

This document should be read in conjunction with the proposed World Bank Policy to understand the proposed responsibilities of the World Bank (in the Policy) and the Borrowing Country (in the Standards).

SECOND DRAFT FOR CONSULTATION JULY 1 2015

Environmental and Social Standard 2. Labor and Working Conditions

Introduction

1. ESS2 recognizes the importance of employment creation and income generation in the pursuit of poverty reduction and inclusive economic growth. By ensuring that workers in the project are treated fairly and provided with safe and healthy working conditions, Borrowers can promote sound worker-management relationships and enhance the development benefits of a project.

Objectives

- To promote safety and health at work.
- To promote the fair treatment, non-discrimination and equal opportunity of project workers.
- To protect project workers, including vulnerable workers such as women, persons with disabilities, children (of working age, in accordance with this ESS), migrant workers, contracted workers and primary supply workers.
- To prevent the use of all forms of forced labor and harmful child labor.
- To support the principles of freedom of association and collective bargaining of workers.

Scope of Application

2. The applicability of ESS2 is established during the environmental and social assessment described in ESS1, during which the Borrower will identify the relevant requirements of ESS2 and how they will be addressed in the project.¹

3. The scope of application of ESS2 depends on the type of employment relationship between the Borrower and the project workers. The term “**project worker**” refers to:

- (a) people employed or engaged directly by the Borrower, the project proponent and/or project implementing agencies to work specifically in relation to the project (**direct workers**);

¹ In conducting the environmental and social assessment and depending on the significance of the potential issues in the project relating to labor and working conditions, the views of representative workers’ and employers organizations may be sought.

ESS2. Labor and Working Conditions

- (b) people employed or engaged through third parties ²to perform work related to core functions³ of the project, regardless of location (**contracted workers**);
- (c) people employed or engaged by the Borrower's primary suppliers⁴ (**primary supply workers**);
- (d) people engaged in community labor such as in community-driven development projects or workfare programs (**workers in community labor**).

ESS2 applies to project workers including full-time, part-time, temporary, seasonal and migrant workers.⁵

Direct Workers

- 4. The requirements of paragraphs 9 to 30 of this ESS will apply to direct workers.

Contracted Workers

- 5. The requirements of paragraphs 31 to 33 of this ESS will apply to contracted workers.

Workers in Community Labor

- 6. The requirements of paragraphs 34 to 36 of this ESS will apply to community labor.

Primary Supply Workers

- 7. The requirements of paragraphs 37 to 39 of this ESS will apply to primary supply workers.

8. Where government civil servants are working in connection with the project, whether full-time or part-time, they will remain subject to the terms and conditions of their existing public sector employment agreement or arrangement, unless there has been an effective legal transfer of their employment or engagement to the project⁶. ESS2 will not apply to such government civil servants, except for the provisions of paragraphs 17 to 20 (Protecting the Work Force) and paragraphs 24 to 30 (Occupational Health and Safety).

² 'Third parties' may include contractors, subcontractors, brokers, agents or intermediaries.

³ 'Core functions' of a project constitute those production and/or service processes essential for a specific project activity without which the project cannot continue.

⁴ 'Primary suppliers' are those suppliers who, on an ongoing basis, provide directly to the project goods or materials essential for the core functions of the project.

⁵ 'Migrant workers' are workers who have migrated from one country to another or from one part of the country to another for purposes of employment.

⁶ Such transfer will be conducted in accordance with all legal requirements and will be subject to all requirements of this ESS.

ESS2. Labor and Working Conditions

Requirements

A. Working Conditions and Management of Worker Relationships

9. The Borrower will have in place written labor management procedures applicable to the project. These procedures will set out the way in which project workers will be managed, in accordance with the requirements of national law and this ESS.⁷ The procedures will address the way in which this ESS will apply to different categories of project workers including direct workers, and the way in which the Borrower will require third parties to manage their workers in accordance with paragraphs 31-33.

Terms and Conditions of Employment

10. Project workers will be provided with information and documentation that is clear and understandable regarding their terms and conditions of employment. The information and documentation will set out their rights under national labor and employment law (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits, as well as those arising from the requirements of this ESS. This information and documentation will be provided at the beginning of the working relationship and when any material changes to the terms or conditions of employment occur.

11. Project workers will be paid on a regular basis as required by national law and labor management procedures. Deductions from payment of wages will only be made as allowed by national law and the labor management procedures, and project workers will be informed of the conditions under which such deductions will be made. All project workers will be provided with adequate periods of rest per week, annual holiday and sick, maternity and family leave, as required by national law and labor management procedures.

12. On termination of the working relationship, each project workers will receive written notice of dismissal and details of severance payments as required by national law and the labor management procedures in a timely manner. All wages that have been earned, social security benefits, pension contributions and any other entitlements will be paid on or before termination of the working relationship, either directly to the project workers or where appropriate, for the benefit of the project workers. Where payments are made for the benefit of project workers, project workers will be provided with evidence of such payments.

Non-Discrimination and Equal Opportunity

13. Decisions relating to the employment or treatment of project workers will not be made on the basis of personal characteristics unrelated to inherent job requirements. The employment of project workers will be based on the principle of equal opportunity and fair treatment, and there will be no discrimination with respect to any aspects of the employment relationship, such as recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, or disciplinary practices.

⁷ To the extent that provisions of national law are relevant to project activities and satisfy the requirements of this ESS, the Borrower will not be required to duplicate such provisions in labor management procedures.

ESS2. Labor and Working Conditions

The labor management procedures will set out measures to prevent and address harassment, intimidation and/or exploitation. Where national law is inconsistent with this paragraph, the project will seek to carry out project activities in a manner that is consistent with the requirements of this paragraph to the extent possible.

14. Special measures of protection and assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job will not be deemed as discrimination, provided they are consistent with national law.

15. The Borrower will provide appropriate measures of protection and assistance to address the vulnerabilities of project workers, including specific groups of workers, such as women, people with disabilities, migrant workers and children (of working age in accordance with this ESS). Such measures may be necessary only for specific periods of time, depending on the circumstances of the project worker and the nature of the vulnerability.

Worker's Organizations

16. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing and to bargain collectively without interference, the project will comply with national law. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. Where national law restricts workers' organizations, the project will not restrict workers from developing alternative mechanisms to express their grievances and protect their rights regarding working conditions and terms of employment. The Borrower should not seek to influence or control these alternative mechanisms.

B. Protecting the Work Force

Child Labor and Minimum Age

17. A child under the minimum age established in accordance with this paragraph will not be employed or engaged in connection with the project. The labor management procedures will specify the minimum age for employment or engagement in connection with the project, which will be the age of 14 unless national law specifies a higher age.

18. A child over the minimum age and under the age of 18 may be employed or engaged in connection with the project only under the following specific conditions:

- (a) the work does not fall within paragraph 19 below;
- (b) an appropriate risk assessment is conducted prior to the work commencing; and
- (c) the Borrower conducts regular monitoring of health, working conditions, hours of work and the other requirement of this ESS.

ESS2. Labor and Working Conditions

19. A child over the minimum age and under the age of 18 will not be employed or engaged in connection with the project in a manner that is likely to be hazardous⁸ or interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development (*harmful child labor*).

Forced Labor

20. Forced labor, which consists of any work or service not voluntarily⁹ performed that is exacted from an individual under threat of force or penalty, will not be used in connection with the project. This prohibition covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements. No trafficked persons will be employed in connection with the project.¹⁰

C. Grievance Mechanism

21. A grievance mechanism will be provided for all project workers (and, where relevant, their organizations) to raise workplace concerns. All project workers will be informed of the grievance mechanism at the time of recruitment and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all project workers.

22. The grievance mechanism will be designed to address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution, and will operate in an independent and objective manner.

23. The mechanism will not impede access to other judicial or administrative remedies that might be available under the law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.

⁸ Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Examples of hazardous work activities prohibited for children include work: (a) with exposure to physical, psychological or sexual abuse; (b) underground, underwater, working at heights or in confined spaces; (c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads; (d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or (e) under particularly difficult conditions such as work for long hours, during the night or in unreasonable confinement on the premises of the employer.

⁹ Work is on a voluntary basis when it is done with the free and informed consent of a worker. Such consent must exist throughout the employment relationship and the worker must have the possibility to revoke freely given consent. In particular, there can be no "voluntary offer" under threat or other circumstances of restriction or deceit. To assess the authenticity of a free and informed consent, it is necessary to ensure that no external constraint or indirect coercion has been carried out, either by an act of the authorities or by an employer's practice.

¹⁰ Trafficking in persons is defined as the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Women and children are particularly vulnerable to trafficking practices.

ESS2. Labor and Working Conditions

D. Occupational Health and Safety (OHS)

24. Measures relating to occupational health and safety will be applied to the project. The OHS measures will include the requirements of this Section, and will take into account the General EHSs and, as appropriate, the industry-specific EHSs and GIIP. The OHS measures applying to the project will be set out in the legal agreement and the ESCP.¹¹

25. The OHS measures will be designed and implemented to address: (a) identification of potential hazards to project workers, particularly those that may be life-threatening; (b) provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances; (c) training of project workers and maintenance of training records; (d) documentation and reporting of occupational accidents, diseases and incidents; (e) emergency prevention and preparedness and response arrangements to emergency situations¹²; and (f) remedies for adverse impacts such as occupational injuries, deaths, disability and disease, taking into account, as applicable, the wage level and age of the project worker, the degree of adverse impact, and the number and age of dependents concerned.

26. All parties who employ or engage project workers will develop and implement procedures to ensure, as far as is reasonably practicable, that workplaces, machinery, equipment and processes under their control are safe and without risk to health, including by use of appropriate measures relating to chemical, physical and biological substances and agents. Such parties will actively collaborate and consult with project workers in promoting understanding, and methods for, implementation of OHS requirements, as well as in providing information to project workers, training on occupational safety and health, and provision of personal protective equipment without expense to the project workers.

27. Workplace processes will be put in place for project workers to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health. Project workers who remove themselves from such situations will not be required to return to work until necessary remedial action to correct the situation has been taken. Project workers will not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal.

28. All project workers will be provided with facilities appropriate to the circumstances of their work, including access to canteens, hygiene facilities, and appropriate areas for rest. Where accommodation services¹³ are provided to project workers, policies will be put in place and implemented on the management and quality of accommodation to protect and promote the health, safety, and well-being of

¹¹ Section 2 of the General EHSs on Occupational Health and Safety applies to all projects and can be found at <http://www.ifc.org/wps/wcm/connect/9aef2880488559a983acd36a6515bb18/2%2BOccupational%2BHealth%2Band%2BSafety.pdf?MOD=AJPERES>. Each of the industry-specific guidelines addresses the OHS issues relevant to the particular industry. Links to each of these guidelines can be found at http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental,+Health,+and+Safety+Guidelines/

¹² These arrangements will be coordinated with the Emergency Preparedness and Response measures established under ESS4.

¹³ Those services might be provided either directly by the Borrower or by third parties.

ESS2. Labor and Working Conditions

the project workers, and to provide access to or provision of services that accommodate their physical, social and cultural needs.

29. Where project workers are employed or engaged by more than one party and are working together in one location, the parties who employ or engage the workers will collaborate in applying the OSH requirements, without prejudice to the responsibility of each party for the health and safety of its own workers.

30. A system for regular review of occupational safety and health performance and the working environment will be put in place and include identification of safety and health hazards and risks, implementation of effective methods for responding to identified hazards and risks, setting priorities for taking action, and evaluation of results.

E. Contracted Workers

31. The Borrower will make all reasonable efforts to ascertain that third parties¹⁴ who engage contracted workers are reputable and legitimate entities and have in place labor management procedures applicable to the project that will allow them to operate in accordance with the requirements of this ESS, except for paragraphs 34-39.

32. The Borrower will establish procedures for managing and monitoring the performance of such third parties in relation to the requirements of this ESS. In addition, the Borrower will incorporate the requirements of this ESS into contractual agreements with such third parties, together with appropriate non-compliance remedies. In the case of subcontracting, the Borrower will require such third parties to include equivalent requirements and non-compliance remedies in their contractual agreements with subcontractors.

33. Contracted workers will have access to a grievance mechanism. In cases where the third party employing or engaging the workers is not able to provide a grievance mechanism to such workers, the Borrower will make the grievance mechanism provide under Section C of this ESS available to the contracted workers.

F. Workers in Community Labor

34. Where community labor may be a component of the project, such as in community-driven development projects, appropriate measures will be implemented to ascertain whether such labor is or will be provided on a voluntary basis as an outcome of individual or community agreement¹⁵.

35. The provisions of paragraphs 9 to 16 (Working Conditions and Management of Worker Relationships) and paragraphs 24 to 30 (Occupational Health and Safety) will apply to community labor in a manner proportionate to the type of the project, the specific project activities in which community labor is used, and the nature of the potential risks and impacts.

¹⁴ See footnote 2: this may include contractors, subcontractors, brokers, agents or intermediaries.

¹⁵ See footnote 9.

ESS2. Labor and Working Conditions

36. Where there is a risk of harmful child labor or forced labor in the community labor, the Borrower will identify those risks consistent with paragraphs 17 to 20 above. If cases of harmful child labor or forced labor are identified, the Borrower will take appropriate steps to remedy them. The Borrower will monitor community labor in order to identify any significant changes and if new risks or incidents of harmful child or forced labor are identified, the Borrower will take appropriate steps to remedy them.

G. Primary Supply Workers

37. Where there is a significant risk of harmful child labor or forced labor related to primary supply workers, the Borrower will identify those risks consistent with paragraphs 17 to 20 above. If harmful child labor or forced labor cases are identified, the Borrower will take appropriate steps to remedy them. The Borrower will monitor its primary suppliers, and if new risks or incidents of harmful child or forced labor are identified, the Borrower will take appropriate steps to remedy them.

38. Additionally, where there is a significant risk of serious safety issues related to primary supply workers, the Borrower will introduce procedures and mitigation measures to ensure that primary suppliers are taking steps to prevent or to correct life-threatening situations.

39. The ability of the Borrower to address these risks will depend upon the Borrower's level of control or influence over its primary suppliers. Where remedy is not possible, the Borrower will shift the project's primary suppliers to suppliers that can demonstrate that they are complying with the relevant requirements of this ESS.