International Trade Union Confederation submission on the Business Enabling Environment pre-concept note

The trade union movement expresses grave concern on the relaunching of the World Bank's Doing Business Report as the Business Enabling Environment report. The proposal for the new report includes a labour indicator that promotes deregulation and an oversimplified view of the world of work, as well as a tax indicator that undermines contributory social protection systems and progress on corporate taxation.

Balanced labour regulations have benefits for all, including workers, employers, and societies. The World Bank has termed this 'jobs-linked externalities'. Labour policymaking matters for the macroeconomy and sustainable development, going far beyond the scope of the business environment report that will inevitably reduce the consideration of labour to its utilisation as an input for business regardless of the wider policy implications. Simply put, it does not belong in this report.

The Doing Business Report was ended in 2021 for catastrophic data manipulation, after years of controversy and promoting damaging policies, with severe repercussion to labour markets and workers around the world. An independent investigation commissioned by the Bank demonstrated how insecure, fixed-term employment contracts in the unit responsible for the report enabled workplace intimidation that kept the malfeasance from coming to light. This is ironic considering Doing Business promoted deregulation of employment contracts and dismissals at the national level. Undoubtedly, this enabled violations to occur in many workplaces globally while fostering precarious employment and inequality that undermined the Bank's goals of shared prosperity and poverty elimination, as well as the Sustainable Development Goals.

We further question the rebranding of Doing Business as the Business Enabling Environment report without changing the flawed assumption of the old report: what is good for business is automatically good for all and for development. A core problem of Doing Business was the use of the Bank's influence to universally promote a set of deregulatory reforms regardless of country context. In the pre-concept note, the first aim is "advocate for policy reform" and the rankings approach will continue. The indexing approach was a central issue, and it is unadvisable to continue in this direction.

The task of creating jobs and fostering decent work for sustainable development should not be subordinated to promoting policies desired by business. The approach in the pre-concept note is mostly focused on balancing the needs individual firms with broader private sector development. The Bank's Country Private Sector Diagnostics would be a more useful direction to pursue. With further work on methodology for the jobs and inclusion element to include job quality and income effects, and measures to avoid harming access to education and health through privatisation, the Diagnostics could be part of the Bank promoting productive investment in the real economy, policies for diversification, and creation of quality jobs.

The angle of approach of the Bank should shift from benefitting the business environment for its own sake to creating business environments that deliver for sustainable development and tackling the issue of financialization, which can drive inequality and hamper the business environment by trapping capital in speculation rather than expanding access to credit for firms. The Bank's 2019/2020 Global Investment Competitiveness Report and the OECD FDI Qualities Indicators point in the direction of thinking about the enabling environment that is needed more broadly to ensure that private sector growth converts to the Bank's goals.[1]

The Competitiveness Report acknowledged that despite potential positive contributions to aggregate employment and demand, foreign investment can drive inequality, only benefit some workers, and in some cases did not reduce poverty. The report therefore recommended "Improve bargaining power and knowledge spillovers for workers by enforcing sufficient labor standards and supporting labor representation." Contrary to the approach of reducing regulations to attract investment and therefore create jobs, an ineffective approach that was at the heart of Doing Business and its usage by policymakers, the Competitiveness Report argues "the best way to ensure inclusive growth is to *complement* investment policy with progressive labor market policies."

Although the pre-concept note makes statements about balancing the needs of firms with the interests of workers, this is not reflected in the substance. Moreover, the balance in consists of references to social protection and labour rights alongside the support for reducing regulations that protect workers. There should be no content that will erode workers' rights and economic security, actions that have negative consequences when the evidence is examined beyond the rhetoric of regulatory burdens.

Labour market policy should be dealt with separately from the business environment by the Bank, and like gender be removed from the purview. Further, a labour indicator does not meet the proposal's criteria of adding value, given the de jure and de facto information already gathered by the ILO in terms of statistics and the supervisory mechanisms on international labour standards, as well as data gathering under Sustainable Development Goal 8. It is complicated and unnecessary to create a new indicator to span a variety of national contexts, including for countries that are not Bank borrowers.

The current task of the Bank should be strengthening cooperation with the ILO and social partners to help close decent work gaps and achieve sustainable, job-rich development. Part of this must include repairing the damage from the Doing Business labour indicator and broader measures to deregulate labour markets. Rising levels of precarious and non-standard employment, together with extensive technological and other changes grouped under 'the future of work', requires the same task of adopting and implementing effective protections and policies.[2] The co-director of the 2019 World Development Report on the changing world of work was Doing Business co-founder Simeon Djankov. By repeating the same logic as Doing Business, it did not make a useful contribution – in contrast to the 2013 edition that moved the Bank beyond the simplistic and blindly pro-business approach.[3] Deregulation and flexibilisation have

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[1] OECD, FDI Qualities Indicators: Measuring the sustainable development impacts of investment, 2019, <https://www.oecd.org/fr/investissement/fdi-qualities-indicators.htm>.
World Bank, "Global Investment Competitiveness Report 2019/2020 : Rebuilding investor confidence in times of uncertainty", <https://openknowledge.worldbank.org/handle/10986/33808>.

[2] See, for. e.g.: Rubery, Re-regulating for inclusive labour markets, Conditions of Work and Employment Series No. 65, ILO, 2015, <https://www.ilo.org/travail/info/publications/WCMS_428981/lang--en/index.htm>.
Berg, Addressing the challenge of non-standard employment, World Bank Jobs and Development Blog, 2017, <https://blogs.worldbank.org/jobs/addressing-challenge-non-standard-employment>.

[3] Anner, Pons-Vignon & Rani, "For a future of work with dignity: A critique of the World Bank Development Report, The Changing Nature of Work", Global Labour Journal, Volume 10, No.1, 2019, <https://doi.org/10.15173/glj.v10i1.3796>.
ITUC, "World Bank's World Development Report 2019: World Bank's unhelpful contribution to debate on the future of work", 2018, <https://www.ituc-csi.org/world-bank-s-world-development>.

not helped countries nor workers in the global economic changes of recent decades. It is time to forge a new path that recognises the development impact of strong labour market institutions and worker protections.[4]

The Employing Workers Indicator, itself a rebranding of the original ease of hiring and firing indicator, was removed from the Doing Business indicators in 2009 because its methodology was deeply flawed and it contributed to a downward spiral in policymaking, with negative effects for workers, employers, and development alike. The Bank's president stated in 2020 that "we will no longer collect labor data for, or include data in, the Doing Business data set". The Bank then separated the Employing Workers Indicator from Doing Business and preserved its existence as an independent project despite its serious flaws.[5] ITUC calls for a full end to the Employing Workers Indicator, with neither reincorporation into the new report nor continuing operation as a standalone project.

The proposed labour section of the new Business Enabling Environment report still contains the approach of the Employing Workers Indicator, with its advocacy of drastically reducing hiring and dismissal rules, as the core of a new labour indicator. The proposal states that "Many studies point to the association between rigid labor market regulation and higher levels of unemployment (especially among vulnerable groups) and informality, along with reduced levels of productivity and economic growth". This claim relies on a highly selective and partial survey of evidence, much of it outdated, and does not reflect the conclusions of comprehensive surveys of the literature and evidence that finds an overall effect close to zero.[6]

The conclusion is also at odds with the Bank's own ground-breaking World Development Report 2013 on Jobs and other research showing that the employment effects are minimal and regulations can be set alongside a plateau avoiding extremely high or low levels. This reality is not suited to the ranking approach, and labour market policy is best set through social dialogue among governments, workers, and employers based upon the development, decent work, and inclusive growth challenges of a country.

We note the pointed omission of the ILO with regards to developing the indicator on hiring, dismissals, and scheduling: "This indicator will build on OECD, IMF, and World Bank research on labor market flexibility". It is also important to note that in recent years the OECD Jobs Strategy has emphasized security, stability, closing loopholes, and addressing disguised employment. The 2018 edition was a reappraisal of flexibility on the basis that "countries with policies and institutions that promote job quality, job quantity and greater inclusiveness perform better than countries where the focus of policy is

[4] Storm & Capaldo, "Labor institutions and development under globalization", Institute for New Economic Thinking Working Paper Series No. 76, 2019 <https://www.ineteconomics.org/uploads/papers/WP_76-revised-Storm_Capaldo.pdf>.

[5] This is acknowledged in the pre-concept note: "Over 10 years ago it was removed from the aggregate rankings, while the data continued to be collected and included as an Annex. In 2020 it was made a standalone project: www.worldbank.org/employing-workers."

[6] Heimberger,"Does employment protection affect unemployment? A meta-analysis", Oxford Economic Papers, Volume 73, Issue 3, July 2021, <https://doi.org/10.1093/oep/gpaa037>.
Betcherman, Gordon, Labor Market Institutions: A review of the literature, World Bank Policy Research Working Paper No. 6276, 2012 <https://ssrn.com/abstract=2181285>.
Storm & Naastepad, "Why labour market regulation may pay off : Worker motivation, co-ordination and productivity growth", 2007, <https://www.ilo.org/empelm/pubs/WCMS_113903/lang--en/index.htm>.

predominantly on enhancing (or preserving) market flexibility." The Strategy underwent a significant shift from the 1990s to today, reflecting the problems associated with labour market deregulation. [7]

Both the ILO and OECD have focused on ensuring protections for all workers regardless of employment status. This is among the priority action areas that are not best served by including labour in a report offering business climate rankings. Like gender and other broader topics, labour is best addressed elsewhere. The need for labour to be handled separately from Doing Business has been long established. This includes the recommendations of the 2013 Independent Panel Review to handle labour market policies separately.[8] The 2013 recommendations were never fully implemented, and the 2021 External Review Panel endorsed a proposal from the Doing Business team to reintroduce the subject. As with the pre-concept note, this proposal was based on an incomplete evidence based and an inaccurate portrayal of the effects of labour regulations. However, we note that the pre-concept note appears to ignore the 2021 External Review Panel recommendation to not include labour or taxes in overall rankings.

The proposal for the Business Enabling Environment advocates for the false and failed promise of low labour market deregulation offset by social protection systems, the so-called flexicurity model. It is an imprecise term based upon inaccurate portrayals of policy in some Nordic countries, including on the process for dismissals. Flexicurity has served as a battering ram for deregulation, or at best muddied the waters of policy discussions.[9] Both social protection and labour market regulations have distinct and complementary functions. An approach of substituting improvements in one area for cuts in another is a dead-end that takes important policies off the table. This has serious consequences for workers, labour markets, and inclusive growth.[10] Measures for real flexibility, such as investing in the care economy and paid leave policies, can be combined with effective labour regulations that reduce discrimination and provide security, plus social protection for resilience toward individual and overall shocks.

The evidence-based and nuanced approach of the 2013 World Development Report undergirded the development of the *Balancing Regulations to Promote Jobs* by the Bank and ILO, with extensive input from workers' and employers' organizations.[11] The irreplaceable functions and importance of various regulations were recognised, with reasonable attention gave to all considerations. This productive

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[7] Evans and Spriggs, "The great reversal: The story of how an influential international organization changed its view on employment security, labor market flexibility, and collective bargaining", Economic Policy Institute, 2022, <https://www.epi.org/unequalpower/publications/workers-and-economists-oecd/>.
On the problems see, for e.g.: Liotti, Labour Market Regulation and Youth Unemployment in the EU-28 <https://link.springer.com/article/10.1007/s40797-021-00154-3>.

[8] Independent Panel Review of the Doing Business Report, 2013, <https://thedocs.worldbank.org/en/doc/237121516384849082-0050022018/original/doingbusinessreviewpanelreportJune2013.pdf>

[9] Burroni and Keune, "Flexicurity: A conceptual critique", European Journal of Industrial Relations, Vol 17, Issue 1, 2011, <https://journals.sagepub.com/doi/10.1177/0959680110393189>.
Janssen, "Flexicurity: The model that never was", Social Europe Journal, 2013, <http://gesd.free.fr/flexijan.pdf>.
Viebrock & Clasen, "Flexicurity – a state-of-the art review", Working Papers on the Reconciliation of Work and Welfare in Europe, 2015 <http://old.adapt.it/adapt-indice-a-z/wp-content/uploads/2015/01/viebroc_lasen.pdf>.

[10] Shahidi et. al., "Do flexicurity policies protect workers from the adverse health consequences of temporary employment? A cross-national comparative analysis", Population Health, Volume 2, December 2016, <https://doi.org/10.1016/j.ssmph.2016.09.005>.

[11] World Bank, "Balancing regulations to promote jobs: From employment contracts to unemployment benefits", 2015, <http://hdl.handle.net/10986/23324>.

research and dialogue made clear that balanced regulations are key to creating decent jobs, transitions from the informal to the formal economy, productivity with shared prosperity, and access to the labour market for groups suffering discrimination and barriers. These challenges are often exacerbated by deregulation, leading to more discrimination and greater occupational segregation into lower-paid and less secure jobs. It also leads to the proliferation of precarious employment contracts.

It is worth recalling the forward to *Balancing Regulations,* which establishes why dialogue is crucial to make responsive, contextual and evidence-based policies for SDG 8 rather than a simplistic prescription for all situations, promoted by rankings:

> This report offers guidelines to design, implement, and reform labor market regulations in four areas: employment contracts, minimum wages, dismissal procedures, and income protection for the unemployed. It shows that, while there is no 'one size fits all' blueprint for reform, there are some general principles that can help improve the design of labor laws and their implementation. The report also underscores the importance of dialogue between representatives of employers and workers as well as other major stakeholders. Significantly, this report reflects a shared vision between the ILO and the World Bank Group to promote policies that encourage job creation and protect workers. This has been possible thanks to the commitment of both institutions to focus on the lessons derived from rigorous research and international experiences. We hope this report will inform countries' paths to achieve the Global Goal to promote inclusive economic growth, employment, and decent work for all.

The introduction to the report further states:

> Beyond some of these general principles, however, there is no overall blueprint to design or adapt labor regulations. Rather, there are different reform paths that depend on country characteristics and are shaped by social, political, economic, and historical circumstances combined with different legal traditions. A recommendation is to reform labor regulations in a systematic and comprehensive manner. In the past, several countries narrowly focused on selected labor regulations without considering the complexity of effects on the labor market.

Such considerations are not reducible to a ranking and indicators, even with an added patina of referencing labour rights and social dialogue. The latter is mentioned in the introduction to the labour section of the pre-concept note but there is nothing further related to social dialogue nor resolution of collective labour disputes in the text. The idea of 'availability of minimum wage' is also unclear, and the approach to selecting some of the core labour standards while omitting forced and child labour is likewise not explained.

Instead of including a labour indicator in the Business Enabling Environment report, the Bank should implement *Balancing Regulations* as a manual for staff. The approach of seeking balance and creating guidance based on input from the ILO and social partners can be replicated for other labour and social protection policy areas, such as promoting skills, active labour market policies, collective bargaining, and inspectorates, and eliminating forced and child labour. All of this would support comprehensive labour policymaking by countries. Transitions from the informal to the formal economy are among the central tasks in the world of work, and an area where additional World Bank support would be beneficial if based upon the interlocking and comprehensive approach of ILO Recommendation 204. This Recommendation is illustrative of how the reductive rankings approach is not appropriate for driving improvements that require comprehensive policymaking involving social partners, particularly job creation in the recovery from the pandemic.

We wish to draw attention to the contradictions and limits in the proposed data gathering. There is a heavy reliance on labour lawyers for social protection, public employment services, individual labour dispute resolution, discrimination, and flexibility of hiring and dismissals. The pre-concept note does not acknowledge that the overwhelming majority of who would be providing input under such a system would be employer-side firms and lawyers with their own biases, agendas, motivations, and functions including defending firms when they engage in wage theft, discrimination, or other violations. It is acknowledged that firm responses are not reliable with regards to some of these topics including discrimination, but it is uncritically accepted that the law firms serving them will provide a more neutral point of view. Firms will, however, provide information on working hours, non-wage costs, and inspections. These are areas in which firms routinely violate the law in many countries, and are therefore not a reliable source of unbiased or accurate information. The proposal to rely on firms and their advisory firms makes clear that the central focus of the report is pro-business policy, regardless of some mentions of worker interests and rights.

There are high levels of complexity in analysing de jure and de facto labour laws, regulations, and programmes. Neither the data collection, preliminary approach, nor the arguments for including labour in the Business Enabling Environment report account for these challenges, and so the intervention is regrettably destined to be counterproductive. This is doubly true if a labour indicator becomes part of an aggregate ranking.

The trade union movement remains open and eager to work with the Bank on labour and social protection, outside of the framework of Business Enabling Environment proposal.

Finally, it is surprising that the proposal for a Business Enabling Environment report clings to the total tax and contribution rate, an approach developed by PwC for the purposes of political advocacy in favour of lower taxes. The proposed changes do not address the fundamental problem that the methodology is not coherent in combining business taxes and contributions to social protection programmes. The proposal is to count 50 per cent of social contributions, despite acknowledging that the share borne by business and workers varies. Once again, this complex topic should be removed from a report that is about ranking the business climate, and be dealt with separately based on national context, input of workers' and employers' organisations, and a variety of considerations including the achievement of universal social protection in determining the cost sharing and level of contributions.

Using the total rate will be a barrier to progress on financing social protection and the nascent progress on international corporate taxation. In the pre-concept note, the inclusion of the total tax and contribution rate is at odds with social protection being included in the labour section. Financing universal social protection including floors will require a mix of employer contributions and general revenue, including corporate and progressive taxation.

For additional commentary on this subject and the legacy of the Employing Workers Indicator, we refer to our input to the 2021 external review panel.