

Meeting of labour experts on the second draft of the World Bank's Environmental and Social Standard 2: Labour and Working Conditions (ESS 2)

18 September 2015, Washington DC

A discussion on the second draft of the World Bank's ESS 2 (dated July 2015) between a group of experts on labour issues and World Bank staff took place in Washington on 18 September 2015. The list of participants is at the end of this report.

The meeting began with an overview of the process and changes made to the first draft ESS 2, which was released in July 2014. The second draft includes additions inspired in part by IFC's Performance Standard 2, while acknowledging the differences between private- and public-sector lending. The subsequent discussion focused on the following issues: scope of ESS 2 with regard to contracted workers, community labour and public servants; reference to ILO Conventions; occupational safety and health; procurement; and issues such as consultation, vulnerability and operationalization of the World Bank's oversight role.

Scope of ESS 2

Some participants expressed the view that the scope of ESS 2 is confusing in its coverage for the four differentiated groups: project, contracted, community and primary supply workers. Some participants felt that the distinction between project and contracted workers is unnecessary and were concerned that the latter would not be fully covered. Further, under "Scope of Application" the borrower's discretion to identify relevant requirements, language not included in any other standard, opens the door for a "pick-and-choose" procedure. It was stated in response that the contracted workers language was drawn from IFC's PS 2 and that the new draft ensures full coverage of contracted workers. The identification of relevant requirements by the borrower does not make them optional and the Bank will have oversight. The scope had expanded substantially and additions were made to ensure access to a grievance mechanism for all. Additional requirements on occupational safety and health had also been included.

Some participants expressed concern about the use of the term "workfare" to describe some types of Bank community labour projects. This term should not be confused with voluntary community work schemes. Participants questioned the rationale behind making application of the standard for community labour dependent on the type of project as this gives room for interpretation and potentially weakens it. Specifically, in countries with a history of violation of fundamental workers' rights, the possibility of excluding workers engaged in community labour from access to ESS 2's grievance mechanism is worrisome. Participants pointed out that the Bank is financing community-driven development projects in some countries that have a long history of use of forced labour in public works projects; it is therefore critical that ESS 2 clearly prohibits this for all projects and provides community members with a confidential grievance mechanism.

In response, it was explained that community work is present in many projects; the idea is to give enough flexibility in the implementation of ESS 2 according to project size and scope. In situations of crisis, some flexibility is required in the hierarchy of application of different standards. There is no intention to exclude of community labour from grievance mechanisms and it was acknowledged that there needs to be more clarity to ensure that flexibility is not abused and undermines labour standards.

Some participants expressed the view that the definition of civil servants working on a project is vague and that the bar for them to be fully covered by ESS 2 is high. For those not classified as project workers, only the provisions concerning child labour, forced labour and occupational health and safety would apply. The distinction between workers in project implementation units (PIU) who are fully covered and civil servants is not straightforward. Participants suggested that the criterion should be based on who pays the salary.

It was explained that civil servants work in a broader public sector and that no different treatment should apply to those working on the project and others. While there is no objection to a clearer definition as to who is fully covered by ESS 2, the intent is to have provisions whose application can be supervised. This is complicated for bargaining rights of civil servants but easier with respect to issues such as child labour and occupational health and safety on the work site, which they consider to be visually observable.

Reference to ILO Conventions and international standards

Concern was expressed by several participants about the absence of any reference in ESS 2 to ILO Conventions, in particular the highly ratified eight fundamental rights conventions that comprise the core labour standards. Only a general reference to “relevant international treaties and agreements” appears in the assessment requirements for the Borrower in ESS 1 and the parallel provision in the Policy section. Participants also noted that ESS 2 as currently written is not fully consistent with the ILO Declaration of Fundamental Principles and Rights at Work.

Those who responded explained that it is complicated to establish an exhaustive list of relevant international standards and noted that what is binding varies among countries. Therefore, ESS 1 obliges the borrower to identify international legal obligations in its assessment, subject to Bank review. The ILO’s core conventions are not universally ratified and Bank is not an enforcement agency. The intent is to have a stand-alone document that does not require outside expertise for interpretation. The Bank will have greater flexibility to take into consideration the context of the country and project in the application of the requirements, which explains the inclusion of language on “alternative mechanisms” in countries that restrict workers’ organizations.

Participants expressed that the view that without reference to international standards, requirements on issues such as discrimination and freedom of association require further definition in the standard. ESS 2 is also not specific enough in its requirements concerning prohibition of forced labour and child labour. Nor does ESS 1 ensure that the ILO standards will be considered in the implementation process.

Several participants emphasized that universality does exist with regard to respect for Fundamental Principles and Rights at Work, which cover non-discrimination, equal pay for equal work, child labour, forced labour, freedom of association and the right to collective bargaining. Respect for these is binding for all 186 ILO member states irrespective of ratification status. Countries that have not ratified all core conventions must report on their progress annually. Close cooperation with the ILO is vital to ensure coherent and effective standards but will be problematic if ESS 2 deviates from internationally recognized terminology and definitions of the core labour standards.

Participants raised concerns that some provisions of the draft ESS 2 are inferior to the labour safeguards of other multilateral development banks that have referenced the ILO standards and that this will create confusion instead of harmonization. An example is the absence in the draft of a requirement that the Borrower “shall not retaliate or discriminate against workers” who seek to engage in workers’ organizations. They noted that such a provision exists in the World Bank’s Standard Bidding Document for Procurement of Works (SBDW), IFC’s PS 2 and the requirements of the regional development banks that have adopted a labour safeguard.

Other participants pointed out that the draft language on child labour omits coverage of several of the worst forms (such as bonded labour, illicit activities, prostitution, etc.) and uses the phrase “harmful child labour”, which is not defined under international standards. They observed that ESS 2 is weaker than IFC and SBDW language on this topic. Reference to the ILO Conventions on child labour, which are among the most widely ratified conventions, would bring clarity.

Occupational health and safety and procurement

On occupational health and safety (OHS), some participants argued that ensuring compliance among contractors is critical since small subcontractors are more likely not to conform to the standard. The OHS record of the Borrower contracting companies should be verified in advance as part of the Bank’s due diligence. It was suggested that ESS 2 should include an obligation to nominate OHS representatives, which a key OSH principle in ILO Conventions and assures day-to-day oversight of OHS requirements and better OSH outcomes.

A participant spoke of the discrepancy between existing procurement of works standards and the draft ESS 2. The labour provisions of the SBDW refer to the core labour standards including freedom of association and collective bargaining without differentiation as to the status of the standards in national law or restricting its application for public servants. Participants observed that these provisions have been applied in Bank-financed construction projects without controversy since 2010 and urged the Bank to harmonize the two standards using the template that is already established and implemented.

Further issues

Some participants pointed out that ESS 2 includes in a footnote that the views of workers’ and employers’ organizations “may” be sought during the environmental and social assessment; they advocated stronger language, observing that trade unions are critical stakeholders. They also noted that neither ESS 1 nor ESS 10 identifies workers’ organizations among the project-affected parties or stakeholders that should be consulted and provided with information and seems to exclude them by referring engagement with workers to ESS 2. Participants recommended that workers’ organizations should be treated like any other stakeholder under ESS 10.

Some participants observed that the definition of “vulnerability” is unclear and does not include union activities and political opinions. A reference to the ILO Convention on discrimination was suggested for clarification. Others responded that there is no general definition of vulnerability as it is context specific but that much more was included in the second draft than in the first.

Concerning implementation of the new Environmental and Social Framework, participants explained that additional resources will be put in place to ensure that the Bank assumes a strong and effective oversight role. A critical component will be the right skill set of staff, enabling them to think analytically and act practically. The Bank also plans to create focal points on the different standards, which will advise the project teams. Challenges remain on how to ensure institutional learning, the question of sequencing and the design of an effective complaints mechanism.

It was suggested that the Bank should establish an international labour advisory group for implementation of ESS 2. Some participants spoke of the useful role such a group had played in the first years of implementation PS 2 by IFC's as well as the latter's creation of a "labour portal". Some participants expressed the view that the Bank needs to improve its due diligence process in order for it be effective in implementing the new safeguards.

List of participants

Bama Athreya, US Agency for International Development
Peter Bakvis, International Trade Union Confederation/ Global Unions
Lance Compa, Cornell University
Charles di Leva, World Bank
Steve Gibbons, Ergon Associates (facilitator)
Reidar Kvam, World Bank
Nancy Leppink, International Labour Organization (by phone)
Una Meades, World Bank
Margaret Mottaz-Shilliday, International Labour Organization
Fiona Murie, Building and Woodworkers' International
Dan Rees, International Labour Organization (by phone)
Karen Travis, US Department of Labor
Aki Tsuda, World Bank (support)
Carolyn Vollmann, International Trade Union Confederation/ Global Unions (support)
Erick Zeballos, International Labour Organization