

Written Submission on Asian Development Bank's (ADB) September 2023 Draft Environmental and Social Framework (ESF)

Submission from Global Union Federations
Received on January 30, 2024

Disclaimer: The views expressed in this document are the views of the author/s and and/or their organizations and do not necessarily reflect the views or policies of the Asian Development Bank, or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this document and accepts no responsibility for any consequence of their use.

Trade Union Perspective on the Asian Development Bank's Draft Environmental and Social Framework

Before any multilateral development bank had adopted a safeguard policy to protect workers, the Asian Development Bank (ADB) led its peers in adopting an explicit commitment to uphold the International Labour Organization's (ILO) core labour standards in 2001. We are now heartened that the ADB has proposed a written Environmental and Social Framework (ESF) that includes explicit safeguards to protect workers on its projects. However, we are disappointed that the proposed language falls behind peer institutions in key respects, and will leave workers exposed to harms at the workplace and confusion about rights.

As the Bank itself has repeated, development finance increasingly flows through financial intermediaries, and it is important that the protections of the ESF apply to all of the Bank's work, from project loans to technical assistance, policy-based loans, and results-based lending. We therefore question the decision to address this issue in a separate policy document from the Bank's *Environmental and Social Policy*. The flexibility that this approach gives the Bank can potentially undermine the application of the Bank's safeguards to certain projects.

While specific areas of concern are enumerated below, we highlight a few key points:

- We urge the ADB to make explicit reference to the ILO, as the international body mandated to set labour standards, and to cite its conventions directly.
- National law should set a floor for labour standards, not a ceiling, and the ADB should enforce international norms around questions of freedom of association and collective bargaining independent of national policies.

The ADB's Core Labor Standards Handbook correctly writes "Should the ADB observe CLS in its interventions even if the country has not adopted labor legislation, or if it has exempted some economic sectors or parts of the population from the law? The answer is yes." (Page 78)

- Local, national, and global unions should be consulted throughout project design and implementation to identify risks to labour rights and ensure compliance with the safeguards. This cooperation will lead to better jobs and safer investments.

ESS1: Assessment and Management of Environmental and Social Risks and Impacts

The process for the assessment and management of risks laid out in ESS1 is heavily weighted towards the attestations of the borrower or the client (paragraph 7) and the host country's applicable laws (Paragraphs 11 & 28).

The dangers of this approach have been amply demonstrated. References to national law should be removed, and provisions regarding the stakeholder and expert assessment processes (Paragraphs 9 & 26) can be strengthened to incorporate robust consultation with trade unions.

ESS2: Labor and Working Conditions

ILO Standards

Even before it developed a written safeguard, the ADB's explicit commitment to uphold the core labour standards of the ILO set a valuable precedent. It is disappointing that the Draft ESF does not refer explicitly to the core labour standards, to the fundamental rights at work, or to any ILO conventions. In addition to constituting a frustrating step backward for the Bank's recognition of labour rights, this will make it more challenging for the Bank to define key terms as basic as forced labour and child labour. This is particularly true in the case of the ADB, which has explicitly referred to the ILO in the past.

We encourage the ADB to follow best practices of other MDB's in this regard, including the IDB and the AfDB, and explicitly cite the ILO's core labour standards and key conventions in their written safeguards. Moreover, the exclusion of explicit reference to the ILO requires awkward phrasing, such as the requirement that a project operate in accordance with local laws "...including those laws implementing host country obligations under international laws." (Paragraph 5)

Terms and Conditions of Work

The Bank's current language requiring that employers provide project workers with "written contracts and/or other forms of information and documentation that contain clear and understandable terms and conditions of their employment" is overly vague, and it would be more appropriate to simply require written contracts. (Paragraph 8)

Written contracts in a language the workers can speak is the best practice for avoiding risk, and written contracts can always be supplemented with additional information and documentation as needed.

Written contracts also help prevent disguised employment. Other MDB's have explicitly incorporated protections against disguised employment, and the ADB should follow their lead. The IDB's ESPS2 (Paragraph 4), the AfDB's OS2 (Paragraph 5), and the IFC guidance notes (PR2 GN8) provide examples. The ADB should incorporate ILO Recommendation 198 on this matter.

Freedom of Association and Collective Bargaining

While all projects take place within their national context, compliance with national law should be a minimum requirement, and that is particularly important in the context of foundational rights such as freedom of association and collective bargaining. The ESF should be clear that the Bank will uphold international norms even in instances where national law fails to do so. (Paragraphs 17-19)

Even in cases where national laws are adequate, by deferring to them unduly the ADB could introduce uncertainties and discrepancies in adjudication and enforcement into its own processes. Instead, the ADB should refer to Conventions 87 (Freedom of Association) and 98 (Collective Bargaining).

Additionally, when a host country's laws are silent on the question of workers' organisations, the client should be expected to inform workers of their rights to form or join workers' organisations of their choosing and bargain collectively in accordance with international norms. (Paragraph 19)

Child Labour

Paragraph 23, which permits the borrower/client to "engage a child who is 13 to 15 years old for light work" under certain conditions is extremely vague. It undermines the Bank's attempt to set a lower limit for project work and will increase the risk of exploitative child labour on ADB projects.

Rather than inviting technical challenges, the ADB should explicitly set a clear age floor regardless of local conditions and cite ILO Conventions 138 and 182.

Community Workers

We are disappointed in the Asian Development Bank's adoption of the World Bank's "community worker" category in ESS2 (Paragraphs 33-35) and are troubled by the fact that almost none of ESS 2 applies to them. This category promotes precarity and informality and erodes protections, and moreover undermines the additionality of international development finance.

We appreciate that the ADB has limited its definition of community workers to unpaid workers, which is a positive step and eliminates some of the grey area around the category. However the existence of this category of recognised project workers who do not enjoy the same protections and rights as other workers increases the risk of violations labour rights violations.

Civil Servants

We encourage the ADB to eliminate this exemption for Civil Servants (Paragraph 4), which appears to replicate a problematic element of the World Bank's standard. The term civil servant is undefined and, in this case, could exclude public sector workers such as teachers and healthcare workers who should not be excluded from such a safeguard.

Supply Chain Workers

The Bank's definition of Primary Supply Workers is overly vague and subject to interpretation, as borrowers could argue that a particular good or service is not essential or necessary to the project. With the exception of extremely small borrowers, suppliers or contractors should not be excluded from this safeguard. (Paragraph 3)

Moreover, all core labour standards must apply to supply chain workers, not only protections against child labour and forced labour. At a minimum the standards on non-discrimination and equal opportunity, collective bargaining, and freedom of association should apply to these workers.

Project Affected Workers

The draft ESF does not protect project-affected workers, who constitute an important community for any project. Aside from the categories of workers laid out above, workers who are displaced due to construction or affected by privatization, outsourcing, or restructuring, should be recognized and protected.

These workers should also be included in the protections of ESS9 regarding climate change.

ESS4: Health, Safety and Security

Given the ILO's adoption last year of Occupational Health and Safety as one of the fundamental principles and rights at work, ESS4 should explicitly reference Convention 155 (OSH), 187 (Promotional

Framework), 190 (Violence and Harassment) and include details fleshing out Convention 161 (Occupational Health Services).

ESS4 as it is currently written lacks sufficient emphasis on prevention. Compared to the EBRD's PR4, for instance, the paragraphs 4 and 6 of ESS4 do not include the need to prepare for, plan, and prevent risk—which should be integrated into the assessments of the Bank and the Client as well as the information and tools provided to workers.

Unsafe Worksites

It is of utmost importance that workers can leave an unsafe worksite. While a grievance mechanism is important, the wording of paragraph 14 implies that the borrower's grievance mechanism is necessary for workers to remove themselves from an unsafe work situation. Workers must be able to remove themselves from an unsafe working condition independent of the borrower's grievance mechanism.

Worker Representation

Worker representation is essential for health and safety at the workplace. ESS4 drafted lags standards set by the AfDB (OS2, Paragraph 29) and guidance from the EBRD, and should incorporate language that encourages representation and consultation.

Health and safety committees elected democratically by the workers should be encouraged at every workplace and consulted on matters of health and safety. Furthermore, trade union representation is crucial to ensure the independence and effectiveness of these committees.

Infections Disease

While ESS4 refers to disease, it contains troublingly few explicit measures to tackle infectious diseases including pandemics. The ADB should follow the lead set by the IDB safeguard, which incorporates very detailed guidelines for pandemics and epidemics that require compliance with the best practices set out by international authorities such as the World Health Organization and require that workers receive training and PPE free of charge (ESP 2 Paragraphs 25-27).

Climate Change

While we applaud the inclusion of ESS9 on climate change, it does not include specific protections for project workers. Workers who are unable to work due to risks posed by climate change—in their commute or in their workplaces, and particularly in cases of restoration or demolition work—must have the right to protect themselves from these harms without retaliation.

Hours & Excess Work

The ADB should include protections against overwork, which is a key health and safety issue in addition to intersecting with ESS2 as an issue of forced labour. The EBRD has incorporated this issue into its Guidance Note on PR4, and the ADB would be wise to follow.