



Major weaknesses in World Bank's draft labour standards safeguard

Since 2012, the World Bank has been engaged in a revision of its social and environmental safeguards policies and held consultations in which the International Trade Union Confederation (ITUC), some Global Union Federations and several national trade union organizations took part. At the end of July 2014, the Bank's executive board is scheduled at to discuss a draft policy that would, for the first time, include a standard on labour and working conditions. Unfortunately the draft standard prepared by Bank management¹ contains some substantial gaps relative to the labour standards requirement that has existed at the Bank's private-sector lending arm, the International Finance Corporation (IFC) since 2006 and those that have been adopted in recent years by some regional development banks. This note points out the significant weaknesses in the World Bank's draft "Environmental and Social Standard 2: Labor and Working Conditions" and calls for them to be corrected prior to adoption.

Background

The lack of a labour standards safeguard in the World Bank's current social and environmental safeguards policies, parts of which date back more than two decades, has been criticized by many governments, civil society organizations including trade unions, and by the Bank's own Independent Evaluation Group (IEG). In a report it published in 2010, the IEG stated: "There is no obvious reason to presume that community and labor impacts are not relevant to the Bank's portfolio ... The World Bank should: Ensure adequate coverage of the social effects – integrating community and gender impacts, labor and working conditions, and health, safety and security issues currently not covered by its safeguards policies ...".²

The absence of a labour standards safeguard at the World Bank has meant that borrowers from the World Bank's public-sector divisions, IBRD and IDA, and managers of projects and other activities funded by those divisions have *not* been required to comply with the basic labour standards adopted at other multilateral development banks (MDBs). MDBs that have adopted labour standards requirements include the World Bank's private-sector division, IFC, the European Bank for Reconstruction and Development (EBRD) and the African Development Bank (AfDB). All of the preceding labour standards safeguards or requirements have included obligations to comply with the International Labour Organization's (ILO) core labour standards³,

¹ The World Bank's "Proposed Social Environmental Framework" has not been made public but the ITUC obtained access to a copy dated 21 July 2014.

² Independent Evaluation Group-World Bank, *Safeguards and Sustainability in a Changing World*, 2010, p. 84 & 104

³ The core labour standards are internationally-agreed fundamental human rights for all workers irrespective of countries' level of development that are defined by eight ILO conventions covering freedom of association and right

present written information to workers about their conditions of employment, provide a safe and healthy work environment and ensure that sub-contracted workers' rights and working conditions are also protected.

The fact that the World Bank has not adopted such standards has created confusion and inconsistency as to the labour conditions that must be applied in development projects, depending on which MDB or which division of the World Bank provides the financing. For example, labour researchers in Iraq found important disparities in the labour standards complied with in World Bank Group-financed projects according to whether financing came from IFC or the Bank's public-sector divisions, with evidence of child labour, unsafe working conditions, unpaid wages and denial of freedom of association in projects financed by the latter.⁴ The lack of a labour safeguard has also meant that the Bank has fallen behind other MDBs which require that the projects they fund meet accepted international labour standards. The World Bank has thus not shown the kind of leadership it demonstrated in past years when it adopted environmental standards that other MDBs subsequently replicated in their lending requirements.

Disappointingly, the draft "Environmental and Social Standard 2: Labor and Working Conditions" (ESS 2) prepared by World Bank management will not allow it to catch up to the standards that have been adopted by other MDBs. The most important weaknesses concern proposals that borrowers from the public-sector divisions of the Bank need not comply with all of the core labour standards and that contract workers should be denied any protection under the labour safeguard.

Incomplete compliance with core labour standards

The World Bank's leadership has expressed its support for and willingness to promote the core labour standards (CLS) since 2002, and in 2006 the Bank took the step of incorporating them into IFC's Social and Environmental Performance Standards, which meant that borrowers were expected to comply with them in order to benefit from IFC financial support. To avoid any ambiguity, IFC's "Performance Standard 2: Labor and Working Conditions" (PS 2) includes an explicit reference to the ILO conventions on which the CLS are based, namely the eight fundamental rights conventions that cover the four themes of freedom of association and right to collective bargaining, elimination of discrimination, elimination of forced labour and prohibition of child labour.

In 2010, clauses similar to the CLS language of IFC's Performance Standards were included in the harmonized contract documents for procurement of works intended to be used for large public-sector infrastructure projects by the World Bank and regional development banks. Two regional

to collective bargaining, elimination of discrimination in respect of employment and occupation, elimination of forced or compulsory labour, and effective abolition of child labour.

⁴ "Behind the World Bank's projects in Iraq" in *Equal Times*, 19 July 2013 (<http://equaltimes.org/behind-the-world-banks-projects-in-iraq#.U81YkU1zaic>)

banks incorporated similar language covering the four components of the CLS and are applicable to all of their lending: the EBRD when it adopted its Social and Environmental Performance Requirements in 2008 and the AfDB when it adopted its Operational Safeguards in 2013.

Importantly, all of the preceding MDB instruments stipulate the principle of compliance with CLS whether or not national laws completely protect these rights. They thus acknowledge the fact that since 1998 it has been a *de facto* condition of membership to the ILO, whose list of members is almost identical to that of the World Bank, that member countries are expected to comply with the CLS whether or not they have been ratified in national law. On the issue of freedom of association and right to collective bargaining, all of the MDB instruments mentioned in the preceding two paragraphs stipulate that no matter what is the precise protection of these rights in national law, the borrower or contractor “shall not discriminate or retaliate against workers who participate or seek to participate in [workers’] organizations and engage in collective bargaining”.⁵

If adopted, the World Bank’s proposed “ESS 2: Labor and Working Conditions” would entail the Bank taking a backward step to before 2002, that is before it supported the CLS. The draft ESS 2 makes no mention of the ILO, its eight fundamental rights conventions or the core labour standards. And for the first time since before 2002, the World Bank suggests through ESS 2 that it rejects the notion of the CLS as an inseparable amalgam of four fundamental rights by stating that some CLS must be complied with in Bank-funded projects whether or not national law provides for them, but that others can be dispensed with. Thus, ESS 2 requires compliance with specific interdictions concerning forced labour, child labour and discriminatory practices. However as concerns freedom of association and right to collective bargaining, ESS 2 states that only “where national law recognizes” those rights will they not be interfered with in Bank-funded projects.

This indicates that Bank project managers would have the green light to discriminate or take repressive measures against workers who seek to exercise freedom of association, since contrary to what has been done in all the other MDB labour standards instruments – IFC’s PS 2, EBRD’s PR 2, AfDB’s OS 5 and the World Bank’s procurement standards – such practices are not prohibited under the draft ESS 2.

ESS 2 also proposes to break with ILO precedent and practice by creating a distinct and limited category of rights for public servants. The Bank’s proposed “Environmental and Social Framework” states that “government civil servants working in connection with the [Bank-funded] project remain subject to their existing terms of employment, save for the requirements under ESS2 relating to protecting workers, including Occupational Health and Safety”. Specifically not

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

included would be any right to information about conditions of employment, to a grievance mechanism, to freedom of association and against discriminatory practices.

One other derogation from the other MDB labour standards requirements under the CLS rubric is that ESS 2 has removed the stipulation that “the principles of non-discrimination [in wages, working conditions, etc.] apply to migrant workers”, which one finds in IFC’s PS 2 and the AfDB’s OS 5. The draft ESS 2 only prohibits employment of trafficked persons.

Contract workers are excluded from protection

An important feature of labour standards requirements adopted by IFC, EBRD and AfDB is that almost all of their provisions are applicable to contract, sub-contracted or third-party workers. For example, IFC’s PS 2 stipulates that all the requirements apply to contracted workers with the exception of retrenchment procedures and supply chain assessments. Protection of contract workers has been one of the most beneficial aspects of the MDB labour standards, since workers in that category are often subject to the greatest exploitation and abuse, meaning that they are more frequently the victims of unsafe workplaces, discriminatory practices and unjust dismissal. Iraqi trade unions, for example, felt that the greatest improvements obtained in enterprises that complied with IFC’s PS 2 were for contract workers since the requirement that the borrower was responsible for their treatment meant that they had to ensure sub-contracting firms adhered to legal requirements such as safe working conditions, maximum hours of work and social security coverage.⁶

The World Bank’s draft ESS 2 deletes all of the obligations vis-à-vis contract workers that exist in the other MDB standards. The sections on third-party workers or contract workers and on supply chains to be found in the preceding MBD labour standards are completely absent from ESS 2. To make things even clearer, the Bank’s proposed “Environmental and Social Framework” states that “ESS2 applies to workers employed *directly* by the Borrower to work specifically in relation to the project” (emphasis added).

The non-application to contract or sub-contracted workers, and the very limited application to public servants as explained above, mean that ESS 2 would apply to almost no one. The infrastructure projects for which this new safeguards framework is intended to apply – by repeatedly emphasizing its applicability to projects, the draft policy implies that the Bank’s large portfolio of development policy loans is excluded – are rarely carried out by government agencies directly. Typically, the work is contracted out to a general contractor, who in turn frequently sub-contracts much of the work to specialized sub-contractors. The employees of all of these firms would be excluded from any protection through ESS 2. The only workers who would have any coverage would be the civil servants who may work in the project as *direct* employees of the borrower, that is the state entity, but only a very limited number of provisions notably concerning health and safety would apply to these public employees.

⁶ “Behind the World Bank’s projects in Iraq”, op. cit.

The non-application of the draft ESS 2 to contract workers is an explicit and discriminatory exclusion which contradicts the other parts of the proposed Environmental and Social Standards. The draft ESS 1 on “Assessment and Management of Environmental and Social Risks and Impacts” comprises an Annex stipulating that “the Borrower will ensure that all contractors engaged on the project operate in a manner consistent with the requirements of the ESSs”, which includes “in the case of subcontracting, requiring contractors to have similar arrangements with their subcontractors.”

By making ESS 2 virtually inapplicable to almost all workers in Bank-funded infrastructure projects through the exclusion of contract workers, even though contractors and sub-contractors are expected to comply with all the other provisions of the new safeguards policy, one could have the impression that the Bank has gone out of its way to ensure that nothing is done to protect a category of workers who, as we have noted, tend to be particularly vulnerable to exploitation and abuse.

World Bank should catch up to, not undermine, labour standards of other MDBs

Other changes in the proposed ESS 2 relative to the template of the other MDBs’ labour standards requirements are similarly difficult to comprehend. All the other MDB standards include the very elementary requirement that the borrower must provide workers with “documented information” (quoted from IFC’s PS 2) on the terms of employment. The draft ESS 2 strikes the word “documented”, implying that in World Bank-funded projects a quick verbal (and unverifiable) explanation of the conditions of employment will suffice.

Added together, the Bank’s proposed ESS 2 not only means that most workers in World Bank-funded projects will be devoid of even the most basic protections, but by breaking with the precedents of more robust labour standards in all of the other MDB lending requirements, the Bank risks creating a chaotic mishmash of varying labour standards requirements, with the World Bank’s far weaker than the others. Thus, a private contractor building a power plant for a public electricity utility in an African country would have to refrain from using child labour, respect workers freedom of association and provide safe working conditions if the project receives financing from the AfDB, but *not* if financing is provided by the World Bank. If, on the other hand, the work is carried out for a private power producer who obtains financing from the World Bank’s IFC, it would have to comply with labour standards similar to those of the AfDB.

The World Bank should revise its draft ESS 2 and harmonize its provisions with the labour standards requirements established at other MDBs, including its own IFC, as regards compliance with the ILO’s core labour standards, application to contract workers, assessment of supply chains and obligation to provide written information to workers about their conditions of employment.

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22 July 2014