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**Human Rights and Development:  
The World Bank's Need for a Consistent Approach**

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## **Introduction**

In recent years, the World Bank has begun to integrate the language of human rights in its own discourse, be it to define the goals of development, highlight its own contribution to their realisation, or defend its operations.<sup>1</sup> This comes at a time when respect for human rights is more and more regarded as a vital aspect of development – some even argue, that, alongside respect for the environment, it is a necessary requirement for sustainability.<sup>2</sup> This dissertation will assess the merits and shortcomings of the Bank's apparently new position on human rights, and consider whether it amounts to a consistent policy approach compatible with international human rights law.

Two broad spheres of relevance can be identified: Firstly, the Bank's lending to repressive regimes, which may directly help to maintain such governments in power through financial assistance, and more indirectly afford them the international legitimacy attached to a World Bank loan. In the light of its own Articles of Agreement, it will be assessed whether it would be legitimate for the World Bank to take a country's human rights record into consideration in its lending policies (Chapter II), and potentially withhold funds on such grounds.<sup>3</sup> In the past, two positions have been taken on this issue: opponents argue that human rights fall within the sphere of politics, and can therefore not be taken into account by the Bank (section 2.1).<sup>4</sup> Defendants of human rights conditionality, on the other hand, argue that although human rights fall within the realm of politics, they should be considered by the Bank – and its Articles of Agreement changed accordingly, if necessary.<sup>5</sup> The present discussion will offer an alternative position: human rights should not be conceptualised as forming part of politics, and can

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<sup>1</sup> In the following, the terms 'World Bank' and 'Bank' will be used interchangeably. They will be understood to refer to both the International Bank for Reconstruction and Development (IBRD), and the International Development Association (IDA).

<sup>2</sup> Tomasevski, 1992, p.78

<sup>3</sup> For this purpose, the IBRD's Articles of Agreement have been consulted, since its relevant sections are virtually identical to the corresponding provisions made in the IDA's Articles of Agreement.

<sup>4</sup> E.g. Kneller, 1980

<sup>5</sup> E.g., Levinson, 1992

therefore conveniently be incorporated into the Bank's lending criteria *without* changes to its Charter (sections 2.2-2.5).

The second area of interest is the projects for which the Bank provides finance and know-how (chapter III). In this context, it will be discussed whether the World Bank has any obligations under international human rights law (section 3.1). If this is indeed the case, then it can be required to put certain safeguards into place in its project-planning and implementation. Its current performance, in terms of policy-formulations and implementation, as well as monitoring, will be assessed against the actual obligations at hand (sections 3.2-3.5).

The two spheres are linked: if a government disregards human rights in general, then it is likely to disregard them in the context of development projects, too.<sup>6</sup> Inasmuch as the Bank has to observe certain human rights obligations in its projects, it may therefore take a legitimate interest in borrowers' overall human rights record – since the final implementation of a project rests with them.

In both areas, it will be concluded that the Bank's current approach is inconsistent, and does not amount to a substantial integration of human rights obligations into its operations.

It does not lie within the scope of this essay to propose concrete policies to incorporate human rights into the World Bank's work. Rather, it aims to provide a starting point, by clarifying all the premises, for such policy proposals. Nevertheless, at the end of each chapter, some issues will be highlighted that potential policies would have to address.

Many of the issues presently covered deserve to be treated in much more depth than is possible in this restricted space. Nevertheless, I chose to provide a comprehensive and wide-ranging analysis rather than concentrating on just one aspect, since the various

dimensions of the World Bank's human rights impact make up a complex and interrelated whole – which represents an indispensable point of reference for understanding each of its constitutive elements.

Chapter I will present the context for the current discussion, namely the gradual rapprochement in recent years between the fields of development and human rights.

## ***I. Theoretical Framework***

### **1.1 Which Rights?**

Following Raz, a 'right' is understood as a compelling need or interest that justifies a corresponding duty on others.<sup>7</sup> A right establishes a relationship between a right-holder, who has a title *to* the content of the right in question, and a duty-bearer, *from* whom it is claimed.<sup>8</sup>

The overarching purpose of *human* rights is the protection of the inherent dignity of the human person. This entails the satisfaction of certain basic needs that are held to be essential to a life of dignity. Thus the content of each specific human right is to contribute to this ultimate purpose.

Traditionally, the state has been identified as the sole duty-bearer with regard to human rights. However, recent writings suggest that other institutions, which can have an equally powerful bearing on individuals (e.g. international organisations or multinational corporations), should also be held accountable to respect them.<sup>9</sup>

Whilst human rights have a strong normative dimension, they are not mere moral aspirations. Their codification in laws is to provide concrete accountability and entitlements. Enforceability of obligations is hence central to the idea of a *legal* human right.<sup>10</sup> There are three levels of rights-obligations: the obligation to *respect*, to *protect*, and

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<sup>6</sup> Tomasevski, 1992, p.81,87

<sup>7</sup> Raz, 1986, chapter 7

<sup>8</sup> Donnelly, 1989, p.12

<sup>9</sup> Skogly, op.cit., p.50

<sup>10</sup> Ibid.

to *fulfill*.<sup>11</sup> Different duty-bearers may hold different levels of obligations: while multinational corporations may for instance be required to *respect* human rights, it is not their duty to *fulfill* them. This obligation pertains to states.

Post-war developments in international human rights law have sought to give legal weight to the moral content of human rights. The United Nations (UN) Charter of 1945 states that ‘promoting and encouraging respect for human rights and for fundamental freedoms’ is one of the purposes of the UN (Article 1(3)). Subsequently, this purpose has been codified in 3 major legal instruments, which together represent the International Bill of Human Rights: The Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966) (the two covenants translating the rights stated in the Universal Declaration into concrete treaty obligations). Although subsequent formulations in international human rights law may be relevant to different aspects of development (e.g. women’s rights), for the sake of brevity ‘human rights’ will in the following be understood to encompass the specific rights laid down in this International Bill of Human Rights.

The Covenants, as well as much academic and legal writing, make a distinction between economic, social and cultural rights on the one hand, and civil and political rights on the other. The idea here is that civil and political rights are somehow more ‘basic’, more readily realisable and enforceable, and therefore more ‘authentic’ human rights than the more elusive economic and social rights, such as the right to food. This artificial separation is rejected here, since it does not do justice to the many dimensions of ‘human dignity’ that call for a holistic conception of human rights. Indeed, ‘basic needs’ rights such as the right to food are obvious and concrete prerequisites to the right to life, particularly in the context of severe poverty and deprivation, and can thus very

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<sup>11</sup> Committee on Economic, Social and Cultural Rights, General Comment No.12, Article 11

well give rise to specific core entitlements, such as the right not to starve.<sup>12</sup> Thus the whole body of internationally recognized human rights will be treated as ‘universal, indivisible and interdependent and interrelated’.<sup>13</sup>

This does not mean that every international agency is responsible for realising all human rights at all times through its work. But, if an international agency, such as the World Bank, has any obligations with regard to human rights, then this obligation extends to all human rights, whilst its concrete operations are inevitably more likely to promote some rather than others (section 3.1).

The next section will explore whether and how international human rights standards may be relevant to development work in general.

## **1.2 Human Rights and Development - Incompatible Goals or Two Sides of the Same Coin?**

Since its inception in the immediate post-war period, the concept and practice of development has undergone significant transformations. Different schools’ (dis)regard for human rights is one area of fundamental change. In fact, the history of development can be understood as a progressive integration of human rights issues in the goals, as well as the conceptualisation, of development.

Development practice throughout the 1950s and 1960s was above all concerned with economic growth and the development of the productive capacity of a country. Modernisation theory, which conceived of development as the achievement of the same social, economic and political standards as the industrialised North, took the state to be the main agent, and principal target, of development efforts.<sup>14</sup> The idea of individuals as agents and ends of development, and consequently a concern for human rights, is virtually absent from modernisation theory. Some proponents of state-centred modernisation and industrialisation, especially in developing countries, even dismissed

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<sup>12</sup> Skogly, op.cit., p.55, 149

<sup>13</sup> Vienna Declaration, 1993, Para.5

<sup>14</sup> Allen & Thomas (eds.), 2000, pp.30-31

(and some still do) human rights as an obstacle to development, a luxury that only developed countries can afford to grant their populations. In this view, human rights have to be suspended temporarily for the sake of a future good, until this advanced stage of economic development is reached.<sup>15</sup>

This ‘growth-centred’ paradigm was challenged during the 1960s and 1970s by what has been termed ‘people-centred’ development. This proposed new goals, for instance certain social and political values (such as social justice and equality), as well as the protection and realisation of the basic needs of individuals, e.g. employment and participation in political decision-making.

Despite this paradigm-shift, reports of the detrimental effects of many development projects on human rights, right up to the present day, are legion. They show up shortcomings by both developing countries and donors, which all share one common feature: the violation of individual entitlements of parts of the population for the sake of economic development,<sup>16</sup> which would have been secured had a human rights framework guided the design and implementation of the projects. The lip-service paid to ‘human development’ since the beginning of the 1990s is therefore not to be confused with a substantive commitment to the realisation of human rights.

In fact, the human rights-approach, if truly incorporated into development efforts, adds a crucial dimension to the improvement of living standards of individuals, namely their *entitlement* to certain provisions, and avenues of redress if these are violated.

Similarly, the methodology of the human development approach (as reflected in the *Human Development Reports*, for instance) can complement human rights analyses. Its concrete policy recommendations for the improvement of living standards, and its tools

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<sup>15</sup> For a detailed analysis of the various trade-offs between development and human rights proposed by this school, see Donnelly, 1985 – they include, for instance, the assertion that high levels of absolute poverty, and a reduction of consumption, are necessary to maximise investment into the economy.

<sup>16</sup> Tomasevski, 1993, p.51

of quantitative as well as qualitative measurement of such improvement add to the more normative human rights methodology.<sup>17</sup>

Amartya Sen's work offers a succinct theoretical discussion of the relationship between development and human rights. Development, in his view, is to be understood as the progressive expansion of individual freedoms.<sup>18</sup> This includes the elimination of economic deprivation, as well as requiring an individual's voice in the political decision-making process and in development itself. Individual freedoms, or human rights,<sup>19</sup> are thus an *intrinsic* aspect of development. At the same time, Sen stresses that individual freedoms contribute *instrumentally* to development (see footnote 25). Hence development and human rights are to be understood as two sides of the same coin.<sup>20</sup>

On the policy-level, international development agencies have only relatively recently taken up the language of human rights. Sen's work was seminal, for instance, to the creation of the United Nations Development Programme's (UNDP) *Human Development Reports* at the beginning of the 1990s. Moreover, the UN Secretary General in 1997 introduced reforms to mainstream human rights into all four areas of the UN's work, including development.<sup>21</sup>

Accordingly, the UNDP's *Human Development Report 2000*, is dedicated to a discussion of the interconnection between human rights and development, and their mutually reinforcing aspects. The report underscores and appreciates the dimension of entitlements and corresponding *duties* introduced into the UNDP's work by the human rights approach.

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<sup>17</sup> UNDP *Human Development Report 2000*, p.22f.

<sup>18</sup> Sen, 1999

<sup>19</sup> In Sen's use, the term 'freedoms' can arguably be used interchangeably with 'human rights'

<sup>20</sup> The right to development, enshrined by a General Assembly Declaration in 1986 (GA Res.41/28, 1986), provides a good example of this amalgamation of development and human rights: it has been described as a 'vector' of human rights, as well as a human right in itself (Independent Expert on the Right to Development, 2001, Para.9) – for a detailed discussion, see Lindroos, 1999

<sup>21</sup> See, e.g., the UNDP's policy document 'Integrating Human Rights with Development', 1998

It is important to add that human rights take priority over development undertakings at all times in this rights-based approach. This can be defined as ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.’<sup>22</sup>

This paper suggests that both human rights and development stand to gain from a ‘one coin’ approach. Hence this line is pursued in the following discussion.

### **1.3 Human Rights Falling Within the Sphere of the Bank’s Work**

From as early as 1988, the World Bank has been eager to underscore its work’s positive impact on human rights.<sup>23</sup> Its position differs, however, from the principle of the indivisibility of human rights. The Bank has been adamant to stress that, due to the nature of its work, its bearing on human rights principally extends to economic and social ones. Former General Counsel Shihata, for instance, lists the Bank’s ‘impressive record’ with regard to the right to development, freedom from poverty, the right to education, the right to health, women’s rights in development, collaboration in refugee-projects, the environment, and involuntary resettlement.

On the other hand, the Bank remains silent about its work’s impact on civil and political rights, and, as far as lending is concerned, its ‘practice...has been to the effect that the degree of respect paid by a government to political and civil rights (as opposed to economic and social rights), has not been considered in itself a basis for the Bank’s decision to make loans to that government.’<sup>24</sup>

The Bank’s scope for positively affecting civil and political rights should not be discounted, however. This is especially so since its adoption of the ‘good governance’ agenda, which incorporates many elements (e.g. a fair and efficient judicial system) that are conducive to the realisation of civil and political rights (section 2.2).

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<sup>22</sup> Robinson,2001,p.4

<sup>23</sup> Shihata,1988

In the context of World Bank projects, furthermore, civil and political rights have on occasion been equally negatively affected as economic and social rights. Local authorities in charge of policing and implementing the Sardar Sarovar dam project in India, for instance, have been accused of intimidating protesters, arbitrary detention, and other violations of the right to free expression.<sup>25</sup>

In conclusion, the Bank's activities can and do have positive as well as negative effects on the *whole* spectrum of human rights.

## **II. World Bank Lending and Human Rights Conditionality**

### **2.1 The Political Affairs Provision**

#### **2.1.1 Legal Elements**

Discussions about the World Bank's legal scope for considering a borrower's human rights record have centred around the 'political affairs' provisions contained in its Articles of Agreement. Article IV, Section 10 provides that

'The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions.' (Emphasis added)

Moreover, Article III, Section 5(b) requires the Bank to ensure that loans be granted 'with due attention to considerations of economy and efficiency and *without regard to political or other non-economic influences or considerations*' (Emphasis added).

Opponents of an explicit human rights conditionality base their argument on these political clauses, to offer the following line of reasoning: (1) Human rights fall within the sphere of politics. (2) The Bank's Articles of Agreement clearly prohibit any involvement into domestic political affairs of member countries. Therefore (3) human rights conditionality falls outside the Bank's range of legitimate activity. In this view, human rights violations may *only* be of interest to the institution if a pattern of gross

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<sup>24</sup> Shihata, 1991, p.79. This stance on civil and political rights was reiterated in the World Bank document *Development and Human Rights: the Role of the World Bank* (1998)

<sup>25</sup> This was prior to India's withdrawal of its loan request to the Bank McAllister, 1993, p.704

violations of human rights amounts to an explicitly *economic* concern, e.g. if it is part of an overall instability in government, which may harm a ‘positive investment climate’, or if it undermines the creditworthiness of a country, or restricts its ability to service its debt obligations.<sup>26</sup>

Such exceptions cannot provide a firm basis for a rights-based approach, since the rights of individuals remain subordinated to other, namely economic, concerns. In line with this approach, it is well imaginable that gross violations of human rights without any economic or financial consequence could be ignored by the Bank, or worse policies with appalling human rights effects and high economic returns could be celebrated as ‘development successes’.<sup>27</sup> Also, it is not clarified when exactly ‘political’ matters acquire ‘economic’ importance, just as the ‘economic impact’ ceiling on human rights violations remains elusive.<sup>28</sup>

The Bank itself has vehemently upheld the above reading of the political clauses in the past, asserting that it is *legally prohibited* from considering human rights in its lending decisions. Most notably, it defended this position in a clash with the UN General Assembly in the 1960s. The General Assembly had made repeated appeals to UN specialised agencies to observe its resolutions on sanctions against Portugal (due to its colonial policy in Mozambique), and South Africa’s apartheid regime. The Bank’s General Counsel at the time rejected these requests on the ground that they were of

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<sup>26</sup>Kneller, 1980, Shihata, 1991, pp.84-93. A recent study by World Bank economists suggests that civil and political rights may be more significant for economic development than this view suggests: their cross-country analysis of the empirical link between these rights and the ‘economic rates of return of public investment projects financed by the World Bank’, finds that ‘civil liberties are...as important as any other single determinant of project success.’ Citizen involvement, by demanding government accountability and efficacy, can significantly influence the successful implementation of public investment projects, according to them (Isham et al., 1997). In the light of these findings, even hard-liners arguing that no considerations other than economic ones should enter World Bank project selection may be more willing to concede a place for human rights.

<sup>27</sup> Levinson, op.cit., p.42f.

<sup>28</sup> Ciorciari, 2000, p.353

*political* character.<sup>29</sup> Subsequently, the IBRD in 1966 granted three loans totalling 50 million dollars to the two countries.<sup>30</sup>

The Bank justified this refusal to co-operate with the UN General Assembly by reference to its status as a UN specialised agency, which grants operational independence from the mother-organisation. Indeed, the Bank's Relationship Agreement with the UN stipulates that 'by reason of the nature of its international responsibilities and the terms of its Articles of Agreement, the Bank is, and is required to function as, an independent international organisation' (Article I(2)). Most importantly, 'the United Nations recognises...that it would be sound policy to refrain from making recommendations to the Bank with respect to particular loans or with respect to terms or conditions of financing by the Bank.' (Article IV(3)). The only exceptions are Security Council resolutions made under Article 48 of the UN Charter, concerning matters of international peace and security (Article VI(1)).

On the other hand, the Bank's own Articles of Agreement allow it to 'give consideration to the views and recommendations of [general international organisations and public international organisations having specialised responsibilities in related fields]' (Article V, Sections 8(a) and (b)). Shihata specifies, however, that such consideration is confined to recommendations compatible with the Bank's Articles of Agreement.<sup>31</sup>

Furthermore, it is true that General Assembly resolutions do not have any legally binding force on the World Bank (or anyone else, for that matter). However it *can*, if it chooses to, abide by General Assembly resolutions, and this has indeed happened in the past.<sup>32</sup>

In view of what has been discussed above, it will be shown, in defence of human rights conditionality, that (1) human rights do not actually fall under the political

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<sup>29</sup> Bleicher, 1970

<sup>30</sup> *Ibid.*, p.33

<sup>31</sup> Shihata, 1988, p.42f.

prohibition clauses, and that therefore (2) the Bank is not legally prohibited from considering them, if it chooses to do so.<sup>33</sup>

### 2.1.2 Historical Background

In order to fully appreciate the meaning and purpose of the political clauses in the Bank's Articles of Agreement, it is necessary to understand the historical context of their formulation, as well as its function in the organisational structure and working of the Bank. Such an interpretation will provide guidance for their applicability to human rights.<sup>34</sup>

Historians of the Bretton Woods Institutions give three principal reasons for the political prohibition clauses. Firstly, it is argued that in the global political context of the emerging Cold War, it was regarded as essential to design the Bank as a technocratic institution isolated from political considerations. This, it was hoped, would attract members regardless of their political ideology, in particular the Soviet Union. Secondly, it has been suggested that Keynes' principal interest was to insulate Britain from an American bias against the Commonwealth 'sterling area', Britain's preferential economic zone. Thirdly, it is argued that Keynes simply wanted to ensure the efficient functioning of the Bank, which in his view required a purely technical and economic method for resource allocation.<sup>35</sup> Without assessing these different accounts, all three are likely to have informed the drafters' decision.<sup>36</sup>

In its operations, the 'apolitical' doctrine of the Bank is intended to reassure two different constituencies: (1) private investors the Bank seeks to attract by guaranteeing them that their financial assets are managed according to rational and sound business principles, and (2) borrowing countries who are more likely to accept reform conditions

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<sup>32</sup> Shihata, 1991, p.76ff

<sup>33</sup> Bleicher, *op.cit.*, p.36

<sup>34</sup> Ciorciari, *op.cit.*

<sup>35</sup> *Ibid.* 366f.

<sup>36</sup> *Ibid.*

if they are perceived to be based on purely economic requirements, rather than the political ideologies of donor countries.<sup>37</sup>

Thus the political clauses extend to (1) political ideology of members, (2) their domestic policy, and (3) loan decisions, which should be based on economic analysis rather than the political nature and affairs of borrowers. Accordingly, if human rights criteria are to enter World Bank lending considerations, it has to be shown that they belong *neither* to a specific political ideology, *nor* to the exclusively internal political affairs of a state.

### 2.1.3 Human Rights and Political Ideology

One of the central elements of human rights is the premise that they pertain equally to all, regardless of race, gender, creed or political affiliation. During the drafting procedures for the Universal Declaration on Human Rights, this premise was supported by representatives of countries with diverse political ideologies.<sup>38</sup> Moreover, support from the two 'blocs' for various international human rights instruments was fairly balanced throughout the Cold War, and Eastern bloc countries on average signed as many human rights treaties as their Western counterparts.

Moreover, violations of, as well as respect for, human rights can and do occur across the political spectrum – neither liberal democracy nor socialism has an *inherent* disposition towards one of the two.<sup>39</sup> Thus neither empirically, nor in theory, can it be upheld that human rights are a matter purely of political ideology or 'political nature'. In fact, part of their purpose is to remain conceptually detached from them. In that sense, they lie *beyond* politics. Introducing human rights lending criteria does consequently not amount to partiality in terms of political ideology.

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<sup>37</sup> Miller-Adams, 1999, pp. 22-24

<sup>38</sup> Robertson, 2000, p. 31f.

<sup>39</sup> Ciorciari, op. cit., p. 368

#### 2.1.4 Human Rights and State Sovereignty

The second part of the argument asserts that human rights conditionality would amount to a violation of state sovereignty over internal political affairs, as protected by the UN Charter Articles 2(4) and 2(7).

This was the Bank's position during the Portugal/South Africa dispute. At the time, the UN General Counsel rejected this argument on the basis that whereas Article IV, Section 10 did indeed prohibit an involvement in the *internal* political affairs of a member country, this did not cover 'the conduct of a state [if it] runs contrary to its obligations under the Charter of the United Nations.'<sup>40</sup> This legal opinion is a precursor to the emerging *erga omnes* duty of single states with regard to the international human rights system – that is, human rights norms are 'owed to the international community as a whole', and in that sense are precisely *not* part of a country's exclusive sovereignty over domestic affairs, just as for instance an act of genocide will not be tolerated as part of a country's 'internal politics'. This is because such an act does not only violate individual rights, but the very founding principles of relations between civilised nations, to which *every* member of the international community may respond.<sup>41</sup> Several landmark decisions made by the International Court of Justice (ICJ) confirm that *erga omnes* obligations extend to 'principles and rules concerning the basic rights of the human person'.<sup>42</sup> Moreover, all UN members, except for China, have in the past supported actions against other states on grounds of human rights violations. This amounts to an implicit renunciation of their own prerogative to claim protection of sovereignty under Article 2(7) of the UN Charter in cases of human rights allegations against themselves.<sup>43</sup> This fact further entrenches their *erga omnes* duties with regards to human rights.

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<sup>40</sup> Bleicher, *op.cit.*, p.41. See also Marmorstein, 1978, p.126

<sup>41</sup> Steiner & Alston, 2000, p.225

<sup>42</sup> as quoted by Ciorciari, *op.cit.*, p.357f.

<sup>43</sup> Steiner & Alston, *op.cit.*, p.589

The World Bank's claim that human rights fall within the domain of domestic jurisdiction, and consequently beyond its mandate, is thus not warranted by international law.<sup>44</sup> It can therefore be concluded that it is not legally prohibited from taking gross violations of human rights into consideration. On the other hand, except for binding Security Council resolutions, the Bank is not legally obliged to consider them, either.<sup>45</sup> However, the important point to make is that the final decision on these issues remains with the Bank.<sup>46</sup>

## 2.2 Flexible Mandates

The World Bank has cautiously taken up human rights issues in the context of its recent 'good governance' agenda, which entails 'the manner in which power is exercised in the management of a country's economic and social resources for development'.<sup>47</sup> Elements of good governance include accountability, transparency, the rule of law, and efficiency in the civil service.<sup>48</sup> Inasmuch as such aspects of policy-making are relevant to economic growth and consequently to its own work, the Bank regards them as legitimate targets for conditionality.<sup>49</sup>

While the boundaries between 'good governance' and 'politics' are obviously blurred, the Bank has made a great effort to keep its approach to the new agenda as technocratic and apolitical as possible. This stance has been criticised by many who argue that the

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<sup>44</sup> Cogen, 1992, p.396

<sup>45</sup> Ciorciari, op.cit., p.359f.

<sup>46</sup> Bleicher, op.cit., p.40

<sup>47</sup> 'Good governance' was first mentioned in the World Bank report *Sub Saharan Africa – From Crisis to Sustainable Growth* (1989), as quoted by Lawyers' Committee for Human Rights, 1995, p.43. For a detailed discussion, see Miller-Adams, op.cit.

<sup>48</sup> Although 'scrupulous respect for the law and human rights' have been mentioned as aspects of good governance (Ibid., p.44), they have not occupied a central place in successive debates on actual governance conditionality (Miller Adams, op.cit., p.113)

<sup>49</sup> Such extensions of its original mandate, namely the economic development of its member countries, are warranted by the Bank's Charter, which allows a flexible interpretation of its clauses. Their final interpretation remains with, in the first instance, the Board of Executive Directors, and in the second instance, the Board of Governors (Article IX(a) and (b)). This provision was used in the past to legally justify the introduction of structural adjustment loans, for instance (Shihata, 1991, p.60). A flexible interpretation of the term 'economic development' may arguably allow for an integration of the advancement of human rights into the Bank's mandate (see also footnote 23 *supra*).

governance agenda cannot side-step certain, clearly political, dimensions, including human rights.<sup>50</sup>

Section 2.5 suggests a different approach in the light of the preceding discussion: given that human rights are precisely *not* part of partisan politics, the Bank should not be apprehensive about their explicit inclusion in governance conditionality. Sections 2.3 and 2.4 will outline how such human rights conditionality has entered the Bank's decision-making in the past, albeit in an indirect and impromptu manner.

### **2.3 The Bank's Past Record**

Irrespective of its overall stance, the World Bank has made sporadic references to human rights violations in the past. Human rights were first mentioned as one reason (among others) for discontinuing aid to the Allende government in Chile, in 1972.<sup>51</sup>

Although more recently it has shied away from making such direct references to human rights, the Bank has used its financial leverage to tip the balance in their favour on several occasions. In 1994, for instance, it required the government of Burkina Faso to incorporate a pledge in its policy framework paper to curb female genital mutilation.<sup>52</sup> In 1995, after the execution of Ken Saro Wiwa, it withdrew from a liquefied gas project in Nigeria that had been vehemently opposed by the activist. Although the Bank made an effort to explain its move in economic terms, it made specific reference to its member countries' condemnation of the death sentence.<sup>53</sup>

Similarly, the current World Bank President James Wolfensohn has used his personal standing to raise the issue of human rights violations in some borrowing countries. For example, in a personal letter to the Indonesian president in 2000, he cautioned that investor confidence may depend on the successful containment of militia groups active

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<sup>50</sup> Ibid.,p.129

<sup>51</sup> Moris,op.cit.,p.25

<sup>52</sup> *Financial Times*,22/04/1994

<sup>53</sup> Miller-Adams,op.cit,p.105

in western Timor at the time.<sup>54</sup> After the *Washington Post* described Wolfensohn's letter as a 'warning', however, the Bank issued an official statement to water down the newspaper's version. The statement underlined the 'overall supportive tone' of the letter and denied any 'plans to cut assistance.'<sup>55</sup>

These occasional references to human rights have gone hand in hand with an emerging dialogue between Bank staff members and human rights groups, NGOs, and UN human rights organisations.<sup>56</sup> At the same time, the World Bank is increasingly targeted by human rights groups' petitions to exert pressure on borrowing members with abysmal human rights records.<sup>57</sup> Yet again, whereas the Bank is eager to display its support for such organisations and their concerns, it refuses to commit itself to an outspoken human rights conditionality in any specific case.<sup>58</sup> Such contradictory signals from the Bank illustrate its effort not to cross the self-imposed fine line between 'permissible' and 'impermissible' interference.

#### **2.4 Bilateral Donors' Human Rights Policies**

While the Bank's stance towards human rights conditionality remains disapproving in theory, and inconsistent in practice, many bilateral donors have started to integrate concrete human rights policies and conditions into their bilateral lending, as well as into their representatives' mandates in the International Financial Institutions.<sup>59</sup> Most significantly, the United States (US) issued Public Law 95-118 in 1977, which 'authorises and instructs' US World Bank Executive Directors to oppose loans to countries whose

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<sup>54</sup> *Washington Post*, 12/09/2000

<sup>55</sup> World Bank News Release, 12/09/2000. Similarly, Wolfensohn expressed concern about Russia's military campaign in Chechnya, at the same time stressing that lending would continue. World Bank News Release, 02/02/2000

<sup>56</sup> E.g., Terry Collingsworth, letter to James Wolfensohn, 23/06/1999, and Robinson, op.cit.

<sup>57</sup> Collingsworth, letter quoted above concerning China; Charles Scheiner, letter to James Wolfensohn, 22/09/2000, regarding Indonesia and East Timor; Kenneth Roth, letter to James Wolfensohn, 14/12/1999, regarding Russia's war in Chechnya

<sup>58</sup> See, e.g., Wolfensohn's reply to Scheiner, 24/12/2000

<sup>59</sup> Tomasevski, 1993, p.64

governments engage in gross violations of human rights.<sup>60</sup> This law prompted several US representatives on the Board to vote against loans to, e.g. Afghanistan, Argentina, and the Central African Republic.<sup>61</sup>

Under the Bank's Articles of Agreement, Executive Directors 'owe their duty entirely to the Bank and to no other authority', and are required to respect its 'international character.' (Article V, Section 5(c)). Accordingly, they have to refrain from promoting the specific political agendas of their own countries. In a discussion of the US Authorisation Act, Shihata admits, however, that there is no effective legal sanction available to the Bank to hold Executive Directors accountable in this respect. Hence, whereas it may strongly discourage such behaviour, in practice it has to tolerate whatever agendas they happen to support.<sup>62</sup>

Thus human rights considerations can enter the Bank's decision-making through single members, especially if they hold a large share of votes on the Board of Executive Directors. In practice, this possibility has not advanced a consistent application of human rights conditionality. Rather, it has been abused by single members as a means for achieving concrete political ends vis-à-vis particular countries, or their own domestic political priorities.<sup>63</sup> The Authorisation Act, for instance, has been applied by US representatives on a highly selective basis, to deny lending to the Sandinista Regime in Nicaragua, for instance, but not to South Korea under the military dictatorship.<sup>64</sup>

Thus the Bank finds itself in a paradoxical situation: it refuses to clarify its own stance,<sup>65</sup> and to formulate concrete human rights requirements, in order to avoid 'political' issues. But this has precisely the opposite effect: the space left empty by the Bank's lack of consistency and clear guidelines has been occupied by the partisan politics

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<sup>60</sup> Quoted by Shihata, 1991, p.104f.

<sup>61</sup> Tomasevski, 1993, p.64

<sup>62</sup> Ibid.

<sup>63</sup> Kneller, op.cit.

<sup>64</sup> Levinson, op.cit., p.56f.

of its members, as well as *ad hoc* reactions to strong external lobbying in particular cases. It is precisely this selective application of blurry criteria imposed on the Bank either from member states or outsiders that is *deeply* political and partial.

## **2.5 Human Rights Beyond Politics**

It is evident from the preceding discussion that the Bank falls between two stools in terms of human rights. On the one hand, it upholds the view that it is legally prohibited from considering human rights. This theoretical position has been rejected. On the other hand, its operations are expanding into human rights territory, although the Bank has been careful to avoid setting clear precedents.

The introduction of a concrete policy on human rights conditionality could reintroduce a technical framework so cherished by the Bank, inasmuch as it would ensure that the *same* conditionality would be applied in *each* case, through an internal mechanism, rather than external political agendas. Such a concrete policy would have to address several issues: (1) *Clear conditionality*: The formulation of a clear conditionality framework to set standards, raise the awareness of countries, and to be applied in a technical manner; (2) *Identification and Assessment*: The Bank lacks the in-house capacity and the international mandate to determine whether countries have a satisfactory human rights record, and in which cases actual sanctions are applicable. The first step of identification should therefore be left to an international body with a clear human rights mandate and sufficient expertise. It has been suggested by some that the World Bank should work in tandem with the UN human rights system.<sup>66</sup> (3) *Type of measures*: While gross violations of human rights may make a government ineligible for aid, sanctions should not hit the population. The effectiveness of the threat of withholding funds will also depend on each country's dependence on external aid. Hence the precise form of

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<sup>65</sup> Ciorciari, op.cit., p.351

sanctions has to be considered in each case.<sup>67</sup> (4) *Coordination*: The precise form of sanctions may be agreed upon in consultation with the various bodies of the UN system, such as the General Assembly and the Security Council. Moreover, only coordination of sanctions between different international aid agencies and bilateral donors can ensure the effectiveness of such efforts. World Bank policy in this area would not be effective without the concerted action of the international donor community as a whole.

By introducing human rights as a lending criterion, the Bank can at the same time 'insure' its own projects from being associated with human rights violations, since governments who respect human rights in general are more likely to respect them in development ventures. Such projects' impact on human rights will be discussed in the next chapter.

### ***III. Impact of World Bank Projects on Human Rights***

The World Bank's operations have direct and often damaging effects on the human rights of local populations. When analysing these, a distinction needs to be made between the more long-term effects of structural adjustment loans, and the more short-term, direct impact of particular projects. The former involve changes in policy and accessibility to public services such as health care and education, which have to be assessed over a long period of time. It may be difficult to trace a long-term deteriorating human rights situation back to the World Bank's structural adjustment demands, as opposed to the government's own policy changes or other variables. Assigning clear responsibility in these cases can therefore be problematic, although studies to that effect abound.<sup>68</sup> Whilst structural adjustment loans may in the long run infringe upon human rights on a broader basis and may be more damaging for larger parts of the population,

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<sup>66</sup> Tomasevski, 1993, chapter 8. While this may be the most realistic and internationally legitimate option, it is clear that the Human Rights Commission, just like any other inter-governmental body, suffers from political abuse by single members.

<sup>67</sup> Ibid., chapter 7

<sup>68</sup> Ibid., p.66, see also Adjepoju, 1993

they have to be analysed in more detail than is possible in this paper. The following discussion will therefore concentrate on single World Bank projects, whose effects on human rights are more easily observable: they are often immediate, and can be traced back unambiguously to project design and implementation. Also, they are more likely to affect clearly identifiable groups, such as indigenous populations.

Not all World Bank projects have the same impact on human rights. Paul identifies two sets of especially ‘risk prone’ projects, which according to him should receive special attention with regard to human rights.<sup>69</sup> These are large infrastructural projects, mainly in areas of transport (e.g. highways), urban infrastructure and hydropower, as well as projects aiming at the modernisation of the agricultural sector, such as large irrigation systems.

Such infrastructural projects are likely to cause loss of land for large parts of local populations, thus often undermining their right to an adequate standard of living, if no adequate compensation is granted. Minority rights are also in danger where such projects dislocate indigenous populations from their ancestral homelands, which often signifies not only material loss, but more importantly loss of social status and culture. The harm caused by such displacement is not restricted to the event itself: failed resettlement is likely to cause social and political marginalisation, a position of vulnerability which renders the victims yet more exposed to future human rights violations of all kinds, from deteriorating health to extreme poverty and even slavery.<sup>70</sup>

The World Bank’s bearing on such dislocation is significant: its overall active portfolio in 1996, for instance, contained projects involving the resettlement of two million people over a stretch of eight years – a conservative estimate of the official

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<sup>69</sup> Paul, *op.cit.*, pp.92-96

<sup>70</sup> Paul, *op.cit.*, p.93; The World Bank itself estimates that the loss of income for displaced populations in some cases reaches up to 40% of original earnings (World Bank, 1996, p.10)

numbers. Such projects make up 15% of total World Bank lending. The scale of resettlement varies from only 500 to over 200.000 people at a time.<sup>71</sup>

Defendants of such major projects usually reason that the advantages that arguably accrue to considerable numbers of beneficiaries (e.g. irrigation, clean water, etc.) by far outweigh the comparably ‘minor’ costs imposed on a ‘small’ number of victims. Such a utilitarian calculus, in form of a cost-benefit analysis across the population, is not permissible from the human rights perspective. Especially in the context of such large-scale projects, individual entitlements are thus best protected by a human rights framework.

The next section will discuss whether the World Bank is liable, as regards its own projects, to operate within such a human rights framework and if so, what obligations this would entail. These will then be used as a yardstick against which the Bank’s policies and actual performance can be assessed.

### **3.1 World Bank Projects and Human Rights: Some Concrete Obligations**

The relationship between the World Bank and the UN has been assessed in section 2.1.

This section will consider what concrete obligations arise from the Bank’s status as a UN specialised agency under international law. Skogly provides an exhaustive discussion of the aspects of international law applicable to the World Bank.<sup>72</sup> It is sufficient here to point out some of her central observations.

The World Bank holds international legal personality (as confirmed by its Articles of Agreement, Article VII, Section 2), i.e. it is subject to international law, and can therefore hold concrete rights and obligations.

As to the international legal sources for potential human rights obligations applicable to the World Bank, neither treaty law, nor customary human rights law or general principles of law can provide a basis: international human rights treaties are exclusively

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<sup>71</sup> World Bank, 1996, pp.1-7

signed by, and applicable to, states. Customary law and general principles, while they do apply to international organisations, are ambiguous. The customary nature of many pertinent human rights, especially economic and social rights, is highly disputed, and those that are accepted as part of customary law or as general principles, such as freedom from slavery or protection from genocide, are arguably marginal to the World Bank's activities.

However, the protection of human rights is one of the central principles and functions of the UN, as laid down in the UN Charter (Article 1(3)). While the Bank is legally and organisationally independent from the UN, it is not independent to the degree of violating fundamental UN principles, but has to respect them. Inasmuch as the International Bill of Human Rights elaborates and codifies the UN Charter's human rights principle (see section 1.1), the Bank's obligation extends to the rights enshrined in these instruments.

In accordance with the functionalist structure of the UN system, the World Bank has clearly framed tasks, which do not include the active *protection* or *fulfillment* of human rights.<sup>73</sup> This function is delegated to other bodies of the 'UN family', such as the Human Rights Commission. Thus the Bank's specific *legal obligations* only extend to the negative level of *respect*. Skogly makes the further specification that it also holds a 'neutral' obligation, i.e., it may not aggravate an already problematic human rights situation in a country, but it is not legally responsible for improving the state of affairs.<sup>74</sup>

In 1998, the World Bank published a document outlining its own role in the promotion of human rights in development. The paper explicitly endorses their synthesis, and reiterates its spheres of operation relevant to the *fulfillment* of human rights

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<sup>72</sup> Op.cit.

<sup>73</sup> It has been argued that the Bank may nevertheless promote them, if it chooses to do so.

<sup>74</sup> While, again, it may choose to do so

(such as poverty alleviation etc., see also section 1.3) – but does not address the *obligation* to *respect* human rights, or offer concrete policies towards that end.<sup>75</sup>

Moreover, the document fails to make the distinction between the *content* of a human right (e.g., education), and the right itself, which ensures the *entitlement* to the content in question.<sup>76</sup> A person may consequently enjoy the content of a right, e.g. receive free education, without holding any claims against an obligation holder legally responsible for providing it. Such charitable provision of resources must not be confused with the granting of a right.<sup>77</sup> Correspondingly, the beneficiaries of World Bank activities, where such benefits accrue, cannot actually *demand* to receive these benefits from the Bank. Depicting its own work as ‘realising human rights’ is thus a conceptual misconception.

It will be assessed in the next few sections if other relevant policies, and its actual practice in the field, adhere to its concrete obligation to *respect* human rights, or its assumed role of provider of rights-contents.

### **3.2 Operational Policies of the World Bank**

The World Bank was the first international development agency to formulate clear policy guidelines of the highest standards with regard to involuntary resettlement and tribal populations: In the early 1980s, Operational Manual Statements (OMS) were formulated on both issues, which were replaced in the early 1990s by Operational Directives (OD). Both were recently streamlined into a three-tier system of Operational Policies (OP – mandatory short policy statements based on the Bank’s Articles of Agreement, general conditions, and Board approved policies), Bank Procedures (BP – detailed guidelines of procedures and documents required to realise the OP, which are also mandatory), and Good Practices (GP, containing guidance for staff on policy implementation – these are only advisory).

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<sup>75</sup> World Bank, 1998

<sup>76</sup> Skogly, op.cit., p.47

The OPs on involuntary resettlement and indigenous peoples constitute the closest to a human rights policy document the Bank has issued so far.<sup>78</sup> Although they are specifically concerned with *group* rights of certain parts of local populations, these, conceptually as well as practically, underpin the human rights of each individual belonging to such a group. The realisation of the human rights of indigenous populations depends on the cultural and social specificities of the group – their safeguarding is essential, therefore, to their right to culture, and the protection of minority rights. Also, most indigenous populations conceptualise tenure of land as collective, rather than individual, ownership. Consequently, the individual right to property, and even to subsistence (since subsistence-production, too, is organised on a communal basis), is realised by the group as a whole. The rights these OPs are formulated to protect are thus fundamental to the realisation of human rights. In fact, the draft OP 4.10 on indigenous peoples states that the ‘broad objective of this policy is to ensure that the development process fosters full respect for the *dignity, human rights, and cultures of indigenous populations*’ (Para.1, emphasis added).

Both OPs require that displacement should be avoided whenever possible. Where this is not feasible, the target groups should not suffer a decline in living standards. Rather, the express aim is to achieve an *improvement* of their situation, by ensuring that such groups benefit directly from projects, e.g. by giving them preferential access to newly emerged productive activities, such as fishery in reservoirs and canals (Para.2 OP 4.12 on Involuntary Resettlement). Furthermore, the OPs are legally innovative in that they recognize populations’ customary rights to land, even where such rights have not been legally enshrined in the dominant society’s legal system. In the case of involuntary resettlement, land-for-land, rather than one-time cash compensation, is preferred, and where this is impossible, clear standards for compensation, at full replacement cost, are

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<sup>77</sup> Tomasevski,1997

set. In urban areas, access to public services (e.g. schools), and employment opportunities, are not to deteriorate after resettlement. Where possible, cultural, social and kinship groups are not to be broken up by the resettlement process, but maintained in the new location if the groups so wish. Both documents favour long-term strategies for integrating affected populations in the development process, and underline the right to participation.

These are impressive standards, which, if realised word-for-word, would certainly protect the human rights of affected populations. However, in prevailing circumstances, the OPs show serious shortcomings. A few examples will illustrate the overall limitations.

Firstly, the main responsibility of integrating the OPs into design, implementation and monitoring of projects rests with the borrower. The Bank's role is one of external support and supervision – and the revised OPs underline that it assumes this role only upon 'request' of the borrower (e.g. OP 4.12, para.32). In addition, the Bank asserts its immunity from prosecution in local courts for problems caused by projects it finances (Articles of Agreement, Article VII). This means that it cannot be held accountable by any external judicial body for possible human rights violations.<sup>79</sup> Such a consultative function without legal accountability does not match the Bank's own non-derogable obligation to respect human rights.

While there are some clear requirements such as the existence of a resettlement plan *prior* to project appraisal (OP4.12, para.22), Bank staff have been negligent in enforcing them in the past (see 3.3 below). A study prepared by the Bank's internal monitors in 1996, for instance, points out that more often than not, resettlers' living standards are not restored, let alone improved upon.<sup>80</sup> Kingsbury observes that while OPs may be

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<sup>78</sup> Skogly, op.cit., p.38

<sup>79</sup> Shihata, 2001, pp.243-258

<sup>80</sup> World Bank, 1996, p.9, 13

'binding' on staff, their implementation is monitored 'flexibly' within the existing management structure, rather than being regarded as legally enforceable. The structural incentive of getting projects through the Bank's complex project cycle as speedily as possible in order to meet certain deadlines, and fulfill the required 'lending targets', combined with this lack of enforceability, can lead to the neglect of policy standards.<sup>81</sup>

Moreover, although the borrower's obligations to adhere to the Bank's standards are to be laid down in the legal agreements between the two (OP4.12, para.23), enforcement mechanisms in case of non-compliance, such as suspension of disbursement, remain the Bank's *ad hoc* choice. The structural difficulty of halting large-scale projects once they have progressed beyond a certain stage means that such enforcement mechanisms are often not resorted to, and effectively makes it hostage to the borrower's willingness to adhere to its standards.

The OPs' main limitation, from a human rights point of view, lies in their restricted scope: indigenous people and resettlers are not the only groups negatively affected by World Bank projects. The absence of an overall human rights policy means that the Bank cannot be held accountable for all cases of human rights violations, e.g. through the Inspection Panel (section 3.4). In addition, the failure to implement the OP satisfactorily restricts the scope of even these rudimentary human rights guidelines. In fact, it was pointed out by Alfredo Sfeir-Younis, Special Representative of the World Bank to the UN, that the sporadic references to human rights in its policy guidelines on indigenous people should not be understood as an integration of an 'advocacy role' in the Bank's mandate.<sup>82</sup>

The next section will illustrate how these policy-shortcomings have resulted in serious human rights violations.

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<sup>81</sup> 1999,p.329

<sup>82</sup> Statement delivered to the UN Economic and Social Council, July 28,1999

### 3.3 The Reality on the Ground: Past Projects, Past Violations

One example from the plethora of cases shall suffice to illustrate the World Bank's past difficulties with adhering to policies and performance targets: the Sardar Sarovar Dam Projects in India. The damming of the Narmada River, which began in 1987, involved the submersion of more than 100,000 hectares of land, virtually all of which was inhabited by tribal populations. A conservative estimate of the number of people affected by the submergence area as well as the building of canals, powerhouses etc. reached 400,000.<sup>83</sup> Huge national and international controversy surrounding the project prompted the World Bank to request an independent review in 1991.

Despite the existence of both the 1980/1981 OMS, and the 1990/1991 ODs on Involuntary Resettlement and Indigenous Populations, and the inclusion of their main principles into the World Bank's loan agreement with India in 1985, the Independent Review found that the whole project was deeply flawed, both in terms of human rights and environmental impact. Underestimation of the scale of resettlement, unsatisfactory implementation, lack of consultation with local populations, disregard for the populations' tribal nature, absence of relevant data, failure by the Bank to consistently apply its own principles and ensure compliance by the borrower, and insufficient compensation are among the shortcomings mentioned by the report.<sup>84</sup> At the heart of such failures, it asserts, lay the 'eagerness on the part of the Bank and India to get on with the job', which resulted in economic considerations overriding environmental and human rights concerns. So alarmed were the independent experts by these blunders, that they recommended that the Bank withdraw from the projects altogether.<sup>85</sup> Despite these findings, the Bank decided to continue funding. Its involvement ceased when India

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<sup>83</sup> Bradford & Morse, 1992, pp.4-7

<sup>84</sup> Ibid., pp.349-358

<sup>85</sup> Ibid., xxv

withdrew its loan request in order to avoid the Bank's environmental safeguard conditions.<sup>86</sup>

The Narmada river project is not the only case where the World Bank did not live up to its own standards: the 1996 Bank-wide review of projects involving large-scale resettlement observed that between 1986 and 1993, only about half of all appraisal missions sent into the field had been provided with the required resettlement plan, and that non-compliance with resettlement requirements persisted on all levels within the Bank and at all stages of the project-cycle.

Sardar Sarovar was the watershed project that prompted the World Bank to take a revolutionary step in 1993. It introduced an internal body mandated to receive complaints from victims of Bank-funded projects. The next section will assess whether the Inspection Panel is an improvement on the Bank's internal monitoring mechanism, and can ensure compliance with the Bank's human rights obligations.

### **3.4 The Inspection Panel**

The three member Inspection Panel's mandate (as laid down in its Operating Procedures) is to serve as an 'independent forum' of last resort for people who feel that 'their rights or interests have been, or are likely to be adversely affected in a direct and material way' through the Bank's 'failure to comply with its policies and procedures' during the implementation of a project.

After a formal request made by the affected parties, the Panel is to instigate a preliminary review, assess the evidence and make a recommendation to the Board of Executive Directors as to whether the matter should be fully investigated. The final decision about an enquiry remains with the Executive Directors. Should they advocate a full investigation, the Panellists are to have access to all germane sources of information.

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<sup>86</sup> McAllister, op.cit., p.705

Bradlow concludes from a discussion of the first request made to the Panel in 1994 that the body can indeed play an important role in clarifying Bank obligations under its own Operational Policies. Also, it can raise awareness about procedural flaws that can be considered in future project design and implementation.<sup>87</sup> The Panel's preliminary review of the Arun III Hydroelectric Project in Nepal pointed out important shortcomings by the Bank as well as the Nepalese government. As a result, President Wolfensohn withdrew funding for the project.

However, the Panel has several procedural weaknesses, which greatly undermine its ability to act as an effective last resort for human rights complaints. Firstly, General Counsel Shihata, following a request by the Board of Executive Directors, stipulated that only a group with a 'commonality of interests' may make recourse to the Panel. A collection of individuals with different complaints all deriving from the same project are thus excluded.<sup>88</sup> This provision is incompatible with the central notion of human rights being held, and claimed, by individuals in their personal capacity.

Secondly, the Panel is only mandated to refer to the Bank's own policy documents, and not to external obligations, as outlined in section 3.1.<sup>89</sup> This means that it cannot make any reference to human rights other than those provided for by the Bank's own policies. Section 3.2 discussed how these fall short of its concrete obligations under international law.

Finally, the fact that ultimate decision-making power remains with the Board of Executive Directors significantly curtails the Panel's role as an independent investigatory and remedial body. While awareness of a problematic project may be raised even where the Board eventually rejects the Panel's recommendations, the final evaluation of project funding remains, as before, internal to the Bank. There are many factors inherent to the

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<sup>87</sup> Bradlow, 1996

<sup>88</sup> Quoted by Bradlow, *op.cit.*, p.261f.

<sup>89</sup> Kingsbury, *op.cit.*, p.330f.

Bank's procedural structure, which in some cases predispose it to continue lending even where this may contravene the OP. Such factors can arguably shape the Board's decision to continue lending, contrary to the Panel's recommendations.

Furthermore, rifts have in the past occurred between Executive Directors representing (borrowing) countries who felt accused by the Panel's findings, and opposed additional inquiries, and those who represented donor countries, who supported them. These disagreements often resulted in the Board's failure to authorise full-scale investigations.<sup>90</sup> Independent observers confirmed the highly political nature of Board disputes surrounding the Panel.<sup>91</sup>

### **3.5 The Present: Any Improvements?**

The Bank makes continuous efforts to improve its performance. The most recent innovation in this respect has been the institution in 2001 of an International Advisory Group (IAG) for the Chad-Cameroon Petroleum Development and Pipeline Project. Its mandate includes the independent identification of 'potential issues' in the realisation of the pipeline, specifically 'issues of governance *including human rights*' (Work Plan, Para.2, emphasis added). The IAG has made important findings with regards to human rights on its field visits, including health hazards due to large concentrations of workers in spontaneous camps, the increase in prostitution of young girls, the systematic exclusion of labour unions from work sites by the oil consortium, and shortcomings in resettlement compensation payments.<sup>92</sup> Furthermore, it identifies a 'two-speed' implementation of the project: while the oil consortium is speeding ahead with the construction of the main pipeline structure, the Bank's complementary capacity building and resource management projects, and resettlement plans, are lagging far behind. This situation is in direct contravention of the OPs' requirement that social development

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<sup>90</sup> Bradlow, 2001, p.250

<sup>91</sup> Udall, 1997, p.64, Kingsbury, op.cit.p.335

<sup>92</sup> Reports of Visits to Chad, May 24 and July 12 2002

projects designed to mitigate detrimental effects of infrastructural projects are to be realised prior, or at least parallel to, the main project.

Independent NGO reports suggest that none of these findings have had significant effects on the completion of the project, with the result that many communities have suffered negative effects, such as the pollution of water sources, lack of participation and information, and even intimidation and harassment prior to the initiation of the project, in order to drive them off the land designated for the pipeline.<sup>93</sup>

In the light of these findings, human rights policy proposals would have to address the shortcomings of existing World Bank policies and monitoring mechanisms, and include three components: (1) An acknowledgement of human rights obligations derived from international law and the corresponding entitlements individuals hold against the Bank. (2) Integration of such a human rights policy into each stage of the project cycle.<sup>94</sup> This may include the requirement of a human rights impact assessment, similar to the environmental impact assessment procedure. (3) An effective monitoring and redress system, preferably through an external body – the Bank could mandate the UN Human Rights Commission, for instance, to review its operations, similarly to the way it monitors countries' performance.<sup>95</sup>

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<sup>93</sup> West Africa, May 6-12, 2002, Centre for Environment and Development & Friends of the Earth, 2001, p.6

<sup>94</sup> Ibid., pp.162-167

<sup>95</sup> Skogly, op.cit., p.187

## **Conclusion**

This essay has illustrated the Bank's inconsistent stance towards human rights in its lending decisions, as well as the projects it finances.

Chapter I outlined the rights-based approach underlying the paper, which regards human rights and development as two sides of the same coin. It is in the nature of development interventions to create benefits for some, and burdens for others. In this context, human rights, particularly those of marginalised parts of the population, are particularly vulnerable and have to be safeguarded. At the same time, remedies have to be available in cases of violations.

It has been suggested that a country's overall human rights record may reveal its proneness to respect them in the context of development projects. Thus it may be of legitimate concern to the Bank, if it wants to uphold its own human rights obligations derived from international law. This may necessitate human rights lending conditions.

Chapter II has shown that the Bank's theoretical rejection of human rights conditionality is weakened by its contradictory practice, as well as member states' potential for realising their own human rights/political agendas through the Bank. It has been argued that it is not actually barred by its Articles of Agreement from considering human rights. The introduction of a clear human rights conditionality framework would, it has been concluded, reinforce the Bank's technocratic institutional culture by establishing a procedure internal to the Bank, with transparent criteria.

The legal situation is different in the case of projects: here, the Bank has an actual obligation under international law, namely to respect human rights. At present, it does not acknowledge this obligation. An analysis of its past performance leaves a fragmented picture: on the one hand, the Bank is aware that rights problems arising from its own projects have to be internally addressed and prevented as fully as possible. On the other hand, implementation is still lagging far behind policy standards, which in turn are

confined to a limited number of cases and people, namely resettlers and indigenous populations. This means that victims, e.g of structural adjustment-induced violations of entitlements are not covered by the Bank's policies.

The two cases, past and present, illustrate some important points: while the Bank takes past mistakes into account to formulate innovative methods for internal and external monitoring, its record remains patchy in two respects. Firstly, the lack of an overall human rights policy means there is no clear reference-point of standards, or ways for individuals to claim entitlements (since the Bank rejects liability for the effects of projects, there are no external avenues of redress, either). Secondly, findings of independent experts are often disregarded, and human rights standards neglected for the sake of economic efficiency.

At the moment, the Bank fails to live up to its human rights obligations. Only an explicitly rights-based approach will ensure that in future, the World Bank's operations will no longer be associated with human rights violations.

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