



Revised draft of World Bank’s proposed labour safeguard (released August 2015): Improved but flaws remain

In early August 2015 the World Bank made public a second, revised draft of its proposed *Environmental and Social Framework*, commonly known as safeguards. The Bank’s safeguards have existed, in some areas, for over two decades and stipulate the basic standards that Bank-funded projects must meet in matters such as pollution prevention, community health and safety, land acquisition and involuntary resettlement, natural resources management and indigenous peoples’ rights.

However the social and environmental standards of the World Bank’s public-sector branches, IBRD and IDA, have up to now not included a labour safeguard, despite the existence of such a standard at the Bank’s private-sector lending arm, IFC, and at two regional development banks, the African Development Bank (AfDB) and the European Bank for Reconstruction and Development (EBRD). The World Bank proposed for the first time to include a labour safeguard in the draft *Environmental and Social Framework* that was released in July 2014. It was given the name “Environmental and Social Standard 2: Labor and Working Conditions” (ESS 2).

While welcoming the World Bank’s intention to adopt a comprehensive labour safeguard, the ITUC, national and other international trade union bodies, civil society organizations and several governments criticized the first draft of ESS 2 for its serious shortcomings. Their criticisms were expressed during extensive consultations on the draft safeguards policy that the World Bank carried out between September 2014 and March 2015; some parties also formulated their analyses and recommendations regarding ESS 2 in writing, including the ITUC.¹

The main criticisms expressed by the ITUC and others who commented on the draft ESS 2 of July 2014 were the unwarranted exemption from safeguard coverage for contracted workers, public servants (except for some limited provisions) and supply-chain workers; the absence of any reference to ILO conventions and standards; and the lack of a requirement for compliance with all of the core labour standards, notably as regards freedom of association and right to collective bargaining, in Bank-financed projects without exemption. Other criticisms concerned the lack of a requirement that written information be provided to workers about their conditions of employment and the undue discretion given to the borrower to determine which requirements

¹ “Major weaknesses in World Bank’s draft labour safeguard”, ITUC, 3 September 2014: http://www.ituc-csi.org/IMG/pdf/ess2-wb_ituc-critique_0914.pdf

of ESS 2 are relevant to the project. Suggestions were also made to add more detail to the provisions on child labour, to strengthen the section on occupational health and safety and to provide specific language on conditions for the use of community labour.

Improvements included in revised draft

Following its seven-months-long consultation, the Bank prepared a revised draft *Environmental and Social Framework* and released it in early August (dated 1 July 2015).² The new draft of ESS 2 contains several improvements to the original draft, and most of these appear to have been made in response to recommendations made by trade unions, other civil society groups and governments. They include the following:

- Support for the principles of freedom of association and collective bargaining is included in the five objectives of the labour safeguard;
- Workers engaged through third parties (contracted workers), supply-chain workers and community labour are now included for coverage by the safeguard;
- Workers are to be provided with written information about their conditions of employment and their rights, including those arising from ESS 2;
- The section on child labour includes additional detail on the specific prohibitions of child labour;
- The provision on forced labour includes additional language to ensure that any use of voluntary labour is done with free and informed consent and without any form of constraint or coercion;
- The occupational health and safety section contains additional requirements concerning health and safety procedures, the right of workers to remove themselves from dangerous work situations, and the establishment of review procedures for identifying and effectively responding to hazards and risks;
- The new provision on contracted workers specifies that the borrower must incorporate the requirements of ESS 2 into contractual agreements with third parties;
- The new section on community labour requires that borrowers must monitor incidents of harmful child labour or forced labour where risks of such practices exist;
- On supply chain workers, the borrower will be required to remedy risks or incidents of harmful child labour, forced labour or serious safety issues and shift the project's suppliers where the borrower is unable to achieve remedy.

Some of these improvements on the first draft of ESS 2 reflect the Bank's decision to harmonize upward to the better standards at the development banks that already had a comprehensive

² http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/clean_second_draft_es_framework_final_draft_for_consultation_july_1_2015.pdf

labour safeguard – AfDB, EBRD and IFC. In a few cases, the World Bank’s language represents slight improvements on those at the other banks.

Remaining flaws in draft ESS 2

However, a few important flaws remain in the revised ESS 2 as compared to the labour provisions of the other banks’ safeguards:

1. There is still no reference of any kind to ILO conventions or alternatively the core labour standards, which are based on the ILO’s eight fundamental rights conventions. These prohibit child labour, forced labour and workplace discrimination and protect workers’ freedom of association and right to collective bargaining.
2. Except for the provisions on child labour, forced labour and occupational health and safety, ESS 2 would not apply to workers defined as “government civil servants”.
3. The provisions on freedom of association and collective bargaining continue to distinguish between countries that protect these rights, where borrowers must respect them, and those that do not. For the latter, the revised draft now requires that borrowers “will not restrict workers from developing alternative mechanisms to express their grievances and protect their rights”. It does not include the requirement adopted by other development banks that, whatever be the recognition of those rights in national law, the borrower “shall not discriminate or retaliate against workers who participate or seek to participate in [workers’] organizations and engage in collective bargaining”;³
4. The Bank’s draft framework, which has been criticized by many groups for its heavy reliance on self-reporting by borrowers, gives the latter a particularly broad degree of latitude for applying the labour standard by allowing the borrower to “identify the relevant requirements of ESS 2 and how they will be addressed in the project”. None of the other safeguards grants the borrower the outright discretion to pick and choose the requirements they believe to be relevant to the project.

The World Bank should correct the remaining flaws in the draft labour safeguard by

- Including explicit reference to the ILO’s core labour standards conventions;
- Including all project workers, whether or not they are defined as public servants, as being subject to the protections of ESS 2;
- Prohibiting acts of discrimination and retaliation against workers who seek to freely associate and bargain collectively in Bank-financed projects, without distinction as to the status of these rights in national law;

³ This provision is from the AfDB’s “Operational Safeguard 5 – Labour conditions, health and safety”, adopted in December 2013. Similar requirements are found in IFC’s “Performance Standard 2” (revised 2012), EBRD’s “Performance Requirement 2” (revised 2014) and the World Bank’s “Standard Bidding Document for Procurement of Works” (revised 2010).

- Removing the right of borrowers to determine on their own which requirements of ESS 2 apply to the project and should be addressed.

Peter Bakvis
Director, ITUC/Global Unions - Washington Office
20 August 2015