



World Bank's Safeguard Policies Review and Update Expert Focus Group on the Emerging Area Labor and Occupational Health and Safety

Jakarta, Indonesia

March 23, 2013

On March 23, 2013, an external focus group meeting of international experts was held in Jakarta, Indonesia, on the subject of Labor and Occupational Health and Safety. This focus group was part of the World Bank safeguard policies review and update process and the topic of labor is one of the emerging areas that stakeholders have asked the Bank to consider during the review. Other emerging areas include: climate change, disability, free, prior and informed consent of Indigenous Peoples, gender, human rights, land tenure and natural resources. More information about this process is available on the safeguards review [website](#). The terms of reference for participants of focus groups for emerging areas are available [here](#).

Participants in the focus group comprised labor experts from a variety of civil society, inter-governmental, donor and research organizations from around the world (see [list of participants](#)). It was agreed at the outset that the focus group would be conducted in accordance with Chatham House rules, and that participants would speak in their individual capacities rather than as representatives of their respective institutions. In addition to participating experts, four World Bank staff members were present. The meeting was facilitated by Steve Gibbons, Director for Labor and Human Rights, Ergon Associates.

The focus group meeting began with a presentation by World Bank staff to help define the purpose and scope of the meeting. The presentation described the rationale, objectives and stages of the overall safeguards review process.

The discussion was guided by three questions:

1. Can a variation on IFC Performance Standard 2 (PS2) for Labor and Working Conditions address the material labor issues that can be expected to arise in World Bank's public sector lending?
2. What would the role of labor safeguards be in procurement and contracts?
3. Should the safeguards address "doing good" in addition to "doing no harm" in the labor context and if so how?

Following is a synthesis of key observations of participants during the day. It should be emphasized that these observations are not reported here as necessarily representing the substantive consensus of the group. They are instead summarized here as key issues put on the table by one or more individual experts that received attention during the consultation and that were proposed for further consideration as the process goes forward.

1. General observations

Focus group participants strongly supported the establishment of labor safeguards for World Bank projects. Safety as a technical issue should not be subject to negotiation and employees should not be incentivized to work in unsafe environments. IFC PS 2 was seen as a good starting point, which would have to be extended and adjusted to fit the special requirements and circumstances of the kinds of projects supported by the World Bank. Other general observations included:

- The World Bank should articulate standards for labor and health and occupational safety, with the borrower being required to uphold, assess, implement, monitor, and enforce these standards.
- A World Bank framework for labor safeguards should address issues that involve violations of national law and/or of the International Labor Organization (ILO) conventions, such as freedom of association, dismissal based on joining unions, late payment, lack of pension contributions, forced labor, child labor, unsafe working environments, etc. The World Bank should seek advice and support on these issues from the ILO.
- A framework for labor risk management and compliance guidance needs to be put into place.
- The borrower needs to be held responsible for compliance with labor standards, even though the borrower is not necessarily the employer.
- A framework or guidance for the management of contractors and implementers of the loan should be established.
- The World Bank should develop strategies to reduce negative impacts on workers. A safeguard related to retrenchment – perhaps supported by a guidebook - would help to establish principles such as consultation and nondiscrimination in retrenchment exercises. The World Bank needs to establish a policy framework in which such guidance can be applied to public sector lending.
- Capacity development will be a crucial issue, especially with regard to compliance monitoring.

2. Applicability of IFC Performance Standard 2

Participants agreed that the principles in IFC PS 2 may be applicable for World Bank lending, but cautioned that public sector lending is not always comparable with lending directly to the private sector. Main points of the discussion included:

- Participants argued that a World Bank labor safeguard should be similar to PS2 as labor risks can become project risk if they are not addressed. Such risk can result in strikes, deaths, shutdowns, exploitative labor practices, and reputational risk for the World Bank. There are problems with PS2 implementation and access to information in specific investments, but the language of PS2 works.
- Participants noted that the fundamental principles expressed in the ILO's core labor standards, which are included in both PS 2 and the World Bank's standard bidding document for procurement of works, are applicable to both private and public sector workers.

- The IFC PS2 is adaptable and covers crucial areas beyond the ILO core labor standards, including some issues of occupational health and safety and right to information for employees. In fact, parts of PS2 are already being used in World Bank-funded construction projects as these are reflected in the labor clauses in the standard bidding documents for the procurement of works and services, which are in turn common with other Multilateral Development Banks through the FIDIC-MDB harmonized construction contract. But the World Bank does not provide specific rules or guidance on implementing them. A standard equivalent to PS2 should be applied to World Bank projects to promote coherence across both institutions.
- Certain differences between private sector and public sector need to be taken into account. For instance, the World Bank needs to consider a broader context with regard to the influx of labor, geographic boundaries, and time horizons. Furthermore, in the case of World Bank projects, the client (borrower) is not necessarily the direct employer.
- If responsibility for occupational safety and health is to be on the client (borrower), the capacity of state institutions with regard to labor safeguards and national legal systems needs to be strengthened. Governments should be enabled and encouraged to do their own assessments and put in place audit systems. The World Bank should be willing to assume some responsibility for monitoring the extent to which contractors are fulfilling labor obligations, as country systems with low capacity may not be able to guarantee compliance.
- Occupational health and safety need to be addressed more comprehensively than it currently is in PS2. At this time, PS2 focuses on employers and does not allow room for participation and the concept of voice of workers through health and safety committees. PS2 also does not include the good HIV/AIDS prevention language of the Bank's standard bidding document. Safety and health assessments should be mandated (though the timing of such an assessment is different from environmental assessments, which also do not promote worker participation). Occupational safety and health issues should be addressed throughout the entire duration of any project.
- PS2 cannot stand on its own – it must be coupled with Performance Standard 1 (PS1) for Assessment and Management of Environmental and Social Risks and Impacts and the World Bank Group Environmental, Health and Safety Guidelines.
- Directions for implementation and strategies to ensure compliance need to be in place.
- Grievance mechanisms need to be in place to make this safeguard efficient. IFC's experiment with the labor portal (a dedicated complaint mechanism for unions on issues related to PS2) is something that the Bank should consider, ensuring that the mechanisms respect basic criteria of transparency and accountability.
- Clear rules for ensuring compliance with the safeguard independently of parallel national judicial proceedings need to be in place. An example here could be the procedural guidelines for the OECD Guidelines for Multinational Enterprises (MNE).

3. The role of labor safeguards in procurement and contracts

The group agreed that specific labor requirements are needed at the stage of procurement. A recurrent issue in the discussion was the compliance monitoring of contracts. There were also questions related to

whether grievance mechanisms are needed for labor issues in procurement. Further specific points raised with regard to the role of labor requirements in procurement included the following:

- The World Bank is not involved in the process of contract management, which makes monitoring of compliance with labor standards difficult. Therefore, Bank procurement staff should become more involved with contract management, the development of local industries capable of meeting basic labor standards, and capacity building.
- Even if the client (the borrower) is not necessarily the direct employer (as companies hire workers), the client still needs to be responsible for compliance with labor standards. The borrower should be responsible for contractors across the entire chain of contracting.
- With regard to World Bank lending, the borrower/ client is both a participant in the market and a regulator of the market.
- Labor standards need to be addressed at a very early stage of procurement, especially in large infrastructure projects.
- The World Bank needs to provide strong guidance to governments to enable them to uphold labor standards throughout procurement (evaluation of tenders with regard to labor issues) and the project implementation process. Contract clauses that require compliance with labor safeguards before future payments can be released would be one possible approach. As the World Bank cannot intervene in contract implementation, labor requirements need to be established at procurement stage and need to be a factor in contract awarding. Subsequent monitoring and due diligence mechanisms are essential.
- Labor requirements should be part of the Standard Bidding Documents and should be considered a legal obligation in the contract.
- The World Bank needs to be able to impose penalties on parties that violate labor safeguards.
- The question of labor safeguards and their relationship to labor requirements in procurement needs to be figured out in tandem.

4. “Doing good” in addition to “doing no harm”

- While labor safeguards should encourage “doing good” and “doing better,” the safeguard process should not be overloaded by trying to fix problems outside the scope of a project.
- However, a labor safeguard policy could be the start of national dialogue, especially with countries where bad practices have been observed. Some governments need to have extra incentive to work on improving practices, and the World Bank could use its leverage here. Ethical practices of clients and employers should be rewarded to foster them.
- Standards regarding occupational health and safety can be used to develop country capacity and strengthen country institutions with lasting impact. This would also require capacity building and the anchoring of safety and health in curricula and competency standards. Capacity building itself contributes to “doing good” beyond “doing no harm.”
- Good practices should be captured and shared.