

Promoting and respecting international labour standards in Asian Development Bank operations: A binding safeguard and beyond



Position paper of the International Trade Union Confederation (ITUC); International Trade Union Confederation – Asia Pacific (ITUC-AP); International Transport Workers’ Federation (ITF), UNI Global Union, Public Services International (PSI); International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF); Building and Wood Workers’ International (BWI); Education International (EI); IndustriALL Global Union; and the International Trade Union Confederation/Global Unions Washington Office.

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Retaking a leadership role on labour rights and sustainable development

In 2001, the Asian Development Bank (ADB) demonstrated leadership and foresight by committing to uphold the core labour standards. In doing so, the ADB aligned itself with the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work. The Declaration establishes that all ILO member states are to *promote, respect, and realise* the freedom of association, collective bargaining, freedom from forced and child labour, and non-discrimination. It is crucial that international financial institutions do the same, and support countries toward this end.

Since then, other multilateral development banks have adopted binding labour safeguards. These have proven more consistent in protecting workers' rights than the fractured operationalisation of the ADB's core labour standards commitment with regards to project lending. Trade unions urge the ADB to reassume its role as a leader by adopting an institution-wide commitment to the international labour standards, including a binding labour standard as part of the Safeguard Policy Statement Review and Update and a continued commitment to labour standards in the Social Protection Strategy.

Sustainable development will only be achieved through the alignment of international organisations with the international labour standards. Labour rights and decent work are essential elements of the enabling environment for inclusive and job-rich growth. Adherence to labour standards maximises the outcomes of development finance by helping prevent, identify, and address rights violations linked to operations.

Full coherence with international labour standards should occur throughout the operations of multilateral development banks. This includes labour safeguards that protect loan project workers or workers affected by projects, *and* procedures that ensure alignment of policy advice, strategies, and policy-based lending with international labour standards. This paper outlines how and why ADB can create a binding safeguard that directly translates the international labour standards of the ILO to the context of lending. Beyond this, ADB can take trailblazing steps to promote, respect, and realise the international labour standards, including the core conventions in all ADB operations. Together, there are three complementary areas of ADB policy where this can occur:

1. A binding labour safeguard for all projects, ensuring that international labour standards are upheld.
2. Systematic incorporation of the core and international labour standards into all thematic and sector strategies. Strategies should also draw upon ILO instruments relevant to the sector or topic. For example, the ADB energy strategy should uphold just transition by integrating the ILO *Guidelines for a just transition towards environmentally sustainable economies and societies for all*.
3. Employment results measurement that tracks the job impacts from ADB lending, including ex-ante and ex-post impact assessments that account for employment loss or degradation of working conditions and labour rights, and tracking the quality and quantity of direct post-

project jobs operating assets built with ADB support. The performance of ADB projects should be judged in substantial part by employment results, not only financial outcomes.

Core labour standard violations and unacceptable working conditions on projects, enabled by omissions in project design

Decisions on creating and shaping a labour safeguard by ADB and its member countries should be informed by a full and accurate picture of labour rights, working conditions, workforces, and implementation of ADB procedures. The ADB should immediately commission a review covering:

- a) Working conditions and respect of core labour standards on selected current and completed projects, including feedback from workers and trade unions. The study should include detailed mapping of project workforces with details on types of employment contracts, structures of employment and contracting, and other pertinent information. Other safeguards, particularly for public sector lending, have been drafted without a detailed understanding of the situations in which a safeguard will be applied.
- b) A comprehensive look at the inclusion or non-inclusion of labour issues in project documents pursuant to the approach described in the Core Labor Standards Handbook.¹ Quantitative and qualitative analysis should be conducted on the coverage of core labour standards issues.

Trade unions have extensively documented shortcomings on the ground and in project documents despite the limited access to resources and information compared with the ADB.² Notably, the Rajasthan Renewable Energy Transmission Investment Programme was examined twice, in 2015 and 2019. The recommendations and findings of the public 2015 report did not lead to change. Similar issues were found four years later. This included lack of personal protective equipment, poor or makeshift worker accommodation unseparated from work areas thereby exposed children of workers to safety hazards, payment of advances by labour intermediaries to

¹ ADB, Core Labor Standards Handbook, 2006, <<https://www.adb.org/documents/core-labor-standards-handbook>>.

² The section is based on the following public studies, and as well as unpublished work available upon request:

Souparna Lahiri, Rajasthan Renewable Energy Transmission Investment Programme A study on ADB's Compliance with Social Protection Strategy and Core Labour Standards, PSI, 2015, <https://www.world-psi.org/sites/default/files/attachment/news/psi_report_on_rajasthan_adb_solar_project_dec2015.pdf>.

Joint GUFs/FNV, Engaging with Asian Development Bank for workers rights: A trade unions guide to understanding ADB, PSI, 2012, <https://www.world-psi.org/sites/default/files/documents/research/a_trade_union_guide_to_understanding_adb_psi-2012.pdf>.

Souparna Lahiri, Core Labour Standards in ADB funded Power Sector Improvement and Urban Development Programme in Bihar, PSI, 2011, <https://www.world-psi.org/sites/default/files/attachment/news/corelabourstandards_in_adb_electricity_bihar_nov2011.pdf>.

PSI, key union issues in Madya Pradesh power sector reforms, 2008. <http://www.world-psi.org/sites/default/files/attachment/news/madhya_pradesh_electricity_workers_and_adb_aug2009.pdf>.

Dr. Avilash Roul & Manoranjan Pegu, eds., Workers' rights in ADB funded projects in India: Non-implementation of core labour standards, Joint GUFs/FNV, 2013, <https://www.world-psi.org/sites/default/files/documents/research/psi_book_jan.pdf>.

internal migrants that enabled coercion or sub-minimum wage pay, and lack of pay or compensation in the event of illness and injury.

Findings of violations and unacceptable conditions are summarised below by category. Abuse and discrimination against migrant workers, including internal migrants, appears throughout.

Freedom of association and collective bargaining

- At the Regional Development Bank in Sri Lanka, management threatened workers in writing with pay cuts if they participated in industrial action, and generally warned them against taking part. to not participate in industrial action and that consequences could include pay cuts. The strike occurred, among other reasons, due to the company's refusal to engage with the workers' union and collectively bargain.
- At the Kathmandu Valley Water Supply Project, 30 workers were fired in a campaign by the company to avoid recognising and bargaining with the union.
- At the Tanahu Hydroelectric project, workers went on strike following a safety incident. Afterwards, the company improved engagement with the union but still assigned additional work tasks to union leaders to reduce their activities.
- The Uttarakhand Power Sector Investment Program was linked with the unbundling of the power company. The successor companies ended collective bargaining and social dialogue. Workers reported harassment, including retaliatory transfers to worksite away from home and an environment of fear.
- On the Kiratpur NerChowk Expressway, part of the Accelerating Infrastructure Investment Facility in India project, two requests to initiate collective bargaining were ignored.

Non-discrimination

- Breastfeeding women were terminated at the Kathmandu Valley project.
- No accommodations or breaks for breastfeeding women on the Rajasthan Renewable Energy project. Women on the project reported frequent verbal abuse. Married couples were often paid jointly.
- Lack of gender-separated toilets at the Regional Development Bank, Rajasthan Renewable Energy, and Kiratpur NerChowk Expressway .
- At NTPC Capacity Expansion, the company complied with a local hire agreement but created a new, lower-paid job class for locals.

Occupational health and safety

- On the Bangalore Metro Rail project, 14 documented major safety incidents resulted in 8 fatalities. At least three additional fatalities and other incidents went unreported. Workers were exposed to asbestos and silica in addition to carbon monoxide, nitrogen dioxide, and sulfur dioxide. A local hospital reported between 30 and 45 monthly visits from migrant workers on the project with respiratory problems.

- At Kathmandu Valley, at least 6 fatalities had occurred. The company did not compensate families beyond funeral costs. After injuries, the company usually refused to pay healthcare costs unless the union pressed the issue.
- Lack of personal protective equipment or highly inadequate equipment reported on Rajasthan Renewable Energy, NTPC Capacity Expansion, Dhaka Mass Rapid Transit, and Madhya Pradesh Power Sector.
- Unaddressed safety hazards such as landslide risks documented at Tanahu Hydroelectric.
- After restructuring under the Madhya Pradesh Power Sector Reform project, fatalities rose as workloads and conditions deteriorated. Lack of compensation for injuries and unaddressed hazards were also identified. The increased tariffs under the reforms also exposed workers to violence from users.

Worker accommodations

- Poor and degrading worker accommodations documented on Kathmandu Valley, Tanahu Hydroelectric, Bangalore Metro Rail Transit, and Rajasthan Renewable Energy. On the latter two, construction workers had to build their own makeshift accommodations. Workers at Rajasthan substations had to sleep in the work area and lacked access to water.
- Unsafe worker transportation at Tanahu Hydroelectric.
- Lack of separation between low-quality accommodations for workers and their families put children at safety risks on the Rajasthan Renewable Energy.

Wages, hours, and employment contracts

- The Regional Development Bank hired full-time 'rural leaders' to handle microfinance operations and paid them below the minimum wage, without social benefits. Their employment was handled directly by the credit department, in contrast to all other employees that were hired by Human Resources.
- Under the Kathmandu Valley Water Supply Project, many workers were casual (without employment contracts), paid below the minimum wage, and not given pay slips. Wages were often paid via intermediaries or recruiters, especially for internal migrant workers. Intermediaries took a cut before the worker. Overtime was only paid beginning after 10 hours of work despite the regular shift being 8 hours per day. The employer was not registering workers with social security and therefore not paying contributions, which also meant that workers did not have access to healthcare.
- Excessive working hours at the Dhaka Mass Rapid Transit project, regularly working 12 hour days and sometimes 7 days per week.
- Lack of employment contracts and overtime violations including forced overtime on weekends on Kiratpur Ner Chowk Expressway. Widespread Unpaid wages and benefits when the primary contractor became insolvent. Some workers at subcontractors were not enrolled in social security.
- On the Rajasthan Renewable Energy Transmission Program, project workers, including construction, cleaning, and security, were mostly internal migrants employed through two

or three layers of subcontracting. Labour intermediaries frequently paid them an advance before they started working and applied wages toward repayment. This led to pay below the minimum wage. Temporary construction workers were paid a flat rate, regardless of job class, that was below minimum wage rates. Many did not receive sick leave or social benefits.

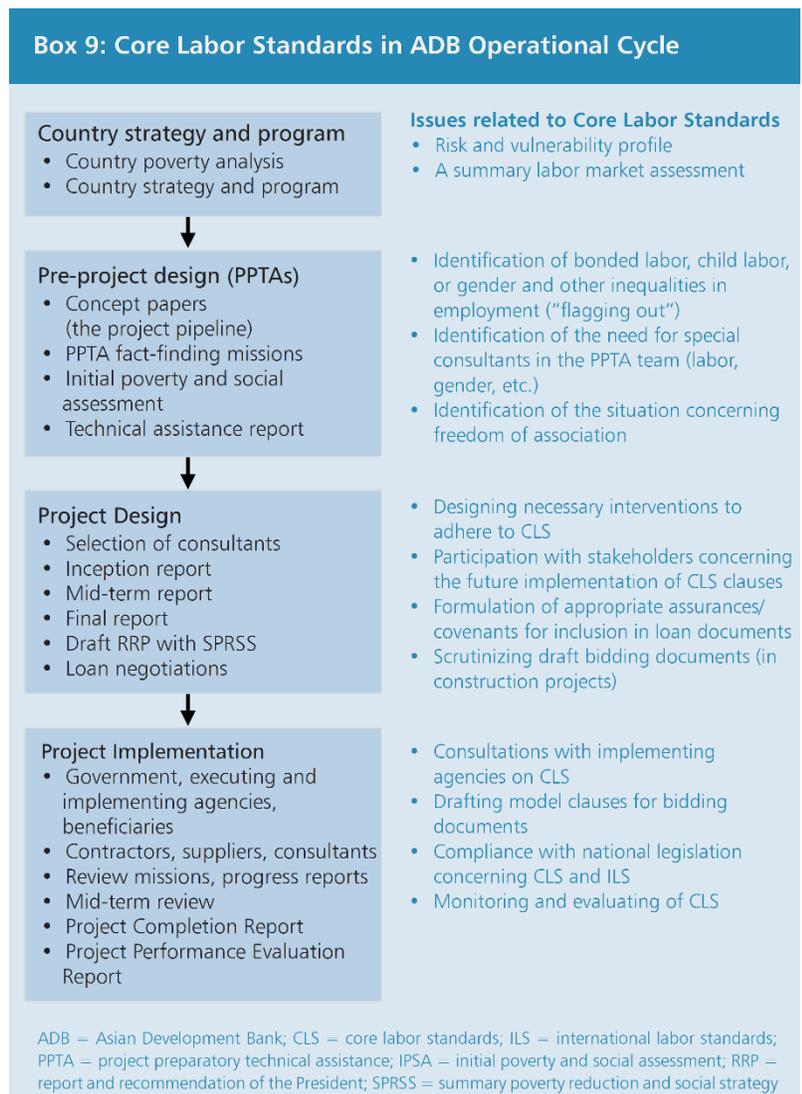
- An estimated 8 to 10 per cent of workers on the Bangalore Metro Rail Transit project received less than minimum wage.

Forced and child labour

- On the Kathmandu Valley and Tanahu Hydroelectric projects, no evidence was found that the age of new hires was verified.
- On projects including Rajasthan Renewable Energy, it was noted that advances could be used to coerce workers to continue performing labour.

ADB project documents

The commitment to the core labour standard in the Social Protection Strategy sits alongside the 2009 Safeguards Policy Statement, which prohibits investments with “production or activities involving harmful or exploitative forms of forced labor or child labor”. It also covers occupational health and safety for project workers in Safeguard 1: Environment. The problems with locating labour and working condition requirements for all projects in the Social Protection Strategy is discussed in the next section. Assessment and attention to labour and working conditions risks, including for project workers and project-affected workers such as those who lose their jobs in ADB-supported privatisation, are scattered throughout ADB guidelines for Country Partnership Strategies and loan project design. This includes ADB Operational Manual in C-3, “Incorporation of Social Dimensions into ADB Operations”, and the Handbook on Poverty and Social Analysis. In theory, this should come together as described in the valuable ADB-ILO Core Labour Standards Handbook.



This fractured and non-binding approach means that core labour standards and other issues, including working conditions and project-affected workers, are frequently unaddressed. The process provides numerous opportunities to drop or ignore labour issues and inadequate procedures to consult trade unions, the ILO, experts, and inspectorates to identify risks. While the Core Labor Standards Handbook includes a plethora of useful guidance, it is clear to trade unions that it has not formed a central part of staff training or working methods. The social and labour elements of Environmental, Social, and Governance approaches have received less attention than the environment at ADB and similar institutions.

A review of project documents for the Rajasthan Renewable Energy Project found:

- Workers were not identified as stakeholders in the Initial Poverty and Social Assessment (IPSA). When the union of electrical company workers wrote twice to ADB, their requests for consultation and involvement were rebuffed.
- The Summary Poverty Reduction and Social Strategy (SPRSS) only stated that jobs would be created in construction without assessing labour rights risks. Neither the IPSA nor the SPRSS considered core labour standards.
- Positively, the loan agreement covered gender-sensitive occupational health and safety measures, separate toilets for men and women, creating childcare facilities, gender training for contractors that include the core labour standards, and the inclusion of the core labour standards in bidding documents. However, project site visits showed non-compliance with these commitments.

A review of the Bihar Power System Improvement Project found a lack of knowledge in the project management unit requirements that contractor tenders include the core labour standards. ADB responded that a consultant had prepared the tenders and the unit may be unaware. This represents a failure to adequately convey requirements to the borrower or go beyond an unimplemented paper concerning the labour practices of contractors. Absent from the project preparation documents for both this project and the Bihar Urban Infrastructure Development Sector Programme were considerations regarding workers and state-owned enterprise reform from the Handbook on Poverty and Social Analysis.

Clarifying the role of the Social Protection Strategy and the Safeguards Policy Statement

The ADB's commitment to the core labour standards in project lending was somewhat shoehorned into a thematic strategy document, the Social Protection Strategy. The ADB in 2009 declined to adopt a labour safeguard on the basis that the Social Protection Strategy already covered the core labour standards. Such reasoning does not hold given the scope and objective of the strategy. There should be a commitment in the Social Protection Strategy to upholding core and international labour standards in the ADB's work on social protection, *and* a binding labour safeguard in the Safeguard Policy Statement. Each has a distinct and important role.

Updates to the Safeguard Policy Statement and the Social Protection Strategy can better utilise the roles of each respective document:

- A safeguards framework with a standalone section on labour and working conditions, creating binding requirements for ADB loan projects that fully uphold the international labour standards.
- A Social Protection Strategy in which international labour standards, including the core labour standards and relevant ILO instruments, guide ADB interventions on social protection and labour markets. Relevant instruments include conventions and recommendations on social protection, labour administration, employment policy, tripartite consultation, and vocational training. Similar steps should be taken in all sector or theme strategies, focusing on other relevant issues.

The Social Protection Strategy is intended to guide the formulation of ADB interventions in labour markets, social protection, and closely related areas of vulnerability and child protection:

Given the broad variety of reform priorities and possible interventions (labor markets, social insurance, social assistance, area-based schemes, and child protection), the strategy sets the parameters to prioritize investments, based on the principles of reducing poverty and vulnerability; strengthening country focus; enhancing strategic alliances and partnerships with development agencies, private sector, and civil society; and taking a long-/medium-term approach to promote effective social protection systems in Asia and the Pacific. ³

Normally, thematic strategy documents guide the work of the department responsible for the sector or theme, such as a social development or a social protection and labour department, and their operations, including advice, technical assistance, and designing loan programmes on that theme. Thematic strategies will also guide other departments and operations that touch upon the subject. Accordingly, the strategy states: “The principles described in the earlier sections are also applicable to social protection components in loans where social protection is not the direct objective of the loan.”

The strategy states that “Examples of ADB’s role in technical assistance and lending programs for the priority social protection interventions include...continuing to support direct interventions that contribute to the elimination of violations of the Core Labor Standards”.⁴ The core labour standards are explained in the document in relation to national legislative frameworks and government procurement, and as part of labour market assessments that help identify priorities for ADB partnerships with developing member countries. These are squarely within the purview of the strategy.

Although the strategy applies to ‘social protection components’ of loans, the issue of safeguards on project working conditions and labour rights goes significantly beyond this scope. Paragraph 84 also goes beyond the main objective to guide ADB priorities and interventions related to social protection and labour markets:

³ ADB, Social Protection Strategy, 2001, pg. 33

⁴ Ibid., pg 55

(ii) (a) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards;

(b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation (e.g., minimum wages, safe working conditions, and social security contributions, etc.) as well as with the Core Labor Standards; and

(iii) As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.⁵

The Safeguards Policy Statement is the more appropriate area for this commitment, as it is better suited to consistently operationalising it in project design and monitoring. At the same time, the Social Protection Strategy should redouble its commitment to the core labour standards while aligning with relevant international labour standards to improve the ADB's work in social protection and labour markets.

It should also be clearly understood that ADB interventions to improve the overall labour standards and social protection situation in a country are complementary and separate from the task of safeguarding project workers. ADB is responsible for ensuring that its funded projects meet expectations and should do all necessary monitoring toward this end. Support for improving national environments does subtract from, or substitute for, this obligation. Experiences on individual investment projects may lead to overall interventions. However, this is separate from bringing a project into compliance using preventive or remedial measures specific to the loan.

Creating a labour safeguard that is fully aligned with international labour standards

The ADB can be more than a follower. It should not copy the text of other labour safeguards that contain derogations from the international labour standards, or otherwise contribute to global policy divergence through the creation of a safeguard out-of-sync with ILO norms. Instead, ABD should be a leader by continuing to apply the core labour standards to projects, and utilising a binding safeguard to enhance and expand the current commitment. The ADB Core Labor Standards Handbook rightly states: "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."⁶

Plainly requiring projects to comply with the core labour standards would also be an extension of the existing Social Protection Strategy paragraph on 'safeguards' that states: "appropriate steps should be taken to ensure that procurement of goods and services, contractors, subcontractors, and consultants, comply with the country's labor legislation (e.g., minimum wages, safe working conditions, social security contributions, etc.) as well as with the Core Labor Standards." Meanwhile, other safeguards at multilateral development banks cite the ILO core conventions and different standards to varying degrees, sometimes describing them as 'guiding' or an objective of the safeguard.

⁵ Ibid., pgs 56-7

⁶ Core Labor Standards Handbook, pg. 78

The safeguard should align with all areas of the international labour standards to account for the range of labour and working conditions issues on projects. This can be accomplished by renewing the Memorandum of Understanding with the ILO, first signed after the Social Protection Strategy commitment. Updates can include joint work on creating a labour safeguard by thoroughly reviewing and translating into the modality of a lending safeguard the ILO Conventions and Recommendations agreed upon at the global level by governments, employers, and workers. It can also outline collaboration on implementation, including staff and borrower training, and assistance with pre-project due diligence.

Coverage of project-affected workers

An effective labour safeguard that is responsive to ADB's operations should cover both project workers and project-affected workers, and apply to all types of support, including policy-based loans. Other multilateral development banks frequently restrict safeguards to the category of project workers, those who perform onsite work through direct or indirect employment relationships, with limited protections for workers at primary suppliers.

Project-affected workers include those who will lose their jobs or incomes due to a project, either through direct measures such as privatisation, outsourcing and restructuring, or through indirect impacts. For example, informal transport workers can be displaced by the construction and operation of a new system, or livelihoods can be lost due to pollution that inhibits agriculture and fishery activities. The safeguard must ensure these labour impacts and risks are addressed.

Covering project-affected workers would be consistent with the Social Protection Strategy requirement that precedes the specifics on projects and core labour standards:

- i) vulnerable groups that maybe negatively affected by an ADB intervention must be adequately compensated and mitigation measures put in place to avoid creating further poverty (e.g., in case of public or private sector restructuring, workers, particularly low-income workers, should not be unfairly disadvantaged, regardless of race, skills, gender, age, or religious and political beliefs

This language can be expanded to specifically mention trade union membership or activity, social origin, or other status.

Procedures for assessing risk to project-affected workers should include due diligence on the existing practices of executing agencies. The ADB should also not exclude any worker, including civil servants and workers providing labour on public employment programmes or other arrangements, from coverage. International labour standards are broadly applicable and relevant to all workers.

Emerging issues

Maximum limits on working hours, a key issue identified in the ILO Centenary Declaration for the Future of Work, have not yet been addressed in safeguards outside the framework of national law or prevailing conditions. With the project timeline pressures that can particularly manifest with infrastructure, the ADB should set common guidelines to avoid excessive working hours that hurt

workers and their conditions. Safeguards should also prevent excessive and unnecessary labour intermediation or subcontracting, as well as overreliance on temporary or otherwise precarious employment contracts. Standards requiring effectively equal treatment of workers on different contracts, or employed through subcontractors or intermediaries, do not effectively tackle the issue of avoiding responsibility and (in practice) driving down conditions using such arrangements.

Requiring the direct payment of wages to workers will help avoid the situations observed on ADB project sites. The World Bank safeguard requires that “where payments are made for the benefit of project workers, project workers will be provided with evidence of such payments” at the time of termination. This should be included with all payslips; if an employer has been avoiding payments, the time of termination or retrenchment is already too late.

Both financial inclusion and monitoring would benefit from stronger rules on documentation and direct payment of wages. Digital tools for documentation of hours and wage payments, and assistance for workers to setup accounts complementary steps that borrowers can be encouraged to take. Systems should be required for fair, transparent, and verifiable tracking of hours worked to avoid forced overtime or other working hour issues observed on ADB project sites.

Although other safeguards include requirements on collective dismissal, this may not adequately address situations of bankruptcy, insolvency, and abrupt shuttering of project sites or workplaces. Workers can be left with unpaid wages and few recourses through processes that are designed for business creditors, a particularly fruitless prospect if the former employer has successfully been able to hide assets or depart the country. The ADB can extend collective dismissals requirements to subcontractors, which are the most likely to engage in such behaviour, and better account for fair treatment of workers in cases of insolvency. This should include a requirement to promptly pay the wages and benefits for all hours worked.

Application to all operations

Policy-based loans and technical assistance can have some of the most lasting and wide-ranging effects on workers, changing their working conditions, rights, and lives for years. In conjunction with the inclusion of the core and international labour standards in all thematic and sector strategies, an ADB labour safeguard should ensure that no policy-based operation violates an international labour standard. For example, reforms of labour inspectorates or pension systems can run contrary to ILO conventions. Policy operations of ADB should never lead to violations. In addition, weakening or undermining ILO conventions runs contrary to the progressive realisation of rights, as enshrined in ILO instruments on social protection and international human rights law. A safeguard should include a section with requirements and procedures to verify that policy-based loans and technical assistance are aligned with ILO standards.

Together, a safeguards approach that prevents policy-based loans from violating standards and a strategic focus on promoting international labour standards will ensure that the ADB’s policy advice and lending contribute to decent work.

Peer institutions

The safeguards at the World Bank Group, both the IFC Performance Standards and the World Bank Environmental and Social Framework, may serve as a reference point if ADB drafts a labour safeguard. There are several issues in the text of these standards, some of which overlap. Several improvements have been made to IFC PS 2 in the safeguards of the European Bank for Reconstruction and Development, and the Inter-American Development Bank. The African Development Bank followed less strictly the IFC to create a standard with direct wording, further references to international labour standards, and fewer loopholes and definitional shortcomings.

As multilateral development banks likewise engaged in public and private sector lending, and without the loopholes and exclusions that hamper the World Bank labour safeguard, the best peer reference points for ADB will be the African and Inter-American development banks.

Notable improvements from EBRD PR 2, AfDB OS 5, and IDB ESPS 2:

- AfDB and EBRD are more direct on alignment with international labour standards. AfDB includes an objective to “Align Bank requirements with the ILO Core Labor Standards”, while EBRD aims to “respect and protect the fundamental principles and rights of workers” per the core conventions. IDB uses similar language. We note, however, that adherence should be mandatory rather than an objective of the safeguard.
- On non-discrimination, AfDB accordingly takes a more direct stance on core labour standards in the text. AfDB modifies language found in the IFC and World Bank standards on situations where national law may clash with expectations of non-discrimination. AfDB states that “Where national law is inconsistent with this OS, the borrower or client should endeavour to carry out its operations consistent with this OS and/or ILO standards, without contravening applicable laws”.
- EBRD, IDB, and AfDB provide additional language on discrimination against women and the need to address gender-based violence. IDB cites Convention 190 as the “baseline” for addressing the issue.
- EBRD requires “written contracts”, the only way to ensure consistency, fairness, and verifiable information. This can be complemented by enhanced practical measures to monitor hours worked and payment of wages and benefits.
- IDB prohibits disguised employment, a growing problem in the world of work. The use of disguised employment on a project can wholly undermine the application of a labour safeguard. Although not explicitly addressed in IFC PS 2, the Guidance Note unambiguously notes that disguised employment is a violation.
- AfDB provides requirements on trade union rights without the problematic subordination to national law. EBRD and IDB require that workers are proactively informed of their freedom of association and collective bargaining rights.
- IDB establishes a floor of 15 years for projects, regardless of law or local conditions. AfDB directly cites ILO conventions, stating the client will “not employ children in any manner that is economically exploitative, or is likely to be hazardous or to interfere with the child’s education or to be harmful to the child’s health or physical, mental, spiritual, moral, or

social development as stipulated in national laws in compliance with the provisions of ILO Convention C138 and C182.”

- Although EBRD still excludes third parties from the retrenchment requirements, it adds “The client will identify risks associated with the recruitment, engagement, and demobilisation of project workers by third parties and establish commensurate policies and procedures for managing and monitoring the performance of third party employers in relation to the project and requirements of this PR.”
- IDB incorporates the occupational health and safety improvements of the World Bank standard while introducing language that better addresses health and disease in light of the pandemic. Since the adoption of the standard, the pandemic has highlighted the issue of vaccinations – both for COVID-19 and as a matter of preventing various forms of infectious disease. Guidelines can be provided on vaccinations and appropriately dealing with new diseases under OHS management systems.

The Common Approach to Environmental and Social Standards for UN Programming, which mirrors much of the multilateral development bank standards on labour, took the significant step of covering supply chain workers in all areas of the core labour standards.⁷

Although IFC Performance Standard 2 is the main reference document for safeguards, it has not been updated since 2012, and contain serious shortcomings that have hampered its implementation from the beginning:

- The standard applies to direct and indirect workers that “perform work related to core business processes”. The term core processes is defined as “those production and/or service processes essential for a specific business activity without which the business activity could not continue”. This creates a loophole whereby a borrower can argue that contractor is performing non-core work and therefore the safeguard does not apply.
- A similar definition problem is present for the definition related to supply chain workers: “Primary suppliers are those suppliers who, on an ongoing basis, provide goods or materials essential for the core business processes of the project”. The use of ‘ongoing’ excludes direct suppliers that do not deliver on an ongoing basis, for example, a large purchase of building materials that only occurs once or a limited number of times. The determining factor should be the size of the supply contract; only small, petty purchases should be exempt.
- The requirement for “documented information” falls short of written employment contracts.
- Reasonable working conditions “could be assessed by reference to (i) conditions established for work of the same character in the trade or industry concerned in the area/region where the work is carried out; (ii) collective agreement or other recognized negotiation between other organizations of employers and workers’ representatives in the trade or industry concerned; (iii) arbitration award; or (iv) conditions established by

⁷ United Nations Environment Management Group, Moving towards a Common Approach to Environmental and Social Standards for UN Programming, 2019, <https://unemg.org/wp-content/uploads/2019/07/FINAL_Model_Approach_ES-Standards-1.pdf>.

national law.” The use of ‘or’ allows borrowers to opt for national law, even if its basic requirements are less than prevailing or comparable work in the sector or area. This formulation also lacks a clear requirement for a living wage.

- Migrant workers are to be “engaged on substantially equivalent terms and conditions to non-migrant workers carrying out similar work”. Qualifying the requirement with ‘substantially’ allows room for differential treatment; equal pay and working conditions should be the expectation.
- The workers’ organization section opens with: “In countries where national law recognizes workers’ rights to form and to join workers’ organizations of their choosing without interference and to bargain collectively, the client will comply with national law.” Paragraph 14 requires that, regardless of restrictions or silence in national law, “the client will not discourage workers from electing worker representatives, forming or joining workers’ organizations of their choosing, or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and collective bargaining. The client will engage with such workers’ representatives and workers’ organizations, and provide them with information needed for meaningful negotiation in a timely manner.” Although this requirement exists in all circumstances, the deference to national law has significantly impaired the ability of IFC and other institutions to address violations and empowered some irresponsible borrowers to violate trade union rights wantonly. Such qualifiers on national law are not present for the other areas of the core labour standards in the IFC standard.
- Workers at third parties, including contractors, are not covered by the requirements on retrenchment. Particularly on infrastructure projects, most workers are employed by contractors. Exempting contractors from the requirement unfairly exposes many project workers to collective dismissal without notice or the protections that ensure a fair process.
- Workers in the primary supply chain are only afforded protections on forced labour, child labour, and serious occupational health and safety issues. At a minimum, they should be covered in all areas of the core labour standards plus safety.

The World Bank’s ESS 2 made notable improvements on occupational health and safety compared to IFC:

- Compensation for injuries and fatalities as part of the project plan
- Coordination between employers present on a project
- The right to stop work in a situation of imminent danger without retaliation.

However, the World Bank standard also stepped backwards in several areas:

- No reference is made to the core labour standards or ILO conventions.
- Civil servants are not covered as project workers unless there has been an “effective legal transfer of their employment or engagement to the project”. The term civil servant is entirely undefined, leading to confusion about the treatment of public sector workers and can enable their exclusion. Workers in the public sector, such as teachers and healthcare workers, are distinct from civil servants engaged in the administration of the state and

subject to separate regulatory regimes. Neither should be excluded from a safeguard that will apply to public sector lending.

- In the absence of national law, the minimum age for a project worker is 14, lower than the baseline of Convention 138. Lower ages are only indicated in the Convention as an “initial” exception that should be phased out, and any development project should at least adhere to Convention 138’s benchmark.
- There are no requirements related to retrenchment or collective dismissal.
- A category of community workers was invented that allows dangerous exceptions to the standard. Vague considerations related to the nature and scope of the project allow any number of exceptions to be taken the safeguard, which should be a floor of labour rights and fair working conditions for all. The lack of protection is particularly troubling because vulnerabilities for workers, along with more opportunities for abuses and fewer options for local legal recourse, can be highest: “where labor is provided by the community as a contribution to the project, or where projects are designed and conducted for the purpose of fostering community-driven development, providing a social safety net or providing targeted assistance in fragile and conflict-affected situations.” In fact, Box 10 of the ADB Core Labor Standards Handbook describes the many violations that can occur in such scenarios. Any workers involved in community-based contracting should receive full and equal protection under the safeguard.

On a more positive note, the World Bank points towards consultation of trade unions in project design: “In conducting the environmental and social assessment and depending on the significance of the potential issues in the project relating to labor and working conditions, the views of representative workers’ and employers’ organizations may be sought.”

This should be a systematic approach in the ADB safeguard, making the World Bank provision mandatory. Trade unions are an unreplaceable source of information during design and monitoring. This can include unions at other operations of the borrower or those representing workers at the executing agency, as well as to local, national, and international trade bodies. Numerous issues at other multilateral development banks, including serious labour disputes that were not identified in due diligence or as part of oversight, could have been avoided if ADB and borrower staff were instructed to consult relevant trade unions.

At peer development banks, labour management procedures are created and updated during the project cycle. To be successful, full workforce mapping needs to occur. This requires an accurate picture of the project workforce, including job classes, types of contracts, pay levels, foreseen changes during the project cycle, and data on migrants, women, and other groups of workers. Without workforce mapping, safeguard implementation is prone to overlooking issues or may face hurdles because of a lack of clarity.

Safeguard implementation

Even a well-designed safeguard can fall victim to inadequate resources and a lack of commitment to implementation. To create a comprehensive and effective standard, the ADB should initiate a structured process of joint work with the ILO and trade unions. Along with a renewed

Memorandum of Understanding with the ILO, this can take the form of a labour advisory group including trade unions and experts. This group would continue to function at ADB after the adoption of the new safeguards, with a particularly crucial role in the early days of implementation.

Together with a safeguard, the ADB should strengthen its collaboration with trade unions to ensure communication between project teams, resident missions, thematic or sector departments, and others at ADB with trade unions. This consistent and open communication will help safeguard execution, particularly the consistent consultation of trade unions in project preparation.

Inconsistent implementation and avoidance of requirements can also arise from a country systems approach in which safeguards are set aside in favour of national law. Such an approach overlooks a key function of safeguards: to ensure that loan projects are conducted in a responsible manner even in local contexts where the law is routinely violated without consequence. Rather than a country systems approach, the ADB should have consistent requirements that will be monitored on every project. As previously noted, the ADB can play an important role through interventions that improve the labour rights situation in member countries, such as strengthening inspectorates, but this is neither a substitute nor an excuse for lack of safeguard implementation at the project level.

Implementation is highly dependent upon the reporting mechanism put in place. Requirements should exist in the safeguard that ensure an accurate and full provision of information to ADB, including data appropriately disaggregated for gender and other factors on hiring, pay, and especially occupational health and safety. The ADB should collect this data in a manner that can be easily aggregated, and publish annual statistics on worker safety incidents and fatalities across the portfolio. This will bolster a culture of safety and help focus efforts on reducing the number of workers injured, disabled, or killed on loan projects.

Adequate resources will be needed at ADB to implement the safeguards, including a new requirement on labour. Due diligence and monitoring can become an unfulfilled promise if staff are stretched too thin or lack the necessary skills and knowledge. The ADB will need to hire staff with genuine expertise in labour rights, occupational health and safety, and the region. The use of consultants, which often are involved only in specific segments of a project and lack the authority of the lending institution, is no substitute for qualified staff. This has become glaring at other multilateral development with regards to health and safety. When it becomes clear that conditions are diverging from the safety plans made by a bank or borrower consultant during project preparation, there are little to no bank staff capable of providing guidance and oversight.

A reliance on external auditors to identify violations and recommend corrective actions can stand in the way of effective application of the safeguards and development of necessary staff capacity. The social auditing industry is riven with problems, often acting to create the veneer of responsible supply chains while failing to prevent or identify violations.⁸ In many cases, audit firms are more

⁸ See: AFL-CIO, Responsibility outsourced: social audits, workplace certification and twenty years of failure to protect worker rights, 2013, < <https://aflcio.org/reports/responsibility-outsourced>>.

interested in future contracts with employers and shy away from honest findings. In others, even auditors that advertise social expertise can lack knowledge on labour or appropriate methods to interview workers and therefore miss major problems or provide misguided advice. ADB safeguards and procedures should encourage joint inspections carried out by bank staff and global union federation representatives. The labour advisory group can further guide or partake in joint site visits.

In other situations, safeguards are rendered moot when a development bank defers to a slow, ineffective court system and refuses to act using its oversight tools. This failure of responsibility is nothing more than a stall tactic. In some cases, it enables the client's strategy of using legal tactics to avoid their obligations. Enforcing and upholding safeguards are not a form of interference in national judicial procedures, each serves a purpose and can be in parallel. Problems can also be avoided on this front by writing a freedom of association and collective bargaining section that upholds the core conventions without the muddying reference to national law present at other development banks. It has created vicious cycles of misinterpretation, ignoring the obligation of non-interference regardless of national law, and facilitated development bank timewasting while national court cases are pending.

Delays in resolving or remediating labour issues can be particularly damaging. For example, the ability of a borrower or contractor to terminate workers in retaliation for forming a union can 'poison the well' for the entire workforce by creating an environment of fear. To encourage the timely resolution of issues, IFC and EBRD have agreed with trade unions on a communication mechanism to raise issues with the safeguards department. This includes a template for describing the issues, a dedicated contact point at the bank, and a commitment to responding within a reasonable amount of time.

ADB should also consider performance bonds and other instruments to ensure funding is available for remediation. Based on the level and type of risk identified, such as for retrenchment, discrimination, or disability due to OHS incidents, adequate money should be set-aside in the loan and by the borrower to reasonably cover remediation and unintended consequences.

The labour safeguard and beyond: Steps to promote international standards and create quality jobs

Establishing a binding labour safeguard is overdue at ADB. The ADB can maximise the opportunity of the safeguards review by:

- Conducting studies on current and past project working conditions, including adherence to the core labour standards, implementation of the existing procedures, and a survey the project workforces or groups of project-affected workers.
- Using the international labour standards as the blueprint, avoiding shortcomings in the safeguards of other multilateral development banks. A safeguard should be fully responsive to the labour issues in lending, with measures to address project-affected workers, provide all workers on a project with equal protections, and verify that policy-based loans do not undermine the international labour standards.

- Renewing Memorandum of Understanding with the ILO foreseeing joint work on safeguards drafting, an update to the Core Labor Standards Handbook, training for ADB staff and borrowers, and a procedure for collaborating on due diligence and project monitoring. Trade unions report that ADB local missions are not conversant in local labour law and would benefit from tailored training.
- Holding structured dialogue with trade unions on the safeguards, and establishing ongoing methods to improve communication through a labour advisory group and other channels.

Generating quality jobs and supporting core labour standards are an operational priority in ADB's 2030 Strategy. A binding labour safeguard will greatly aid this task, but the work does not end there. Updates to sector, thematic, and country strategies should systematically address how to respect and promote the international labour standards, including any ILO conventions or recommendations that are specific to the topic. Strategies should also have a well-defined approach to create quality jobs, and measure results in this area. Comparisons of jobs results are particularly useful and salient at the sector level, where direct comparisons between projects can be made and sector portfolio performance assessed over time.

The 2019-2024 ADB Corporate Results Framework took an important step with an indicator on jobs generated by loans. Work on measuring the jobs results of projects should continue, including measurement of job quality on loan projects and direct post-project job creation. While the safeguards often act to improve working conditions, the purpose is to create a compliance floor. To truly support the goals of the 2030 Strategy, attention should be paid to quality issues, including raising wages and conditions above this floor. A significant channel of lasting job creation through ADB operations are the jobs that exist after the project is completed, such as in the operation of hospitals or systems. Even where the first intent of the project is to have broader transformative effects, such as improving living standards and job creation through better health and energy access, the direct post-project jobs matter and should be measured for quantity and quality. Any job and income loss should also be assessed, such as the elimination of high-paying jobs when an energy system is converted to renewables. This can inform project design, such as stronger just transition measures to move displaced workers into the jobs created, and country or sector strategies.

Alongside measuring direct post-project job creation, pre- and post-project employment impact assessments are essential to improving project design and preventing harm. This should include indirect or linked job loss and gain, and changes to working conditions including the enjoyment of labour rights. This applies both to investment projects and policy-based lending or technical assistance. Measures including deregulation and restructuring of services should be assessed for the impact it will have on workers, either through retrenchment or a transition to private operation with far worse treatment.

Twenty years after the ADB's commitment to the core labour standards, it is time for the ADB to make the next step: an institutional commitment to international labour standards and quality job creation as part of a decade of action for the Sustainable Development Goals and recovery from the pandemic.

Additional resources

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