



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

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## BWI LETTER OF COMPLAINT TO CAO

### Office of the Compliance Advisor Ombudsman

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29 May 2015

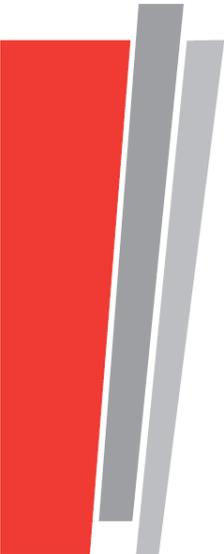
I, Apolinar Z. Tolentino, Jr. Regional Representative of the Building and Wood Workers International (BWI [www.bwint.org](http://www.bwint.org)) for Asia Pacific, lodge a complaint concerning the IFC Project Ballarpur International Graphic Paper Holdings B.V., Project No. 34602 located in Sabah state Malaysia.

*IFC is considering a potential investment consisting of debt and/or equity in Ballarpur International Graphic Paper Holdings (BIGPH), a company incorporated in the Netherlands. BIGPH owns subsidiaries which are leading pulp and paper manufacturers in India and Malaysia. BIGPH is a step-down subsidiary of Ballarpur Industries Limited ("BILT" or the "Company" and BILT together with its subsidiaries referred to as the "Group"), which is head quartered in India and is an IFC investee company (# 10066 in 2000) and (# 20798 in 2003). Part of the investment proceeds may be directed to Sabah Forest Industries (SFI), whose operations are located in Sabah state of Malaysia.*

<http://ifcextapps.ifc.org/ifcext/spiwebsite1.nsf/651aeb16abd09c1f8525797d006976ba/211853831fc6c62885257d0300705681?opendocument>

This complaint is made on behalf of Sabah Timber Industry Employees Union (STIEU), an affiliated trade union organisation to BWI. I work at BWI Asia Pacific Regional Office and can be contacted through the following address, telephone and fax numbers, and e-mail:

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This complaint is about BILT and SFI flagrant violation of IFC Performance Standard 2 on labour and working conditions, in particular clauses 13 and 14 on Workers' Organisations.

BILT Paper is said to be India's largest manufacturer of printing and writing paper. Its subsidiaries are BILT Graphic Paper Products Limited (BGPPL) reported to be India's largest printing and writing paper manufacturer; Ballarpur Industries Limited and its six manufacturing units in India and Sabah Forest Industries (SFI), located in Sipitang, Sabah, Malaysia.

<http://sabahforest.en.gongchang.com/abouthttps://www.google.com/maps/place/Sabah+Forest+Industries+Sdn.+Bhd./@5.021863,115.580635,13z/data=!4m2!3m1!1s0x0:0x3a6019650044c50>

Since 1998 the employees of SFI have been struggling to form a trade union of their own choosing but SFI management has so far succeeded in busting the union through legal maneuverings particularly through the use of Judicial Reviews.

While employees at BILT Graphic Paper Products Limited, Ballarpur Unit and Ashti Unit are accorded rights to self-organisation of their own choosing, BILT has tolerated SFI anti-union policy and practice to suppress its workers' right to form union of their own choosing.

BILT management is practicing double standards on compliance with ILO core conventions, namely Convention 87 on Freedom of Association and Convention 98 on Collective Bargaining. On one hand, it allows workers in BILT plants in India to form unions; while on the other hand, it is heavily suppressing SFI employees in their efforts to form a union of their own choosing.

The BWI has met SFI management representatives to reason that it is in the best interest of SFI business to adhere to Malaysian national Labour laws and ILO Conventions 87 and 98. However, the management representatives insisted that they will only recognise an "in-house union".

Attempts were also made to dialogue with BILT Chief Executive Officer to explain that SFI management public insistence to promote recognition of an in-house union is a direct violation of Malaysian national labour laws and ILO Conventions 87 and 98 but BILT refused to meet with the BWI delegation.

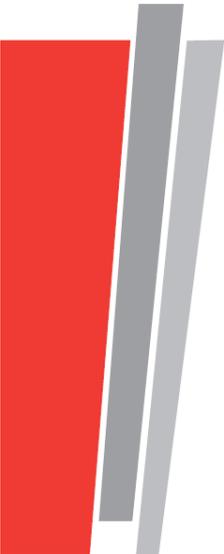
At the end of August 2014, we submitted a Communication to IFC about the BILT and SFI violation of IFC Performance Standard 2; this was duly acknowledged by [REDACTED] IFC, Environment and Social Development Department, Policy and Quality Assurance via email dated 26<sup>th</sup> August 2014.

On 9<sup>th</sup> September 2014, we sent another email to [REDACTED] about the impending approval of BILT/SFI loan and pointed out the misrepresentation of the industrial dispute in the ERM Report where it practically endorsed the SFI-initiated Joint Consultative Committee as "an alternative workers organisation where employees grievances will be addressed".

In the same email, we have referred to the latest Project Overview in the IFC website. It stated: There is an ongoing litigation since 1998 in relation to formation of a union at SFI, which remains a key concern of the workers. While in the interim a joint consultative committee has been set up, SFI has committed to not opposing formation of a union and will undertake steps to facilitate union formation.

In her email dated 11<sup>th</sup> September [REDACTED] commented:

*To clarify the confusion with respect to the JCC, this was not intended to be a substitute for*



*a union. It was created as an interim means to remain engaged with workers and to receive worker grievances while a union was being constituted, but was unsuccessful due to lack of participation by employees. Further, a traditional grievance mechanism has been established, independently of the government-managed union formation process, which the Company is upgrading in line with PS2 provisions.*

*We hope that this information helps clarify the current situation. We remain open to continuing this conversation, and look forward to seeing sustained progress with the union formation process currently underway at SFI.*

There were further exchanges of emails on this matter dated 12<sup>th</sup> and 23<sup>rd</sup> September 2014 until the communication between us and IFC Washington Office became dormant except for the IFC mission to SFI in November.

In November 2014, the IFC dispatched a team composed of [REDACTED] and [REDACTED]. They met with the SFI management and with the leadership of STIEU. The STIEU has documented the minutes of the meeting with IFC team on 25<sup>th</sup> November.

In the absence of any communication from IFC Washington Office, I called the attention of [REDACTED] through my email dated 6<sup>th</sup> March 2015. At the same time, we reported another infringement of IFC Performance Standard 2 by SFI management when it issued a Circular to All STIEU employees that it “supports the employees of SFI to form and register an in-house union and thereafter submit the relevant documents for recognition”.

The date of the email is highly suspect as an attempt to depict a different industrial policy and practice since the circular was issued just a few weeks before the scheduled visit of IFC representatives [REDACTED] and [REDACTED].

This Memo both violates IFC Performance Standard 2 clauses on Workers’ Organisations and Malaysian Industrial Relations Act of 1967, which state:

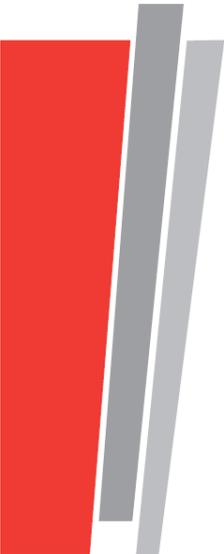
### **Performance Standard 2**

*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.*

### **Malaysian Industrial Relations Act: Rights of workmen and employers**

4. (1) No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and to participate in its lawful activities.



This section 4(1) of the Industrial Relation Act 1967, is crystal clear in indicating that employees have their right to form and assist in the formation of and join a trade union and to participate in its lawful activities without interference of other persons. There is nothing in the law saying that a workman can only join or form “to an in-house union whose membership is open exclusively to all eligible employees of SFI”.

In the same email, we appealed to IFC to clearly direct SFI to comply with Performance Standard 2. Without a strong indication to SFI to comply with Performance Standard 2, it will continue its anti-union industry policy and practice and will leave us no other option but to opt for other redress mechanisms.

On 6<sup>th</sup> March 2015 we called the attention of IFC to the status of our case and a conference call between IFC – [REDACTED] and [REDACTED] and myself took place on 31 March 2015. Mr. Peter Bakvis, from the International Trade Union Confederation, facilitated the conference call.

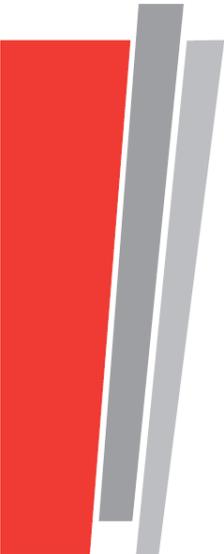
In the conference call we mainly reiterated the documented violations of BILT and SFI on IFC Performance Standard 2; while IFC indicated that would send another mission sometime in last week of April. The BWI expressed its wish to be directly involved in this mission.

Last 29<sup>th</sup> April the BWI and STIEU leaders met with IFC Representatives - [REDACTED] Social Development Specialist; [REDACTED] [REDACTED] [REDACTED] Principal Environmentalist, Environment, Social and Government Department; and [REDACTED] Investment Analyst, Manufacturing, Agribusiness and Services in SFI complex. During the meeting, we informed the IFC team that on 27<sup>th</sup> April a meeting had been convened by the Sabah Industrial Relation Department to make a final list of employees eligible to vote and set the date of secret ballot voting. Sabah Forest Industry (SFI) management representatives declared that it was in the process of filing a Judicial Review against the Minister of Human of Resources Order on the scope of representation.

This very alarming information was urgently conveyed to the IFC team with the intent to persuade SFI to exhaust the Ministry of Human Resource-led transparent and due legal process that would lead workers to participate in secret ballot for recognition of STIEU.

In particular, we appealed to the IFC team to exert its mandate to compel SFI to adhere to Performance Standard 2 by reminding its client that:

- a. In adhering to IFC Performance Standard 2 and with the government-led transparent and due legal process leading to recognition of union without imposition and limitation, SFI must exhaust all possible measures available within the Ministry of Human Resources in relation to its Order dated 3rd April 2015. The order is in reference to the scope of employees eligible to vote in the secret ballot. It should avoid resorting to a very tedious, expensive and politically sensitive legal process of Judicial Review.
- b. The SFI is the source of the list of non-managerial, non-executive, confidential and security guard employees submitted to IRD. As such in relation to item number 1 above, SFI must exert all efforts available within the ambit of MHR on the scope of eligibility of employees to vote leading conduct of secret ballot. SFI should refrain from filing a Judicial Review as a pretext to avoid compliance with due process and legality of recognition of STIEU.



On 14<sup>th</sup> May our prediction became a catastrophic reality when SFI officially filed its 3<sup>rd</sup> Judicial Review. The filing of Judicial Review practically killed the Ministry of Human Resources-led process that is supposedly to lead to conduct of secret ballot election for STIEU recognition.

Also, we have documented last 12th May 2015, [REDACTED], GM for HRD summoned and dressed down [REDACTED], an executive employee, who has extended support to STIEU. During the meeting at his office [REDACTED] arrogantly stated that SFI will never recognise STIEU to represent the employees as indicated in the SFI COO Memo dated 7th November.

At the same time, we have good reasons to believe that SFI is instigating some employees to file case against STIEU leaders before the Trade Union Activities Department. This is, obviously, to sow division among members and harass the leaders.

All these manifestations, once again, indicated that SFI has no intention to go through the process of allowing its employees to exercise their right to join union of their own choosing as required by IFC PS2 as well as based on government-led transparent and legal process within the purview of Ministry of Human Resources. Time and again, it demonstrated that SFI is only pretending that is adhering to the advice of IFC to immediately initiate measures to have its industrial policies align to IFC PS2. The company is simply making a mockery of our good intentions to have the issue resolved in an amicable manner.

I would like to see this complaint resolved in such a manner that BILT and SFI must immediately demonstrate compliance to IFC Performance Standards 2 and should:

1. Cease and desist from harassing STIEU and reviving the defunct Sabah Forest Industries Employees Union and declaring that it will only recognise an in-house union.
2. Withdraw the Judicial Review it filed in Sabah High Court and revert to Ministry of Human Resources-led process that will lead to holding of secret ballot to determine STIEU recognition.
3. Allow the conduct of secret ballot election without further delay and agree to have IFC, BWI and Forest Stewardship Council (FSC) and Malaysian Trade Union Congress (MTUC) as official observers of the conduct of secret ballot.
4. Respect the results of election by refraining from filing a Judicial Review.

Respectfully yours,



**Apolinar Z. Tolentino, Jr.**  
Regional Representative  
BWI Asia Pacific