

## NOTE

### WORLD BANK CHILD LABOR AND FORCED LABOR SAFEGUARD PROPOSAL

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#### I. INTRODUCTION

For over a decade, the World Bank (Bank), an international financial institution that provides billions of dollars each year in financial aid and technical assistance to developing countries, has consistently declared its support of human rights.<sup>1</sup> Although the Bank claims that its projects and policies contribute to the promotion of human rights, it has never specified its legal obligations in relation to international human rights principles.<sup>2</sup> Over the past several years, there has been increased concern that the World Bank “lacks adequate checks to guard against funding human rights abuse.”<sup>3</sup> Notably, the Bank’s current policies leave open the risk of human rights violations by not explicitly prohibiting child labor and forced labor in the development projects it funds. Human Rights Watch has indicated that the Bank needs to “stop undermining” its development efforts by ensuring that its projects do not contribute to human rights abuses.<sup>4</sup>

The Rural Enterprise Support Project (RESP II), a World Bank-funded development project in Uzbekistan, serves as an example which illustrates that the Bank’s current policies do not adequately address human rights risks stemming from labor abuses.<sup>5</sup> The project sought to

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1. *See What We Do*, WORLD BANK, <http://www.worldbank.org/en/about/what-we-do> (last visited Mar. 20, 2014); *FAQ: Human Rights*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/BANCOMUNDIAL/EXTFAQSSPANISH/0,,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:1723673,00.html> (last visited Feb. 7, 2015); *World Bank: Ducking Human Rights Issues*, HUM. RTS. WATCH (July 22, 2013), <http://www.hrw.org/news/2013/07/22/world-bank-ducking-human-rights-issues>.

2. *See World Bank: Ducking Human Rights Issues*, *supra* note 1.

3. *Id.*

4. *Id.*

5. BANK INFO. CTR. & HUMAN RIGHT SOC’Y OF UZB. “EZGULIK”, THE NEED FOR CHILD IMPACT ASSESSMENTS: A CASE STUDY OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION

bolster the Uzbek agricultural sector by providing a loan to the country's government.<sup>6</sup> Agriculture is the most common and important sector for child labor, with an estimated ninety-eight million children involved globally.<sup>7</sup> The Uzbek government has been criticized by a variety of countries and international organizations for forcing its citizens, both children and adults, to harvest cotton in abusive conditions.<sup>8</sup>

The Uzbek project illustrates that the Bank pays insufficient attention to risks of forced labor and child labor in its due diligence before approving loans. While appraising the Uzbek project, the Bank inadequately addressed the risk of forced labor and child labor.<sup>9</sup> Despite widespread recognition of child labor and forced labor in the Uzbek agricultural sector, only a few public World Bank documents even mentioned these issues prior to the approval of the RESP II loan.<sup>10</sup> According to the Bank Info Center,<sup>11</sup> an independent nongovernmental organization that advocates for public accountability in World Bank and other regional development bank projects, the social assessment carried out prior to the approval of the RESP II loan "barely dealt with the issue of child labor in the cotton fields" and "contained a number of inconsistencies and factual errors."<sup>12</sup> For example, the assessment asserts that "school children are not exploited for cotton production," but later in the same paragraph it notes that "when there was a shortage of farm labor school children were picking cotton."<sup>13</sup> Another Bank project document found that the only risk associated with child labor was the possibility that "[e]xternal NGOs may continue raising child labor issue [sic] with the Bank."<sup>14</sup>

The Bank's current safeguard policies,<sup>15</sup> which are designed to as-

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FUNDED UZBEKISTAN RURAL ENTERPRISE SUPPORT PROJECT-PHASE II, at 3 (2013) [hereinafter BANK INFO. CTR.], available at <http://www.bicusa.org/wp-content/uploads/2013/05/RESP-II-Uzbekistan-Case-Study-BIC.pdf>.

6. *Rural Enterprise Support Project*, WORLD BANK, <http://www.worldbank.org/projects/P046043/rural-enterprise-support-project?lang=en> (last visited Mar. 20, 2014).

7. *International Programme on the Elimination of Child Labour (IPEC): Facts and Figures*, INT'L LAB. ORG., <http://www.ilo.org/ipec/lang--en/index.htm> (last visited Mar. 23, 2014).

8. BANK INFO. CTR., *supra* note 5, at 3.

9. *Id.*

10. *Id.* at 7.

11. Bank Information Center is an independent, nonprofit, nongovernmental organization that "advocates for the protection of rights, participation, transparency, and public accountability in the governance and operations of the World Bank Group and regional development banks." *About the Bank Information Center*, BANK INFO. CENTER, <http://www.bicusa.org/about> (last visited Mar. 20, 2014).

12. BANK INFO. CTR., *supra* note 5, at 3.

13. *Id.*

14. *Id.*

15. The current safeguards include: Operational Policies (OP) 4.01 Environmental Assessment, OP 4.04 Natural Habitats, OP 4.09 Pest Management, OP 4.10 Indigenous Peoples, OP

sess and manage environmental and social risks in its development projects, do not explicitly prohibit child labor or forced labor in Bank-funded projects.<sup>16</sup> The potential use of child labor and forced labor in Bank-funded projects demonstrates the need for a system offering greater protections and a more rigorous risk assessment process capable of mitigating the possibility of human rights abuses in the Bank's development projects. Indeed, the Bank's own Advisory Panel has acknowledged that "[o]ne of the most obvious things wrong with the current safeguards approach" is the "lack of consideration of the full range of social issues."<sup>17</sup>

To address these concerns, the Bank is presently reviewing and updating its social and environmental safeguard policies.<sup>18</sup> This endeavor presents an opportunity for the Bank to include greater protection against social risks in its development projects by adopting safeguards that are not currently included in its policies. Specifically, the Bank has an opportunity to adopt a safeguard that addresses a full range of labor issues in a manner that is consistent with international law, customs, and conventions.<sup>19</sup>

After months of consultation efforts with stakeholders, the Bank re-

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4.11 Physical Cultural Resources, OP 4.12 Involuntary Resettlement, OP 4.36 Forests, and OP 4.37 Safety of Dams. *Safeguard Policies*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html> (last visited Mar. 20, 2014).

16. See *Child Rights and the World Bank Safeguards Campaign*, BANK INFO. CENTER, <http://www.bicusa.org/issues/safeguards/childrights> (last visited Mar. 20, 2014).

17. THE INDEP. EVALUATION GRP.: THE WORLD BANK, SAFEGUARDS AND SUSTAINABILITY POLICIES IN A CHANGING WORLD: AN INDEPENDENT EVALUATION OF WORLD BANK GROUP EXPERIENCES xlvii (2010), available at [http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/Safeguards\\_eval.pdf](http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/Safeguards_eval.pdf) (Statement of the External Advisory Panel).

18. THE WORLD BANK, REVIEW AND UPDATE OF THE WORLD BANK ENVIRONMENTAL AND SOCIAL SAFEGUARD POLICIES CONSULTATION PLAN (2012), available at [http://consultations.worldbank.org/Data/hub/files/safeguardsreview\\_consultationplan.pdf](http://consultations.worldbank.org/Data/hub/files/safeguardsreview_consultationplan.pdf). The Safeguards Review and Update will be carried out in three phases. *Consultations: Review and Update of the World Bank Safeguard Policies*, WORLD BANK, <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies> (last visited Nov. 1, 2014). The World Bank (Bank) is in between Phase 2 and Phase 3 of the review process. *Id.* Phase 2 was scheduled to last from "July 2014–early 2015." *Id.* The consultation period of Phase 2 is now closed. *Id.* To date, Phase 3 of the review is "planned" but has not yet begun. *Id.* For more information about the background, rationale, and objectives of the review and update process, see The World Bank's Safeguard Policies Proposed Review and Update: Approach Paper 2–9 (Oct. 10, 2012) (unpublished paper), available at [http://consultations.worldbank.org/Data/hub/files/safeguardsreviewapproachpaper\\_3.pdf](http://consultations.worldbank.org/Data/hub/files/safeguardsreviewapproachpaper_3.pdf).

19. Specifically, the labor safeguard should address a full range of labor rights, including nondiscrimination, equal opportunity, child labor, forced labor, occupational health and safety, and collective bargaining. See, e.g., INT'L FIN. CORP., PERFORMANCE STANDARD 2: LABOR AND WORKING CONDITIONS 2–5 (2012 ed.) [hereinafter INT'L FIN. CORP. (2012)], available at [http://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2_English_2012.pdf?MOD=AJPERES).

cently released a draft proposal of modified environmental and social safeguard policies for its development projects and is seeking feedback on the content of the policies.<sup>20</sup> One of the proposed safeguard policies aims to protect workers in the Bank's development projects.<sup>21</sup> This proposed safeguard policy on labor and working conditions specifically prohibits child labor and forced labor.<sup>22</sup>

This Note will provide feedback on the manner in which the Bank's proposed safeguard provisions on child labor and forced labor can be improved to ensure the protection of human rights in the Bank's projects. Part II will identify the weaknesses of the Bank's current safeguard policies, discuss relevant international law, customs, and conventions that involve child labor and forced labor, and highlight policies of other international financial institutions (IFIs). Part III will offer the language of a labor safeguard that would diminish risks of child labor and forced labor in Bank projects and will explore how this measure can assist the Bank in carrying out its mission. Part IV concludes.

## II. BACKGROUND

The use of child labor and forced labor is a violation of international human rights. Numerous international organizations, conventions, and agreements articulate important minimum standards regarding child labor and forced labor under international law. However, the World Bank has not clearly specified its human rights obligations under international law.<sup>23</sup> In contrast, several IFIs have adopted and implemented labor protections for their development projects. The Bank is currently updating its safeguard policies and has proposed an expansion of its safeguards to include greater human rights protections, including a proposed safeguard on labor and working conditions.

### A. *International Law on Child Labor and Forced Labor*

Under international law, forced labor is universally condemned<sup>24</sup> and

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20. *Consultations: Review and Update of the World Bank Safeguard Policies*, *supra* note 18.

21. THE WORLD BANK, FACTSHEET: PROPOSED ENVIRONMENTAL AND SOCIAL STANDARD 2: LABOR AND WORKING CONDITIONS, *available at* [https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/environmental\\_and\\_social\\_standards\\_-\\_factsheet\\_ess2.pdf](https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/environmental_and_social_standards_-_factsheet_ess2.pdf).

22. *Id.*

23. Kirk Herbertson et al., *Human Rights (the World Bank Way)*, BRETTON WOODS PROJECT (June 18, 2010), <http://www.brettonwoodsproject.org/2010/06/art-566445>.

24. *International Labour Standards on Forced Labour*, INT'L LAB. ORG., <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm> (last visited Feb. 8, 2015).

child labor constitutes a violation of fundamental human rights.<sup>25</sup> Issues involving child labor and forced labor often coincide; for example, forced labor is listed as one of the worst forms of child labor.<sup>26</sup> The Universal Declaration of Human Rights (UDHR) prohibits slavery or servitude and provides that everyone has the right to free choice of employment and the right to just and favorable working conditions.<sup>27</sup> Forced labor is also proscribed by the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>28</sup> Additionally, the U.N. Convention on the Rights of the Child (CRC),<sup>29</sup> the most widely ratified convention in the world,<sup>30</sup> forbids the economic exploitation of children.<sup>31</sup> The CRC consists of a universally agreed upon set of international obligations and non-negotiable human rights standards.<sup>32</sup> In relevant part, the CRC declares that children have a right to be protected from performing any work that is likely to be hazardous, to interfere with their education, or to be harmful to their health

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25. *Id.*; see Virginia Mantouvalou, *Are Labor Rights Human Rights?*, 3 EUR. LAB. L.J. 151, 154 (2012).

26. Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, 2133 U.N.T.S. 161, 163–67.

27. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). Article 4 of the Universal Declaration of Human Rights (UDHR) states, “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” Article 23(1) states, “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” The provisions of the UDHR that prohibit child labor and forced labor may constitute customary international law. Halton Cheadle, *Reception of International Labour Standards in Common-Law Legal Systems*, 2012 ACTA JURIDICA 348, 355–56.

28. See International Covenant on Civil and Political Rights art. 8.3, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368; Organization of American States, American Convention on Human Rights art. 6.2, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; European Convention for the Protection of Human Rights and Fundamental Freedoms art. 4.2, Nov. 4, 1950, ETS 5, 213 U.N.T.S. 222; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 11.2, Dec. 18, 1990, G.A. res. 45/158, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990); see also María Fernanda Perez Solla, *Slavery and Human Trafficking International Law and the Role of the World Bank* (The World Bank: Soc. Prot. & Labor, Discussion Paper No. 0904 Apr. 2009).

29. Convention on the Rights of the Child, G.A. Res. 25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, at 171 (Dec. 31, 1990). The Convention on the Rights of the Child (CRC) was the first legally binding international instrument to incorporate the complete range of human rights for children, including civil, cultural, economic, political, and social rights. *Overview: Convention on the Rights of the Child (CRC)*, UNICEF, [http://www.unicef.org/ceecis/overview\\_1583.html](http://www.unicef.org/ceecis/overview_1583.html) (last visited Mar. 17, 2015).

30. *Overview: Convention on the Rights of the Child (CRC)*, *supra* note 29.

31. Convention on the Rights of the Child, G.A. Res. 25, *supra* note 29, at 54.

32. *Overview: Convention on the Rights of the Child (CRC)*, *supra* note 29.

or development.<sup>33</sup>

One prominent international convention on labor rights is the 1998 Declaration on Fundamental Principles and Rights at Work (Declaration) of the International Labour Organization (ILO).<sup>34</sup> The Declaration has been widely cited and accepted by world leaders, international and regional organizations, policy makers, ILO member countries, and the press.<sup>35</sup> It outlines four fundamental principles, also known as core labor standards.<sup>36</sup> The core labor standards include the elimination of all forms of forced labor and effective abolition of child labor.<sup>37</sup> Although many nations have ratified additional ILO conventions on child labor and forced labor,<sup>38</sup> the Declaration commits all of the 185 ILO member countries to respect and promote the four fundamental principles regardless of whether they have ratified the other conventions.<sup>39</sup> A majority

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33. Article 32 of the CRC provides that “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that 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.” Convention on the Rights of the Child, G.A. Res. 25, *supra* note 29, art. 32.

34. *Child Labour: International Conventions on Child Labour*, UNITED NATIONS, <http://www.un.org/en/globalissues/briefingpapers/childlabour/intlconvs.shtml> (last visited Mar. 20, 2014); Convention on the Rights of the Child, G.A. Res. 25, *supra* note 29, at 171. The International Labour Organization (ILO) is a specialized U.N. agency created to enhance social protection and strengthen dialogue on labor issues. *About the ILO*, INT’L LAB. ORG., <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited Mar. 20, 2014). The ILO maintains that the values in the 1998 Declaration on Fundamental Principles and Rights at Work (Declaration) reflect a global consensus on social and labor issues, and the principles serve as a key reference point for labor rights issues. *Declaration: History*, INT’L LAB. ORG., <http://www.ilo.org/declaration/thedeclaration/history/lang--en/index.htm> (last visited Mar. 20, 2014). The core ILO conventions may constitute customary international law. See Cheadle, *supra* note 27, at 355–56.

35. *Declaration: History*, *supra* note 34.

36. See ASIAN DEV. BANK, CORE LABOUR STANDARDS AND ADB (2006).

37. The other two fundamental principles are freedom of association and the effective recognition of the right to collective bargaining, and elimination of discrimination in respect of employment and occupation. *The Text of the Declaration and Its Follow-Up*, INT’L LAB. ORG., <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (last visited Mar. 20, 2014).

38. Ratification makes the conventions binding on the countries that are a party to the conventions. PETER FALLON & ZAFIRIS TZANNATOS, CHILD LABOR: ISSUES AND DIRECTIONS FOR THE WORLD BANK 5 (1998), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1998/02/01/000009265\\_3980319100151/Rendered/PDF/multi\\_page.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1998/02/01/000009265_3980319100151/Rendered/PDF/multi_page.pdf).

39. *About the Declaration*, INT’L LABOUR ORG., <http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm> (last visited Mar. 23, 2014). This is because each country that becomes a member of the ILO assumes the obligation to promote and realize the fundamental principles. *The Text of the Declaration and Its Follow-Up*, *supra* note 37. Therefore, even if an ILO member country does not ratify other ILO conventions, it has an “obligation to respect, promote and realize, in good faith” the fundamental principles of freedom of association and the right to collective bargaining, the elimination of forced labor, the effective abolition of child labor, and the elimination of employment discrimination. Jean-Michel Servais, *A New Declaration at the ILO: What For?*, 1 EUR. LAB. L.J. 286, 294 (2010). It has even been asserted that there is international con-

of countries, acting under the auspices of the ILO standards, have adopted legislation to “prohibit or place severe restrictions” on the employment of children.<sup>40</sup>

Despite the international obligation of most countries to effectively eliminate child labor, an estimated 168 million children globally are involved in child labor.<sup>41</sup> Eighty-five million of those children are involved in hazardous work that endangers their health and safety.<sup>42</sup> Evidence indicates that child labor perpetuates poverty across generations by keeping poor children out of school and limiting their prospects for upward social mobility.<sup>43</sup> This decrease in human capital slows economic growth and social development.<sup>44</sup> A recent ILO study found that the elimination of child labor in developing economies could generate economic benefits “nearly seven times greater than the costs.”<sup>45</sup>

Not all work done by children constitutes child labor proscribed by international law. Child labor refers to work that “deprives children of their childhood, their potential and their dignity” and that is “mentally, physically, socially or morally dangerous and harmful to children.”<sup>46</sup> Work performed by children constitutes child labor when it “interferes with a child’s schooling,” deprives the child of the opportunity to attend school, causes the child to “leave school prematurely,” or requires a child to “combine school with excessively long and heavy work.”<sup>47</sup> In order to determine whether work done by children constitutes child labor, there are a variety of factors that must be ascertained, such as the age of the child, the state of the economy of the country in which the child resides, the age at which compulsory schooling ends, the amount of work, working conditions, and the nature of the work.<sup>48</sup>

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sensus that these four standards (CLS) are applicable to all countries. *See* ASIAN DEV. BANK, *supra* note 36.

40. *See ILO Conventions and Recommendations on Child Labor*, INT’L LAB. ORG., <http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm> (last visited Mar. 20, 2014).

41. *Id.*; *Child Labour*, INT’L LAB. ORG., <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm> (last visited Mar. 20, 2014); *What Is Child Labour*, INT’L LAB. ORG., <http://www.ilo.org/ipec/facts/lang--en/index.htm> (last visited Mar. 20, 2014).

42. *Id.*; INT’L LABOUR ORG., GLOBAL ESTIMATES AND TRENDS OF CHILD LABOUR 2000–2012: Q & A, at 1 (2013) [hereinafter GLOBAL ESTIMATES AND TRENDS OF CHILD LABOUR], available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@ipec/documents/publication/wcms\\_221881.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_221881.pdf).

43. *International Labour Standards on Child Labour*, INT’L LAB. ORG., <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm> (last visited Mar. 20, 2014).

44. *Id.*

45. *Id.*

46. *What Is Child Labour*, *supra* note 41.

47. *Id.*

48. *See ILO Conventions and Recommendations on Child Labor*, *supra* note 40.

The key ILO conventions on child labor are the 1973 Minimum Age Convention<sup>49</sup> and the 1999 Worst Forms of Child Labor Convention.<sup>50</sup> Because both are fundamental conventions,<sup>51</sup> the Declaration requires all ILO member countries to respect and promote the principles contained in these agreements, regardless of whether the member country has ratified either convention.<sup>52</sup> The Minimum Age Convention mandates that its members specify a minimum age for employment in their territories, which should not be younger than the age of compulsory schooling and should not be less than fifteen years old.<sup>53</sup> The convention also stipulates that children under eighteen years old should not be employed in work that is likely to “jeopardize the health, safety or morals of young persons.”<sup>54</sup> The Worst Forms of Child Labor Convention requires states to eliminate the worst forms of child<sup>55</sup> labor including, *inter alia*, all forms of slavery, sale and trafficking of children, debt bondage, and forced or compulsory labor.<sup>56</sup> Children under the age of eighteen are also shielded by the Worst Forms of Child Labor Convention from engaging in “hazardous” work that is likely to harm their

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49. Convention (No. 138) Concerning Minimum Age for Admission to Employment, adopted June 26, 1973, 1015 U.N.T.S. 297, 297–308. The Minimum Age Convention has been ratified by 166 states. GLOBAL ESTIMATES AND TRENDS OF CHILD LABOUR, *supra* note 42, at 4; *What Is Child Labour*, *supra* note 41.

50. Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, *supra* note 26, at 163–67. Convention No. 182 helped to focus the international spotlight on the urgency of action to eliminate, as a priority, the worst forms of child labor without losing the long-term goal of the effective elimination of all child labor. *ILO Conventions and Recommendations on Child Labor*, *supra* note 40. All but eight of the ILO’s 185 member countries have ratified the Worst Forms of Child Labor convention. GLOBAL ESTIMATES AND TRENDS OF CHILD LABOUR, *supra* note 42, at 4; *What Is Child Labour*, *supra* note 41.

51. *ILO Conventions and Recommendations on Child Labor*, *supra* note 40.

52. *Id.* The Declaration creates an annual follow-up procedure for countries that have not ratified the fundamental conventions. *The Text of the Declaration and Its Follow-Up*, *supra* note 37; *Child Rights and the World Bank Safeguards Campaign*, *supra* note 16. This follow-up is intended to “provide an opportunity to review each year, by means of simplified procedures, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.” *The Text of the Declaration and Its Follow-Up*, *supra* note 37. Governments of countries that have not ratified the fundamental conventions report on “any changes which may have taken place in their law and practice.” *Id.*

53. Convention (No. 138) Concerning Minimum Age for Admission to Employment, *supra* note 49, art. 2. However, it provides that developing countries “whose economy and educational facilities are insufficiently developed” may initially specify a minimum age of fourteen years old. *Id.*

54. *Id.*

55. For the purposes of the Convention, the term “child” refers to persons under the age of eighteen. Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, *supra* note 26, art. 6.

56. *Id.* art 2.

health, safety, or morals.<sup>57</sup> The ILO issued a recommendation to supplement the Worst Forms of Child Labor Convention to clarify the types of work that would constitute hazardous work, such as work with dangerous machinery or work that exposes children to hazardous substances.<sup>58</sup>

As mentioned above, forced labor is frequently identified as one of the worst forms of child labor.<sup>59</sup> Two important international conventions on forced labor include the 1930 Forced Labour Convention<sup>60</sup> and the 1957 Abolition of Forced Labour Convention.<sup>61</sup> The Forced Labour Convention prohibits all forms of forced labor, defined as work or services “which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>62</sup> Each member that ratifies the convention “undertakes to suppress the use of forced or compulsory labor in all its forms within the shortest possible period.”<sup>63</sup> The convention requires its members to make

57. *Id.* More specifically, hazardous child labor is defined as work in dangerous or unhealthy conditions that could result in a child being killed, or injured or made ill because of poor safety and health standards and working arrangements. *Hazardous Child Labor*, INT’L LAB. ORG., <http://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm> (last visited Mar. 23, 2014). “Hazardous work” is a subset of “child labor,” which is in turn, a subset of children in “employment” (or “working children”). GLOBAL ESTIMATES AND TRENDS OF CHILD LABOUR, *supra* note 42, at 1.

58. The ILO issued a recommendation to supplement the Worst Forms of Child Labor Convention, in which it further explained that hazardous work includes work which:

[E]xposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

*Worst Forms of Child Labour*, INT’L LAB. ORG., <http://www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm> (last visited Nov. 15, 2014).

59. Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, *supra* note 26, art. 3.

60. Convention (No. 29) Concerning Forced or Compulsory Labour, *adopted* June 28, 1930, 39 U.N.T.S. 55. This fundamental convention defines forced labor and prohibits all forms of forced or compulsory labor. *International Labour Standards on Forced Labour*, *supra* note 24.

61. Convention (No. 105) Concerning the Abolition of Forced Labour, *adopted* June 25, 1957, 320 U.N.T.S. 291.

62. Convention (No. 29) Concerning Forced or Compulsory Labour, *supra* note 60, art. 2. The convention lists a few exceptions to the definition of forced labor, such as work or services exacted from a person “as a consequence of a conviction in a court of law” or work exacted “in virtue of compulsory military service for work of a purely military nature.” *Id.* art. 2; Kanchana N. Ruwanpura & Pallavi Rai, *Forced Labour: Definitions, Indicators and Measurement* (Int’l Labour Org., Working Paper No. 18, 2004) at 4, *available at* [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081991.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081991.pdf).

63. Convention (No. 29) Concerning Forced or Compulsory Labour, *supra* note 60, art. 1. However, the Convention allowed “recourse” to the use of forced labor during the short transi-

forced labor a penal offense and ensure that the laws prohibiting forced labor are “really adequate and are strictly enforced.”<sup>64</sup>

Almost three decades later, the ILO adopted the 1957 Abolition of Forced Labour Convention.<sup>65</sup> Unlike the 1930 Forced Labour Convention, a country that ratifies the 1957 Abolition of Forced Labour Convention “undertakes to take effective measures to secure the immediate and complete abolition” of forced labor.<sup>66</sup> The 1957 Convention specifically prohibits members from using forced or compulsory labor as a means of political coercion, as punishment for participating in strikes, as a means of racial, social, national, or religious discrimination, or for the purpose of economic development.<sup>67</sup>

In 2014, the ILO adopted a protocol to supplement the Forced Labour Convention.<sup>68</sup> The protocol recognizes that forced labor constitutes a violation of human rights and “contributes to the perpetuation of poverty.”<sup>69</sup> The protocol states that to fulfill the obligations under the 1930 Convention to suppress forced labor, members “shall take effective measures to prevent and eliminate its use” and provide victims with “protection and access to appropriate and effective remedies, such as compensation.”<sup>70</sup> The protocol lists measures that its members should take to prevent forced labor, such as educating people and employers, addressing the root causes that heighten the risks of forced labor, and supporting due diligence in the public and private sectors to prevent risks of forced labor.<sup>71</sup> In addition to the protocol, the ILO also issued a recommendation on the supplementary measures for the effective suppression of forced labor in 2014.<sup>72</sup> The recommendation states that in-

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tional period of five years after the Convention came into force for “public purposes only and as an exceptional measure,” subject to the conditions in the Convention. *Id.* art. 1.

64. *Id.*

65. Convention (No. 105) Concerning the Abolition of Forced Labour, *supra* note 61, at 292.

66. *Id.* art. 1.

67. *Id.*

68. This protocol, *Protocol of 2014 to the Forced Labour Convention, 1930*, has been ratified only by Niger and is not in force by any country. *Ratification of P029—Protocol of 2014 to the Forced Labour Convention, 1930*, INT’L LAB. ORG., [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO:11300:P11300\\_INSTRUMENT\\_ID:3174672](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO:11300:P11300_INSTRUMENT_ID:3174672) (last visited May 25, 2015).

69. *Id.* pmbl.

70. *Id.* art. 1. This includes taking “effective measures for the identification, release, protection, recovery and rehabilitation of all victims” of forced labor. *Id.* art. 3.

71. *Id.* art. 2.

72. *R203- Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)*, INT’L LAB. ORG., available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100\\_ILO\\_CODE:R203:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_ILO_CODE:R203:NO) (last visited May 25, 2015). The Recommendation addresses preventative and protection measures that members should take to eliminate forced labor, lists remedies that should be ensured to victims of forced labor, and identifies en-

ternational cooperation should be strengthened among members “and with relevant international and regional organizations” and states that these actors should “assist each other in achieving the effective and sustained suppression of forced or compulsory labour.”<sup>73</sup>

The elimination of child labor and forced labor remains an important challenge for governments around the world, making it particularly relevant to the Bank’s development projects because the Bank lends to governments.<sup>74</sup> According to the ILO, there are an estimated 20.9 million victims of forced labor worldwide.<sup>75</sup> Furthermore, the use of child labor and forced labor inhibits the Bank’s poverty eradication goals. The ILO has explicitly stated that forced labor is “a leading cause of poverty and a hindrance to economic development.”<sup>76</sup>

The Bank has acknowledged that the core labor standards are “relevant” to its development work.<sup>77</sup> The Bank also recognizes that the 1998 ILO Declaration “specifically asks international organizations such as the World Bank to promote an atmosphere conducive to the achievement of core labor standards.”<sup>78</sup> This is particularly important, given that nearly all of the governments the Bank lends to are ILO members which are obligated to respect the Declaration’s core labor standards.<sup>79</sup> Although the Bank claims to promote an “atmosphere conducive to the achievement of the core labor standards,” it does not currently have any policy forbidding the use of child labor or forced labor in its development projects.<sup>80</sup>

### B. *The World Bank and International Law*

The use of child labor and forced labor is an important issue that the

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forcement measures. *Id.*

73. *Id.* The Recommendation states that members and organizations should assist each other by “strengthening international cooperation between labour law enforcement institutions in addition to criminal enforcement,” “mobilizing resources for national action programmes and international technical cooperation and assistance,” providing “mutual legal assistance,” cooperating “to address and prevent the use” of forced labor by diplomatic personal, and providing mutual technical assistance. *Id.*

74. *International Labour Standards on Forced Labour*, *supra* note 24.

75. *Id.*

76. *Id.*

77. *Core Labor Standards Toolkit—Step 1*, WORLD BANK, <http://go.worldbank.org/47D2S54KG0> (last visited Mar. 18, 2015).

78. *Id.*

79. *IDA Borrowing Countries*, WORLD BANK, <http://www.worldbank.org/ida/borrowing-countries.html> (last visited Mar. 18, 2015); *Alphabetical List of ILO Member Countries (185 countries)*, INT’L LAB. ORG., <http://www.ilo.org/public/english/standards/relm/country.htm> (last updated Nov. 26, 2013).

80. *Core Labor Standards and the World Bank*, WORLD BANK (July 2000), <http://go.worldbank.org/47D2S54KG0>.

Bank must confront in order to achieve its mission to reduce poverty and promote economic development.<sup>81</sup> The World Bank<sup>82</sup> is a public international organization created by sovereign member nations.<sup>83</sup> When the Bank was created, its mandate was limited to “economic” activities, primarily to assist in post-war rebuilding efforts.<sup>84</sup> Over time, the Bank’s mandate expanded to include development financing and global poverty reduction.<sup>85</sup> The Bank provides financial aid and technical assistance to developing countries through low-interest loans, interest-free credits, and grants to support investments in areas related to education, health, infrastructure, and private sector development, among others.<sup>86</sup> The Bank lends to member governments or to public or private entities within a member country where the member government fully guarantees the loan.<sup>87</sup> The Bank has set an ambitious goal to end extreme poverty by the year 2030.<sup>88</sup>

In 1947, the World Bank became a U.N. specialized agency and “assumed the obligation to give due regard” to U.N. resolutions, thereby subjecting itself to the reach of international law.<sup>89</sup> In 1959, the General

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81. *Id.*

82. The World Bank Group was established in 1944 and has more than 120 offices worldwide. *What We Do*, *supra* note 1. The World Bank Group comprises five institutions: The International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Center for Settlement of Investment Disputes (ICSID). Two of the institutions—the IBRD and IDA—predominately lend to governments and are commonly referred to as the “World Bank.” For the purposes of this Note, the term “World Bank” and the safeguard policies discussed refer to the policies of the IBRD and IDA. For the purposes of this Note, the proposed labor safeguard pertains to the World Bank (specifically, the IBRD). The IBRD has 188 member countries, while IDA has 172 member countries. *What Is the World Bank?*, WORLD BANK, <http://go.worldbank.org/TH98NKEYJ0> (last visited Mar. 23, 2014); *What Is the World Bank Group?*, BANK INFO. CENTER, <http://www.bicusa.org/kids/what-is-the-world-bank-group> (last visited Mar. 20, 2014); *Member Countries*, WORLD BANK, <http://www.worldbank.org/en/about/leadership/members> (last visited Mar. 23, 2014). *Law, Justice, and Development: Lending*, WORLD BANK, <http://go.worldbank.org/BEAKI5SWM0> (last visited Mar. 20, 2014).

83. See *What Is the World Bank?*, *supra* note 82.

84. *Id.*; *Foundations of the World Bank: 1944–1948*, WORLD BANK, <http://go.worldbank.org/BEAKI5SWM0> (last visited Mar. 20, 2014).

85. *History*, WORLD BANK, <http://www.worldbank.org/en/about/history> (last visited Nov. 1, 2014).

86. *What We Do*, *supra* note 1.

87. Daniel D. Bradlow & David B. Hunter, *International Financial Institutions and International Law* (American University, WCL Research Paper No. 2011-18, 2010) at 10.

88. *What We Do*, *supra* note 1. Currently, more than thirty percent of children under eighteen in developing countries—about 600 million people—live in “extreme poverty,” defined as living on less than \$1.25 a day. *Id.*

89. Roberto Danino Zapata, Sec’y Gen. of ICSID & Senior Vice President & Gen. Counsel of the World Bank, *Opening Remarks at the First Annual Conference “Interpretation Under the Vienna Convention on the Law of Treaties—25 Years and On”* (Jan. 17, 2006), *transcript available at* <http://siteresources.worldbank.org/INTLAWJUSTICE/214576-1139604306966/20817203>

Counsel of the Bank acknowledged that the Bank is a subject of international law and that it possesses treaty-making capacity.<sup>90</sup> Furthermore, the Bank's loan agreements with borrowers constitute international agreements that are subject to international law.<sup>91</sup> Each loan agreement is governed by the Bank's General Conditions Applicable to Loans and Guarantees,<sup>92</sup> which states that the rights and obligations of the Bank under the agreements shall be valid and enforceable notwithstanding any contradictory national law.<sup>93</sup>

Although the Bank recognizes that human rights are relevant to its international development goal and are an "intrinsic part" of its mission, it has not specified its legal obligations to respect and promote human rights.<sup>94</sup> In 2005, the Bank's General Counsel concluded that the Articles of Agreement, the governing document that authorizes the Bank to make loans to member countries or entities in member countries, "permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities."<sup>95</sup> Despite the acknowledgement that human rights are relevant to its development goals, it remains unclear how legal obligations to respect human rights

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/WhyTreatiesMatterLondon011706.pdf.

90. *Law, Justice, and Development: Lending*, *supra* note 82.

91. *Law, Justice and Development: Financial Agreements as Treaties*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:22100712~menuPK:1696097~pagePK:148956~piPK:216618~theSitePK:445634~isCURL:Y,00.html> (last visited Mar. 20, 2014); *Law, Justice, and Development: Lending*, *supra* note 82. The lending agreements of the World Bank are all international treaties registered with the U.N. Secretariat in accordance with the provisions of Article 102 of the U.N. Charter, which calls for the registration of "[e]very treaty and every international agreement" made by members of the United Nations. Zapata, *supra* note 89, at 8; U.N. Charter art. 102, para. 1.

92. *Law, Justice, and Development: Lending*, *supra* note 82.

93. *Id.*

94. Herbertson et al., *supra* note 23; Ana Palacio, *The Way Forward: Human Rights and the World Bank*, WORLD BANK (Oct. 2006), <http://go.worldbank.org/RR8FOU4RG0>. For example, the Bank has stated that "creating the conditions for the attainment of human rights is a central and irreducible goal of development." *Id.*; see also SIOBHÁN MCINERNEY-LANKFORD & HANS-OTTO SANO, THE WORLD BANK, HUMAN RIGHTS INDICATORS IN DEVELOPMENT: AN INTRODUCTION 6 (2010), available at [http://siteresources.worldbank.org/EXTLAWJUSTICE/Resources/HumanRightsWP10\\_Final.pdf](http://siteresources.worldbank.org/EXTLAWJUSTICE/Resources/HumanRightsWP10_Final.pdf).

95. Palacio, *supra* note 94. The Articles of Agreement is the governing document that authorizes the Bank to make loans to member countries or to entities in member countries and specifies conditions for the loans. The Bank's Articles of Agreement is accepted by each of its members upon membership. *Law, Justice, and Development: Lending*, *supra* note 82. Each of the World Bank Group institutions has its own distinct Articles of Agreement or an equivalent governing document. *Board of Directors: Articles of Agreement*, WORLD BANK, <http://go.worldbank.org/W01PGBIFM0> (last visited Mar. 23, 2014). See generally INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT: ARTICLES OF AGREEMENT (2012), available at [http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/IBRDArticlesOfAgreement\\_English.pdf](http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/IBRDArticlesOfAgreement_English.pdf). The General Counsel's review resulted in the 2006 Legal Opinion on Human Rights and the Work of the World Bank. *Id.*

should be incorporated into the Bank's mandate and policies.<sup>96</sup> While the Bank has not clarified its own human rights obligations, it has stated that it "may play a facilitative role" in supporting its member governments to "fulfill their human rights obligations."<sup>97</sup> Unfortunately, the Bank's lack of labor rights protections illustrates that its current policies do not adequately ensure that its borrowers fulfill their international human rights obligations.

### C. *Child Labor and Forced Labor Protection Policies of Other IFIs*

Unlike the World Bank, several international financial institutions have adopted standards and policies addressing labor and working conditions. The International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), European Bank for Reconstruction and Development (EBRD), Asian Development Bank (ADB), and African Development Bank have all adopted labor policies with provisions specifically addressing child labor and forced labor. Many of these policies incorporate the principles of international law and the ILO conventions cited above.<sup>98</sup>

#### 1. The International Finance Corporation and Multilateral Investment Guarantee Agency Performance Standard on Labor and Working Conditions

Two institutions of the World Bank Group, the IFC and MIGA, have adopted a performance standard on labor and working conditions for their development projects.<sup>99</sup> The performance standard addresses a va-

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96. See, e.g., Palacio, *supra* note 94 (the Bank's policies, programs, and projects have never been explicitly or deliberately aimed toward the realization of human rights).

97. *FAQ: Human Rights*, *supra* note 1.

98. Specifically, the Minimum Age Convention, Worst Forms of Child Labour Convention, and Forced Labour Convention. See, e.g., EUROPEAN BANK FOR RECONSTRUCTION & DEV., *EBRD Performance Requirement 2: Labour and Working Conditions*, in ENVIRONMENTAL AND SOCIAL POLICY 16 (2014), available at [http://www.ebrd.com/downloads/about/sustainability/ESP\\_PR02\\_Eng.pdf](http://www.ebrd.com/downloads/about/sustainability/ESP_PR02_Eng.pdf) (citing ILO conventions).

99. See generally INT'L FIN. CORP. (2012), *supra* note 19, at 1–6. It is important to note that unlike the IBRD and IDA, the IFC and MIGA primarily lend to the private sector rather than governments. *What Is the World Bank Group?*, *supra* note 82. The policies of these institutions are labeled performance standards rather than safeguards, although the performance standards serve the same purpose as the safeguard policies of the World Bank. The standards outline the borrower's responsibilities for managing environmental and social risks. INT'L FIN. CORP., PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY i (2012), available at [http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES). There has been discussion about consolidating the World Bank and IFC's social and environmental policies at the World Bank under one overarching and internally consistent policy. However, to date, no such consolidation has occurred. THE INDEP. EVALUATION GRP., *supra* note 17, at xxxiv. MIGA's 2013 Performance Standards are completely consistent with IFC's 2012 Performance Standards. News Brief, Multilateral Inv.

riety of labor issues and includes specific provisions regarding child labor and forced labor. In defining child labor and forced labor, the performance standard references the CRC and the 1930 ILO Forced Labour Convention.<sup>100</sup> The performance standard on labor and working conditions also references several ILO conventions in an effort to remain consistent with relevant international law and conventions involving labor issues.<sup>101</sup> It prohibits the use of child labor and forced labor, requires borrowers to conduct risk assessments and monitor the work of children, and mandates that borrowers must take appropriate remedial steps if child labor or forced labor is identified.<sup>102</sup> The performance standard applies to direct workers, contract workers that perform work related to core business processes of the project for a substantial duration, and workers engaged by the borrower's primary suppliers.<sup>103</sup>

The IFC and MIGA performance standard on labor and working conditions is consistent with the international standards of the CRC in that it prohibits the borrower from employing children in any manner that is "economically exploitative," is "likely to be hazardous," or might "interfere with the child's education, or [harm] the child's health or physical, mental, spiritual, moral, or social development."<sup>104</sup> The performance standard prohibits the borrower from employing children under the age of eighteen in hazardous work.<sup>105</sup> It also requires that borrowers identify all employees under the age of eighteen.<sup>106</sup> If the borrower hires children, then the borrower must perform a risk assessment and regularly monitor the health, working conditions, and hours of work of

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Guarantee Agency, MIGA Revisits Sustainability Police and Performance Standards (Oct. 1, 2013), *available at* <http://www.miga.org/news/index.cfm?aid=3567>; *see* INT'L FIN. CORP. (2012), *supra* note 19, at 1–6; *see generally* MULTILATERAL INV. GUARANTEE AGENCY, PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY (2013), *available at* [http://www.miga.org/documents/performance\\_standards\\_env\\_and\\_social\\_sustainability.pdf](http://www.miga.org/documents/performance_standards_env_and_social_sustainability.pdf).

100. *Core Labor Standards and the World Bank*, *supra* note 80.

101. INT'L FIN. CORP. (2012), *supra* note 19, at 1.

102. *Id.* at 4–5.

103. *Id.* at 1–2.

104. *Id.* at 4.

105. *Id.* The Guidance Note to the performance standard highlights examples of hazardous work, including the following:

[H]azardous work activities include work (i) with exposure to physical, psychological, or sexual abuse; (ii) underground, underwater, working at heights, or in confined spaces; (iii) with dangerous machinery, equipment, or tools, or involving handling of heavy loads; (iv) in unhealthy environments exposing the worker to hazardous substances, agents, processes, temperatures, noise, or vibration damaging to health; or (v) under difficult conditions such as long hours, late night, or confinement by employer.

INT'L FIN. CORP., GUIDANCE NOTE 2: LABOR AND WORKING CONDITIONS 14 (2012), *available at* [http://www.ifc.org/wps/wcm/connect/0d7a4480498007faa1f7f3336b93d75f/Updated\\_GN2-2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/0d7a4480498007faa1f7f3336b93d75f/Updated_GN2-2012.pdf?MOD=AJPERES).

106. INT'L FIN. CORP. (2012), *supra* note 19, at 4.

the children.<sup>107</sup>

The performance standard's provision on forced labor is also consistent with international law. The performance standard prohibits the borrower from employing forced labor, which is defined as "any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty."<sup>108</sup> The performance standard's prohibition of forced labor includes "any kind of involuntary or compulsory labor," such as indentured labor, bonded labor, or similar labor-contracting arrangements.<sup>109</sup> The borrower may not employ trafficked persons.<sup>110</sup>

Finally, the performance standard mandates that borrowers must identify whether there is a high risk of child labor or forced labor in the primary supply chain.<sup>111</sup> The borrower is responsible for monitoring its primary supply chain on an ongoing basis to identify any significant change, new risk, or incident of child labor and forced labor.<sup>112</sup> If new risks or incidents are identified, the borrower must take appropriate steps to remedy them.<sup>113</sup>

The IFC's performance standards, including the performance standard on labor and working conditions, have been used as a model for other institutions.<sup>114</sup> For example, MIGA adopted standards that are "completely consistent" with the IFC's performance standards in 2013.<sup>115</sup> The performance requirements of the EBRD also reflect the language of the IFC's performance standards.<sup>116</sup> Additionally, the Equator Principles, which have been adopted by leading international

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107. *Id.*

108. *Id.* at 5.

109. *Id.*

110. *Id.* The performance standard defines trafficked persons as follows:

[T]he recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

*Id.* at 5 n.13. The performance standard also recognizes that children are particularly vulnerable to trafficking. *Id.* at 5.

111. The term "primary supplier" refers to those suppliers who are providing goods and materials essential for the core business processes of the project. INT'L FIN. CORP., *supra* note 105, at 2.

112. *Id.* at 6.

113. *Id.* at 21.

114. FRANZ CHRISTIAN EBERT & ANNE POSTHUMA, INT'L LAB. ORG., LABOUR STANDARDS AND DEVELOPMENT FINANCE INSTITUTIONS: A REVIEW OF CURRENT POLICIES AND ACTIVITIES 3 (2010), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_192837.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_192837.pdf).

115. MULTILATERAL INV. GUAR. AGENCY, *supra* note 99.

116. EBERT & POSTHUMA, *supra* note 114, at 3.

private sector banks, contain the provisions of the IFC's performance standards.<sup>117</sup> The IFC estimates that the Equator Principles are now applied to eighty percent of project finance provided by private banks in developing countries.<sup>118</sup>

## 2. The European Bank for Reconstruction and Development Performance Requirement on Labor and Working Conditions

The EBRD adopted a performance requirement on labor and working conditions in 2008.<sup>119</sup> The performance requirement specifically addresses child labor and forced labor. It provides that the borrower must comply with "all relevant national laws provisions [sic] related to the employment of minors" and echoes the CRC by mandating that the borrower may not employ children in a 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."<sup>120</sup> The requirement further states that children under the age of eighteen may not be "employed in hazardous work."<sup>121</sup> The borrower must perform an appropriate risk assessment for all work of persons under the age of eighteen.<sup>122</sup>

The performance requirement prohibits the borrower from employing forced labor, which is defined as "any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty."<sup>123</sup> This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements.<sup>124</sup>

The performance requirement's ban on the exploitation of children and the use of forced labor extends to supply chains in certain circumstances.<sup>125</sup> If the borrower "learns" that child labor or forced labor in violation of the ILO standards is present in the supply chain and the goods "contribute materially to the core functions" of the EBRD-funded

117. *Id.*

118. *Id.*

119. *Performance Requirement: Labour and Working Conditions*, *supra* note 98, at 22; EBERT & POSTHUMA, *supra* note 114.

120. *Performance Requirement: Labour and Working Conditions*, *supra* note 98, at 17. The CRC provides that "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that 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." Convention on the Rights of the Child, *supra* note 29, art. 32.

121. *Performance Requirement: Labour and Working Conditions*, *supra* note 98, at 23.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 25.

activities, the borrower must “take all reasonable steps” to address the problem.<sup>126</sup> The borrower should continue to procure such goods or materials only after it receives sufficient evidence that the supplier is committed to implementing a program, “in line with good international practice,” to eliminate such conditions and practices within a reasonable time frame.<sup>127</sup> The borrower must report the progress of the implementation of the program to the EBRD on a regular basis.<sup>128</sup>

### 3. The Asian Development Bank’s Social Protection Strategy

In 2001, the ADB adopted a Social Protection Strategy, which committed the ADB to comply with the ILO’s core labor standards.<sup>129</sup> The ADB maintains that the core labor standards are considered in the design and implementation of its investment projects, though compliance with the core labor standards is not a condition for lending or technical assistance in borrower countries.<sup>130</sup> Instead, the ADB staff members are “encouraged” to analyze the individual loan project’s adherence to the core labor standards.<sup>131</sup>

The ADB does not have a specific labor safeguard, but the Social Protection Strategy commits the ADB to “comply with the internationally recognized core labor standards” in the “design and formulation” of its loans.<sup>132</sup> The Social Protection Strategy states that the ADB will “take all necessary and appropriate steps to ensure that ADB-financed procurement of goods and services, contractors, subcontractors . . . will comply with the . . . Core Labor Standards.”<sup>133</sup> Additionally, the ADB created a Core Labor Standards Handbook (Handbook) to illustrate how the core labor standards should be integrated into ADB projects.<sup>134</sup> During the project identification stage, an initial poverty and social analysis is conducted to identify those people who may benefit from or

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126. *Id.*

127. *Id.*

128. *Id.*

129. ASIAN DEV. BANK, *supra* note 36.

130. ASIAN DEV. BANK, CORE LABOUR STANDARDS HANDBOOK 17 (2006), *available at* <http://www.adb.org/sites/default/files/institutional-document/33480/files/cls-handbook.pdf>.

131. *Id.*

132. ASIAN DEV. BANK, OUR FRAMEWORK POLICIES AND STRATEGIES: SOCIAL PROTECTION 56 (2003), *available at* <http://www.adb.org/sites/default/files/pub/2001/social-protection.pdf>.

133. *Id.* at 57.

134. ASIAN DEV. BANK, *supra* note 130, at 7; *see* ASIAN DEV. BANK, HANDBOOK ON POVERTY AND SOCIAL ANALYSIS: A WORKING DOCUMENT 57 (2012). The Handbook does not add new policies or compliance requirements to the Asian Development Bank staff but instead provides information on the core labor standards and “provides examples of good practices about the application of CLS in ADB’s operations.” ASIAN DEV. BANK, *supra* note 130, at 7.

be adversely affected by the project.<sup>135</sup> The Handbook provides that a summary labor market assessment, including a review of the available information about child labor, should be used in the country poverty analysis.<sup>136</sup> If the project raises potential core labor standards issues, measures to ensure compliance are included in the ADB's implementation arrangements.<sup>137</sup> These measures may include a requirement that all civil works contracts include commitments to comply with international core labor standards or a requirement that the executing agency and project implementation consultants monitor and report on the performance of the civil works contractors regarding core labor standards.<sup>138</sup>

#### 4. The African Development Bank's Operational Safeguard on Labour Conditions, Health, and Safety

The African Development Bank recently adopted an Integrated Safeguards System (ISS) to address emerging environmental and social development challenges.<sup>139</sup> The ISS includes a safeguard on labor conditions that is consistent with the core labor standards.<sup>140</sup> The African Development Bank safeguard, consistent with the CRC, explicitly prohibits the borrower from employing children in any manner that is economically exploitative, likely to interfere with the child's education, or likely to be harmful to the child's health, or physical, mental, spiritual, moral, or social development.<sup>141</sup> Similarly, the borrower may not employ forced labor, defined as any work or service "not voluntarily performed that is exacted from an individual under threat or force or penalty."<sup>142</sup> This requirement extends to any kind of involuntary or

135. *Project Cycle*, ASIAN DEV. BANK, <http://www.adb.org/projects/cycle> (last visited Mar. 23, 2014).

136. ASIAN DEV. BANK, *supra* note 130, at 63.

137. ASIAN DEV. BANK, *supra* note 134, at 113.

138. *Id.*

139. AFRICAN DEV. BANK GRP., INTEGRATED SAFEGUARDS SYSTEM WORKING PROGRESS: STRATEGIC CHOICES MADE IN THE DESIGN OF THE INTEGRATED SAFEGUARDS SYSTEM (ISS) 2 (2012), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/AFDB%20ISS%2023022012%20ENGLISH.pdf>; *AfDB Adopts Integrated Safeguards System*, AFRICAN DEV. BANK GROUP (Jan. 1, 2014), <http://www.afdb.org/en/news-and-events/article/afdb-adopts-integrated-safeguards-system-12743>.

140. 1 AFRICAN DEV. BANK GRP., SAFEGUARDS AND SUSTAINABILITY SERIES: AFRICAN DEVELOPMENT BANK GROUP'S INTEGRATED SAFEGUARD SYSTEM: POLICY STATEMENT AND OPERATIONAL SAFEGUARDS 49 (2013), available at [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf). Operational Safeguard 5 applies to African Development Bank investments in both the public and private sectors in which the African Development Bank is a direct contractual partner. *Id.*

141. *Id.* at 50; Convention on the Rights of the Child, *supra* note 29, at 54.

142. AFRICAN DEV. BANK GRP., *supra* note 140, at 50.

compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements.<sup>143</sup> Finally, when there is a high risk of child labor or forced labor, the safeguard requires the borrower to consider the adverse impacts associated with supply chains and take appropriate steps to address them.<sup>144</sup>

The above examples demonstrate that other IFIs have established measures to ensure that human rights—including labor rights—are respected in their investment projects. These measures explicitly reference and address child labor and forced labor in development projects. All of the IFI policies listed above refer to international law and international conventions in their provisions on child labor and forced labor.<sup>145</sup> Although these IFIs have incorporated the ILO core labor standards into their development lending policies, the World Bank has not updated its policies to provide labor rights protections.<sup>146</sup>

#### D. *The World Bank's Safeguard Policies and Review Process*

The World Bank has eight environmental and social safeguard policies that are designed to assess and manage the environmental and social risks of its development projects.<sup>147</sup> These safeguard policies are intended to prevent or mitigate undue harm to people and the environment in the development process.<sup>148</sup> Nonetheless, the Bank has faced criticism that its current safeguard policies are inadequate—specifically that they do not provide sufficient consideration of social issues.<sup>149</sup> The Bank is currently in the process of reviewing and updating its safeguard policies and has released a draft of its updated environmental and social framework, which includes specific policies related to labor issues.<sup>150</sup>

143. *Id.*

144. *Id.* at 51.

145. *See, e.g.,* EUROPEAN BANK FOR RECONSTRUCTION & DEV., *supra* note 98.

146. *Labor*, BANK INFO. CTR., <http://www.bicusa.org/safeguards/labor-safeguard> (last visited Mar. 23, 2014).

147. The current safeguards include: OP 4.01 Environmental Assessment, OP 4.04 Natural Habitats, OP 4.09 Pest Management, OP 4.10 Indigenous Peoples, OP 4.11 Physical Cultural Resources, OP 4.12 Involuntary Resettlement, OP 4.36 Forests, and OP 4.37 Safety of Dams. The safeguard policies are listed in the Bank's Operational Manual. *See* THE WORLD BANK, OPERATIONAL MANUAL, pt. 4.00, tbl. A1 (2015), *available at* [http://siteresources.worldbank.org/EXTOPMANUAL/Resources/EntireOM\\_ExternalUpdatedAugust\\_28-2014.pdf](http://siteresources.worldbank.org/EXTOPMANUAL/Resources/EntireOM_ExternalUpdatedAugust_28-2014.pdf); *Safeguard Policies*, WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html> (last visited Mar. 20, 2014).

148. *Safeguard Policies*, *supra* note 147.

149. THE INDEP. EVALUATION GRP., *supra* note 17, at xlviii.

150. *Consultations: Review and Update of the World Bank Safeguard Policies*, *supra* note 20; Press Release, The World Bank, World Bank to Begin Discussions on Proposal to Strengthen Social and Environmental Safeguards (July 30, 2014), *available at* <http://www.worldbank.org/en/news/press-release/2014/07/30/world-bank-begin-discussions-proposal-strengthen-social->

### 1. The Bank's Current Safeguard Policies

According to the Bank, its safeguard policies are the “cornerstone of its support to sustainable poverty reduction.”<sup>151</sup> The safeguard policies act as guidelines in the identification, preparation, and implementation stages of the Bank's projects to ensure that environmental and social risks are evaluated and managed.<sup>152</sup> These policies require borrowers to identify and mitigate certain environmental and social risks in order to receive Bank financing.<sup>153</sup> The safeguard policies also provide a mechanism for consultation and disclosure of information relating to Bank-funded projects.<sup>154</sup>

The environmental assessment safeguard policy is an umbrella policy used by the Bank to examine the potential environmental and social risks and benefits associated with each development project.<sup>155</sup> The environmental assessment essentially acts as an overarching safeguard policy required for all Bank projects. The borrower conducts the assessment, which is subject to Bank review.<sup>156</sup> Information obtained from the environmental assessment determines which of the other environmental and social safeguard policies are relevant to the development project.<sup>157</sup> At the outset of a proposed Bank-funded project, the Bank classifies each proposed project into one of four categories<sup>158</sup> depending

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environmental-safeguards.

150. *Consultations: Review and Update of the World Bank Safeguard Policies*, *supra* note 20. The draft was created after five months of consultations involving over two thousand people in over forty countries.

151. *Id.*

152. ABHAS K. JHA ET AL., *THE WORLD BANK, SAFER HOMES, STRONGER COMMUNITIES: A HANDBOOK FOR RECONSTRUCTING AFTER NATURAL DISASTERS* (2010); *Safeguard Policies*, *supra* note 147. The borrower is responsible for conducting any assessment required by the Safeguard Policies, with general advice provided by Bank staff. See *THE WORLD BANK, OPERATIONAL MANUAL*, *supra* note 147, pt. 10.00, Investment Project Financing.

153. *World Bank Safeguards Review*, BANK INFO. CENTER, <http://www.bicusa.org/issues/safeguards> (last visited Mar. 23, 2014). If the affected community believes that World Bank-financed projects have not complied with the safeguards, they can bring their concerns to the Bank's Inspection Panel. *Id.*

154. *Id.*

155. *Environmental Assessment*, WORLD BANK, <http://go.worldbank.org/Z995CUTDP0> (last visited Mar. 23, 2014). The environmental assessment is a vital tool for integrating environmental and social risks into strategies, policies, and programs. It provides the minimum requirements that all Bank-funded projects must meet. *Id.* The Bank undertakes environmental screening of each proposed development project to determine the appropriate extent and type of environmental assessment. *THE WORLD BANK, OPERATIONAL MANUAL*, *supra* note 147, pt. 4.01, Environmental Assessment.

156. *THE WORLD BANK, OPERATIONAL MANUAL*, *supra* note 147, pt. 4.01, Environmental Assessment.

157. *Id.*

158. The four categories include Categories A, B, C, and FI. A proposed project will be classified as Category A if it is “likely to have significant adverse environmental impacts that are sen-

on the “type, location, sensitivity, and scale of the project” and the “nature and magnitude of its potential environmental impacts.”<sup>159</sup> The combination of the project categorization and environmental and social safeguard policies triggered by the project determines what environmental and social assessments, frameworks, plans, or other instruments the borrower will be responsible for conducting and/or implementing.<sup>160</sup>

As noted above, the Bank’s current safeguard policies do not specifically address, or prohibit, child labor in Bank-funded projects. The Bank has two pre-existing social safeguard policies, the Indigenous People Safeguard<sup>161</sup> and Involuntary Resettlement Safeguard.<sup>162</sup> Although these safeguards recognize that children require increased protection by listing them among “vulnerable groups,” they do not mandate that those involved in Bank projects must take any particular measure to protect children’s rights or prevent harm to children.<sup>163</sup> Similarly, the social safeguards do not explicitly ban the use of forced labor in Bank-funded projects.

The Bank has acknowledged that its safeguard policies do not provide sufficient consideration to social issues.<sup>164</sup> For instance, the

sitive, diverse, or unprecedented.” *Id.* The project will be classified as Category B if:

[I]ts potential adverse environmental impacts on human populations or environmentally important areas—including wetlands, forests, grasslands, and other natural habitats—are less adverse than those of Category A projects. These impacts are site-specific; few if any of them are irreversible; and in most cases migratory measures can be designed more readily than for Category A projects.

*Id.* Category C projects are those which are “likely to have minimal or no adverse environmental impacts. Beyond screening, no further [environmental assessment] action is required for a Category C project.” *Id.* Lastly, a project will be classified as Category FI if it “involves investment of Bank funds through a financial intermediary, in subprojects that may result in adverse environmental impacts.” *Id.*

159. *Id.*

160. The borrower is responsible for conducting any assessment required by the safeguard policies, with general advice provided by Bank staff. *See id.* Types of assessments can include environmental impact assessment, strategic environmental and social assessment, hazard or risk assessment, environmental and social management framework, indigenous peoples plan, resettlement policy framework, etc. *Id.*

161. For more information about the Bank’s Indigenous Peoples Safeguard Policy, see *Indigenous Peoples*, WORLD BANK, <http://go.worldbank.org/IBZABS9UU0> (last visited Mar. 18, 2015).

162. For more information about the Bank’s Involuntary Resettlement Safeguard Policy, see *Involuntary Resettlement*, WORLD BANK, <http://go.worldbank.org/ZDIJXP7TQ0> (last visited Mar. 23, 2015).

163. THE WORLD BANK, OPERATIONAL MANUAL, *supra* note 147, pt. 4.12, Involuntary Resettlement; *see also Child Rights and the World Bank Safeguards Campaign*, *supra* note 16 (suggesting that the World Bank work to counteract potential detrimental impacts of its projects on children by incorporating a child rights focus in its social and environmental safeguards for investment lending).

164. THE INDEP. EVALUATION GRP., *supra* note 17, at xlviii.

Bank's Independent Evaluation Group (IEG)<sup>165</sup> specifically recognized that the Bank's safeguards do not adequately address labor issues and working conditions at the project level.<sup>166</sup> The Bank's Management agrees that a more comprehensive approach to social issues would help support the Bank's development goals.<sup>167</sup> An external Advisory Panel subsequently affirmed the IEG's findings and stated it was "absolutely necessary" that the Bank strengthen its social policies.<sup>168</sup>

## 2. The Bank's Safeguard Review Process and Draft Framework

The Bank is currently engaged in a three-phase review of its social and environmental safeguard policies, which have not been updated in decades.<sup>169</sup> The review includes a "global, multi-stakeholder consultation process" designed to receive input from Bank stakeholders in a "broad, inclusive and transparent manner."<sup>170</sup> The objective of the consultation process is to "shape and inform the development of an integrated framework of the next generation of safeguard policies."<sup>171</sup>

Phase 1, during which the Bank received several submissions and significant input from civil society organizations in addition to its own consultations with stakeholders, has been completed.<sup>172</sup> The Bank is currently in between Phase 2 and Phase 3 of the review process.<sup>173</sup> After evaluating the information obtained in Phase 1, the Bank created a preliminary draft of a new, integrated safeguard policies framework.<sup>174</sup>

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165. The Independent Evaluation Group (IEG) evaluates the activities of the World Bank, IFC, and MIGA and reports directly to the World Bank Group's Board of Directors. *About IEG: Improving World Bank Group Development Results Through Excellence in Evaluation*, WORLD BANK GROUP, <http://ieg.worldbank.org/about-us> (last visited Mar. 20, 2014).

166. THE INDEP. EVALUATION GRP., *supra* note 17, at 71–72, 74, 89, 92–95.

167. *Id.* For more information on the Bank's Management and organizational structure, see *World Bank Management*, WORLD BANK, <http://go.worldbank.org/L5YPHHEK00> (last visited Mar. 20, 2014).

168. THE INDEP. EVALUATION GRP., *supra* note 17, at 83–98. The external Advisory Panel was comprised of "Mohan Munasinghe, Professor of Sustainable Development, University of Manchester, United Kingdom, and Chairman of the Munasinghe Institute for Development; Francis Vanclay, Professor in the Department of Cultural Geography, University of Groningen, The Netherlands; and Luiz Gabriel Todt de Azevedo, Sustainability Director in the Energy Vice-Presidency, Odebrecht SA, Brazil." *Id.* at ix.

169. *Consultations: Review and Update of the World Bank Environmental and Social Safeguard Policies Consultation Plan*, *supra* note 20; Press Release, *supra* note 150.

170. *Consultations: Review and Update of the World Bank Environmental and Social Safeguard Policies Consultation Plan*, *supra* note 20.

171. *Id.*

172. *Id.*

173. The originally scheduled completion date for Phase 2 was November 2013 and Phase 3 was scheduled to end June 2014, but deadlines have been pushed back. *See id.* The consultation period of Phase 2 is now closed. *Id.* To date, Phase 3 of the review is "planned" but has not yet begun. *Id.*

174. *Id.*

The draft has been made publicly available as of July 2014, and the Bank is seeking feedback on the content of the draft framework before it is submitted to the Board.<sup>175</sup>

Civil society organizations and other stakeholders have broadly supported the concept of the Bank adopting a labor safeguard that complies with the ILO core labor standards.<sup>176</sup> The Bank received feedback which noted that it is “behind the curve” because it has not adopted labor standards as a condition for lending, while such standards have been adopted by other IFIs.<sup>177</sup> Input from several civil society organizations emphasized the importance of revising the Bank’s safeguard policies to better address the needs of children.<sup>178</sup> The Bank has also received feedback that it should adopt a labor safeguard which clearly prohibits child labor, “as defined by the ILO,” by all companies in the project as well as their supply chains and related services.<sup>179</sup>

The Bank has proposed a draft Environmental and Social Framework (Framework) to replace its current safeguard policies.<sup>180</sup> The proposal includes an environmental and social standard (ESS1) which allows for the “assessment and management of environmental and social risks and impacts” of a development project.<sup>181</sup> Like the Bank’s current environmental assessment safeguard, ESS1 would apply to all Bank-funded projects.<sup>182</sup> The borrower is responsible for completing the environmental and social assessment, which is subject to review by the Bank.<sup>183</sup>

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175. *Id.*

176. Letter from R. Kyle Peters et al., Vice President & Head of Network, Operations Policy & Country Servs., to Jim Yong Kim, President, The World Bank (Jan. 28, 2012), *available at* [http://consultations.worldbank.org/Data/hub/files/meetings/January28\\_Protection\\_for\\_the\\_Needs\\_of\\_Children.pdf](http://consultations.worldbank.org/Data/hub/files/meetings/January28_Protection_for_the_Needs_of_Children.pdf) (noting that as a U.N. specialized agency, it is “all the more important” for the Bank to uphold U.N. standards such as the ILO core labor standards); Initial Comments by Civil Society Organizations on the World Bank’s Safeguard Policies Review and Update (Dec. 2012) (unpublished paper), *available at* <http://consultations.worldbank.org/Data/hub/files/meetings/InitialCommentsbyCivilSocietyOrganizationsontheWorldBankSafeguardsReviewDEC2012.pdf>.

177. Initial Comments by Civil Society Organizations on the World Bank’s Safeguard Policies Review and Update, *supra* note 176, at 9.

178. *See id.* at 10.

179. Letter from R. Kyle Peters et al. to Jim Yong Kim, *supra* note 176, at 2.

180. *See* The World Bank, Setting Standards for Sustainable Development 3 (July 30, 2014) (first draft for consultation), *available at* [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/07/30/000456286\\_20140730173436/Rendered/PDF/898130BR0CODE200Box385287B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/07/30/000456286_20140730173436/Rendered/PDF/898130BR0CODE200Box385287B00PUBLIC0.pdf). The draft Environmental and Social Framework (Framework) applies to all of the Bank’s development projects. The draft Framework created new project categories to replace the existing categorizations. *Id.* at 12. These new project categorizations are: High Risk, Substantial Risk, Moderate Risk, and Low Risk.

181. *Id.* at 21.

182. *See id.* at 22.

183. *See id.* at 21. Although the borrower conducts the assessments and screenings, the Bank’s draft Framework provides for open and transparent engagement between the borrower, communities affected by the project, project works, and other stakeholders. The draft Framework

The results of the assessment will trigger the other social and environmental standards that the borrower must then address.<sup>184</sup>

The ESS1 stipulates that the environmental and social assessments must address the primary supply chain only if it is “central to the project’s core functions” and the borrower “can reasonably exercise control over its primary suppliers.”<sup>185</sup> If these requirements are met, then the borrower must implement a supply chain management system.<sup>186</sup> The ESS1 defines primary suppliers as suppliers who provide goods or materials essential for the core aspects of the project on an ongoing basis.<sup>187</sup> Core functions are defined as the production and/or service processes that are “essential for a specific project activity without which the project cannot continue.”<sup>188</sup>

Notably, the draft proposal includes a labor safeguard (ESS2), which addresses a wide range of labor issues that may be relevant to Bank-funded development projects.<sup>189</sup> The ESS2’s applicability to the development project “is established during the environmental and social assessment” required in ESS1, in which the borrower identifies the “relevant requirements of ESS2 and how they will be addressed in the project.”<sup>190</sup> A stated objective of ESS2 is to avoid child labor and forced labor in Bank-funded development projects.<sup>191</sup> It requires the borrower to implement labor management procedures, which describe how “project workers will be managed, consistent with the requirements of national law.”<sup>192</sup> The labor management procedures “specify a minimum age for employment in connection with the project,” consistent with “national law.”<sup>193</sup> The ESS2 applies to project workers, which are defined as persons “employed or engaged directly by the Borrower, the project proponent and/or project implementing agencies to work specifically in relation to the project,” regardless of whether the worker is a “full-time, part-time, temporary, seasonal [or a] migrant worker.”<sup>194</sup>

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states that the Bank will “require the Borrower to engage with communities, groups, or individuals affected by proposed projects, and with civil society . . . in a manner commensurate with the risks to and impacts on affected communities.” *Id.* at 16–17.

184. *See id.* at 26. Environmental and Social Standard mandates that the borrower must consider the requirements of the other environmental and social standards. *Id.*

185. *Id.* at 28.

186. *See id.*

187. *Id.*

188. *Id.*

189. *Id.* at 36–39.

190. *Id.* at 36.

191. *Id.*

192. *Id.*

193. *Id.* at 38.

194. *Id.* at 36.

The ESS2 prohibits the borrower from employing children under eighteen in a “manner that is likely to be hazardous or interfere with the child’s education or be harmful to the child’s health or physical, mental, spiritual, moral or social development.”<sup>195</sup> If children under eighteen are employed, the borrower must conduct a risk assessment and regularly monitor the child’s “health, working conditions and hours of work.”<sup>196</sup>

The ESS2 also prohibits forced labor, which is defined as “any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty.”<sup>197</sup> According to ESS2, forced labor includes “any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements.”<sup>198</sup> It also explicitly bans the borrower from employing trafficked persons in connection with the project.<sup>199</sup>

There are several important challenges that the Bank will face in adopting a new labor safeguard. Most notably, the Bank will have to address issues of limited staff and resources to monitor the borrower’s adherence to the safeguard’s requirements, which restricts the accountability for safeguard assessment and supervision.<sup>200</sup> The Bank’s Advisory Panel has noted that because many governments are weak on addressing social risks, more Bank resources may be required to develop borrowers’ capacities to implement new safeguard policies.<sup>201</sup>

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195. *Id.* at 38. The labor standard included in the draft Framework (ESS2) identifies several activities that constitute hazardous work, including:

(a) [E]xposure to physical, psychological or sexual abuse; (b) underground, underwater, working at heights or in confined spaces; (c) with dangerous machinery, equipment or tools, or involving handling of heavy loads; (d) in unhealthy environments exposing the worker to hazardous substances, agents, processes, temperatures, noise or vibration damaging to health; or (e) under difficult conditions such as long hours, late hours or confinement by employer.

*Id.* at 38 n.5.

196. *Id.* at 38.

197. *Id.*

198. *Id.*

199. *Id.* ESS2 defines trafficking as follows:

[T]he recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

*Id.* at 38 n.5.

200. For example, the IEG found that over a third of Bank-funded projects had “inadequate environmental and social supervision, manifested mainly in unrealistic safeguards ratings and poor or absent monitoring and evaluation.” THE INDEP. EVALUATION GRP., *supra* note 17, at xvii.

201. *See generally* THE INDEP. EVALUATION GRP., *supra* note 17 (describing the need for stronger safeguard policies).

### III. ANALYSIS

The Bank should take advantage of the current safeguard review process to expand labor-focused human rights protections in its development projects. Any labor safeguard adopted by the Bank should, at a minimum, be consistent with international law to ensure that its development projects would not contribute to human rights violations. This safeguard should be consistent with the ILO core labor standards discussed above and must explicitly prohibit child labor and forced labor in Bank-funded projects.<sup>202</sup> These protections should extend to the primary supply chain.

#### A. *Benefits and Challenges of Adopting a Labor Safeguard*

To realize its mission of eradicating extreme poverty,<sup>203</sup> the Bank must ensure that its development projects do not contribute to human rights abuses in the form of child labor and forced labor. As noted above, child labor is a violation of fundamental human rights, which hinders economic development.<sup>204</sup> Accordingly, labor rights and working conditions are crucial issues that must be addressed in Bank-funded development projects.<sup>205</sup>

By adopting a labor safeguard, the Bank will be acting consistently with other IFIs in taking measures that ensure that its development projects do not contribute to human rights abuses related to labor. The Bank's current social safeguard policies trail behind those of other IFIs, particularly in regard to labor standards for lending requirements. This has resulted in criticism of the Bank, especially because the IFC has had a performance standard on labor since 2006.<sup>206</sup>

If it adopts additional safeguard protections, the Bank may face significant challenges arising from limited staff and resources for accountability, safeguard assessment, and supervision.<sup>207</sup> A labor safeguard

202. *The Text of the Declaration and Its Follow-Up*, *supra* note 37; *Child Rights and the World Bank Safeguards Campaign*, *supra* note 16.

203. *What We Do*, *supra* note 1.

204. *International Labour Standards on Child Labour*, *supra* note 43.

205. The IEG and World Bank have mentioned that the Bank should provide protections for labor rights issues. THE INDEP. EVALUATION GRP., *supra* note 17, ch. 5; *see also id.* at xlvii. Furthermore, hundreds of civil society organizations have noted that the Bank must address labor rights issues, particularly issues of child labor and forced labor. Initial Comments by Civil Society Organizations on the World Bank's Safeguard Policies Review and Update, *supra* note 176; Letter from R. Kyle Peters et al. to Jim Yong Kim, *supra* note 176.

206. *See* INT'L FIN. CORP., PERFORMANCE STANDARD 2: LABOR AND WORKING CONDITIONS (2006 ed.) [hereinafter INT'L FIN. CORP. (2006)].

207. For example, the IEG has recommended that the Bank "[i]ntroduce a certification program to expand the pool of staff qualified to undertake social and environmental preparation and supervision." *Independent Evaluation Group: Recommendations for the World Bank*, WORLD BANK, <http://go.worldbank.org/U4DZE9T2L0> (last visited Nov. 15, 2014).

will allow the Bank to provide increased measures of social protection in its development projects, which may create the need for increased monitoring and oversight to ensure that the borrower adheres to the safeguard's requirements. Another potential challenge is that borrower governments may lack the capacity to sufficiently address this new category of social risks.<sup>208</sup>

To address these concerns, the Bank's proposed Environmental and Social Framework includes "non-mandatory guidance and information tools" to assist "Borrowers in implementing the Standards" and "Bank staff in conducting due diligence and implementation support."<sup>209</sup> These resources can provide important information on how to monitor and implement the various assessments and plans required by the safeguards to assist government borrowers that have inadequate capacity to address social risks.<sup>210</sup> Furthermore, to address staffing issues, the Bank can take appropriate measures to increase the amount of staff members qualified to undertake social and environmental supervision.<sup>211</sup> However, it must be noted that the proposed labor safeguard's provisions on child labor and forced labor do not expand the borrower country's international obligations, as most countries have ratified the CRC and are obligated to respect key ILO conventions on child labor and forced labor.<sup>212</sup> Instead, in adopting the proposed child and forced labor provisions, the Bank will merely be facilitating compliance with obligations that most of the borrower governments have already assumed under international law.

#### B. *Proposed Labor Safeguard Provisions on Child Labor and Forced Labor*<sup>213</sup>

The Bank should use the IFC's Performance Standard on Labor and Working Conditions<sup>214</sup> as a reference point in drafting its own labor safeguard. The IFC's performance standard provisions on child labor,

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208. The IEG has acknowledged that the "quality of implementation and monitoring" of the safeguards is dependent on the borrower's capacity and commitment. THE INDEP. EVALUATION GRP., *supra* note 17, at xx.

209. The World Bank, *supra* note 180.

210. *Id.*

211. *Id.*

212. *Overview: Convention on the Rights of the Child (CRC)*, *supra* note 29; see *About the Declaration*, *supra* note 39.

213. As noted above, any labor standard adopted by the Bank should address a full range of labor rights, including nondiscrimination, equal opportunity, child labor, forced labor, occupational health and safety, collective bargaining, etc. However, this Note focuses only on the proposed provisions that should be included within the labor safeguard that addresses child labor and forced labor.

214. INT'L FIN. CORP. (2012), *supra* note 19, at 1–6.

forced labor, and supply chains serve as an important model for any labor safeguard the Bank adopts for several reasons. First, the performance standard is consistent with international law.<sup>215</sup> The performance standard references several ILO conventions, including the ILO core labor standards, in an effort to remain consistent with relevant international law. Second, the performance standard has been cited with approval by the IEG and by the Bank's Advisory Panel.<sup>216</sup> Lastly, the performance standard has been used as a model for other IFIs and private banks in developing countries that have adopted policies on labor.<sup>217</sup>

The safeguard should explicitly prohibit the use of child labor in Bank-funded projects in line with ILO Convention 138 on the Minimum Age for Admission to Employment and Work and ILO Convention 182 on the Worst Forms of Child Labor because these conventions reflect an international consensus on child labor issues that all members of the ILO are obligated to respect and promote.<sup>218</sup> The safeguard should also explicitly prohibit forced labor, in accordance with the 1930 Forced Labour Convention<sup>219</sup> and the 1957 Abolition of Forced Labour Convention,<sup>220</sup> because the abolition of forced labor is also a core labor standard which all ILO member states are obligated to respect and promote.<sup>221</sup>

To be effective, the ban on child labor and forced labor must apply to a significant amount of workers involved in Bank-funded projects. Therefore, where a high risk of child labor and forced labor is identified, the safeguard should extend to the primary supply chain.<sup>222</sup> By including the primary supply chain, the labor safeguard will serve to prevent the borrower government from easily circumventing the labor safeguard protections by buying products produced by child labor or forced labor.

Like the other social and environmental safeguards, the labor safeguard should fall under the umbrella of the Bank's environmental assessment safeguard, now the proposed ESS1 standard. The results of the environmental and social assessment required by ESS1 will deter-

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215. See, e.g., INT'L FIN. CORP. (2012), *supra* note 19, at 1.

216. THE INDEP. EVALUATION GRP., *supra* note 17, at xlviii.

217. EBERT & POSTHUMA, *supra* note 114.

218. *Child Rights and the World Bank Safeguards Campaign*, *supra* note 16; *ILO Conventions and Recommendations on Child Labor*, *supra* note 40.

219. Convention (No. 29) Concerning Forced or Compulsory Labour, *supra* note 60. This fundamental convention defines forced labor and prohibits all forms of forced or compulsory labor. *International Labour Standards on Forced Labour*, *supra* note 24.

220. Convention (No. 105) Concerning the Abolition of Forced Labour, *supra* note 61.

221. *About the Declaration*, *supra* note 39.

222. See INT'L FIN. CORP., *supra* note 105, at 21.

mine whether ESS2 is applicable.<sup>223</sup> According to the requirements of ESS1, the borrower must identify the relevant requirements of ESS2 and how they will be addressed in the project.<sup>224</sup> Thus, all proposed Bank projects should require screening by the borrower<sup>225</sup> to identify the level of risk of child labor or forced labor. Under the draft Framework, the project will be categorized depending on the severity of the risk of child labor or forced labor, as well as any other social and environmental safeguard risks that are triggered by the environmental assessment.

The proposed ESS2 requires the borrower to have a labor management procedure, yet there is not much guidance on what information must be contained in the labor management procedure and how the procedure will be evaluated or monitored.<sup>226</sup> For projects with a high risk of child labor or forced labor, the borrower government should be responsible for conducting more comprehensive risk assessments and actions plans and should notify the Bank on what measures it plans to take to ensure that the project will not involve child labor or forced labor. For high-risk projects, the borrower should also be required to conduct an assessment of its primary supply chain to identify risks of child labor and forced labor and submit information to the Bank describing how the borrower will monitor its primary supply chain.

One primary concern with the Bank's proposed ESS2 draft is that it applies only to project workers, a term narrowly defined as "people employed or engaged directly by the Borrower, the project proponent and/or project implementing agencies to work specifically in relation to the project."<sup>227</sup> Although this definition extends to full and part time, temporary, seasonal, and migrant workers, it does not apply to contract workers or workers in the primary supply chain.<sup>228</sup> However, in an annex to ESS1, the draft Framework states that the borrower must ensure that "all contractors engaged on the project operate in a manner consistent with the requirements of the ESSs."<sup>229</sup> These conflicting requirements may create confusion or loopholes for the borrower. To avoid this confusion and ensure that ESS2's requirements are enforced, the Bank must clearly identify which workers are covered by the stand-

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223. The World Bank, *supra* note 180, at 36.

224. *Id.*

225. Although the borrower conducts the assessments and screenings, the Bank's draft Framework allows for input from civil society organizations and affected communities. See *supra* note 183 and accompanying text.

226. The World Bank, *supra* note 180, at 36.

227. *Id.*

228. *Id.*

229. *Id.* at 35.

ard.

Like the IFC's performance standard on labor and working conditions, the Bank should explicitly include contract workers in its definition of project workers under the ESS2 safeguard.<sup>230</sup> By merely mentioning in the annex of ESS1 that the borrower must also ensure that contractors respect the other ESS requirements, the Bank creates confusion which may open a loophole for borrower governments to rely on subcontracting as a means to evade the requirements of ESS2.<sup>231</sup> Accordingly, the definition of "project worker" under the draft ESS2 must be revised to expressly provide that "all contracted workers and primary supply chain workers" engaged on the project are considered "project workers" for purposes of ESS2.

Another notable issue with the Bank's proposed Environmental and Social Framework is that there is no explicit provision regarding the primary supply chain in ESS2. Instead, the provision on primary supply chains is found in ESS1.<sup>232</sup> The ESS1 provision stipulates that where the borrower "can reasonably exercise control over its primary suppliers, the environmental and social assessment will also consider whether the primary supply chains central to the project's core functions are likely to be associated with environmental and social risks and impacts."<sup>233</sup> If so, the borrower is responsible for adopting and implementing a supply chain management system.<sup>234</sup>

The Bank must clarify the criteria of the supply chain management system, which the borrower must implement if environmental and social risks are identified. Currently, ESS1 provides no guidance on the requirements of a supply chain management system. The Bank should require the borrower's supply chain management system to include elements such as regular monitoring requirements, informational meetings and training sessions for primary suppliers, or periodic investigations by the borrower to ensure that primary suppliers do not employ child labor and forced labor.

Like the IFC's performance standard of labor and working conditions, there should be a supply chain provision in ESS2 to make abundantly clear that the prohibition of child labor and forced labor extends to the primary supply chain in Bank-funded projects.<sup>235</sup> As noted

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230. INT'L FIN. CORP., *supra* note 19, at 1–2; *see* PETER BAKVIS, ITUC/GLOBAL UNIONS, MAJOR WEAKNESSES IN WORLD BANK'S DRAFT LABOR STANDARDS SAFEGUARD 4–5 (2014), available at [http://www.ituc-csi.org/IMG/pdf/ess2-wb\\_ituc-critique\\_0914.pdf](http://www.ituc-csi.org/IMG/pdf/ess2-wb_ituc-critique_0914.pdf).

231. *See* The World Bank, *supra* note 180, at 35.

232. *Id.* at 28.

233. *Id.*

234. *Id.*

235. *See* INT'L FIN. CORP., *supra* note 19, at 6.

above, the Bank's draft Framework does not include a provision addressing the primary supply chain in ESS2. A supply chain provision in ESS2 is necessary to clearly communicate to the borrower that child labor and forced labor are among the social risks that the borrower must evaluate in its primary supply chain assessments.

For the reasons stated above, in order to ensure that Bank projects do not contribute to human rights violations in the form of labor rights abuses, the Bank must modify its current draft of the ESS2 safeguard. The modifications and proposed language of the provisions on child labor and forced labor produced below should be included in any labor safeguard that the Bank adopts. Specifically, the provisions below, including their footnotes, should replace the child labor, forced labor, and supply chain provisions of the draft ESS2 Safeguard. These provisions are consistent with the international law discussed above and are drafted in the same format as the relevant draft ESS2 provisions. The requirements of these proposed provisions are designed to ensure that the use of child labor and forced labor, which hinder economic development, is effectively prohibited in Bank-funded projects. The italicized portions are language that is not currently included in the draft Framework. Accordingly, the child labor provision of the labor safeguard should read as follows:

*The Borrower will have in place labor management procedures applicable to the project. Labor management procedures will specify a minimum age for employment in connection with the project. The minimum age for employment must not be less than the age of compulsory schooling and must not be under the age of 15 years old. Where national laws have provisions for the employment of minors, and the national laws are consistent with ILO Convention 138 on Minimum Age, the Borrower will follow the applicable national law.*

Children under the age of 18 may not be employed in connection with the project in a manner that is *economically exploitative*, or is likely interfere with the child's education,<sup>236</sup> or to be harmful to the child's health or physical, mental, spiritual, moral or social development. *Children under the age of 18 will not be employed in hazardous work.*<sup>237</sup>

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236. This includes work that interferes with a child's schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to combine school attendance with excessively long and heavy work.

237. Examples of hazardous work activities include work: (a) with exposure to physical, psychological or sexual abuse; (b) underground, underwater, working at heights or in confined spaces; (c) with dangerous machinery, equipment or tools, or involving handling of heavy loads; (d) in unhealthy environments exposing the worker to hazardous substances, agents, processes, temperatures, noise or vibration damaging to health; or (e) under difficult conditions such as long hours, late hours or confinement by employer.

*The Borrower will identify the presence of all working persons under the age of 18. Where children under the age of 18 may be employed in connection with the project, an appropriate risk assessment must be conducted, together with regular monitoring of health, working conditions, and hours of work, in addition to the other requirements of this ESS.*<sup>238</sup>

The forced labor provision of the labor safeguard should read as follows:

Forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty, *including threat of penal sanctions and the loss of rights*, will not be used in connection with this project. This prohibition covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements. No trafficked persons will be employed in connection with the project.<sup>239</sup>

Currently, there is no supply chain provision in the draft ESS2. The supply chain provision of the labor safeguard should read as follows:

*Where there is a high risk of child labor or forced labor in the primary supply chain, the Borrower will identify those risks and promptly notify the Bank. The primary suppliers include those who are providing goods and materials essential for the core aspects of the project. If child labor or forced labor cases are identified, the Borrower will document the cases, and take appropriate steps to remedy them. The Borrower will monitor its primary supply chain on an ongoing basis in order to identify any significant changes in its supply chain. If new risks or incidents of child labor or forced labor are identified, the Borrower will take appropriate steps to remedy them in accordance with the following requirements:*

*For child labor, the Borrower should only continue to procure such goods or materials after receiving satisfactory undertakings or evidence that the supplier has implemented a program in line with good international practice to eliminate such practices within a reasonable time. The Borrower will report on progress with the implementation of such program to the Bank on a regular basis. For forced labor, the Borrower should only continue to procure such goods or materials after receiving satisfactory evidence that the supplier has*

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238. It must be noted that much of the text of this proposed Labor Safeguard has been modeled after the Proposed ESS2 Standard. See The World Bank, *supra* note 180, at 38.

239. Trafficking in persons is defined as the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Women and children are particularly vulnerable to trafficking practices.

*taken appropriate steps to eliminate the conditions that constitute forced labor.*

The modifications of the child labor, forced labor, and supply chain provisions from the draft ESS2 standard are necessary and essential to ensure that the standard is consistent with international law. The revisions to the draft ESS2 standard provide increased protection by extending the prohibition of child and forced labor to a greater amount of workers in connection with Bank-funded projects by redefining project workers.

#### IV. CONCLUSION

The World Bank must expand its safeguard protections and specifically adopt a labor safeguard. The Bank has acknowledged that its current safeguard policies are insufficient.<sup>240</sup> It is imperative that the labor safeguard explicitly prohibit child labor and forced labor—which are violations of fundamental human rights and hinder economic development—in Bank-funded projects. By doing so, the Bank will be taking important and necessary measures to prevent human rights abuses in its development projects and will be contributing in a significant way to the realization of its ambitious development goals.

The Bank's proposed labor safeguard, ESS2,<sup>241</sup> must be modified in order to ensure that it is consistent with international law—particularly, the ILO core labor standards—and that its protections apply to all workers involved in the project. The current draft ESS2 does not adhere to the best practices of other IFIs. This Note proposed a modified draft of the ESS2 provisions regarding child labor, forced labor, and the supply chain that would ensure that the Bank adequately safeguards against the use of such labor. These proposed revisions are necessary to ensure that the Bank protects the very people that it identifies in its central mission and development goals. The provisions suggested in this Note should replace the child labor, forced labor, and supply chain provisions of the ESS2. In addition to the provisions, this Note highlighted that the Bank must expand its definition of “project worker” under the draft ESS2 to include “all contracted workers and primary supply chain workers” engaged on the project. The proposed modifications reflect both the IFI best practices as well as international law.

In the future, the Bank should continue its dialogue with stakeholders. The Bank should seriously consider this input and modify its draft Framework to integrate feedback from civil society organizations. The

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240. THE INDEP. EVALUATION GRP., *supra* note 17, at xlvii.

241. See The World Bank, *supra* note 180.

Bank already has plans to produce a second draft of the Framework during Phase 3 of the safeguard review and update process. The second draft must ensure that the labor provisions are consistent with the core labor standards of the ILO and the best practices of other IFIs. The second draft should also clearly explain what information must be contained in the labor management procedures and how the procedure will be evaluated or monitored.

Furthermore, the Bank should continue to provide “non-mandatory guidance and information tools” to assist “Borrowers in implementing the Standards” and “Bank staff in conducting due diligence and implementation support.”<sup>242</sup> These tools should explain how the core labor standards, particularly the abolition of child labor and forced labor, are integrated in Bank-funded development projects.

These important changes and clarifications are crucial for the Bank to adequately ensure that its policies are consistent with international law and to prevent the use of child labor and forced labor in its development projects.

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242. *Id.*