
ESS2 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 August (dated 1 July 2015). 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, although language could be made clearer;
The new provision on contracted workers specifies that the borrower must incorporate the requirements of ESS 2 into contractual agreements with third parties;
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 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

Remaining flaws in draft ESS 2
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 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. 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. 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.

4. Language is still ambiguous and confusing regarding the categories of project workers. It should make clear that contracted workers are to have full coverage of the provisions of ESS2, and that the Borrower must ensure that Contractors will comply fully with ESS2. There is only one mention of labour provisions in tender documents in ESS1.

5. Health and Safety ESS2 says nothing regarding worker’s participation and representation. It should include the requirement to have Workers’ Health and Safety Representatives and Joint workplace Health and Safety committees.

**BWI Comments:** The World Bank should correct the remaining flaws in the draft labour safeguard by:

1. Including explicit reference to the ILO’s core labour standards conventions. As a minimum, reference the ILO Declaration on Fundamental Principles and Rights at Work;

2. Clarifying that all project workers, in particular contracted workers, are subject to the full protections of ESS 2.

3. Clarifying that Clients must ensure that Contractors will comply fully with the provisions of ESS2.

4. Clients should be directed to include Labour Requirements in tender documents, including use of Labour Clauses in the World Bank Standard Bidding Documents and the MDBs Harmonised General Conditions of Contract for Construction as a minimum.

5. 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;

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

7. Ensuring that Health and Safety requirements include election of Workers’ Health and Safety Representatives and establishment of Joint workplace Health and Safety committees.

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