

TO: ADB-SPU safeguards team

RE: **PSI comments on ADB's Safeguard Policies**

CC: Executive Directors, ADB-RSDD, ITUC, BWI, ILO-Manila, ALNI-Philippines, NGO Forum on ADB

Public Services International (PSI) views the Bank's update of its 'safeguard policies' as an opportunity to strengthen and integrate in a more cohesive manner ADB's current policies and guidelines on social protection and ILO's core labor standards (CLS)[\[1\]](#) and decent work agenda into the Bank's 'safeguards' framework. Our initial comments – (i) the scope of the SPU, (ii) the agenda of SPU Multistakeholder Consultation (19-20 Nov, Manila), and (iii) trade union participation at the Consultation – had earlier been emailed to the ADB-SPU team. In light of the ADB-SPU team's Nov 11 response to our comments, excerpts of which are found below --

"On the scope of the SPU, as approved by ADB Management, the SPU covers environment, involuntary resettlement, and Indigenous Peoples. It is envisaged that *labor issues will continue to be addressed through ADB's Social Protection Strategy and as part of the requirements indicated under OM Section C3 on Incorporation of Social Dimensions into ADB Operations*. Comments related to core labor standards would be addressed in that context." --

A. PSI urges the Bank to embark on a new and separate review and 'update' of its existing labor safeguards and social protection strategy that will provide for mandatory and clear-cut operational guidelines vis compliance to all four core labor standards and decent work agenda.

Many cases of CLS violations take the form of physical violence against union organizers and officials, apart from the usual discrimination and dismissals and other work-related anti-union/worker action. Slave labor and bonded labor are still found in the Asia-Pacific region, mainly affecting the most vulnerable, i.e., children and women. About 60 percent of the workers in the region are in the informal economy; in some countries, informal economy accounts for over 90 percent. Informal economy workers or those engaged in 'atypical work' are the most exploited, most neglected and is characterized by low wages, long working hours, lack of social protection, lack of job security, absence of occupational health and safety measures, and are largely unorganized and exempted from labor laws. Atypical work is commonly characterized by its contingency, transitoriness, different working conditions compared to regular workers in the same job, and precariousness of employment such as part-time job, dispatched workers, temporary or contractual workers, or outsourced workers.

Moreover, in many of our discussions with PSI affiliates and other workers organizations affected by ADB-supported activities, we have found very weak the Bank's implementation of ADB's *CLS Handbook* and *Social Protection Strategy*. Problems in the field include: absence of a labor participation strategy; non-consultation with and participation of workers organizations/unions; no timely disclosure of relevant information to workers organizations/unions; lack of adequate mitigation measures that are agreeable to affected workers; no grievance nor monitoring mechanism.

The new Bank review of its existing labor safeguards should address the following concerns:

1. Consolidate into a more coherent framework ADB's various labor-related policies/guidelines, to wit:

- ADB's *Social Protection Strategy* approved by the Bank's Board of Directors in 2001;
- ADB's *Core Labor Standards Handbook* launched in 2006 to 'formally adopt' CLS as part of the 2001 Strategy: • "Vulnerable groups that may be 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); mitigation measures should always aim to adequately balance social objectives and economic sustainability; • (i) In the design and formulation of its loans, ADB will comply with the internationally recognized CLS; (ii) 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 CLS; • As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with." (pp 16-17)
- *OM Section C3 on Incorporation of Social Dimensions into ADB Operations*;
- ADB's 'initial stakeholder analysis' (ISA), as part of *IPSA (Initial Poverty and Social Assessment)*, should clearly identify workers organizations/unions as key stakeholders. Likewise, affected workers should be differentiated by categories according to likely severity or significance of impacts (e.g., position in enterprise, age group, gender, contractuales/outsourced, etc); ADB should bear in mind that those workers engaged in 'atypical work' are often the most vulnerable and exploited. These differentiated impacts should enable ADB to design adequate mitigation measures for each category of affected workers in consultation and with full participation and consent of affected workers.
- ADB's *Handbook on Poverty and Social Analysis* incorporates CLS issues in its risk/vulnerabilities assessment and mitigation measures, and recognizes that labor issues are likely to be 'significant' when: (a) Workers may lose their employment as a result of public or private sector restructuring. (b) The project may develop labor market policies or investments. (c) The project, including ADB-financed procurement of good and services, is not in compliance with the national labor legislation (e.g. minimum wage, safe working conditions, social security contributions, etc.) and any of the International Core Labor Standards – i.e. the project is at risk of (i) including/employing forced labor, (ii) child labor, (iii) having discrimination at the workplace, or (iv) impedes workers to associate and to collectively bargain.[\[2\]](#)
- ADB should introduce new operational guidelines on *Labor Impact Assessment* that should be so structured such that: (i) impacts on workers are identified and assessed early in the project cycle; (ii) adverse impacts are avoided, minimized, or mitigated; and (iii) affected workers are consulted.[\[3\]](#) Labor impact assessments should

also incorporate **gender dimensions**, including collection of sex-disaggregated data, targeted gender equality outcomes, mitigation measures that are culturally acceptable and accessible to women, etc. Moreover, all ‘safeguard costs’ related to workers should be fully funded under the ADB loan.

2. Incorporate language similar to IFC’s Performance Standards (PS2) – ADB’s labor safeguards should incorporate provisions similar to IFC’s new Performance Standards 2, which trade unions consider a key benchmark for MFIs. Effective since May 2006, IFC’s PS2 commits IFC clients to respect national law and international standards on: Freedom of association and collective bargaining; Non-discrimination and equality of opportunity; Freedom from child labour; Freedom from forced labour; Retrenchment – clients required to have a retrenchment plan; Working relations – documentation and communication of conditions; Working conditions – compliance with collective bargaining and national law on pay, hours, occupational safety and health (OSH); Grievance mechanisms – must be in place for workers; Human resource policy – client is expected to have this in place.

IFC’s policy applies to non-employee workers, contract labour, subcontractors and suppliers. The new IFC policy also requires that all proposed IFC projects include an assessment of the labor, health and safety impacts and risks of the project, and adopt measures to respond to any deficiencies or negative impacts commensurate with the level of impact and risk. Non-compliance with CLS could lead to cancellation of the IFC loan.[\[4\]](#)

IFC’s Performance Standards also has a chapter on *"Delivery of Essential Services"* that is of considerable interest to PSI as we advocate for Quality Public Services that meet the needs of communities and workers: *“For projects involving the final delivery of essential services, such as the retail distribution of water, electricity, piped gas, and telecommunications, to the general public under monopoly conditions, IFC encourages the public disclosure of information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations, and the form and extent of any ongoing services, IFC also encourages the public disclosure of concession fees or privatization proceeds. Such disclosures may be made by the responsible government entity (such as the relevant regulatory authority) or by the client.”* (para. 23)

3. In support of ITUC’s earlier recommendation, ADB should also adopt a new labour standards lending requirement independently from the new Safeguards Policy. ITUC rightly noted that a separate CLS loan requirement policy would justify the absence of labor issues from ADB’s Safeguard Policy Update and explain why trade unions were largely ignored and not invited to the consultations. (see ITUC letter to Pres. Kuroda, April 18, attached here)

4. ‘Country Safeguards Systems’ – Where national labor legislation provides inadequate safeguards, ADB should continue to commit itself to internationally-recognized CLS, as provided for in the *CLS Handbook*.

B. Any provision above – e.g. vis affected workers of ‘involuntarily’ resettled enterprises; conditions of workers in construction camps, etc – should already be integrated into the ongoing SPU process.

We also reiterate here our comment at the Non 19-20 Consultation on SPU’s 2nd draft (Appendix) on ‘ADB prohibited investment activities’ related to the CLS on child labor. Consistent with ADB’s *Social Protection Strategy* and *CLS Handbook*, section (i) on “production or activities involving harmful or exploitative forms of forced labor/harmful child labor,” **ADB should prohibit activities that involve noncompliance with all four core labor standards and related labor laws.**

All workers have basic human rights and are entitled to all opportunities for full human development; this is consistent with and supports ADB’s goal of poverty reduction in the region.

Sincerely yours,
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[1] CLS are a set of four internationally recognized basic rights and principles at work: (i) freedom of association/FOA and the effective recognition of the right to collective bargaining, (ii) elimination of all forms of forced or compulsory labor, (iii) effective abolition of child labor, and (iv) elimination of discrimination in respect of employment and occupation.

[2] In Appendix 9.2, p.11. IPSA is posted online upon completion, usually attached to Project Preparatory Technical Assistance (PPTA), as an appendix.

[3] According to ADB's own guidelines, impact assessments should: (i) start as soon as potential projects for ADB financing are identified and continue throughout the project cycle; (ii) apply to all projects, including private sector operations and to all project components whether financed by ADB, Government or co-financiers; (iii) require affected people be consulted during project preparation and implementation, and that information is disclosed in a language and form appropriate to them; (iv) involve assessment of impacts and preparation of safeguard documents that summarize impacts and mitigation measures, and arrangements for safeguard integration in project design and implementation; and (v) provide for disclosure to the general public by placing safeguard documentation on the web at various stages in the project cycle.

[4] For more info, see:

[http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Policy+and+Performance+Standards+FINAL+03-06-06/\\$FILE/Policy+%&+Performance+Standards+PUBLIC+FINAL-03-06-06.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Policy+and+Performance+Standards+FINAL+03-06-06/$FILE/Policy+%&+Performance+Standards+PUBLIC+FINAL-03-06-06.pdf)