

HOW THE WORLD BANK & IMF USE THE *DOING BUSINESS* REPORT TO PROMOTE LABOUR MARKET DEREGULATION IN DEVELOPING COUNTRIES

by Peter Bakvis, Director, ICFTU/Global Unions¹ – Washington Office

Summary

1. Starting with the first edition launched in October 2003, the World Bank's *Doing Business* publication has included a chapter on "Hiring and Firing Workers" that defines a wide variety of labour regulations as obstacles to investment. Countries that establish minimum wages above a certain very low level, set maximum weekly hours below 66 hours, require any advance notice for dismissal or specific procedures for job termination are all considered to have rules that hinder their investment friendliness and place them in a worse rank in comparison with other countries, according to *Doing Business*'s "ease-of-doing-business" indicators. Countries can improve their rank when they do away with these and various other kinds of labour regulations.

2. Representatives of the international trade union movement have met with World Bank staff responsible for the publication, including the vice-president for Private Sector Development, to raise concerns about the implicit message of *Doing Business* that labour market deregulation has only benefits and no costs. Bank staff have told trade unionists that *Doing Business* does not intend to give any indication of what is an appropriate level of labour regulation and that those who use *Doing Business* data on labour regulation, such as by way of country rankings, to promote removal or decrease of regulations, are "misinterpreting the data".

3. This paper documents seven cases of recent country-level policy reports and recommendations issued by the World Bank and IMF that use *Doing Business* indicators on labour regulation to propose reducing or doing away with various types of labour regulations, in spite of the claim of those responsible for the publication that such recommendations constitute a misuse of the data. It is beyond the scope of this paper to determine why several World Bank units, as well as the IMF, are misinterpreting data produced by another Bank unit. Whatever be the explanation for this situation, corrective action is called for. It is suggested at the conclusion of this paper that the whole topic of labour regulations, which by the *Doing Business* team's own acknowledgement does not lend itself to judgements by them on appropriate levels of regulation, should be removed from the purview of *Doing Business*.

¹ The ICFTU represents trade unions in 154 countries with a total of 155 million members. The ICFTU works closely with the Global Union Federations, representing workers in different sectors, and with the Trade Union Advisory Committee to the OECD (TUAC). All the above organizations are on the Global Unions web site: <http://www.global-unions.org>

***Doing Business's* “Hiring and firing workers” indicators**

4. Starting with *Doing Business in 2004*, issued in October 2003 as the first edition of an annual World Bank publication, labour and employment regulations have been one of the five original themes used to evaluate countries’ “ease of doing business”. By the third edition, *Doing Business in 2006*, the number of themes covered had been expanded to eight.

5. Almost as soon as the first edition of *Doing Business* was launched, ICFTU-affiliated organizations in developing and transition countries reported that World Bank country offices were using the “Hiring and firing workers” indicators of *Doing Business* to publicly challenge client-country governments to reduce or eliminate various types of protection for workers. The Bank offices did this through public statements or at meetings, where they compared the country’s hiring and firing indicators with those of other countries, frequently countries in the same region (or using regional averages), and asserted that higher indicators constituted obstacles to investment and should be corrected by reducing the level of protection.

6. The ICFTU/Global Unions expressed their concerns about the *Doing Business* labour indicators in a number of verbal and written communications, including a letter on the *Doing Business* report sent to the World Bank’s president, five twice-yearly statements for the IFIs’ spring meetings in which the subject was raised², and a detailed analysis of the publication’s labour market indicators sent to Bank staff and Executive Directors³.

7. The statements and analyses produced by trade unions pointed out several implicit and potentially harmful policy implications of the hiring and firing indicators. These declare countries to be less friendly to business if the legally established workweek is less than 66 hours, if the legal minimum wage exceeds 25 per cent of GDP per capita, or if they put any restrictions on part-time work such as requiring full social protection. Additional bad marks are given to countries that do not allow employers to terminate labour contracts at their own total discretion, or that establish any sort of requirement for advance notice, priority rules or severance payment in case of dismissal, either individual or collective.

8. The World Bank calculates these hiring and firing indicators without any reference to the kind of industrial relations or social protection schemes, or lack thereof, that might exist in the country. By implying that the removal of such protections has only benefits, i.e. making the country more investment-friendly, but no costs, even though no cost-benefit analysis of removing the regulation has been done, *Doing Business* has been informing countries that across-the-board labour

² The most recent was “Equitable development and poverty reduction require improved protection of workers’ rights: Statement by Global Unions to the 2006 Spring Meetings of the IMF and World Bank”, April 2006

³ “Comments by ICFTU/Global Unions on the World Bank’s *Doing Business in 2005: ‘Hiring and Firing of Workers’*”, May 2005

deregulation is a win-win approach. The first edition of *Doing Business* advised countries to imitate the “deregulation experience” of several developing countries that had undertaken “a general reform toward reduction of the scope of employment regulation”⁴.

No assessment of the effects of labour deregulation

9. It should also be noted that, as shown further below in discussing specific country cases, the World Bank has not backed up with research findings its assertions that developing and transition countries which adopt specific labour market deregulation measures will obtain more investment and employment. Even though the Bank subtitled the 2006 edition of *Doing Business* “Creating Jobs”, it cited only two studies, both based on data from OECD countries (one of which, by a World Bank author, had not been published) to back up its claim that weakened labour regulations result in higher employment⁵.

10. Not only has no developing-country evidence been provided about the supposed benefits derived from labour deregulation, but additionally, the Bank is inaccurate in suggesting that there is a consensus as to the need for OECD countries to deregulate in order to improve employment outcomes. The OECD itself recently undertook a reassessment of its *Jobs Strategy* and concluded: “there is no single combination of policies and institutions to achieve and maintain good labour market performance”⁶.

11. The OECD found that the “successful performers” in terms of employment growth include both countries with light employment protection legislation (EPL) and low welfare benefits, and others with more restrictive EPL, generous welfare benefits and coordinated collective bargaining. But whereas the former group of countries is characterized by “relatively wide income disparities”, the latter (which include the Nordic countries) “have achieved high employment and low income disparity”⁷. Another recent OECD publication examined the determinants of structural unemployment in OECD countries and found that “the impact of EPL and union density are statistically insignificant”⁸.

12. Among the kind of negative consequences of labour market deregulation that *Doing Business* has ignored in calculating its hiring and firing indicators are the following:

- Long working hours (*Doing Business* states that the maximum legal working day should be no less than twelve hours) result in higher levels of workplace injuries and fatalities

⁴ World Bank, *Doing Business in 2004*, 2003, p. xix

⁵ World Bank, *Doing Business in 2006*, 2005, p. 26

⁶ OECD, *Boosting Jobs and Income – Policy Lessons from Reassessing the OECD Jobs Strategy*, 2006, p. 18

⁷ *ibid*, p. 19

⁸ OECD, *Employment Outlook 2006*, 2006, p. 212

- The minimum wage level *Doing Business* considers acceptable (25 percent of GDP per capita or less), means that most Sub-Saharan African countries would have minimum wages of less than US\$30 per month, i.e. less than the World Bank's own \$1 a day extreme poverty threshold
- Since part-time jobs are disproportionately held by women workers, already frequently subject to inferior wages and benefits, the rule that full social protection should not be granted to part-time workers particularly penalizes women
- The elimination of all forms of protection against contract termination without cause or unfair dismissal would increase workers' vulnerability to abuse, particularly among groups that have traditionally been victims of discrimination
- In the absence of government-provided unemployment benefits, often non-existent in developing countries, advance dismissal notice or severance pay requirements (defined by *Doing Business* as obstacles to investment) constitute the only form of income protection workers have

13. Curiously, the 2006 edition of *Doing Business* includes the suggestion that “rather than requiring high severance payments ... middle-income countries can introduce unemployment insurance”⁹. However countries that do so are also penalized by the *Doing Business* indicators if, as in most countries, unemployment insurance is financed through payroll taxes. *Doing Business in 2006* introduced a “hiring cost” indicator which measures all social security payments and other payroll taxes as a percentage of workers' salaries. If a country were to decide to increase social protection and finance it through payroll taxes, it would find itself in a worse position in the overall “ease of doing business” ranking.

Contradictory messages from World Bank on labour

14. *Doing Business* implies support for the International Labour Organization's (ILO) core labour standards (CLS) – freedom of association, right to collective bargaining, elimination of forced labour, abolition of child labour, and elimination of discrimination in respect of employment and occupation¹⁰. However none of the *Doing Business* indicators give better scores to countries that actually observe the CLS.

15. On the contrary, countries can practice routine violations of CLS and still win top marks in *Doing Business*'s labour indicators. Thus, Saudi Arabia is granted the best possible score of 0 for both “difficulty of hiring” and “difficulty of firing”¹¹, despite having outlawed trade unions and collective bargaining and not permitting women to work in several occupations. On the other hand, South Africa is penalized by relatively high difficulty and hiring and firing indicators (56 and 60, respectively¹²),

⁹ World Bank, *Doing Business in 2006*, 2005, p. 25

¹⁰ *ibid*, p. 26

¹¹ *ibid*, p. 149

¹² *ibid*, p. 152

in part because the post-apartheid government went beyond paying lip service to the anti-discrimination component of the CLS and put in place affirmative action measures designed to correct past discrimination against non-white and women workers.

16. The simplistic message of *Doing Business* that labour deregulation is an automatic win-win situation contrasts with some other World Bank publications that have more seriously examined labour market issues. One example is the *World Development Report 2006: Equity and Development* (WDR 2006): “Unlike the markets for many commodities, labor markets generally are not competitive.... This can lead to unfair and inefficient outcomes when the bargaining position of the workers is weak.” WDR 2006 stated that, left to themselves, private markets often result in underpaid workers, hazardous working conditions, discrimination against vulnerable groups and “also do a poor job of protecting workers against the risk of unemployment”.¹³

17. While cautioning that excessively rigid work rules can lead to segmentation of the labour market, the *World Development Report 2006* stated that appropriate public interventions, i.e. labour market regulation, “can improve market outcomes and lead to significant equity gains”¹⁴. Speaking specifically about employment protection legislation (EPL), which *Doing Business* suggests can be eliminated without cost, WDR 2006 warned that “reducing EPL needs to be complemented by greater worker protection that is not linked to specific jobs”¹⁵. As will be shown in the country cases, the balanced approach to labour regulation expressed in WDR 2006 is usually absent in the country-level IFI recommendations, which are often exclusively inspired by the one-sided deregulatory message of *Doing Business*.

Meetings with authors of *Doing Business*

18. As noted above, the ICFTU/Global Unions sent their written concerns about *Doing Business* to the World Bank on several occasions. Subsequently, representatives of the ICFTU and other trade union organizations took part in discussions with the World Bank team responsible for preparing the publication, in July 2005 and March 2006, to further explain their concerns. On the Bank side, the meetings have included Michael Klein, vice-president for Private Sector Development and responsible for the publication, and Simeon Djankov, the lead author of *Doing Business*.

19. In both meetings with unions, the Bank’s representatives suggested that the fact that *Doing Business* had become the highest-circulation publication of the World Bank meant that the report’s information must be useful and provided some validation of the simple methodology used. In the first meeting, the Bank’s

¹³ World Bank, *World Development Report 2006: Equity and Development*, 2005, p. 186

¹⁴ *ibid*, p. 186

¹⁵ *ibid*, p. 191

representatives dismissed most of the ICFTU's objections concerning the analysis and recommendations. While they agreed that the indicators examine labour regulations as to whether they are perceived to constitute obstacles to investment, they said that the indicators should not be taken as a judgement as to whether the level of regulation was good or bad. An appropriate level of regulation could in fact be higher than 0.

20. Furthermore, the *Doing Business* team told the ICFTU that it did not advise countries to carry out labour deregulation on the basis of their hiring and firing indicators relative to those of other countries and stated that anyone who did so was "misinterpreting" the indicators. Moreover, they did not think it was appropriate to present the information derived from the indicators in terms of country rankings.

21. The World Bank apparently changed its mind on the issue of country rankings, since the 2006 edition of the *Doing Business* report launched in September 2005 contained, for the first time, an "ease of doing business ranking" for all 155 countries surveyed¹⁶. The 2005 edition had only included a table with the "top 20 economies on the ease of doing business"¹⁷. In addition, the Bank's *Doing Business* web site began providing rankings of all countries for each component indicator, including "hiring and firing".

22. At the second meeting with unions in March 2006, the lead author of *Doing Business* reiterated that those who used the indicators to push for labour market deregulation were misinterpreting the indicators. He emphasized that nowhere in the "Hiring and Firing Workers" chapter of *Doing Business* was any assertion made as to what was an appropriate level of labour regulation. He did not explain why, if this was the case, the *Doing Business* web site presented country indices for hiring and firing and the other criteria by including the country's rank alongside the "best performer" and the "worst performer" in each category. In the category "hiring and firing", for example, the best overall performer was indicated as being Palau¹⁸.

23. Trade union representatives present at the second meeting gave the Bank examples of how the *Doing Business* hiring and firing indicators had been used by the IMF and World Bank to push for labour deregulation in specific countries. The Bank's representative did not respond to the information about the "misinterpretation" of the *Doing Business* indicators. However several trade union leaders subsequently asked the ICFTU/Global Unions to document some of these cases in a written document in the hope that, by calling attention to alleged misuse of the *Doing Business* indicators by the Bank's and Fund's own staff, it could lead to corrective action by the institutions.

¹⁶ World Bank, *Doing Business in 2006*, 2005, p. 92

¹⁷ World Bank, *Doing Business in 2005*, p. 2

¹⁸ Among the features *Doing Business* notes for the labour regulations of "best performer" Palau, which is not a member of the ILO, are that the maximum number of working hours allowed per day is 24, the maximum number of working days per week is 7, and annual leave for an employee with 20 years seniority is 0 days. <http://www.doingbusiness.org/ExploreEconomies/>

24. Seven cases in which *Doing Business* indicators have been used by the IFIs to promote labour deregulation on a country level, all of which took place in 2005 or 2006, are presented in the following paragraphs. They illustrate both the recurrent use of the indicators to push labour market deregulation, and, in some cases, the IFIs' admitted ignorance as to the impact of the measures they recommend.

Use of *Doing Business* to push labour market deregulation: Country cases

Bolivia

25. In October 2005, the World Bank issued a *Country Economic Memorandum* (CEM) for Bolivia which cited *Doing Business* by noting that “the firing costs for labor – in terms of weeks of salary – are modest in relation to those of some countries (e.g., Brazil and Colombia) but higher than average in Latin America”¹⁹. Because Bolivia’s “difficulty of hiring index”, as calculated by *Doing Business*, was higher than the regional average, the Bank’s CEM proposed that firms which establish operations in the country’s free trade zones (*Zonas Francas Industriales*) should be “exempted from some of the more burdensome provisions of the Labor Code”²⁰.

26. An interesting feature of the Bolivian case is that the same CEM acknowledged that the Bank had no idea as to whether the “burdensome provisions” that it suggested eliminating actually harmed investment and growth. The CEM’s authors even appeared to express scepticism about employers’ complaints: “Many firms are quick to complain about the Labor Law. It reduces their flexibility and productivity, but the relevant question here is *how much* it impedes private investment and forces firms into the informal sector, and that has not been estimated”.²¹ Not only did the Bank not know what the negative impact on Bolivian workers would be of eliminating the provisions firms found burdensome, it did not even know whether it would actually result in increased investment.

Colombia

27. The second edition of *Doing Business*, launched in September 2004, hailed Colombia as one of the two “world’s most successful investment climate reformers over the past year ... [for] increasing the flexibility of labor laws” (the other country was Slovakia)²². The “Hiring and Firing Workers” chapter of *Doing Business in 2005* lauded Colombia and Slovakia for their “bold” labour reforms which, it predicted, would produce “the largest payoffs [compared to more modest reforms in other countries]... in reducing unemployment”²³.

¹⁹ World Bank, *Bolivia: Country Economic Memorandum*, 2005, p. 32

²⁰ *ibid*, p. 41-42

²¹ *ibid*, p. 32

²² World Bank, “Doing Business 2005: Poor Nations Struggle to Reduce Red Tape for Business, Miss Large Growth Opportunities”, World Bank News Release No:2005/69/S, 8 September 2004

²³ World Bank, *Doing Business in 2005*, 2004, p. 30

28. Barely a year later, the World Bank apparently decided that being one of the world's top two labour law reformers was just not good enough. In a November 2005 *Country Economic Memorandum* for Colombia, the Bank declared that "Labor market inflexibility and the high cost of labor contribute strongly to informality and unemployment. ... [M]ore reforms are needed."²⁴ The source of the Bank's newfound concern about *Doing Business in 2005*'s top-scoring reformer was the 2006 edition of *Doing Business*, which had done new calculations and decided that Colombia's hiring and firing indicators were still too high. The CEM noted that, according to *Doing Business in 2006*, these indicators were higher in Colombia than in OECD countries and called on Colombia to "make hiring and firing decisions more flexible"²⁵.

29. More detail about the World Bank's renewed pressure on Colombia to carry out labour reforms is found in a special study on the country's labour market carried out by the Bank in November 2005, the conclusions of which were incorporated into the CEM. The CEM summarized the report's findings on the 2002 labour reforms, celebrated by *Doing Business in 2005* because they would produce major employment "payoffs", as saying that the impact "seems to have been modest" in terms of employment creation²⁶. In fact, the Bank's special labour market study on Colombia did not even go that far. The report's conclusion after evaluating the much-vaunted labour reform was that "the impact of the reform *may* have been positive. However, making this link is not an easy task"²⁷.

30. In other words, the Colombian labour market deregulation measures that *Doing Business* confidently predicted would be hugely successful in inducing job creation turned out to have had so little impact that the World Bank's researchers were not sure they had any effect at all. Yet the Bank's country-level reports continue to rely on *Doing Business*'s supposed know-how in labour reform matters to design their policy recommendations.²⁸

Ecuador

31. In Ecuador, the World Bank's April 2005 *Investment Climate Assessment* cited the fact that Ecuador's "flexibility of firing index", as calculated by *Doing Business*, was higher than in some other South American countries. The Bank invoked the high indicators to recommend a wide-ranging series of measures, including elimination of profit-sharing and employer-provided retirement schemes: "Ecuador should consider

²⁴ World Bank, *Colombia: Country Economic Memorandum*, 2005, p. 16

²⁵ *ibid*, p. 91

²⁶ *ibid*, p. 90

²⁷ World Bank, *Colombia: Labor Market Adjustment, Reform and Productivity*, 2005, p. 33

²⁸ Perhaps unsurprisingly, neither the *Colombia: Country Economic Memorandum*, which deals extensively with labour issues, nor the Bank's lengthy two-volume study on Colombian labour markets mentioned the severe repression against trade unions in Colombia. 444 trade unionists were attacked and 70 killed in 2005, making Colombia the most dangerous country in the world to be a trade unionist (ICFTU, *Annual Survey of Violations of Trade Union Rights*, 2006, p. 114).

measures aimed at reducing rigidities in its labor markets, particularly with regard to firing restrictions, mandatory profit sharing and employer-subsidized retirement ...”. Curiously, the Bank made these recommendations even though it found that only fourteen per cent of Ecuadorian firms rated government labour regulations as a source of major problems.²⁹

32. Although International Monetary Fund staff usually acknowledge that they have no expertise on labour issues, the IMF also invoked the *Doing Business* hiring and firing indicators for Ecuador and made its own proposals for labour deregulation in its March 2006 *Article IV Consultation Staff Report*: “The mission emphasized the importance of reducing labor market rigidities, including by eliminating the 15 percent mandatory profit-sharing required from private firms, as crucial for improving economic efficiency and the investment climate, as well as promoting employment growth”³⁰.

Lithuania

33. The World Bank’s May 2005 *Investment Climate Assessment* for Lithuania examined the *Doing Business* rigidity of employment index³¹ for the country, set at 41, and found that it was “about the average for Europe and Central Asia”. However, “Lithuania has much greater rigidity than the leader in the region, the Slovak Republic”, whose rigidity of employment index as calculated by *Doing Business in 2005* was only 10.³²

34. Among the features of Lithuania’s labour legislation that the World Bank found problematic were the fact that “labor contracts [must] be in writing and based on a model set out by law”. Equally troublesome for the Bank was that when Lithuania became a European Union member in 2004, it took actions “boosting the minimum wage and setting high standards for health and safety of workers”. According to the Bank’s investment climate assessment, provisions such as these “may, in the short term, reduce Lithuania’s attractiveness to foreign and domestic advisors alike”, as compared to the regional deregulatory leader, Slovakia.³³

35. For reasons not explained in 2006 edition of *Doing Business*, Slovakia, the world’s “top reformer” of *Doing Business in 2005* (followed by second-place Colombia) because of its “bold” labour reforms, had lost most of its lustre by the time the new edition came out. In the report’s 2006 edition, the Bank had recalculated Slovakia’s rigidity of employment index and increased it from 10 to 39, only slightly below Lithuania’s.³⁴

²⁹ World Bank, *Ecuador: Investment Climate Assessment*, April 2005, p. 190&187

³⁰ IMF, *Ecuador: Article IV Consultation Staff Report*, 2006, p. 23

³¹ *Doing Business*’s “rigidity of employment index” is a composite of three other indicators: difficulty of hiring index, rigidity of hours index and difficulty of firing index.

³² World Bank, *Lithuania: Investment Climate Assessment*, May 2005, p. 43-44

³³ *ibid*, p. 42&44

³⁴ World Bank, *Doing Business in 2006*, 2005, p. 151

36. News about Slovakia's demotion from its former status as the model to emulate in terms of labour deregulation only made its way slowly to the Bank's sister institution, the IMF. Eight months after *Doing Business in 2006* had discarded the idea that Lithuania needed to deregulate its labour market in order to catch up with the regional leader, the IMF published an *Article IV Consultation Staff Report* in May 2006 which continued to invoke *Doing Business* in insisting that the task of improving Lithuania's business climate "remained unfinished". The Fund called in particular for the removal of restrictions on overtime work and temporary work contracts.³⁵

Nepal

37. In January 2005, Nepalese trade unions and employers, supported by the government and the ILO, agreed on a labour law reform process that would make job termination rules more flexible and concomitantly establish a social security system, improve health and safety standards, and ratify all of the CLS conventions. However the tripartite process for reform was abruptly cut short when the country's monarch seized absolute power in February 2005 and suspended civil rights, imprisoned many trade unionists and outlawed union assemblies. Given the influential role that the World Bank plays in Nepal because of its important programme there, Nepalese unions urged the Bank to use its influence and encourage the king to re-establish democratic rule and support continuation of the tripartite labour reform process.

38. Instead of defending the reform process under democratic institutions, local World Bank staff told unions and the ILO that Nepal needed to immediately bring down the country's hiring and firing indicators and particularly the high "difficulty of firing index" as calculated by *Doing Business*. The Bank even threatened to reduce financial support to the king's regime, not for refusing to restore civil rights, but in case he did not promulgate a labour reform which drastically reduced protection against dismissal, curtailed the scope of collective bargaining in favour of individual work contracts, and restricted trade union action. The World Bank appeared to believe that the king's seizure of absolute power and suspension of civil liberties provided the ideal situation in which to impose labour deregulation.

39. In January 2006, the World Bank's country director for Nepal confirmed in writing the threat to reduce financial support if the *Doing Business*-inspired labour reform was not implemented:

*"To the extent that labor law reform continues to constitute a priority area of reform that would determine HMGN's [His Majesty's Government of Nepal] ability to access budget support from the World Bank, HMGN may wish to work with its own tight deadline [i.e. immediate implementation of the labour ordinance]....I do not recall saying that we felt 'agreement' among tripartite constituents was essential to ensure effective implementation of reforms ..."*³⁶

³⁵ IMF, *Republic of Lithuania: 2006 Article IV Consultation Staff Report*, 2006, p. 20

³⁶ Letter from Kenichi Ohashi, World Bank Country Director for Nepal, to the International Labour Organization, 12 January 2006

40. The Nepalese king did as urged and promulgated the labour ordinance advocated by the World Bank in mid-March 2006. The draconian labour law changes he decreed contributed to making relations with trade unions even worse. The latter joined in the pro-democracy movement that ultimately forced the king to give up his dictatorial powers and reinstate parliament in late April, but not before a last wave of repression resulted in hundreds of detentions and several deaths. On 14 May the new government withdrew the labour ordinance and proposed a restoration of the tripartite reform process.

41. Interestingly, the IMF adopted a more prudent approach to labour reform in Nepal than its sister IFI. In its February 2006 *Article IV Consultation Staff Report*, the IMF supported increased flexibility because Nepal's *Doing Business* labour market rigidity indicators were "above the South Asian average". However the Fund cautioned that the Bank-sponsored labour ordinance should only be promulgated "after due consultation with all stakeholders to ensure that its provisions are durable and implementable".³⁷ The IMF's apprehensions about the sustainability of a decree that ran roughshod over a tripartite reform process turned out to have been well founded. The *Doing Business*-inspired labour ordinance lasted barely two months and was never implemented.

Romania

42. IMF staff members often claim that they have no expertise in labour issues. However, lack of expertise has not prevented the IMF from sometimes taking the lead on the precise type of labour reforms that countries should adopt. As with the World Bank, the source of inspiration for the Fund's recommendations is usually the *Doing Business* report. Romania presents such a case. In its May 2006 *Article IV Consultation Staff Report* for Romania, the IMF stated that "labor market rigidities are impediments to a business-friendly environment and Romania stands out compared with other countries, particularly on costs of hiring and firing workers"³⁸. A comparative table of the *Doing Business* labour market flexibility indicators was included in the IMF's report.

43. The IMF's report mentioned that Romania had recently adopted amendments to the labour code that the government expected would increase labour market flexibility. The government pointed out that these amendments were not reflected in the *Doing Business* indicators, which had been calculated before the labour law changes were adopted. Without referring to any evaluation as to the expected impact of the flexibility measures already adopted, the IMF report dismissed the government's concerns about the accuracy of the *Doing Business* indicators and pushed for further deregulation: "Staff expressed reservations about the adequacy of these measures and urged the authorities to further amend labor market legislation"³⁹.

³⁷ IMF, *Nepal: 2005 Article IV Consultation Staff Report*, 2006, p. 14&17

³⁸ IMF, *Romania: 2006 Article IV Consultation Staff Report*, 2006, p. 29

³⁹ *ibid*, p. 29

South Africa

44. The IMF's *Article IV Consultation Staff Report* for South Africa, issued in September 2005, dealt with the country's labour regulations and noted that, on the basis of the *Doing Business* indicators, "South Africa scores particularly high in difficulty of hiring and dismissal procedures" as compared, for example, to the OECD average. The report recommended, among other proposals relating to labour matters, "further streamlining dismissal procedures" as a way to "make a significant dent in unemployment"⁴⁰. The *Article IV Report* for South Africa backed up its recommendation with a *Selected Issues* report that included a full chapter on the role of labour market regulations in South Africa and devoted several paragraphs to the *Doing Business* indicators⁴¹.

45. However, the IMF's reports on South Africa failed to mention that the higher hiring and firing indicators for South Africa than in OECD countries were explained in part by the country's affirmative action programmes, adopted by post-apartheid governments to overcome the legacy of decades of racial discrimination in the labour market. South Africa's labour laws include regulations to avoid that all of the non-white employees of a firm would be the first to lose their jobs in case of retrenchment and also provide recourse for workers who feel they have been unjustly dismissed.

46. For both of these types of labour provisions, South Africa received bad marks from *Doing Business*. On the one hand, South Africa was faulted because "there are priority rules applying to dismissals or lay-offs, i.e., in order to fire redundant employees, the employer must follow ... objective priority criteria". On the other, South Africa was given bad marks under *Doing Business*'s "Grounds for firing" category, which defines as business-unfriendly rules such as "the employer may not terminate employment contract without cause" and "the law establishes a public policy list of 'fair' grounds for dismissal"⁴².

47. The IMF's suggestion that South Africa should "streamline" its dismissal procedures in order to bring the *Doing Business* difficulty of hiring indicator down to the OECD average would require elimination of the affirmative action regulations adopted after the end of apartheid. Not only did the South African government adopt these measures to combat the legacy of institutionalized racism but, as was noted in paragraph 15 above, eliminating discrimination in the labour market and workplace is one of the ILO's core labour standards that both IFIs claim to support. Given the country's long history of racial discrimination, one can understand South Africans' reluctance to conform to the IMF's expert opinion, based on the *Doing Business* indicators, that the anti-discrimination rules should be done away with in the interests of "ease of doing business".

⁴⁰ IMF, *South Africa: 2005 Article IV Consultation Staff Report*, 2005, p. 19&20

⁴¹ IMF, *South Africa: Selected Issues*, 2005, p. 50-66

⁴² Explanations of the specific "Hiring and firing" scores for South Africa and the coding methodology are provided in the World Bank's *Doing Business* web site: <http://www.doingbusiness.org/>

Conclusions

48. It was noted in this paper that, according to the World Bank team responsible for the preparation of the *Doing Business* report, the “hiring and firing” indicators are not intended to connote an appropriate level of regulation and anyone who uses the report’s indicators in comparison with those of other countries to promote labour market deregulation is “misinterpreting” the data. The review of seven country cases shows that World Bank and IMF staff have been using the *Doing Business* indicators exactly for that purpose. It is beyond the scope of this paper to judge whether this is a matter of duplicitous conduct on the part of the department responsible for *Doing Business* – i.e. informing country-level staff of the Bank and Fund that the indicators should be used to pressure countries to remove labour regulations while telling external groups that such is not the case – or whether the World Bank has become dysfunctional to the point that several Bank units are overtly misusing data produced by another Bank department.

49. What is clear is that the *Doing Business* indicators are being used to drive a particularly one-sided and harmful approach to labour market reform in developing and transition countries, in that they ignore the costs (as well as possible benefits) of labour market deregulation and ignore the need to compensate weakened employment protection rules with improved social security, both of which were emphasized in the Bank’s *World Development Report 2006*. *Doing Business* has been used to push countries to bypass tripartite consultation mechanisms for reforming labour laws and, despite the publication’s implicit endorsement of the core labour standards, has been used to encourage countries to eliminate measures which have been put in place to implement CLS, such as programmes to end discriminatory practices.

50. The “misinterpretation” of *Doing Business*, if that is indeed what is taking place, is probably due in large part to the simple coding formula which, according to the authors, explains the report’s success as the World Bank’s best seller. The authors claim that they have no intention of indicating what is an appropriate level of labour regulation. However, by designating as the world’s “best performer” in terms of hiring and firing the country which has the least amount of labour market regulation, the message of *Doing Business* cannot be clearer: the less labour regulation a country has, the better it is. In light of the way *Doing Business* is being applied by the World Bank and IMF to promote harmful labour market deregulation, this paper recommends that the whole topic of labour regulations should be removed from the purview of the *Doing Business* report.