Businesses Operating in Weak Governance Economies: Trade Union Rights

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I. Introduction: OECD Policy Brief No. 23 – Corporate Governance in Developing, Transition and Emerging-Market Economies

The East Asian financial crisis of 1997-1998 and the Russian and Brazilian crises that occurred shortly thereafter brought to light the importance of strengthening corporate governance in emerging market economies. The ultimate goal is to convert a closed, market-unfriendly, and undemocratic economy based on relationships to an open, market-friendly, and democratic economy based on rules. Corporate governance simply entails the rules governing relationships between individuals who manage a corporation and those who invest in the corporation. Those rules ensure that a corporation complies with universal standards of corporate behaviors.

There are three universal purposes to corporate governance: 1) to implement incentives for corporate managers to increase a corporation's performance; 2) to limit corporate managers' self-interested actions that are harmful to the corporation; and 3) to monitor and ensure that corporate managers are accountable for their behaviors and to employ reasonable protection for investors. Widespread dilemmas for investors or creditors in transition markets include cronyism and/or weak judicial systems. Because of the weak legal system, it is difficult for investors to properly enforce contracts they make with emerging-market economies. Another problem with emerging-market economies is that corporate assets are often controlled by a concentrated group of individuals, who, in turn, control the managers. To further exacerbate the problem of concentrated ownership, corporations also own shares amongst each other. Thus, asset ownership is further concentrated to a smaller number of individuals. It is the minority shareholders, which includes foreign investors, who end up bearing the impact of this concentrated and cross-ownership problem because the "inside" investors expropriate corporate assets to the detriment of the minority shareholders and the corporation.

Transitioning from state-owned businesses to privately-owned businesses alleviates some of the problems of concentrated and cross-ownerships. However, it is not enough. Emerging-market economies should establish institutions of corporate governance to encourage companies to take actions that are beneficial to society. Corporate governance gives corporations the rights and the means to earn profits in ways that are beneficial to society. Simply, the more incentives corporate governance gives to corporations to act nobly, the higher the chances that these corporations will act nobly. One significant way to improve corporate governance is to bring in investors from OECD-member nations. Another important method of improving corporate governance is to create domestic pension funds. Corporate governance, however, is not without its obstacles. There is still the problem with interested groups that try to monopolize assets of a corporation, and thus, in essence its power structures. In such a system, there is less accountability for corporate actions, which leads to weak corporate governance that is based on relationships (i.e. cronyism), and not rules.

To be successful in implementing the institutions of corporate governance, policymakers and regulators must examine the interactions between political governance and corporate governance. Improved governance is not the answer to all the problems of a developing country. It is equally important to pay special attention to improving a country's financial institutions, its competition policy, and rules and regulations of specific sectors. Below are some examples of the status of emerging-market nations.

II. Angola: ICFTU – Internationally Recognized Core Labor Standards in Angola: Report for the WTO General Council Review of the Trade Policies of Angola

Angola is a nation that relies primarily on oil and diamonds for revenue. Most Angolans live in rural areas and survive on subsistence farming. As of February, 2006, Angola has ratified all eight core ILO labor Conventions. In theory, Convention No. 87 (Freedom of Association and Protection of the Right to Organize and Convention No. 98 (Right to Organize and Collective Bargaining) allow Angolan employees to form and join trade unions. However, they must first seek government permission to do so. Although employers are not allowed to discriminate against union members and it is still an idea that is not enforced. For example, in February, 2004, management refused to acknowledge a trade union formed and joined by 1,000 employees at a subsidiary of Chevron Texaco. Furthermore, the government often fixes wages and benefits by consulting, but not negotiating with unions.

If workers want to strike, two-thirds of their fellow employees must agree in order for a strike to be effective. In addition, there are no laws against employers who retaliate against striking employees. Angola further restricts striking by not allowing certain types of employees to strike, and it also imposes sanctions on employees who have gone on strike without permission or proper procedures. Angola is revising its Strike Act to comport with international standards. In general, there is widespread corruption in Angola, and without the government’s blessings, any action taken by a union is ineffective.

Convention No. 29 and Convention No. 105 prohibit forced labor. However, forced labor is still widespread in Angola, and women and children are trafficked for the purpose of forced labor or forced prostitution. Angola does not have laws against trafficking.

III. Burma: ICFTU – Annual Survey of Violations of Trade Union Rights (2006)

Trade unions are banned in Burma, which lead independent trade unionists to work underground. In recent news, ten independent trade unionists were arrested, and sentenced from three to twenty-five years in prison. One died after five months incarceration. Ten villagers were kidnapped and forced to work for the army. Garment factory employees on strike were arrested, and one leader in the agriculture industry was killed.

Burma laws require a single trade union system, which is contrary to the ILO Labor Conventions, which allow workers to organize at their own choosing. Although Burma has several laws regarding trade unions, it is unclear which law applies, and in practice, unionists face violence by the authorities, who view them as treasonous. Because Burma has banned all trade unions, its government has created and forced employees to join the Union Solidarity and Development Association (USDA). Although the government has set up committees for workers to discuss their grievances, employees are not allowed to go on strike or to demonstrate.

The Federation of Trade Unions-Burma (FTUB) is an independent trade union that has worked underground since 1991. Members of FTUB caught by the government are sentenced to life imprisonment or to death. The government has denounced FTUB as an “expatriate terrorist gang,” and accused the ICFTU of assisting the FTUB in terrorism. On August 28, 2005, the Burmese government officially declared the FTUB as illegal under section 15(2) of Burma’s Unlawful Associations Act.

IV. Colombia: ICFTU – Annual Survey of Violations of Trade Union Rights (2006)

In recent news, seventy trade unionists were murdered. Harassment against trade unionists has continued to increase, and the Colombian legal system is not effective in enforcing laws to protect trade unionists. In theory, trade unionists are allowed to organize and manage their own activities. Although the Colombian Constitution allows workers to strike, Colombian statutes banning strikes still remain in force. Trade unionists who strike illegally can be immediately dismissed. Trade unionists who strike legally can also be dismissed after six months. The rights of public sector employees to strike or to bargain collectively are severely limited. In 2004, Colombia revised its laws to increase working hours and to decrease wages.

It is reported that over 90% of violence against trade unionists are not prosecuted because of the lack of investigation on the part of the government. There is evidence, however, that the government is taking steps to protect at-risk trade unionists by providing them with bodyguards and mobile phones. Although statistics show that there is a decrease in general violence against trade unionists, statistics also show that there is an increase in harassment, persecution, and abductions. In particular, violence against female trade unionists has increased by 34.86% from 2004 to 2005. In addition, efforts by trade unions to engage in collective bargaining are also undermined by the government.

V. Congo: Annual Survey of Violations of Trade Union Rights (2006)

In theory, Congo's laws regarding labor standards mirror international labor standards. In practice, its government has interfered with union affairs by arresting union members during a teachers' strike. Before union members can go on strike, they must notify the Ministry of Labor. If they fail to give notice, employers can fire them. Unpaid wages remain a significant problem for unions. However, on December 31, 2005 Congo did increase employees' wages. Union members have been discriminated against and dismissed from their jobs due to union-related activities. Furthermore, very little collective bargaining has taken place as a result of a civil war. In 2005, eight trade union representatives were arrested for "stirring up trouble."

VI. East Timor: MUA Support Trade Unions in East Timor

The MUA is supporting trade unions in East Timor. East Timorese are still generally inexperienced about their labor rights, and in particular, they do not have essential experience in unionizing. East Timor needs to revamp its labor code to establish minimum wages, and health and safety standards. The Konfederasaun Sindicatu Timor Lorosa'e (KSTL) was established on February 27, 2001 to represent workers' interests. The KSTL is supported by the MUA, and it is becoming a "strong and self-sustaining union movement."

VII. Liberia: ICFTU – Annual Survey of Violations of Trade Union Rights (2006)

The government interfered with the activities of the Liberia Federation of Labor Unions (LFLU) and tried to remove its leaders. Public servants are not allowed to join trade unions or to strike in Liberia. Even if employees are allowed to join unions, there are not laws that forbid discrimination against union members. Liberian laws do not allow employees to strike without obtaining a permit from the government. To further exacerbate employment conditions, the government has formed agreements with employers who exploit workers. Liberia has promised to enact legislations that do not contravene the ILO Labor Conventions. It is also expected that the election in November will result in a leader who will be more perceptive to trade union rights.