2011) Rejected NCP assistance, unresolved issues.
- Vinci (2017) Accepted and resolved issues.

## Project Owner owns and is accountable for Project certifications

Trade unions consider it important that the entity with ultimate leverage and control of a project be certified. For the objectives of infrastructure certification schemes, this entity is most accurately the Project Owner, who initiates the project and holds overall responsibility for the development.

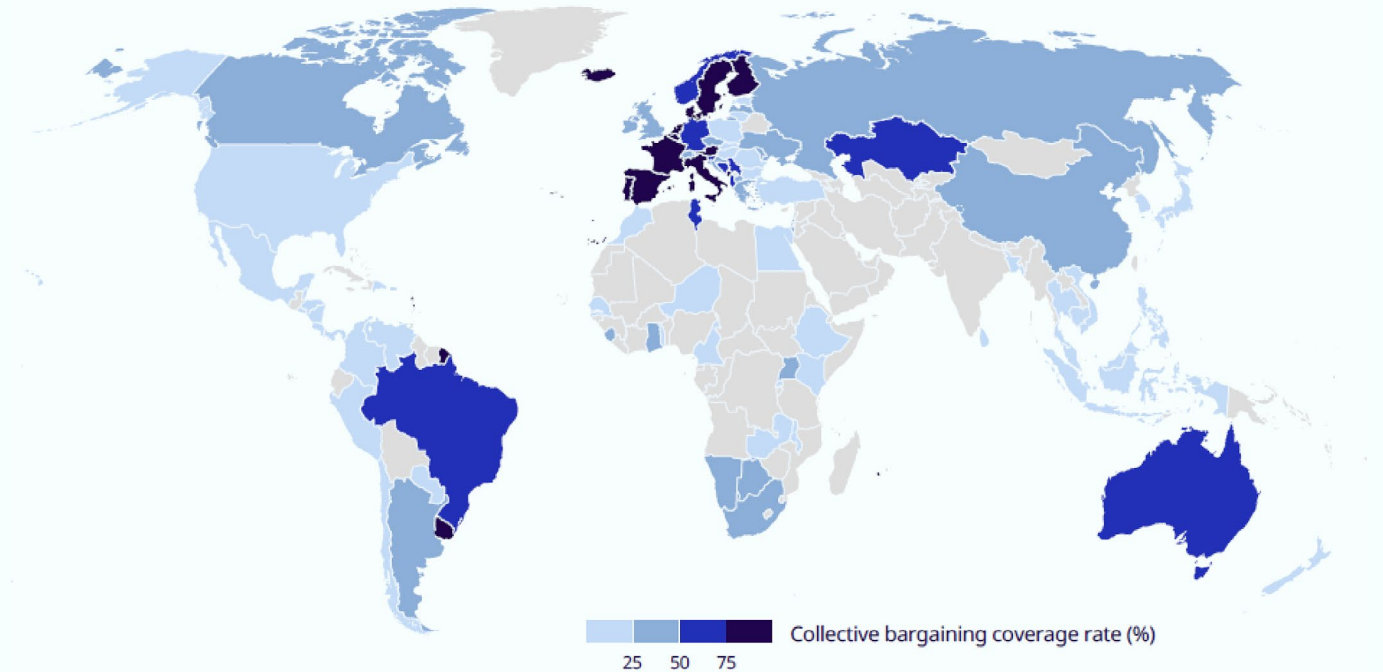
After award and financing contracts are executed, the value of certifications depreciates precipitously.

To ensure the certification is efficient and operable for infrastructure projects, it is important that the objectives are incorporated in contracts throughout the project cycle. Devoting certifications to the Project Owner allows them to be seamlessly passed through from start to finish. This begins with a transparent procurement process, complete with standard language for labour clauses, governance, and climate guarantees from the selected contractor regarding its commitment to uphold the standards of the certification. The Project Owner would use its own contracting to implement and enforce its certification to other project operators.



## Project Capacity and Resilience Varies Widely

Figure 1:  
Collective bargaining coverage around the world (percentage)



Note: Based on the latest available data for 98 countries. Countries in grey are those for which data are not available.  
Source: ILOSTAT.

TUAC and BWI anticipate several infrastructure projects in OECD and non-OECD markets over the next ten years. Labour markets vary on inclusiveness and constructive industrial relations. TUAC defines labour markets' resilience based on the level of social dialogue and bargaining in OECD governments.<sup>2</sup> ILO expands data on collective bargaining to non-OECD governments in Africa and Asia.<sup>3</sup>

Labour disagreements are more likely to occur where markets have a preponderance of fragmented or non-existent bargaining systems, which tend to be tied to lower job quality in the first place. The combined factors tend towards workers' dissatisfaction and not consensus. In this perspective, we predict heavier trade union density and wider collective bargaining have more capacity to avoid project disruptions.

- Countries with a high level of collective bargaining coverage taking place predominantly at a sectoral or national level are seen as **most resilient**;
- Countries with sectoral and/or company level bargaining and mid-range collective bargaining coverage, are seen as being **moderately resilient**;
- Countries where bargaining takes place at the company level only, are seen as **least resilient**, having limited capacity for tailored labour market solutions.

<sup>2</sup> TUAC (2022) Briefing #3: Implementing the OECD Guidelines to Achieve Global Recovery.

<sup>3</sup> Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery. Geneva: ILO, 2022.

## Consequences when Project Owners are not certified or requirements are not passed through

Subcontracted workers are more susceptible to adverse labour rights issues. A significant portion of Infrastructure project work is exposed to exploitative working conditions with conditions of forced labour. Migrant workers are a particularly vulnerable group.

Examples of this were identified on the Indian Gujarat Rural Roads Project, where migrant workers lived under bonded conditions through being held to work based on debts to subcontracted work leaders. Trade union monitoring of the Gujarat Project revealed subcontracted and migrant workers completely disconnected from the stated Project standards because the international financial institution (“IFI”) principles were not passed through from the Project owner to these illegal employment providers. Due diligence was inadequate because the workers and trade union were consistently excluded. Known risks would have been avoided had trade unions been included and their concerns taken seriously from the outset.

## ILO Code of Practice on OHS in Construction

Regarding OSH in Construction, we would suggest that an explicit reference is included on the Level 1 criteria 8.28 to implement the provisions of the ILO Code of practice on Safety and Health in Construction which is a sector-specific recommendation on OHS. The Code of Practice provides provisions that clarify the Convention 155 on Occupational Safety and Health (1981), which sets out the general responsibilities of governments, employers’ duties, and the rights of workers and their representatives on Health and Safety.

## Government Examples of Incentivising Project Implementation of the OECD Guidelines and RBC Due Diligence Standards

USA, Australia and Japan established the “Blue Dot Network” (“BDN”), which seeks to apply certifications for socially and environmentally responsible projects as a way to attract investment. The BDN identifies trade-offs between infrastructure projects and would certify project business decisions affecting workers. More information at <https://www.state.gov/blue-dot-network/>

### Europe Infrastructure

The European Union “Global Gateway” is a €300b fund with democratic values, equal partnerships and clean energy at the heart of its principles. The fact of EU governments having the highest level of bargaining coverage enables more than certifications on social impact, it enables the EU to back up its stated objective to “offer not only solid financial conditions for partners, but also promote the highest standards in environmental protection, social affairs and strategic management.” ([https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/global-gateway\\_en#sources-of-financing](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/global-gateway_en#sources-of-financing))

### Examples in Latin America and Uganda

Where the trade union has been involved in planning and monitoring processes, such as in Latin American examples, research demonstrated greater compliance to the IFI policies and international labour rights. Another example on a project in Uganda showed that there are benefits for involving the union as a stakeholder by the contractor for its expertise even before it is able to reach full membership capacity. The accumulated trade union expertise proved valuable in planning and in the frameworks on the life of the projects, which has increased project compliance.



## The Trade Union Advisory Committee to the OECD

The TUAC is informed by real-time experiences by national and global trade unions with combined representation of 300 million workers taking steps to implement the Guidelines every day.

Under the OECD Guidelines, governments are expected to establish national contact points to promote and defend responsible business. Companies are expected to undertake due diligence in order to identify, prevent, mitigate and account for how they address actual and potential adverse impact in their own operations, as well as in their global supply chains and other business relationships.

The Guidelines implementation is not optional for businesses in order to:

- Support and not oppose core labour rights;
- Increase bargaining coverage;
- Extend responsible business practices through supply chains;
- Secure jobs with retention and reemployment.

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## What we ask



The TUAC and BWI recommend **OECD Governments incorporate meaningful trade union frameworks and the NCP in infrastructure projects.**

The TUAC and BWI encourage the **ILO Code of Practice on Occupational Health and Safety** be included as part of contracts with Project Owners.



The TUAC and BWI call on **business, government and institutional investors to require evidence of compliance from Project Owners before investing capital or awarding projects.**



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**The BWI brings together trade unions representing around 12 million members in 127 countries.**  
**59 national organisations in 31 OECD member countries are affiliated to TUAC.**  
Find our affiliates [here](#).