Letter to the World Bank
from
Labor Unions and Civil Society Organizations in Myanmar (Burma)
regarding
ESS2: Labor and Working Conditions

It has come to our attention that the World Bank is currently revising its Environmental and Social Framework, commonly known as safeguards. We understand that the World Bank’s safeguards have existed for over two decades and that they 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. Up until now, these safeguards did not include a labor safeguard for the World Bank’s public-sector branches (the IBRD and IDA) despite the existence of such a safeguard at the Bank’s private-sector lending arm (the IFC) and at two regional development banks, the African Development Bank (AfDB) and the European Bank for Reconstruction and Development (EBRD).

We applaud the World Bank’s inclusion of a labor safeguard in the latest draft of the Environmental and Social Framework that was released to the public in August 2015 (dated 1 July 2015). The proposed labor safeguard was given the name “Environmental and Social Standard 2: Labor and Working Conditions” (ESS2). We note that this latest draft of ESS2 is better than the original draft that the World Bank released in July 2014. We thank the World Bank for listening to the initial criticisms and recommendations made by the International Trade Union Confederation (ITUC), other international and national unions, civil society organizations and several governments during the first consultation period between September 2014 and March 2015.

We understand that the World Bank is currently requesting reactions and recommendations to the current draft of the safeguards. Therefore, we the undersigned labor unions and CSOs from Myanmar wish to point out the following important flaws that remain in the current draft of ESS2 as previously pointed out by the ITUC:

1. There is still no reference of any kind to ILO conventions or alternatively the core labor standards, which are based on the ILO’s eight fundamental rights conventions. These prohibit child labor, forced labor and workplace discrimination and protect workers’ freedom of association and right to collective bargaining.

2. Except for the provisions on child labor, forced labor and occupational health and safety, ESS2 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 current 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”.

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1 This provision is from the AfDB’s “Operational Safeguard 5 – Labor 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).
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 labor standard by allowing the borrower to “identify the relevant requirements of ESS2 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.

Given that labor conditions are very much a relevant factor to World Bank operations in Myanmar, we call on the Bank to correct the remaining flaws in the draft labor safeguard by accepting the following recommendations already submitted to you from the ITUC:

- Include explicit reference to the ILO’s core labor standards conventions;
- Include all project workers, whether or not they are defined as public servants, as being subject to the protections of ESS2;
- Prohibit 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;
- Remove the right of borrowers to determine on their own which requirements of ESS2 apply to the project and should be addressed.

Furthermore, it has come to our attention that some are calling for an exemption of the labor safeguards regarding community labor programs. Given Myanmar’s well-documented history of forced labor and weak rule of law, we strongly urge that there be no exemption of labor safeguards when workers are involved in community labor programs.

We, the undersigned, thank the World Bank for the attention these issues deserve.

15 March 2016 (organizations listed in alphabetical order):

Cooperative Committee of Trade Unions (CCTU)
Labour Rights Defenders & Promoters (LRDP)
Lets Help Each Others (LHEO)
Migration Worker Rights Network (MWRN)
Solidarity of Trade Unions