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ABUSE-FREE DEVELOPMENT

How the World Bank Should Safeguard Against Human Rights Violations



Abuse-Free Development

How the World Bank Should Safeguard Against Human Rights Violations

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Summary

When I came to the Bank ... I was told by the general counsel within days of my getting to the institution, and in great secrecy, “Don’t mention the ‘C’ word.” So I asked, “What’s the ‘C’ word?” He replied, “Corruption.” Well, maybe we now need to mention the ‘R’ word, which is ‘Rights.’

—Then-World Bank President James D. Wolfensohn, March 1, 2004¹

[I]t would be tantamount to a virtual ‘fig leaf’ for any institution to claim that much is being contributed to enhancing human rights in a country simply because development projects—such as on water or rural roads—are being funded.

—Daniel Kaufmann, then-Director of Global Programs at the World Bank Institute, October, 2006²

In Ethiopia, the World Bank is working to support education, health, water, sanitation, rural roads, and agricultural extension services through a US\$2billion project that staff members argue, by virtue of its contribution to these key sectors, is good for human rights.

But in at least one part of the country—Ethiopia’s western Gambella region—the main vehicle for achieving development objectives, including those envisioned under this World Bank project, is a program that not only fails to further such rights, it tramples upon them.

Known as villagization, the government initiative involves forcibly relocating some 1.5 million indigenous and other marginalized people in five regions of Ethiopia to new villages where the government claimed there would be improved access to basic services and infrastructure. Human Rights Watch investigations into the first year of villagization, as published in Human Rights Watch’s, 2011 report, “*Waiting Here for Death: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region,*” have found that

¹ James Wolfensohn, “Some Reflections on Human Rights and Development,” in Philip Alston and Mary Robinson, *Human Rights and Development: Towards Mutual Reinforcement*, (New York: Oxford University Press, 2005), p. 22.

² Daniel Kaufmann, “Human Rights, Governance, and Development: An empirical perspective Some Reflections on Human Rights and Development,” in World Bank Institute, *Development Outreach*, October 2006, <http://siteresources.worldbank.org/EXTSITETOOLS/Resources/KaufmannDevtOutreach.pdf> (accessed July 14, 2013) p. 19.

consultation and compensation have been grossly inadequate, and relocation marred by intimidation and violence, with state security forces repeatedly threatening, assaulting, and arbitrarily arresting villagers who resist transfer. Dozens of farmers in Ethiopia's Gambella region told Human Rights Watch they were moved from fertile areas where they survived on subsistence farming, to dry, arid areas and that the promised government services often did not exist. Human Rights Watch documented at least seven credible accounts of people dying as a result of the beatings inflicted by the military during relocations, and heard of many more deaths that could not be corroborated.³ One 20-year-old man who escaped to South Sudan told Human Rights Watch:

Soldiers came and asked me why I refused to be relocated.... They started beating me until my hands were broken.... I ran to tell [my father] what had happened, but the soldiers followed me. My father and I ran away.... I heard the sound of gunfire.⁴

Forced to separate from his father, he kept running and hid from the soldiers in nearby bushes. When he returned the next day, he learned that his father had been killed.

This report provides analysis that demonstrates that it is essential that the World Bank respect and protect human rights in order to achieve its goals to end extreme poverty and promote shared prosperity. The report illustrates how the Bank can work toward these goals in complex environments like that of Ethiopia, while respecting the human rights of those it is working to benefit.

Firstly, the World Bank should commit to respect and protect human rights, including by ensuring it does not exacerbate or contribute to human rights violations through its lending or other activities. And secondly, it should implement systematic human rights due diligence to ensure it honors this commitment. Human rights due diligence is the process of identifying how the Banks' lending or other support may impact upon human rights and determining how to constructively and proactively avoid or mitigate human rights risks.

³ Human Rights Watch, *"Waiting Here for Death": Forced Displacement and "Villagization" in Ethiopia's Gambella Region*, January 2012, <http://www.hrw.org/reports/2012/01/16/waiting-here-death>, p. 36.

⁴ Human Rights Watch interview, [location and participant withheld]; "World Bank: Investigate 'Development' Project Abuses," Human Rights Watch news release, March 18, 2013, <http://www.hrw.org/news/2013/03/18/world-bank-investigate-development-project-abuses>.

Had it taken such steps with its Promoting Basic Services (PBS) Program (formerly the Protection of Basic Services Program) and its other projects which were implemented in regions where the Ethiopian government was carrying out villagization, for example, the Bank would have identified risks of arbitrary arrests and detention, forced evictions, beatings, torture, and killings. It would also have identified the potential for reduced and inadequate access to food, health care, and water. Once identified, the Bank could have built measures to avoid these risks into its project design.

Instead, the Bank failed to appropriately monitor human rights risks related to the program, or to meaningfully respond to the concerns about such violations when they were identified by third parties. In fact, it defended the government program, arguing there was no evidence that villagization was forced, despite hearing first-hand testimony from victims and witnesses who described it as anything but voluntary. Furthermore, it determined not to apply its own safeguard policies to the project in question.

Ethiopia's PBS program, implemented in an environment of villagization, is just one project that illustrates the relevance of human rights to World Bank programming.

This report highlights what the World Bank has to gain by committing to respect and protect human rights in all of its activities and consciously working to do so. It illustrates how the World Bank can achieve this, drawing on three case studies which show how the World Bank has not respected human rights in certain programs. These case studies are based on previously published Human Rights Watch reports.

The World Bank's two-year review and update of its safeguard policies, which commenced in October 2012, provides an opportunity for the Bank to introduce a due diligence framework that will enable it to identify the human rights impacts of its activities. It could also help the Bank take measures to mitigate negative impacts, maximize positive impacts, and avoid implementing projects and programs that will contribute to, or exacerbate, human rights violations. A version of this report was submitted to the World Bank's safeguards review team on May 1, 2013.

Why the World Bank Should Be Concerned with Human Rights

As early as 1998, the World Bank acknowledged that “creating the conditions for attainment of human rights is a central and irreducible goal of development” and that “the world now accepts that sustainable development is impossible without human rights.”⁵

Development activities can violate economic, social, and cultural rights, as well as civil and political rights. By adopting a human rights conscious approach, the World Bank can minimize avoidable suffering, especially among marginalized, excluded, and vulnerable groups, and in doing so render its development efforts more sustainable.

The World Bank has its own legal obligations to respect and protect human rights as an international organization and a United Nations specialized agency. Its member states have similar and additional specific human rights obligations, which they retain while members of the Bank including as they sit on the Bank’s Board of Executive Directors which approves Bank projects.

In practice as they currently stand, the Bank’s safeguard policies are insufficient to ensure that human rights are respected in its projects. While World Bank staff have, on occasion, argued that the Bank’s nonpolitical mandate outlined in its Articles of Agreement precludes it from having a human rights mandate, few argue that it is permitted to violate human rights protected by international law.⁶ In 1998, the World Bank stated in its own publication that it “has always taken measures to ensure that human rights are fully respected in connection with the projects it supports.”⁷ The safeguards review provides the opportunity for the Bank to enhance its policies to achieve this goal.

Currently, the World Bank commits not to finance project activities that would contravene borrower country obligations under relevant international environmental treaties and agreements. However, it is silent on obligations under international human rights treaties.

⁵ World Bank, “Development and human rights: the role of the World Bank,” 1998, <http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186409169154/o8DHR.pdf> (accessed April 8, 2013), p. 2.

⁶ World Bank, “IBRD Articles of Agreement,” June 27, 2012, <http://go.worldbank.org/oFICOZQLQo> (accessed May 1, 2013), art. IV, sec. 10; World Bank, “IDA Articles of Agreement,” <http://www.worldbank.org/ida/articles-agreement/IDA-articles-of-agreement.pdf> (accessed March 1, 2013), art. V, sec. 6.

⁷ World Bank, “Development and human rights: the role of the World Bank.”

What the World Bank Will Gain by Respecting Human Rights

The absence of a clear commitment not to support any activities that will contribute to or exacerbate human rights violations leaves staff without guidance on how they should approach human rights concerns or what their responsibilities are.

The result is that World Bank staff members have unfettered discretion to determine the extent to which they will consider human rights risks, take measures to mitigate or avoid such impacts, and the degree to which these concerns will be brought to the attention of senior management or the board. In practice, funding decisions relating to rights concerns lack transparency and appear arbitrary and inconsistent. Further, this precludes people whose rights are adversely affected by these decisions from holding the Bank to account.⁸

By supporting governments to uphold their human rights obligations, the World Bank would advance policy harmonization in recipient countries and the implementation of development projects through systems that countries already have in place. Reducing human rights risks also can help to mitigate reputational, legal, and financial risks. As the World Bank's Nordic Trust Fund for Human Rights has noted, "Human rights discourse is now so well-entrenched in communities that human rights impact assessments are a logical tool for risk management in a range of contexts."⁹

Finally, as increasing evidence indicates, ensuring commitment to human rights would likely create more sustainable development.

The World Bank is Lagging Behind on Human Rights

The donor environment in which the World Bank exists has changed in recent years, as more countries graduate to middle income status and emerging economies increasingly invest in development abroad.

⁸ For further discussion see, Daniel Bradlow, "The World Bank, the IMF and Human Rights," *Journal of Transnational Law and Contemporary Problems*, vol. 6, pp. 47-90, 51, 52, 79, 80.

⁹ Nordic Trust Fund, World Bank, "Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development," February 2013, http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf (accessed April 15, 2013), p. 10.

At the same time, development finance has been increasingly moving in a direction to better protect human rights. Development agencies, international organizations, regional development banks, and businesses have increasingly recognized and sought to uphold their human rights obligations. The World Bank is falling behind. In order to remain a leading development institution, Human Rights Watch urges the World Bank to enhance the standards to which it holds itself.

The increased ability for nontraditional donors to provide assistance abroad affords the Bank an enhanced opportunity to show how poverty can be eradicated without violating human rights, how aid can reach the poorest and most marginalized communities the right way, and how development can be sustainable.

What the World Bank Needs to Do

The time has come for the World Bank to implement mechanisms to prevent it exacerbating or contributing to human rights violations. This should be done by committing to respect human rights and undertake human rights due diligence. Human rights due diligence is not about “naming and shaming” countries receiving development aid. Rather, it would include the World Bank considering how each of its activities may create or exacerbate existing human rights problems in order to determine how to constructively and proactively mitigate those risks. Project activities should also aim at maximizing positive human rights impacts, consistent with the Bank’s poverty alleviation mandate.

Recommendations

Based on the analysis contained in this report, Human Rights Watch urges the World Bank to take all necessary measures to ensure that it respects human rights in all of its activities, including by ensuring it does not contribute to or exacerbate human rights violations.

The World Bank Should Amend its Safeguard Policies to:

- Commit not to support any activities that will contribute to or exacerbate human rights violations and to respect international human rights in all of its projects, programs, and activities under them, irrespective of the funding mechanism utilized.
- Commit not to fund activities that would violate the human rights obligations of the recipient country under national or international law, including regional treaties and agreements.
- Undertake due diligence to ensure the Bank does not support activities that will contribute to or exacerbate human rights violations. This should include undertaking human rights impact assessments to identify the human rights impacts of its activities and avoid or mitigate adverse impacts. The Bank can also use such impact assessments to maximize positive human rights impacts of its activities, consistent with its poverty alleviation mandate.
- Ensure that all members of affected communities have the opportunity to meaningfully participate in shaping development agendas and policies, during all stages of projects or programs.
- Enhance existing safeguards to meet international human rights standards, including updating the indigenous peoples and involuntary resettlement policies to meet the standards set out in relevant human rights treaties, declarations, and documents from treaty bodies and UN special rapporteurs interpreting these obligations.
- In order to ensure it does not discriminate against people on any grounds prohibited by international law:
 - Commit to non-discrimination and substantive equality, and to work to dismantle all forms of discrimination and address inequality in all Bank activities.

- Require systematic assessment of the environment for discrimination and marginalization when analyzing the risks related to and the impacts of proposed projects or programs, including obstacles to substantive equality.
- Require respect of the rights of persons with disabilities and work to ensure that all activities are disability-inclusive.

To Ensure the Effectiveness of its Safeguard Policies, the World Bank Should:

- Apply its safeguard policies to all activities of the World Bank, including all lending mechanisms and technical advice.
- Take all necessary measures to ensure that all members of affected communities have the opportunity to meaningfully participate throughout all stages of the development process, projects, or programs.
 - Ensure that affected individuals and organizations, including civil society and marginalized groups, are able to meaningfully participate in crafting development agendas (including country partnership strategies and interim strategy notes), reforming policy, strategy documents, identifying, preparing, and carrying out projects, and in human rights impact assessments.
 - Ensure that consultations are accessible, including accessible for people with disabilities.
 - Publish the drafts of strategy and key project documents for a defined comment period to ensure civic participation and substantive exchange with civil society, publish comments received (with consent of the interveners), and provide comments to the Board of Executive Directors.
- Adjust systems for measuring results to enable them to determine the extent to which projects reach marginalized communities and incorporate their inputs and perspectives, including, amongst others, the most poor, women, people with disabilities, and ethnic, linguistic, and religious minorities.
- Enhance implementation, monitoring, and supervision of safeguard policies, including by:
 - Ensuring that staff have the capacity to implement the safeguard policies.
 - Creating incentive structures to reward World Bank staff for advancing inclusive, sustainable development which reaches marginalized communities, in close compliance with the safeguard policies.
 - Adequately funding implementation, monitoring, and supervision.

- Ensure that the Inspection Panel has jurisdiction over the implementation of the safeguard policies, as amended to include human rights due diligence.
- Support member states in creating and upholding strong remedies for human rights violations, including human rights violations to which Bank activities have contributed or exacerbated.
- Ensure that project level grievance mechanisms enable people to raise concerns about alleged violations of human rights in the context of World Bank activities and ensure that its social accountability mechanisms monitor compliance with international human rights law.

I. Background

The World Bank and its Safeguard Policies

Since the 1970s, the World Bank has progressively introduced policies aimed at identifying, preventing, and mitigating the undue social and environmental harm of its projects. Since 1997, these policies have been collectively known as the World Bank's safeguard policies and have been labeled "do no harm" policies. The Bank's safeguards policies apply to the World Bank's investment lending, now called investment project financing, which accounts for the largest share of its lending.

The Bank introduced these policies, and has since enhanced them, largely in response to sustained campaigns resulting from Bank-funded projects that harmed people, their rights, and the environment.¹⁰

¹⁰ For example, the World Bank approved funding for the Sardar Sarovar dam in western India in 1985 (and withdrew support in 1993), a controversial project that displaced tens of thousands of individuals and caused considerable environmental damage; the Yacyreta water project on the Argentina-Paraguay border (financing approved in 1979, 1988, and 1992), a dam and hydroelectric power plant afflicted with corruption and social and environmental consequences; the Pak Mun dam in Thailand (financing approved in 1991), a hydroelectric dam which had severe impacts on the fisheries and fishing communities of the Mun river; the Northwest Brazil Integrated Development Program (Polonoroeste) in the Brazilian Amazon (financing approved in 1981), a road development and resettlement project that involved serious violations of indigenous peoples' rights and environmental problems; the transmigration project in Indonesia, a resettlement program funded in 1976 designed to move people from overpopulated areas in order to improve socio-economic conditions, which led to political and ethnic tensions in the new settlements among other problems; and the Kedung Ombo dam in Indonesia (financing approved in 1985), a multipurpose dam and irrigation project that led to the forced displacement of thousands of families. Megan Brogan, "An Environmental Anthropology: The Effects of the Yacyretá Dam on Communities in Misiones, Argentina in Comparison to the Economic and Environmental Well-being of the Pilcomayo River Basin," *Thesis, University of Oregon*, 2012, https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/12847/Brogan_final.pdf?sequence=1 (accessed June 10, 2013); David Vargasm "Paraguay: Concerns, Tension Rise with Water Level in Yacyreta Dam," *IPS*, August 14, 2008, <http://www.ipsnews.net/2008/08/paraguay-concerns-tension-rise-with-water-level-in-yacyreta-dam/> (accessed June 10, 2013); Tyson R. Roberts, "On the river of no returns: Thailand's Pak Mun Dam and its fish ladder," *Natural History Bulletin of the Siam Society*, vol. 49 (2001), pp. 189-230; François Molle, Tira Foran, and Mira Käkönen, *Contested Waterscapes in the Mekong Region: Hydropower, Livelihoods and Governance*, (London: Earthscan, 2009); Robert H. Wade, "Boulevard of Broken Dreams: The inside Story of the World Bank's Polonoroeste Road Project in Brazil's Amazon," Working Paper no. 55, August 2011, http://www2.lse.ac.uk/GranthamInstitute/publications/WorkingPapers/Papers/50-59/WP55_world-bank-road-project-brazil.pdf (accessed July 14, 2013); Stephen Schwartzman, "World Bank Holds Funds for Development Project in Brazil," *Cultural Survival*, February 2010, <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/brazil/world-bank-holds-funds-development-project-brazil> (accessed June 10, 2013); Aris Anata, "The Indonesian Crisis: A Human Development Perspective," *Institute of Southeast Asian Studies*, (2003), pp. 229-230; J. Hardjono, "The Indonesian Transmigration Program in Historical Perspective," *International Migration*, vol. 26.4 (1988), p. 427-39; Jonathan A. Fox and David L. Brown, *The Struggle for Accountability: The World Bank, NGOs and Grassroots Movements*, (Cambridge, MA: MIT, 1998); World Bank, "Kedung Ombo Multipurpose Dam and Irrigation Project," <http://www.worldbank.org/projects/P003840/kedung-ombo-multipurpose-dam-irrigation-project?lang=en> (accessed June 10, 2013).

The World Bank's Safeguard Policies

The World Bank has three safeguard policies that are of particular relevance when considering the human rights implications of projects:

- **Environmental Assessment:** provides when environmental assessments are required. Such assessments consider the impacts of the project in question on the natural environment, human health and safety, involuntary resettlement, indigenous peoples, physical cultural resources, and transboundary and global environmental aspects.¹¹
- **Indigenous Peoples:** provides for the identification and mitigation of adverse impacts of projects on indigenous peoples and their rights, including by requiring free, prior, and informed consultation that results in broad community support for projects that affect indigenous peoples.¹²
- **Involuntary Resettlement:** provides for the identification and mitigation of risks of involuntary resettlement.¹³

The remaining safeguard policies seek to mitigate:

- Risks of harm to physical cultural resources, natural habitats, and forests;¹⁴
- Risks of harm relating to pest management and dam safety;¹⁵ and
- Risks of harmed relations between borrowers regarding international waterways and disputed areas.¹⁶

As discussed below, the World Bank's safeguard policies do not address the kind of due diligence required to avoid violations of international human rights law.

Generally, the borrowing country has the primary responsibility to implement compliance with safeguard policies, while World Bank staff have the responsibility of supervising

¹¹ World Bank Operational Policy 4.01, Environmental Assessment.

¹² World Bank Operational Policy 4.10.

¹³ World Bank Operational Policy 4.12.

¹⁴ World Bank Operational Policies 4.11, 4.04, and 4.36.

¹⁵ World Bank Operational Policies 4.09 and 4.37.

¹⁶ World Bank Operational Policies 7.50 and 7.56.

policy compliance. In practice, the World Bank has not sufficiently invested in monitoring and supervising compliance with its safeguard policies. The Independent Evaluation Group (IEG)¹⁷ a quasi-independent arm of the World Bank that reports directly to the Bank's Board of Executive Directors, has found that "more than a third of World Bank projects had inadequate environmental and social supervision, manifested mainly in unrealistic safeguards ratings and poor or absent monitoring and evaluation."¹⁸

The Inspection Panel, the World Bank's accountability mechanism that also reports directly to the Board of Executive Directors, investigates and reports on complaints of noncompliance brought to it by persons affected by a project.

The World Bank's Review and Update of its Safeguard Policies

In October 2012, the Bank launched a two-year review and update of its eight environmental and social safeguard policies that include operational policies on environmental assessment, natural habitats, pest management, indigenous peoples, physical cultural resources, involuntary resettlement, forests, and dam safety. The review will also consider the Bank's policy on piloting the use of borrower systems for environmental and social safeguards. The review team was due to provide an initial draft of an integrated safeguards policy to the World Bank's Committee on Development Effectiveness in July 2013; however this is likely to be delayed. The review team is scheduled to brief the Board of Executive Directors on the review so far on July 23, 2013.

The Bank has identified several issue areas that are not currently covered under the safeguard policies that it will consider under the review. These issue areas include: human rights; gender; free, prior, and informed consent of indigenous peoples; labor and occupational health and safety; disability; land tenure and natural resources; and climate change.¹⁹

¹⁷ The Independent Evaluation Group (IEG) is an arm of the World Bank Group charged with evaluating the performance of Bank Group policies, programs, projects, and processes to learn what works and what does not. The IEG reports directly to the World Bank Group's board of directors. Independent Evaluation Group (IEG), "About IEG," undated, <http://ieg.worldbankgroup.org/about-us> (accessed July 15, 2013).

¹⁸ Independent Evaluation Group (IEG), "Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience," 2010, http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/Safeguards_eval.pdf (accessed June 9, 2013).

¹⁹ World Bank, "Review and Update of the World Bank Safeguard Policies: Scope of the Review."

II. What the World Bank Will Gain by Respecting Human Rights

Sustainable Development

There is a growing body of evidence that human rights-based approaches can lead to more sustainable and inclusive development results.²⁰

As early as 1998, the World Bank acknowledged that creating “conditions for attainment of human rights is a central and irreducible goal of development” and that the world now accepted that “sustainable development is impossible without human rights.”²¹ The UN Committee on Economic, Social, and Cultural Rights has put it this way:

[T]he human rights dimensions of poverty eradication policies rarely receive the attention they deserve. This neglect is especially regrettable because a human rights approach to poverty can reinforce anti-poverty strategies and make them more effective... International human rights provide a framework of norms or rules upon which detailed global, national and community-level poverty eradication policies can be constructed... the application of the international human rights normative framework ... helps to ensure that essential elements of anti-poverty strategies, such as non-discrimination, equality, participation and accountability, receive the sustained attention they deserve.²²

²⁰ See, for instance, Catarina de Albuquerque and Virginia Roaf, “On the Right Track: Good practices in realising the rights to water and sanitation,” 2012, http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf (accessed July 14, 2012); Daniel Kaufmann, “Human Rights, Governance, and Development: An empirical perspective Some Reflections on Human Rights and Development,” in World Bank Institute, *Development Outreach*, October 2006, <http://siteresources.worldbank.org/EXTSITETOOLS/Resources/KaufmannDevtOutreach.pdf> (accessed June 29, 2013), pp. 15-20; Hans-Otto Sano, “Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development,” *Human Rights Quarterly*, vol. 22.3 (2000), pp. 734-52; Paul Greedy, “Rights-based Approaches to Development: What Is the Value-added?” *Development in Practice*, vol. 18.6 (2008), pp. 735-47; Mac Darrow and Amparo Tomas, “Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation,” *Human Rights Quarterly*, vol. 27.2 (2005), pp. 471-538.

²¹ World Bank, “Development and human rights: the role of the World Bank.”

²² UN Committee on Economic, Social, and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights,” U.N. Doc. E/C.12/2001/10, May 4, 2001, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.2001.10.En](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.2001.10.En) (accessed July 15, 2013).

More recently, the European Commission has acknowledged that the people-led movements in North Africa and the Middle East have highlighted that progress on development indicators alone while important, is not sufficient.²³

Minimize Avoidable Suffering

Development activities can violate economic, social, and cultural rights, as well as civil and political rights. As several UN special rapporteurs have noted, development activities that are formulated and implemented consistently with human rights can minimize avoidable suffering, especially among marginalized, excluded, and vulnerable groups, and in doing so are rendered more sustainable.²⁴ By including human rights risks in its safeguards, the World Bank can guard against unintentional harm.²⁵ There is evidence that the degree to which a country protects civil liberties has a “substantial impact” on the impact of World Bank projects.²⁶

Enhance Participation, Equality

Human rights can be empowering in recognizing each individual as a rights-holder and can enhance free, meaningful, and active participation, thereby promoting ownership. As Mary

²³ European Commission, “Increasing the impact of EU Development Policy: an Agenda for Change,” October 13, 2011, http://ec.europa.eu/europeaid/what/development-policies/documents/agenda_for_change_en.pdf (accessed June 29, 2013), p. 3.

²⁴ “Where minorities are not consulted on poverty reduction strategies that will affect them, the outcome of well-intentioned programmes may be a null change or even a decline in human development. Minorities have a right to participate in decision-making that will affect them and respecting this right is paramount for development interventions.” Gay McDougall, “Report of the Independent Expert on minority issues, Gay McDougall,” U.N. Doc. A/HRC/4/9, February 2, 2007, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/105/93/PDF/G0710593.pdf?OpenElement> (accessed May 1, 2013), p. 18. See also, OHCHR, “Special Rapporteur on the human right to safe drinking water and sanitation,” undated, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx> (accessed April 8, 2013); Magdalena Sepúlveda Carmona, “Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Mission to Viet Nam,” U.N. Doc A/HRC/17/34/Add.1, May 9, 2011, <http://daccess-ods.un.org/TMP/2618596.25577927.html> (Accessed May 1, 2013).

²⁵ Mary Robinson, “What Rights Can Add to Good Development Practice,” in Philip Alston and Mary Robinson, *Human Rights and Development: Towards Mutual Reinforcement*, (New York: Oxford University Press, 2005), p. 38.

²⁶ Jonathan Isham, Daniel Kaufmann, and Lant H. Pritchett, “Civil Liberties, Democracy, and the Performance of Government Projects,” *The World Bank Economic Review*, vol. 11. no. 2 (1997) <http://info.worldbank.org/etools/docs/library/17657/civillibs.pdf> (accessed April 15, 2013) p. 234. The economic rate of return of projects in countries with strong civil liberties is eight to 22 percentage points higher than in countries with the weakest record of civil liberties. Jonathan Isham and Daniel Kaufmann, “Governance and Returns on Investment: An Empirical Investigation,” World Bank Policy Research Working Paper No. 1550, November 1999, <http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-1550> (accessed July 15, 2014). See also, World Bank, “World Development Report 2002: Building Institutions for Markets,” September 1, 2001, <http://go.worldbank.org/YGBBFHL1Yo> (accessed April 15, 2013) p. 99.

Robinson, former president of Ireland and former United Nations High Commissioner for Human Rights, said in 2005:

[Human rights] help shift the focus of analysis to the most deprived and excluded, especially to deprivations caused by discrimination. They require those involved in development processes to provide information and a political voice for all people. They affirm that civil and political rights need to be exercised in practice as well as theory in the course of successful and legitimate development, and that economic, social, and cultural rights need to be recognized and implemented as human rights, rather than aggregated in a general way or idealized.²⁷

By analyzing the human rights impacts of its projects with the active participation of affected communities, the Bank can enhance public knowledge of its activities and stimulate public debate. While such analysis may augment the design phase for Bank activities, investment in public knowledge and debate grounded in human rights analysis should facilitate project implementation and ensure projects are responsive to the needs of affected communities.²⁸

Enhance Accountability

Committing to human rights through its safeguard policies would enable people to hold the Bank accountable to internationally agreed norms. It would make it easier for people to show links between the Bank's projects and programs and human rights outcomes, build understanding and capacity regarding human rights, and raise awareness of the degree to which the Bank contributes to human rights. Indigenous rights campaigners have criticized accountability at the World Bank to be "much more an exercise of paternalistic (apparent) 'good will' than of adherence to any sense of being bound by a system of constraints grounded in law."²⁹ Integrating human rights into the safeguards would answer this criticism.

²⁷ Mary Robinson, "What Rights Can Add to Good Development Practice," pp. 38-9.

²⁸ Daniel Bradlow, "The World Bank, the IMF and Human Rights," pp. 84-85.

²⁹ Camilo Pérez Bustillo, "Towards International Poverty Law?: The World Bank, Human Rights, and Indigenous Peoples in Latin America," in Willem Van Genugten et al. eds., *World Bank, IMF, and Human Rights*, (Netherlands: Wolf Legal Publishers, 2003), pp. 157, 182.

Policy Harmonization for Client Countries

The World Bank has increasingly asserted that development assistance can be more effective if it works more directly with the institutions and systems that countries already have in place and supports efforts to strengthen those institutions and systems.

A key element of this should be respecting a country's human rights obligations including by not supporting activities that contravene these obligations. In doing so, the Bank would support governments in fulfilling their treaty obligations and promote policy harmonization within governments.

Member Countries and Human Rights

At time of writing, more than 90 percent of the World Bank's 188 member countries have ratified four or more international human rights treaties. Human rights are also protected to varying degrees in most countries' constitutions or legislation.

- All but two have ratified the International Convention on the Rights of the Child;
- 181 have ratified the International Convention on the Elimination of All Forms of Discrimination against Women;
- 176 have ratified the International Convention on the Elimination of All Forms of Racial Discrimination;
- 170 have ratified the International Covenant on Civil and Political Rights;
- 164 have ratified the International Covenant on Economic, Social and Cultural Rights.

When the UN Committee on Economic, Social, and Cultural Rights asked governments whether they had raised human rights obligations when negotiating with international financial institutions, no delegation responded that such a line of questioning was inappropriate.³⁰ Rather, one state responded it had not raised rights issues in negotiations

³⁰ The UN Committee on Economic, Social and Cultural Rights is the UN treaty body tasked with holding member states to account for their obligations under the International Covenant on Economic, Social and Cultural Rights. Paul Hunt, "Relations Between the UN Committee on Economic, Social and Cultural Rights and International Financial Institutions," pp. 139, 149. Hunt went on to say that discussions with delegation on these issues had been fruitful, and some had privately confirmed their support for the Committee raising the questions. *Ibid.*, pp. 149-150.

because international financial institutions do not work through the ministries involved in ratifying and implementing human rights treaties (foreign affairs and justice), but finance ministries.³¹ The World Bank can contribute to harmonizing policies between government ministries by committing not to fund activities that would contravene a country's human rights obligations.

As Paul Hunt, the former UN special rapporteur on the right to health and UN Independent Expert on Economic, Social, and Cultural Rights noted, such measures would empower governments to say:

As a law-abiding international citizen, we are sure [the World Bank] would not encourage us to breach our binding international human rights obligations which we owe to all individuals in our jurisdictions.³²

The World Bank should ensure that its activities do not undermine the ability of states to comply with their own legal obligations.³³ The World Bank's former legal counsel similarly recognized:

There should be a clear understanding that in certain cases and under certain circumstances, human rights generate actionable legal obligations. Such obligations may arise from international treaties, or from rights enshrined in national laws. Here the Bank's role is to support its Members to fulfill those obligations where they relate to Bank projects and policies.³⁴

Better for Business

There is growing evidence that a human rights approach to business is profitable. It can lead to enhanced business reputation, greater productivity, improved access to markets

³¹ Paul Hunt, "Relations Between the UN Committee on Economic, Social and Cultural Rights and International Financial Institutions," pp. 139, 147.

³² Ibid.

³³ Daniel Bradlow, "The World Bank, the IMF and Human Rights," p. 82.

³⁴ Ana Palacio, "The way forward: Human Rights and the World Bank," *World Bank Institute*, October 2006, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/o,,contentMDK:21106614~menuPK:445673~pagePK:64020865~piPK:149114~theSitePK:445634,00.html#palacioacknowledge> (accessed April 15, 2013); Daniel Bradlow, "The World Bank, the IMF and Human Rights."

and investors, increased attraction for consumers, a more stable work environment with fewer project delays, improved worker morale and motivation, and an increased ability to attract the best-qualified employees.³⁵ While there is little empirical evidence to show the economic benefits of integrating human rights into development finance, key lessons from business best practices can be applied to the world of development finance. In addition, studies have shown that World Bank-financed projects have resulted in higher rates of return in countries with civil liberties, revealed a positive correlation between civil liberties and per capita income growth rates, and indicated that growth is significantly higher in countries that implement governance reforms following a period of political instability than those that do not.³⁶

A conscious approach to human rights and effective human rights due diligence can lead to a more collaborative relationship with the community, thereby reducing conflicts, developing a more secure license to operate, and avoiding operational risks such as protests, strikes, or sabotage. It can also ensure that institutions are better prepared to prevent human rights violations and deal with allegations of abuse.³⁷

Conflicts with affected people, local communities, and civil society organizations can increase the cost of development projects due, for example, to disruptions to production, lost opportunities, and staff time needed to manage these conflicts. A major mining project in 2011, for example, with expenditure of \$3 to 5 billion is estimated to suffer around \$20 million per week of delayed production.³⁸ In its most recent report on business

³⁵ Lucy Amis, Peter Brew and Caroline Ersmarker, "Human Rights: It is your Business, The Case for Corporate Engagement," *The Prince of Wales International Business Leaders Forum (IBLF)*, 2005, http://commdev.org/files/1154_file_Human_Rights_It_Is_Your_Business.pdf (accessed April 15, 2013).

³⁶ Roger C. Kormedi and Philip G. Meguire, "Macroeconomic Determinants of Growth," *Journal of Monetary Economics*, vol. 16 (1985), pp. 141-163; Jonathan Isham, Daniel Kaufmann and Lant Pritchett, "Civil Liberties, Democracy, and the Performance of Government Projects," *The World Bank Economic Review*, vol. 11 (1997), pp. 219-242; Lorenzo E. Bernal-Verdugo, Davide Furceri, and Dominique Guillaume, "The Dynamic Effect of Social and Political Instability on Output: The Role of Reforms," IMF Working Paper no. 13/91, April 2013, <http://www.imf.org/external/pubs/cat/longres.aspx?sk=40486.0> (accessed July 14, 2013).

³⁷ Castan Centre for Human Rights Law, International Business Leaders Forum, and Office of the United Nations High Commissioner for Human Rights, "Human Rights Translated: A Business Reference Guide," 2008, http://human-rights.unglobalcompact.org/doc/human_rights_translated.pdf (accessed April 15, 2013), p. viii.

³⁸ Rachel Davis and Daniel M. Franks, "The Costs of Conflict with Local Communities in the Extractive Industry," 2011, <http://www.shiftproject.org/publication/costs-conflict-local-communities-extractive-industry> (accessed April 15, 2013). The study further suggests that a better understanding of the costs of conflict with local communities has the potential to lead to greater attention of companies to social, environmental and economic issues, see pp. 8, 9. See also, Robert Eccles, Ioannis Ioannou, and George Serafeim, "The Impact of Corporate Sustainability on Organizational Processes and Performance," *Harvard Business School Working Paper Series 12-035*, (2011), p. 19.

risks facing mining and metals, Ernst and Young has ranked ‘social license to operate’ as the fourth top risk.³⁹ In the past, World Bank projects, including for example in Cambodia, have been suspended following publicity of human rights issues linked to the projects.⁴⁰ Effective human rights due diligence would reduce incidences of conflict by identifying and preventing human rights violations related to World Bank projects, and enable the Bank to answer allegations that may give rise to conflict.⁴¹

Business and human rights research suggests reputation and share price are correlated. A good reputation attracts consumers, investors, suppliers, and employees. Minimizing business risks of complicity in violations of human rights is important for brand protection.⁴² The World Bank’s reputation may impact replenishment or loan repayments, as well as interest from recipient countries. Investing in projects without analyzing and mitigating human rights risks can delegitimize the Bank. One of the best ways the World Bank can stand out when its role as the leader in development finance is challenged by emerging economies is by committing not to undermine human rights in the name of development.

Companies that follow a human rights approach to business and develop knowledge and experience will be better equipped to expand to new markets with similar human rights issues. Through their experience in dealing with human rights issues and having the necessary expertise, they become attractive partners for customers, suppliers, employees, and governments.⁴³

³⁹ Ernst & Young, “Business risks facing mining and metals 2013–2014,” 2013, http://www.businessspectator.com.au/sites/default/files/EYG_Business%20risks%20in%20mining%20and%20metals%202013-2014_June%202013.pdf (accessed June 15, 2013).

⁴⁰ In August 2011, the World Bank suspended new lending to Cambodia after the Inspection Panel found the Bank had violated its own policies in implementing a land titling project. Mark Tran, “World Bank suspends new lending to Cambodia over eviction of landowners,” *The Guardian*, August 10, 2011, <http://www.guardian.co.uk/global-development/2011/aug/10/world-bank-suspends-cambodia-lending> (accessed July 14, 2013). In September 2008, the World Bank (IDA and IBRD) withdrew from the \$4.2 billion Chad-Cameron Petroleum Development and Pipeline project, on the ground that it had added military expenditures to a definition of priority sectors for development, breaking an agreement to largely dedicate its oil revenues to alleviating the country’s extreme poverty. However, this withdrawal was largely symbolic as the loan was already repaid. Korinna Horta et al., “The Chad-Cameroon Oil & Pipeline Project: A Project Non-Completion Report,” 2007, http://apps.edf.org/documents/6282_ChadCameroon-Non-Completion.pdf (accessed April 15, 2013).

⁴¹ Castan Centre for Human Rights Law, International Business Leaders Forum, and Office of the United Nations High Commissioner for Human Rights, “Human Rights Translated: A Business Reference Guide,” p. viii.

⁴² Lucy Amis, Peter Brew, and Caroline Ersmarker, “Human Rights: It is your Business, The Case for Corporate Engagement.”

⁴³ *Ibid.*, p. 4.

The World Bank, especially considering its competition with emerging national banks, will be best served to secure its leading role in development finance by incorporating a human rights strategy and gaining experience and expert knowledge on relevant human rights issues in the areas of its operations.

An improved human rights record can also contribute to an increasingly engaged, productive workforce. Companies with good human rights records have been found to be more successful in recruiting, maintaining, and motivating their employees.⁴⁴

⁴⁴ Ibid., p. 5. Companies with a reputation of having superior work practices and a commitment to human rights are reported to receive 45 percent more unsolicited applications than others. Even in times of a bad employment market, it is reported that graduates think twice about working for a company with a bad reputation concerning human rights. A study surveying CSR reputation effects on MBA job choices shows a willingness to accept lower pay for working with a company with a positive social image. David B. Montgomery, Catherine A. Ramus, "Corporate Social Responsibility Reputation Effects on MBA Job Choice," *Stanford GSB Working Paper*, No. 1805, May 2003; Geoffrey Heal, *When Principles Pay: Corporate Social Responsibility and the Bottom Line*, (New York: Columbia Business School Publishing, 2008), p.26.

III. Lagging Behind on Human Rights

Out of Step

In recent years, international financial institutions, United Nations agencies, development agencies, and businesses have increasingly recognized their human rights obligations and worked to respect human rights through their activities.

In a recent World Bank and Organisation for Economic Co-operation and Development (OECD) publication, the authors considered dozens of development agencies and found that the majority had adopted human rights policies or were in the process of doing so, while few agencies had no human rights policies at all.⁴⁵

For example, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) commit not to finance projects that would result in a violation of human rights and are currently reviewing their processes for achieving this to better realize these commitments.⁴⁶ The current draft of the African Development Bank

⁴⁵ The World Bank and Organisation for Economic Co-operation and Development (OECD), *Integrating Human Rights into Development: Donor Approaches, Experiences and Challenges*, 2nd ed. (Washington DC: World Bank, OECD, 2013), pp. 4-6, table 1.1.

⁴⁶ The European Investment Bank (EIB) explicitly provides that it “will not finance projects which result in a violation of human rights.” It further commits to a human rights-based approach, based on the principles of the Charter of the Fundamental Rights of the European Union, the UN Universal Declaration of Human Rights, and international good practices. EIB, “Statement of Environmental and Social Principles and Standards,” 2009, http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf (accessed April 30, 2013), paras. 6, 30, 46. Further, it will not finance projects in countries declared “off-limits” by the European Council for EU financing, particularly due to violations of human rights, see para. 46. The European Bank for Reconstruction and Development (EBRD) similarly seeks to ensure that the projects it finances respect the rights of affected workers and communities and provides that it will not knowingly finance projects that would contravene country obligations under relevant international human rights treaties and agreements. European Bank for Reconstruction and Development (EBRD), “Environmental and Social Policy,” May 2008, <http://www.ebrd.com/downloads/research/policies/2008policy.pdf> (accessed April 30, 2013), paras. 3, 9. See also, for example, the Inter-American Development Bank (IDB)’s 2003 ‘Strategy on Modernization of the State,’ through which it commits to pursuing democratic governance, defined to include: “First, the requirement of representatives that legitimizes public authority through free elections; second, the existence of mechanisms for the effective constraint and division of power, for ensuring the accountability of public officials to citizens and respect for citizen rights and liberties; third, controls on arbitrariness so that authority is exercised in a manner consistent with the law and the constitution, with effectiveness and efficiency in the assignment of resources to social needs and with transparency and integrity in the behavior of public officials; and finally, democratic governance requires conditions in which the enforcement of the principles of solidarity and subsidiarity permit a consensual and effective relationship between different social actors in a context of social cohesion.” IDB, “Modernization of the State Strategy Document,” GN-2235, July 2003, <http://www.iadb.org/en/publications/publication-detail,7101.html?id=4524%20&dcLanguage=en&dcType=All> (accessed April 30, 2013), p. 1.

(AfDB)’s revised safeguard policies similarly provide that the “Bank is committed to respecting and promoting Human Rights.”⁴⁷ Other international financial institutions, including the Asian Development Bank (ADB), have required compliance with international treaty obligations in loan agreements.⁴⁸

The United Nations Development Group—comprised of the 32 United Nations funds, programs, agencies, departments, and offices that play a role in development—has committed to a human rights approach to development, under which:

All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.⁴⁹

Several UN agencies have implemented screening and due diligence procedures in an effort to meet this commitment. For instance, the United Nations Development Program (UNDP) has implemented an Environmental and Social Screening Procedure for its projects, through which it seeks to identify and avoid potential negative human rights impacts resulting from its activities.⁵⁰ The United Nations Office on Drugs and Crime (UNODC) has implemented human rights due diligence as outlined in its policy paper, “UNODC and the Promotion and Protection of Human Rights.”⁵¹ Although not related to

⁴⁷ African Development Bank, “African Development Bank’s Integrated Safeguards System: Policy Statement and Operational Safeguards,” December 28, 2012, Part II: Integrated Safeguards Policy Statement, B. 6: Human rights and vulnerable groups, including Indigenous Peoples, p. 17.

⁴⁸ See, for instance, ADB, “Asian Development Bank Loan Agreement, Ho Chi Minh City – Long Thanh – Dau Giay Expressway Technical Assistance Project, Loan Number 2374 - VIE (SF),” December 20, 2007, <http://dc588.4shared.com/doc/qqrul3p/preview.html> (accessed May 1, 2013). International financial institutions have also considered international human rights within certain sectors. For instance, the Inter-American Development Bank’s work in the justice sector has explicitly considered international human rights standards. See, Christina Biebesheimer, “The impact of human right principles on justice reform in the Inter-American Development Bank,” in *Human Rights and Development: Towards Mutual Reinforcement*, P. Alston and M. Robinson, eds. (New York: Oxford University Press, 2005), pp. 269-296.

⁴⁹ United Nations Development Group (UNDG), “The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies,” 2003, http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (accessed April 30, 2013), p. 1.

⁵⁰ UNDP, “Environmental and Social Screening Procedure (ESSP) for UNDP Projects, Guidance Note,” March 19, 2012.

⁵¹ United Nations Office on Drugs and Crime (UNODC), “UNODC and the Promotion and Protection of Human Rights: Position Paper,” 2012, http://www.unodc.org/documents/justice-and-prison-reform/UNODC_Human_rights_position_paper_2012.pdf (accessed April 12, 2013).

development assistance, the Human Rights Due Diligence Policy on UN support to non-UN security forces, which the Secretary General endorsed in July 2011, also illustrates the importance the UN is increasingly placing on ensuring it does not assist human rights violations.⁵²

Other international and national agencies have similarly increasingly sought to ensure that they uphold human rights through their development policies. For instance, in addition to committing to respect human rights through its development activities, the Swedish government requires human rights impact analyses prior to making decisions that have development aspects.⁵³ Denmark, Germany, and the United Kingdom, among others, have similarly committed to ensure that development assistance is not used in ways that are incompatible with human rights.⁵⁴ In addition, in 2012, the European Union committed to a Strategic Framework and Action Plan on Human Rights and Democracy, an undertaking to step up its efforts to promote human rights across all aspects of external action, including development policy.⁵⁵

⁵² United Nations, “Human Rights Due Diligence Policy on UN support to non-UN security forces (HRDDP),” 2011, <http://rconline.undg.org/wp-content/uploads/2011/11/2011-HRDDP-Policy.pdf> (accessed April 12, 2013).

⁵³ Ministry of Foreign Affairs of Sweden, “Global Challenges – Our Responsibility: Communication on Sweden’s Policy for Global Development,” Government Communication 2007/08:892008, [http://www.sida.se/media/4633/sweden%20policy%20for%20global%20development%20\(2008\).pdf](http://www.sida.se/media/4633/sweden%20policy%20for%20global%20development%20(2008).pdf) (accessed July 14, 2013), p. 8. See also Swedish International Development Agency (SIDA), “Country Strategy Development: Guide for Country Analysis from a Democratic Governance and Human Rights Perspective,” 2003.

⁵⁴ Ministry of Foreign Affairs of Denmark, “Freedom from Poverty – Freedom to Change, Strategy for Denmark’s Development Cooperation,” July 2010, p. 4; Ministry of Foreign Affairs of Denmark, “Democratisation and Human Rights for the Benefit of the People,” June 2009, <http://amg.um.dk/en/policies-and-strategies/freedom-democracy-and-human-rights/> (accessed July 14, 2013), p. 7; and Ministry of Foreign Affairs of Denmark, “Guidelines for Programme Management,” October 2009, which require human rights to be considered when developing programs and strategies, and assessing their effectiveness. The German government’s 2011 strategy paper on Human Rights in Germany’s Development Policy restates that human rights are a guiding principle in its development policy. Government of Germany, Federal Ministry for Economic Cooperation and Development, “BMZ Strategy Paper 4: Human Rights in German Development Policy, Strategy” 2011, http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier305_04_2011.pdf?follow=adwordc (accessed April 15, 2013). United Kingdom Department for International Development (DFID), “Implementing the UK’s conditionality policy,” May 2009, http://www.ukan.org.uk/fileadmin/user_upload/HTN_Implementing_the_UKs_Conditionality_Policy__May_09.pdf (accessed April 15, 2013).

⁵⁵ Council of the European Union, “EU Strategic Framework and Action Plan on Human Rights and Democracy,” June 25, 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf (accessed April 15, 2013), p. 2. See European Commission, “Impact Assessment Guidelines,” January 15, 2009, http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf (accessed April 15, 2013) for discussion on how the Commission must assess potential impacts of initiatives on human rights. See also, European Commission, “Increasing the impact of EU Development Policy: an Agenda for Change,” October 13, 2011, http://ec.europa.eu/europeaid/what/development-policies/documents/agenda_for_change_en.pdf (accessed June 29, 2013), p. 3.

The 2011 UN-backed Guiding Principles on Business and Human Rights have also enjoyed significant buy-in from companies that just a decade ago would have disputed the idea they even have human rights responsibilities.⁵⁶ The principles were designed to operationalize the UN’s “Protect, Respect, Remedy” framework, which stresses human rights due diligence, and the responsibility of governments to protect individuals from human rights abuses tied to business operations, the responsibility of companies to respect human rights, and the need for abuse victims to be able to access effective remedies.⁵⁷

Ignoring International Calls

Human rights bodies have with increased frequency urged the World Bank to uphold human rights and recognized that human rights impact assessments are a key method for operationalizing this. They have also pressed international financial institutions to take into account the human rights obligations of recipient countries in all aspects of their negotiations to ensure that they do not undermine human rights.⁵⁸ As early as 1998, the UN special rapporteur on the right to education suggested:

[A]n effective method of challenging disregard of human rights in macroeconomic policies [would be] a requirement that a human rights impact assessment be carried out before such policies are developed and implemented.⁵⁹

UN special rapporteurs have continued to make this call. In 2003, the special rapporteur on the right to health stated:

⁵⁶ For further discussion, see Christopher Albin-Lackey, “Without Rules: A Failed Approach to Corporate Accountability,” *World Report 2013*, (New York: Human Rights Watch, 2013), <http://www.hrw.org/world-report/2013/essays/112459>.

⁵⁷ “Protect, Respect and Remedy: a Framework for Business and Human Rights,” U.N. Doc. A/HRC/8/5, April 7, 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (accessed April 10, 2013); UN OHCHR, “Guiding Principles on Business and Human Rights, Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” U.N. Doc. HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed April 10, 2013).

⁵⁸ See, for example, UN Committee on Economic, Social and Cultural Rights (CESCR), “Report on the Twenty-second, Twenty-third and Twenty-fourth Sessions,” U.N. Doc. E/C.12/2000/21, June 7, 2001, <http://www.refworld.org/docid/45c30b2eo.html> (accessed April 15, 2013), para. 170.

⁵⁹ Katarina Tomasevski, “Background paper,” U.N. Doc. E/C.12/1998/18, November 30, 1998, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2d938ee2cd4a7f8b802566c10051967c?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2d938ee2cd4a7f8b802566c10051967c?Opendocument) (accessed April 12, 2013).

Appropriate impact analyses are one way of ensuring that the right to health—especially of marginalized groups, including the poor—is given due weight in all national and international policy-making processes.⁶⁰

Six years later, in 2009, the special rapporteur on the right to food said Brazilian authorities:

[S]hould systematically perform ex ante impact assessments on the right to food when engaging in large-scale infrastructure projects, such as dams, with the participation of the communities affected.⁶¹

UN human rights bodies have explicitly called on the World Bank to undertake human rights impact assessments. According to the Committee on the Rights of the Child:

[T]he World Bank and other international organizations] should have standards and procedures to assess the risk of harm to children in conjunction with new projects and to take measures to mitigate risks of such harm. These organizations should put in place procedures and mechanisms to identify, address and remedy violations of children’s rights in accordance with existing international standards including when they are committed by or result from activities of businesses linked to or funded by them.⁶²

The special rapporteur on the right to adequate housing, Raquel Rolnik, has also recommended that the World Bank commit to human rights and implement a system of due diligence. In her concluding comments after a recent mission to the World Bank, she urged the Bank to:

⁶⁰ Paul Hunt, “Commentary, UN Special Rapporteur on the Right to Health: Key Objectives, Themes, and Interventions,” 2003, <http://www.hhrjournal.org/archives-pdf/4065415.pdf.banned.pdf> (accessed April 12, 2013) p. 18.

⁶¹ Olivier De Schutter, “Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Mission to Brazil,” U.N. Doc. A/HRC/13/33/Add.6, February 19, 2009, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.33.Add.6_en.pdf (accessed April 12, 2013).

⁶² UN Convention on the Rights of the Child, General Comment No. 16, On State obligations regarding the impact of the business sector on children’s rights, U.N. Doc. CRC/C/GC/16 (2013), <http://www2.ohchr.org/english/bodies/crc/comments.htm> (accessed April 12, 2013), para. 48.

[S]eize the opportunity of the safeguard review process to commit to human rights standards in all its activities. This will ensure that the Bank can effectively champion and help fulfil human rights, and maintain its position as a central player in the effort to combat social exclusion, empower communities as actors for their own development and eliminate poverty at its roots.⁶³

She recommended that the Bank “commit to undertake (and require borrowers to undertake) human rights due diligence in all of its activities, including investment lending, development policy lending and the newly adopted Program-for-Results.” She further recommended that it “ensure that effective mechanisms are in place to implement these policies and identify, prevent, mitigate and account for how to address actual and potential adverse human rights impacts.”⁶⁴

Legal Obligation to Respect and Protect Human Rights

The World Bank has legal obligations to respect and protect human rights, as an international organization and a UN specialized agency, and its member states have their own similar and additional specific human rights obligations that they continue to be bound by as members of the Bank and with which their agents are required to comply.

As an international organization, the World Bank derives human rights obligations from customary international law and general principles of law.⁶⁵ As a UN specialized agency,

⁶³ Raquel Rolnik, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, Addendum, Mission to the World Bank,” U.N. Doc. A/HRC/22/46/Add.3, February 15, 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.46.Add.3_English.pdf (accessed April 15, 2013), p. 21.

⁶⁴ Ibid.

⁶⁵ Adam McBeth, “A right by any other name: The evasive engagement of international financial institutions with human rights,” *The George Washington International Law Review*, vol. 40 no. 4, August 2009, p. 1105, 42 footnote 6; ILC, “Draft Articles on the Responsibility of International Organizations with commentaries, in the report of the ILC’s sixty-third session, UNGAOR 66th session,” U.N. doc. A/66/10, 2011, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed July 15, 2013), commentary to art. 4 (b), para. 2, p. 14. International Law Association, “Final Report of the International Law Association Committee on Accountability of International Organizations,” 2004, p. 26: “Human rights obligations, which are increasingly becoming an expression of the common constitutional traditions of States, can become binding upon IO-s in different ways: through the terms of their constituent instruments; as customary international law; or as general principles of law or if an IO is authorized to become a party to a human rights treaty. The consistent practice of IO-s points to a recognition of this. Moreover, certain human rights obligations may have attained the status of peremptory norms.” International Law Commission, “Yearbook of the International Law Commission, Report of the Commission to the General Assembly on the work of its fifty-third session,”

the World Bank has an obligation to respect and promote human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁶⁶ UN member states are obliged under article 103 of the Charter to comply with the provision of the Charter over other international agreements in the event of a conflict between the two.⁶⁷ The International Bill of Rights, which refers to the combination of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), is recognized as the key source used to interpret the rights provisions in the UN Charter.⁶⁸

While some have argued, incorrectly in the opinion of Human Rights Watch, that the non-political mandate of the Bank outlined in the Articles of Agreement precludes it considering human rights, few argue that the World Bank itself is permitted to violate human rights protected under international law.⁶⁹ The World Bank's own rules do not supersede these human rights obligations.⁷⁰ In 1998, the World Bank stated in its own

vol. II pt. 2, U.N. Doc. A/CN.4/SER.A/2001/Add.1, 2001, pp. 49-50: "Peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination." See also the Furundzija case before the International Criminal Tribunal for the former Yugoslavia, where the prohibition of torture was recognized *jus cogens*, available at <http://www.icty.org/sid/7609>; See also the related concept of *erga omnes* obligations (owed by all States to the international community) in the Barcelona Traction case (Belgium v. Spain), ICJ Rep. 1970, paras. 33 and 34; See also the East Timor case (Portugal v. Australia), judgment of 30 June 1995, ICJ Rep, 1995, p. 90.

⁶⁶ Charter of the United Nations, June 26, 1945, 59 Stat.1031, T.S. 993, 3 Bevans 1153, entered into force Oct.24, 1945, art. 555, 56. The World Bank is a specialized agency of the UN as a result of an agreement between the Bank and the UN's Economic and Social Council (ECOSOC) in 1946: Agreement between the UN and the IBRD, entered into force, 1946, 16 U.N.T.S. 346.

⁶⁷ Charter of the United Nations, Supra note 44, art. 103: "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

⁶⁸ The UN special rapporteur on the right to food has stated that "[t]he growing consensus is that most, if not all of the rights enumerated in the [UDHR] have acquired a customary status in international law." Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, (Cambridge: Cambridge University Press, 2010), p. 50; See also the "The Tilburg Guiding Principles on World Bank, IMF and Human Rights," 2002, <http://www1.umn.edu/humanrts/instree/Tilburgprinciples.html>, principle 6 (accessed April 30, 2013), principle 1: "The Universal Declaration of Human Rights of 1948 is a 'common standard of achievement for all peoples and all nations' (Preamble of the Declaration). At the beginning of the new Millennium, the Declaration goes far beyond being merely a moral or political obligation, as large parts of it belong to international customary law, while some rights have developed into *jus cogens* standards."

⁶⁹ The World Bank's articles of agreement state that the Bank "shall not interfere in the political affairs of any member ... Only economic considerations shall be relevant to their decisions..." World Bank, "IBRD Articles of Agreement," June 27, 2012, <http://go.worldbank.org/oFICOZQLQo> (accessed May 1, 2013), Article IV, Section 10. Language to the same affect appears in Article V, 6 of the IDA Articles of Agreement; World Bank, "IDA Articles of Agreement," <http://www.worldbank.org/ida/articles-agreement/IDA-articles-of-agreement.pdf> (accessed March 1, 2013).

⁷⁰ ILC, "Draft Articles on the Responsibility of International Organizations with commentaries, in the report of the ILC's sixty-third session, UNGAOR 66th session," U.N. doc. A/66/10, 2011, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed May 1, 2013), art. 32.

publication that it “has always taken measures to ensure that human rights are fully respected in connection with the projects it supports.”⁷¹

In addition to the World Bank bearing human rights obligations in its own legal capacity, each of its member countries has similar and additional specific human rights obligations that derive, for example, from treaties to which they are a party. As a matter of international law, governments retain all their human rights obligations when they become members of an international organization and therefore cannot abandon them in their capacity as governing members of the Bank.⁷² In that capacity, governments are obliged to exercise due diligence with respect to their human rights obligations.⁷³ According to UN human rights bodies and academics expert in this area, executive directors have an obligation to ensure that the policies and decisions of the World Bank are consistent with their governments’ human rights obligations, including those obligations derived from human rights treaties that they have ratified.⁷⁴

⁷¹ World Bank, “Development and human rights: the role of the World Bank,” p. 2.

⁷² The Maastricht Principles on extra-territorial obligations of States in the area of economic, social, and cultural rights observe that: “[a]s a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.” “Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights,” 2011, http://www.rtfn-watch.org/uploads/media/Maastricht_ETO_Principles_EN.pdf (accessed April 30, 2013), principle 15. See also, Responsibility of International Organizations, adopted by Drafting Committee in 2011, U.N. GAOR, Int. Law Comm’n, 63d Sess., art. 61 1, U.N. Doc. A/CN.4/L.778 (2011); and Cephas Lumina, “Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, Guiding principles on foreign debt and human rights,” U.N. Doc. A/HRC/20/23, April 10, 2011, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-23_en.pdf (accessed May 1, 2013), para. 6: “All States, whether acting individually or collectively (including through international and regional organizations of which they are members), have the obligations to respect, protect and fulfill human rights. They should ensure that any and all of their activities concerning their lending and borrowing decisions, those of international or national public or private institutions to which they belong or in which they have an interest, the negotiation and implementation of loan agreements or other debt instruments, the utilization of loan funds, debt repayments, the renegotiation and restructuring of external debt, and the provision of debt relief when appropriate, do not derogate from these obligations.”

⁷³ International Law Association, “Final Report of the International Law Association Committee on Accountability of International Organizations,” 2004, p. 240.

⁷⁴ See for example the Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15 (2003) U.N. Doc. E/C.12/2002/11, para. 36: “States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.” The Committee made the same observation regarding the right to health in General Comment No. 14, U.N. doc. E/C.12/2000/4, July 4, 2000; For more examples see, Sepulveda, M., *The Nature of States Obligations under the International Covenant on Economic, Social and Cultural Rights*, (Intersentia, 2003), p. 237. The Maastricht Principles on extra-territorial obligations of States in the area of economic, social and cultural rights further observe that “A State that transfers competences to, or participates in, an international organization must take all reasonable steps to ensure that the relevant organization acts

The Bank's view towards human rights has evolved over the last 15 years. There is now not only recognition that consideration of human rights is permitted, but that in some cases it is required. For example, former Bank General Counsel Roberto Danino wrote in 2006 that the Bank should "recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank's mission."⁷⁵ However, in practice, the World Bank still uses the constraints of its articles of agreement to avoid human rights issues that it does not wish to address.⁷⁶

The World Bank's articles of agreement with the United Nations state that the Bank operates independently of the UN and that the UN is to refrain from making recommendations with regard to particular loans and terms or conditions of financing.⁷⁷ As the Tilburg Guiding Principles on World Bank, IMF and Human Rights state, this "provides an organizational independence from the UN, not from international law."⁷⁸

consistently with the international human rights obligations of that State." "Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights," 2011.

⁷⁵ Dañino, R., Senior Vice-President & Gen. Counsel, Legal Opinion on Human Rights and the Work of the World Bank, 2006, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/o,,contentMDK:21106614~menuPK:445673~pagePK:64020865~piPK:149114~theSitePK:445634,00.html> (accessed April 30, 2013), p. 9, para. 26. The World Bank's consideration of human rights "is "permissive": allowing, but not mandating, action on the part of the Bank in relation to human rights."

⁷⁶ Daniel Bradlow, "The World Bank, the IMF, and Human Rights," p. 79.

⁷⁷ Agreement between the UN and the IBRD, entered into force, 1946, 16 U.N.T.S. 346, art. IV, para 3.

⁷⁸ "The Tilburg Guiding Principles on World Bank, IMF and Human Rights," 2002, <http://www1.umn.edu/humanrts/instree/Tilburgprinciples.html>, principle 6 (accessed April 30, 2013).

IV. Three Case Studies: Human Rights Due Diligence in Practice

Case Study I: Discrimination and Repression in Ethiopia

I am marked as an [opposition] member so I did not get any farmer's assistance—seeds, fertilizer, and materials. I asked them and got the same answer, "This doesn't concern you, since you hate the government, why would you get help from them?"

—Farmer, Dilla, Ethiopia, October 3, 2009⁷⁹

Basic rights that are fundamental to civic participation and social accountability, such as freedom of expression, assembly, and association, have been increasingly restricted in Ethiopia.⁸⁰ The ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) party has coupled repressive 2009 laws, the Charities and Societies Proclamation (CSO law) and the Anti-Terrorism Proclamation, with threats, intimidation, and politically motivated prosecutions of civil society activists, journalists, and others who speak out on political issues or express views critical of government policy.⁸¹ To date, 11 journalists have been convicted and sentenced under the Anti-Terrorism law, in addition to many other individuals, including opposition supporters. In recent years, the government has also intensified its surveillance of telecommunications, and censorship of internet and radio broadcasting.⁸²

⁷⁹ Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*, October 19, 2010, <http://www.hrw.org/reports/2010/10/19/development-without-freedom-o> p. 36; Human Rights Watch interview with a farmer, Dilla, Ethiopia, October 3, 2009.

⁸⁰ See Human Rights Watch, *"One Hundred Ways of Putting Pressure": Violations of Freedom of Expression and Association in Ethiopia*, March 2010, <http://www.hrw.org/node/89128>; "Ethiopia: Terrorism Verdict Quashes Free Speech," Human Rights Watch news release, January 19, 2012, <http://www.hrw.org/news/2012/01/19/ethiopia-terrorism-verdict-quashes-free-speech>; and Human Rights Watch, *"Analysis of Ethiopia's draft terrorism law,"* June 30, 2009, <http://www.hrw.org/news/2009/06/30/analysis-ethiopia-s-draft-anti-terrorism-law>.

⁸¹ Human Rights Watch, *"One Hundred Ways of Putting Pressure": Violations of Freedom of Expression and Association in Ethiopia*.

⁸² Human Rights Watch, *World Report 2013*, (New York: Human Rights Watch, 2013), Ethiopia chapter, <http://www.hrw.org/world-report/2013/country-chapters/112446>.

In implementing development programs, including those that are donor funded, the Ethiopian government has routinely discriminated against people on the basis of their perceived or real political opinions. Drawing on interviews with more than 200 people in 53 villages across three regions of Ethiopia, Human Rights Watch has documented how in the year before parliamentary elections in 2010, government officials routinely denied people access to services, including agricultural inputs like seeds and fertilizers, micro-credit loans, and job opportunities because they were viewed as unsupportive of the ruling party or sympathetic to the political opposition.⁸³ Foreign governments have reported similar allegations. For example, a 2009 United States diplomatic cable noted: “Post has received multiple reports that the Government of Ethiopia is also using the complete spectrum of government resources—including many basic public services—in a patronage system to shore up support for the EPRDF.”⁸⁴

The World Bank

In a 2006 Interim Country Assistance Strategy (Interim CAS), the Bank and other members of the group of international donors who coordinate on Ethiopia, known as the Development Assistance Group (DAG),⁸⁵ committed to:

- (i) Move away from direct budget support in favor of alternative instruments that would provide greater oversight over poverty reducing expenditures and promote increased accountability; (ii) reduce aid over time if governance does not improve; and (iii) focus on new governance programs.⁸⁶

⁸³ Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*.

⁸⁴ US Department of State, “Party Patronage and Foreign Assistance in Ethiopia,” cited in WikiLeaks cable ID: 09ADDISABABA2809, November 24, 2009, <http://wikileaks.org/cable/2009/11/09ADDISABABA2809.html> (accessed April 30, 2013).

⁸⁵ The Donor Assistance Group includes the African Development Bank, Australian Government Overseas Aid Program (AusAid), Austria Development Cooperation, Agencia Española de Cooperación Internacional para el Desarrollo (Spanish Agency for International Cooperation and Development, AECID), Canadian International Development Agency (CIDA), Denmark Embassy, United Kingdom Department for International Development (DFID), European Commission, Embassy of Belgium, Embassy of Finland, Embassy of France, German Embassy-German Development Cooperation, Embassy of Norway/Norwegian Agency for Development Cooperation (NORAD), International Labour Organisation (ILO), International Monetary Fund, Indian Embassy, Irish Aid, Italian Cooperation, Japan International Cooperation Agency (JICA), Netherlands Embassy, Swedish International Development Cooperation Agency (SIDA), Turkish International Cooperation Agency (TICA), UN Development Programme (UNDP), United Nations Population Fund (UNFPA), United States Agency for International Development (USAID), and the World Bank.

⁸⁶ World Bank, “Interim Country Assistance Strategy for the Federal Democratic Republic of Ethiopia,” May 1, 2006, <http://documents.worldbank.org/curated/en/2006/05/6792467/ethiopia-interim-country-assistance-strategy> (accessed April 30, 2013), p. 2.

The Interim CAS went on to note that the “biggest challenge” was to “separate political parties from the state,”⁸⁷ and it warned against “weak and eroding institutional checks and balances increasing the risk of capture of decentralization, block grants and the civil service.”⁸⁸ The Bank concluded that it would seek to adjust its support if the political context worsened and these risks increased, “both to help the country address the risks, and to manage the level of resources entering an environment that may not be conducive to development.”⁸⁹

Unfortunately, despite the persistence of these issues since 2006, subsequent country strategies have failed to sufficiently acknowledge and monitor these risks, and the World Bank has not adequately addressed these risks in its country programming.

Protection of Basic Services

The World Bank’s Promoting Basic Services (PBS) Program (formerly the Protection of Basic Services Program) was established in 2006 and is now in its third phase. It was designed and named to “protect” basic service delivery following the suspension of direct budget support in the wake of the violent crackdown on opposition supporters in 2005. It “aims to contribute to (i) expanding nationwide access to basic services such as education, health, water supply, sanitation, rural roads and agricultural extension services, and (ii) improving the quality of these services.”⁹⁰ As the Bank stated in the Interim CAS of 2006, “in an increasingly divided environment, a new instrument was needed to ensure that resource flows to local authorities could be protected from political capture through an enhanced set of checks and balances.”⁹¹

However, as a 2010 DAG study has recognized, the safeguards in PBS “would not pick up on access to employment or access to goods and services being shaped by political affiliation or on PBS funds being misused for political training and education.”⁹² Human

⁸⁷ Ibid., p.8.

⁸⁸ Ibid., p.29.

⁸⁹ Ibid.

⁹⁰ World Bank, “Q&A: Ethiopia’s Promoting Basic Services (PBS) III Program,” updated March 18, 2013, <http://siteresources.worldbank.org/INTAFRICA/Resources/257994-1337109990438/et-q-a-ethiopia-s-promoting-basic-services-pbs-iii-program.pdf> (accessed April 14, 2013).

⁹¹ World Bank, “Interim Country Assistance Strategy for the Federal Democratic Republic of Ethiopia,” May 1, 2006, <http://documents.worldbank.org/curated/en/2006/05/6792467/ethiopia-interim-country-assistance-strategy> (accessed April 30, 2013), p. 3.

⁹² Development Assistance Group (DAG), “Aid Management and Utilisation in Ethiopia: a Study in Response to Allegations of Distortion in Donor-Supported Development Programmes,” July 2010, http://www.dagethiopia.org/index.php?option=com_docman&task=doc_download&gid=123&Itemid=120 (accessed July 10, 2013), p. 18.

Rights Watch has documented instances of the government excluding perceived political opponents from benefiting from PBS.⁹³ Channeling money through the federal government to regional, zonal, and district authorities in Ethiopia failed to eliminate this risk.

The 2010 DAG study also noted the need for investigation beyond desk reviews of documentation, and including field evidence to properly examine allegations that some donor-supported programs were being used for political gain.⁹⁴ Similarly, according to a 2010 media report, Kenichi Ohashi, then the World Bank country director in Ethiopia, acknowledged that the only way to examine the problem of politicization would be some kind of “undercover investigation.”⁹⁵ The DAG did not proceed with a field investigation.

Recognizing the serious potential for the CSO law to be used to restrict nongovernmental activity, donors initially advocated for amendments to the draft law. Nonetheless, Ethiopia passed the CSO law in 2009, including a key provision that bars nongovernmental activity on human rights, good governance, conflict resolution, and advocacy on women, children and disability rights, if an organization receives more than 10 percent of its fund from foreign sources.⁹⁶ Many governments, including donors to PBS, called for the law’s repeal or amendment and certain donors threatened to withdraw support for phase two of PBS.⁹⁷ The Ethiopian government responded by providing written assurances to the World Bank that the law would not affect social accountability activities.⁹⁸ That promise has not been kept and the World Bank appears not to have adapted its programming accordingly. Other donors have been similarly reluctant to address this.⁹⁹

⁹³ Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*.

⁹⁴ Development Assistance Group (DAG), “Aid Management and Utilisation in Ethiopia: a Study in Response to Allegations of Distortion in Donor-Supported Development Programmes,” p. iii.

⁹⁵ “Ethiopia: Government Denies Food Aid ‘Manipulated’ for Political Gain,” *IRIN News*, June 7, 2010.

⁹⁶ Human Rights Watch, “*One Hundred Ways of Putting Pressure*”: *Violations of Freedom of Expression and Association in Ethiopia*; Kenneth Roth, “NGOs Have a Right to Receive Foreign Funding,” *International Service for Human Rights*, April 26, 2013, <http://www.hrw.org/news/2013/04/26/ngos-have-right-receive-foreign-funding>; Laetitia Bader, “Civil Society Crackdown in Ethiopia,” *New Internationalist*, January 4, 2013, <http://www.hrw.org/news/2013/01/04/civil-society-crackdown-ethiopia>.

⁹⁷ For example, the Netherlands and Sweden. For discussion, see Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*, p. 75.

⁹⁸ Letter from Ministry of Finance and Economic Development to Kenichi Ohashi, Ethiopia Country Director, World Bank, Ref: 2 PA-2/WB-8/09, date unknown, 2009, on file with Human Rights Watch. See also, World Bank, “Management response to request for inspection panel review of the Ethiopia: Protection of Basic Services Program Phase II Additional Financing (P121727) and Promoting Basic Services Phase III Project (P128891),” November 19, 2012, p. 11.

⁹⁹ Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*.

The 2009 CSO law delivered a terrible blow to independent civil society in Ethiopia. It is one of the most draconian laws regulating nongovernmental activity in the world.

Since the law's adoption, Ethiopia's most important human rights groups have been compelled to dramatically scale down operations or remove human rights activities from their mandates, and an unknown number of organizations have closed entirely. Numerous governments, including member states of the European Union and human rights experts, have called for the repeal or substantial amendment of the law, citing its violation of fundamental guarantees on freedom of association. As the UN High Commissioner for Human Rights said in July 2012:

The once vibrant civil society in Ethiopia has been whittled away as the space for them to operate freely has rapidly shrunk since the 2009 Charities and Societies Proclamation was passed into law. The dramatic reduction in the number of organizations working on human rights issues, particularly on civil and political rights, is deeply disturbing.¹⁰⁰

Human Rights Due Diligence

Undertaking due diligence to identify, analyze, and mitigate the human rights risks of its programming would enable the World Bank to navigate Ethiopia's challenging environment and advance sustainable development. Ethiopia is one of the poorest countries in the world and roughly a third of its population lives below the poverty line.¹⁰¹

A large percentage of the population needs assistance in the form of food, seeds, fertilizer, and cash support, and the World Bank plays a key role in providing such assistance. Human rights due diligence would require the Bank to publicly acknowledge the human rights risks. A key element of human rights due diligence would include undertaking a human rights impact assessment for each of the World Bank's programs. Such an assessment could identify, among others, the risks such as:

- Discrimination in the distribution of aid on the basis of perceived political opinion, ethnicity, or on some other ground;

¹⁰⁰ OHCHR, "Climate of intimidation against rights defenders and journalists in Ethiopia—Pillay," July 18, 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12365&LangID=E> (accessed May 1, 2013).

¹⁰¹ World Bank, "Ethiopia: Poverty headcount ratio at national poverty line (29.6 percent of the population)," 2011, <http://data.worldbank.org/indicator/SI.POV.NAHC/countries/ET?display=graph> (accessed July 11, 2013).

- Reprisals against critics, independent monitors, or people utilizing grievance mechanisms of the Bank or Bank programs; and
- Consultations being undertaken in a threatening environment or not at all.

To be effective, this assessment would need to be a living document, enabling the Bank to identify and address new or emerging rights concerns.

Sufficient monitoring and supervision could have, for instance, enabled the Bank to assess the degree to which the government of Ethiopia was fulfilling its assurance that the CSO law would not affect social accountability activities, and to address this in future programming. This would enable Bank staff to constructively assess and address the environment when crafting social accountability projects, such as that under PBS. Then, the Bank could also recognize the limitations of social accountability projects and significantly enhance its own supervision of projects to compensate, including regular field visits. Such a process would empower Bank staff to address these risks before they become media headlines and, if concerns emerge, better equip the Bank to deal with the allegations presented.

* * *

Case Study II: Forced “Villagization” in Ethiopia

“If people are not being told why, do we have to go?” my friend [name withheld] said at the public meeting. This meeting took place in the day, then in the night, people were beaten by the EDF [Ethiopian Defense Force, army] and accused of mobilizing farmers against villagization. Two of my friends were beaten, arrested, and taken to hospital. [He showed photos of two beaten friends.] The next day, there was another meeting. And my friend [who had spoken up the day before] got emotional at the meeting. When the meeting was over the EDF followed him into town at night and shot him from behind through the neck [showed photograph]. The two army officers were at the earlier meeting.

—Ethiopian refugee, former resident of Gambella, Dadaab, Kenya, 2011.¹⁰²

¹⁰² Human Rights Watch interview, Dadaab, Kenya, June 18, 2011.

Since 2010, the Ethiopian government has been in the process of relocating 1.5 million people in five regions under the government’s three year “villagization” program. The program affects many indigenous peoples and other marginalized groups, who have been relocated from their areas of origin to new villages where the government had claimed there would be improved access to infrastructure and basic services.¹⁰³

In Gambella region, Human Rights Watch found that consultation and compensation has been grossly inadequate and the relocation process has been marred by intimidation and violence. Human Rights Watch researched human rights abuses committed during the first year of villagization, as documented in our report, *“Waiting Here for Death”: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region*.¹⁰⁴ State security forces have threatened, arbitrarily arrested, and assaulted people when implementing “villagization.” Human Rights Watch documented at least seven credible accounts of people dying as a result of the beatings inflicted by the military and heard of many more deaths that could not be corroborated.¹⁰⁵ Further, promised schools, health clinics, and agricultural support were not provided in the new villages, at least in the first phase of villagization.¹⁰⁶

The World Bank

The World Bank’s Promoting Basic Services (PBS) Program (formerly the Protection of Basic Services Program) is a \$2 billion program that was established in 2006. The project covers five sectors: education, health, water and sanitation, rural roads, and agricultural extension services. PBS is now in its third phase of funding with a tranche of \$600 million for PBS III approved by the World Bank in September 2012. The day before the Bank approved this third phase, refugees from the Gambella region of Ethiopia filed a complaint with the Inspection Panel alleging that Bank staff had not complied with the Bank’s policies.¹⁰⁷ Bank staff and management strongly denied those charges.¹⁰⁸ On February 8, 2013, the Inspection Panel found the complaint eligible and recommended full

¹⁰³ Human Rights Watch, *“Waiting Here for Death”: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region*.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., p. 36.

¹⁰⁶ Ibid.

¹⁰⁷ “World Bank: Investigate ‘Development’ Project Abuses,” Human Rights Watch news release; World Bank Inspection Panel, “Ethiopia: Protection of Basic Services Program Phase II Additional Financing and Promoting Basic Services Phase III Project,” <http://go.worldbank.org/CF6PM4F6Qo> (accessed May 1, 2013).

¹⁰⁸ World Bank, “Management response to request for inspection panel review of the Ethiopia.”

investigation.¹⁰⁹ After a long delay, the Board approved the investigation on an absence-of-objection basis on July 12, 2013.¹¹⁰

Anuak community members conducting an Anuak cultural celebration dance, at the UNHCR refugee camp in Dadaab, Kenya on June 19, 2011. In September 2012, representatives of displaced people from the Gambella region of Ethiopia brought a complaint to the World Bank Inspection Panel. The Inspection Panel has found the complaint eligible and recommended a full investigation, which was approved by the Board of Executive Directors on July 12, 2013. © 2011 Human Rights Watch



Since 2010, villagization has been the principle vehicle for achieving development objectives in Gambella, including those envisioned under PBS. As the Gambella Regional Government plan for villagization makes clear, villagization will happen in all *woredas* (districts) with the intention of moving people to areas where they can be better provided with basic services.¹¹¹

PBS is now inextricably linked to villagization in Gambella.¹¹² First, the strategy for service provision is to relocate people to places where service providers are to be located.

¹⁰⁹ World Bank Inspection Panel, “Report and Recommendation on Request for Inspection: Ethiopia: Protection of Basic Services Program Phase II Additional Financing (P121727) and Promoting Basic Services Program Phase III Project (P128891), p. 21-22.

¹¹⁰ While the Board of Executive Directors often approves the Inspection Panel’s recommendations on an absence-of-objection basis, in this case an executive director requested a discussion. The Board discussion was initially scheduled for March 19, 2013, then rescheduled for July 18, 2013, before the executive director who had requested the discussion withdrew his request allowing the Board to approve the Panel’s recommendation on an absence-of-objection basis at 6pm on July 12, 2013. World Bank, “World Bank Group Boards calendar: July 2013,” <http://documents.worldbank.org/curated/en/2013/06/17873930/world-bank-group-boards-calendar> (accessed July 1, 2013). See also, “World Bank: Investigate ‘Development’ Project Abuses,” Human Rights Watch news release.

¹¹¹ The Gambella Regional Government’s Villagization Plan is included as an appendix in *“Waiting Here for Death”: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region*.

¹¹² Human Rights Watch’s research focused on Gambella. It is likely that in the other regions in which the Ethiopian government is implementing villagization the same links exist between villagization and PBS.

Supporting the providers of those services is an essential part of the PBS strategy. In addition, PBS funds are actually supporting villagization because the program is paying part of the salaries of government officials who are implementing the villagization program. As an Ethiopian government and DAG-commissioned study on Grievance Resolution Mechanisms for PBS makes clear:

In effect one can argue that PBS pays a portion of the compensation of all regional government and local government employees ... because PBS funds are commingled with funds from other sources that regional state and local governments use to pay employee compensation.¹¹³

This study suggests that the staff who are designing and implementing the villagization plans are paid, in part, by PBS. Even if PBS were only funding positions that are seemingly peripheral to villagization, such as teachers and others related to the five sectors PBS supports, the government has forced teachers, too, to assist in the implementation of villagization, including by making their students assist.

The World Bank has determined that it will not apply its safeguard policies on indigenous peoples or involuntary resettlement to PBS III, as it involved recurrent expenditures. Human Rights Watch has met with World Bank staff on several occasions to raise concerns about the human rights violations linked to villagization and PBS, including prior to the publication of our January 2012 report *“Waiting Here for Death’: Forced Displacement and “Villagization” in Ethiopia’s Gambella Region.”* Throughout these meetings, the World Bank staff maintained that there was no evidence that villagization was forced and that the links between PBS and villagization were negligible. Staff continued to maintain this even after meeting several refugees who testified to witnessing or experiencing the violent nature of forced villagization. The World Bank did not trigger its safeguard policies even for PBS III, which went to the board after this September 14, 2012 meeting with refugees.¹¹⁴

¹¹³ Robert C. Randolph and Buli Edjeta, “Study on Strengthening Grievance Resolution Mechanisms for the PBS programme in Ethiopia,” September 30, 2011, http://csradr.com/STUDIES/Strengthening_GRMs_in_Ethiopia.pdf (accessed September 20, 2012), p. 9.

¹¹⁴ For analysis on application of safeguard policies, see World Bank, “Project Appraisal Document: Ethiopia - Third Phase of the Promoting Basic Services Project,” August 29, 2012 <http://documents.worldbank.org/curated/en/2012/08/16711203/ethiopia-third-phase-promoting-basic-services-project> (accessed July 1, 2013), pp. 34-35.

Human Rights Due Diligence

The human rights risks that villagization presents for PBS would not have been evident until 2010 when the public and donors first became aware of the government program. Ongoing due diligence should include continually identifying and analyzing human rights risks throughout the course of a project and require the Bank to publicly acknowledge the human rights risks. This could have enabled the Bank to identify the risks of arbitrary arrest and detention, forced evictions, beatings, torture, and killings linked to villagization, in addition to the risks of reduced and inadequate access to food, health care, and water through the villagization process. Once identified, the Bank could have taken measures to avoid and mitigate the risks and build these measures into the third phase of PBS.

Instead, the Bank failed to appropriately monitor human rights risks or to meaningfully respond to the concerns of human rights violations associated with the program once they were identified by third parties. The Bank continued to say there was no evidence villagization was forced despite hearing first-hand testimony from victims and witnesses, and did not apply its own safeguard policies to PBS III.

* * *

Case Study III: Forced Labor, Other Abuses in Drug Detention Centers in Southern Vietnam

In Vietnam, people dependent on drugs can be held in government detention centers, where they are forced to perform menial labor for up to four years, in the name of “treatment” or “rehabilitation.”¹¹⁵

Human Rights Watch’s September 2011 report, “*The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*,” documents arbitrary detention, forced labor, torture, and other forms of ill treatment in 14 detention centers under the authority of the Ho Chi Minh City government. Because the laws, regulations, and principles that govern drug detention centers in and around Ho Chi Minh City apply to all of Vietnam’s drug detention centers, Human Rights Watch is concerned that the

¹¹⁵ Human Rights Watch, *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, September 7, 2011, <http://www.hrw.org/reports/2011/09/07/rehab-archipelago-o>.

abuses described in this report are present in centers in other parts of Vietnam, of which there are over a hundred.¹¹⁶

Detainees are held without due process and are forced to work. None of the people whom Human Rights Watch interviewed in the course of researching the 2011 report saw a lawyer, judge, or court at any time before or during their detention in drug detention centers, and—despite regulations providing for appeal of administrative decisions—were unaware of means to appeal the decision to detain them in a center.

Refusing to work or violating center rules results in punishment that in some cases amounts to torture. One detainee told Human Rights Watch: “Those who refused to work were beaten by the guards and then put into the disciplinary room. In the end they agreed to work.”¹¹⁷ Former detainees told Human Rights Watch how they were beaten with wooden truncheons, shocked with electrical batons, and deprived of food and water. Children as young as 12-years-old who use drugs are also held in these centers, where they have been forced to work, beaten, and abused.

The result is a system of forced labor on a massive scale: between 2000 and 2010, over 309,000 people across Vietnam passed through the centers, all of whom were required to work producing goods for the centers. Former detainees told Human Rights Watch how they are forced to work in cashew processing, forms of agricultural production (either for outside sale, such as potato or coffee farming, or for consumption by detainees), garment manufacturing, other forms of manufacturing (such as making bamboo and rattan products), and construction work.¹¹⁸

The World Bank

The World Bank, together with a number of other international donors, supported the Vietnamese government to provide HIV and healthcare interventions in these centers. Through a \$35 million 2005 project that concluded in 2012, the World Bank provided approximately \$1.5 million funding for various HIV-related services in drug detention

¹¹⁶ Ibid.

¹¹⁷ Human Rights Watch interview with detainee, Ho Chi Minh City, 2010.

¹¹⁸ Human Rights Watch, *The Rehab Archipelago: Forced Labor and Other Abuses in Drug Detention Centers in Southern Vietnam*, September 7, 2011, <http://www.hrw.org/reports/2011/09/07/rehab-archipelago-o>.

centers.¹¹⁹ Under what it described as a pilot program, the Bank funded HIV clinics in three centers, providing funds to the Vietnamese government to recruit temporary consultants (doctors and nurses) and renovate health clinics and medical equipment inside the centers.¹²⁰ As a separate component of the same project, government authorities in 20 provinces were given funds to implement various HIV-related services in drug detention centers.

The centers in which the World Bank operated are governed by the same decrees as centers in the rest of Vietnam. According to government regulations, labor therapy (*lao dong tri lieu*) is one of the official five steps of drug rehabilitation. The centers must “organize therapeutic labor with the aim of recovering health and labor skills for drug addicts.”¹²¹ The decrees that govern drug detention centers in Vietnam stipulate that work in the centers is not optional and center directors are authorized to punish detainees for refusing to obey regulations, including the obligation to work.¹²² According to government decrees, such punishments may take the form of reprimands, warnings, or “education in a disciplinary room.”¹²³

¹¹⁹ World Bank, “Vietnam, HIV/AIDS Prevention,” December 31, 2012, <http://www.worldbank.org/projects/Po82604/hivaids-prevention?lang=en> (accessed July 15, 2013); Letter from Victoria Kwakwa, Vietnam Country Coordinator, World Bank, to Human Rights Watch, June 9, 2011.

¹²⁰ The three centers under this component of the project are centers in Hanoi, Hai Phong and Khanh Hoa. This component was funded from 2005-2010. See, for example, World Bank, “Vietnam - HIV/AIDS Prevention Project : Procurement Plan,” 2007, <http://documents.worldbank.org/curated/en/2007/05/8704262/vietnam-hivaids-prevention-project-procurement-plan-procurement-plan-2007> (accessed July 15, 2013) p. 5.

¹²¹ The five official stages are: 1. Admission and sorting; 2. Treatment for withdrawal, the impact of detoxification and opportunistic infection; 3. Education and counseling to rehabilitate behaviors and personality; 4. Labor therapy and vocational training; 5. Preventing and fighting against relapse, preparing for community reintegration. See, Interministerial Circular 41/2010/TTLT-BLDTBXH-BYT, “Guiding the Process of Rehabilitation for Drug Addicts at the Centers for Social Education and Labor for Voluntary Rehabilitation Treatment,” issued by the Ministry of Labor and the Ministry of Health, dated December 31, 2010, art. 2 [Human Rights Watch translation].

¹²² Regarding the legal obligation of detainees to abide by center rules, the 2009 decree establishes that detainees have a responsibility “to actively participate in laboring and production [and] to complete the assigned target on volume and quality of work.” Decree 94/2009/ND-CP, October 26, 2009, art. 34(1)(b) [Human Rights Watch translation]. See also Decree 135/2004/ND-CP, June 10, 2004, arts. 30 and 32. Regarding the director’s authority to punish detainees, see Decree 135/2004/ND-CP, June 10, 2004, art. 57(1) and Decree 94/2009/ND-CP, October 26, 2009, art. 43(1).

¹²³ Decree 135/2004/ND-CP, June 10, 2004, art. 70(3); Decree 94/2009/ND-CP, October 26, 2009, art. 31(2).



A detainee overseer at a drug detention center in Vietnam watches the work of other detainees in a cashew workshop. Refusing to work, or violating center rules, results in punishment that in some cases is torture. The World Bank provided approximately \$1.5 million in funding for various HIV-related services in Vietnamese drug detention centers through a US \$35 million project that concluded in 2012. © 2011 Private

Under Vietnamese law, ill detainees have a right to be released to receive treatment in community settings when the center is unable to provide adequate healthcare services.¹²⁴ However, in practice, donor support for centers to provide HIV and other health services has had the perverse impact of facilitating the continued detention of individuals who would otherwise be eligible for release from detention and transferred to a government hospital or returned home for treatment and care.

The World Bank told Human Rights Watch that it had considered:

[E]conomic, technical, financial, environmental, social, and institutional framework[s], including the legal framework affecting the proposed project, in addition to risks, including reputational risks, associated with the proposed project. In terms of social issues, World Bank staff assesses the potential impact on all affected persons under the proposed project. In turn, these requirements are reinforced under Section 3.01 of the Development

¹²⁴ Decree 135 of 2004 establishes that people certified as having contracted a serious illness shall be exempt from the decision to detain them or have that decision delayed. The same decree provides, “In cases an individual serving the decision contracted a serious illness or fatal disease that exceeds the caring capacity of the Center for Social Treatment, Education and Labor, he/she shall be transferred to a state run hospital, or returned to the family for caring and treatment. The duration of caring and treatment shall be accounted for as part of the period of serving the decision.” The 2009 decree governing post-rehabilitation management has similar provisions. See Decree 135/2004/ND-CP, June 10, 2004, art. 18 and 34(1). Also see Decree 94/2009/ND-CP, October 26, 2009, art. 32(1). The principle that people suffering a serious illness should be released from drug detention has been present in Vietnam’s drug detention center regulations since the mid-1990s. See, for example, Decree 20/CP of 1996, art. 36.

Grant Agreement for the Project, which requires Vietnam to carry out the Project ‘in conformity with appropriate ... public health practices, and sound ... health standards acceptable to the Association.’¹²⁵

Despite undertaking this analysis, there is no evidence that the World Bank had identified the risk of forced labor, torture, or arbitrary detention, including of children. When asked if the World Bank had documented human rights violations in the centers, the World Bank country director stated:

We are not aware of World Bank staff receiving any reports of human rights violations in the drug rehabilitation clinics supported by the Project. If we do receive such a report we would make this a focus of a supervision mission to ensure all Bank policies are met and that any concerns are fully examined.¹²⁶

As the centers in which the World Bank operated are governed by the same decrees as centers in the rest of Vietnam, Human Rights Watch does not find it credible that detainees in those centers were accorded proper due process protections or were not forced to work. When Human Rights Watch provided evidence of human rights abuses in drug detention centers in Vietnam to the World Bank, it responded by saying that the part of the project that funded services in the detention facilities had been completed.¹²⁷

Human Rights Due Diligence

If the World Bank had analyzed the human rights risks of this project, by undertaking basic research on how these centers operate and how detainees are placed in them, it could have learned that:

¹²⁵ Letter from Victoria Kwakwa, World Bank Country Director for Vietnam, to Human Rights Watch, “Annex: Answers to the Questions,” June 9, 2011.

¹²⁶ Ibid.

¹²⁷ On April 19, 2013 at the World Bank/IMF Spring Meetings Civil Society Forum, Charles Di Leva, Chief Counsel, Environmental and International Law at the World Bank responded to Human Rights Watch’s concerns about this project by saying that the Bank terminated this project in response to the human rights violations. Charles Di Leva, Chief Counsel, Environmental and International Law, Remarks at the World Bank at the World Bank/IMF Spring Meetings Civil Society Forum, Washington, DC, April 19, 2013. The project documents contradict this, confirming that the World Bank project continued beyond its scheduled conclusion until December 31, 2012, with the pilot project funding clinics within the centers concluding as scheduled in 2010. World Bank, “Projects and Operations: HIV/AIDS prevention” undated, <http://www.worldbank.org/projects/Po826o4/hiv-aids-prevention?lang=en> (accessed April 30, 2013).

- Detainees, including children, are subject to forced labor in these detention centers;
- Detainees have no access to due process; and
- Ill detainees, including those with HIV, had the right to be released if they are not able to receive the treatment they need in the centers.

Once identified, the World Bank could have avoided the risks to the Bank by supporting HIV-specific health services in the community for center detainees if those detainees were released from drug detention centers. There are some indications that the centers were in fact prepared to release ill detainees, as recognized in the Bank's written response to Human Rights Watch's concerns.¹²⁸ Such an approach would have provided centers with a significant incentive to release sick detainees from arbitrary detention and avoided the Bank contributing to the health costs of people arbitrarily detained and subjected to forced labor.

It would also have aligned Bank support with international law and the existing Vietnamese legal framework and avoided a scenario in which HIV-positive project beneficiaries received healthcare, but were otherwise left in arbitrary detention. Additionally, it would have strengthened the HIV capacity of existing healthcare settings in the community.

Further, the Bank could have explored the potential for expanding funding support of voluntary, community-based drug dependency treatment, including appropriate services for women and children, and funding HIV-specific health services as part of such voluntary systems. It could have ensured that services for children were age-specific, medically appropriate, and include educational components. This could have opened a space for the World Bank to emphasize to the Vietnamese government the enhanced effectiveness of voluntary, community-based drug treatment.

¹²⁸ Letter from Victoria Kwakwa, World Bank Country Director for Vietnam, to Human Rights Watch, "Annex: Answers to the Questions," June 9, 2011.

V. What the World Bank Needs to Do

Commit to Human Rights

The World Bank should introduce into its safeguard policies a commitment not to support any activities that will contribute to or exacerbate human rights violations. The World Bank should also commit to respect international human rights in all of its projects and programs, and activities under them. This should be irrespective of the funding mechanism utilized. This applies equally to civil, political, economic, social, and cultural rights, which are interrelated, interdependent, and indivisible.

Lack of a clear commitment deprives staff of guidance on their human rights responsibilities.¹²⁹ The result is that World Bank staff members have unfettered discretion to determine the extent to which they will consider risks of human rights impacts, implement measures to mitigate or avoid such impacts, and the degree to which these concerns will be brought to the attention of senior management or the board. In practice, funding decisions relating to rights concerns lack transparency and appear arbitrary and inconsistent. Further, this precludes people affected by these decisions from holding the Bank to account.¹³⁰

The World Bank should commit further to ensure that it does not fund activities which would violate the human rights obligations of recipient countries, derived from its UN membership, international and regional human rights treaties that it has ratified, and other sources of international human rights law. This is akin to the World Bank's existing commitment not to finance project activities that would contravene obligations of the country under relevant international environmental treaties and agreements.¹³¹

¹²⁹ Daniel Bradlow, "The World Bank, the IMF and Human Rights," p. 51.

¹³⁰ *Ibid.*, pp. 52, 79, 80.

¹³¹ World Bank Operational Policy 4.01, para. 3.

Ensure Safeguards Meet International Human Rights Law Standards

The World Bank safeguard policies contain elements that are particularly relevant to human rights but fall short of international human rights law standards. In this respect, the World Bank should:

- Amend the indigenous peoples' policy to comply with the UN Declaration on the Rights of Indigenous Peoples.¹³² This will include, among other things, recognizing the right of indigenous peoples to free, prior, and informed consent.¹³³
- Amend the involuntary resettlement policy to comply with the International Covenant on Economic, Social, and Cultural Rights and the UN Basic Principles and Guidelines On Development-Based Evictions and Displacement.¹³⁴ In February, UN special rapporteur Raquel Rolnik made a submission to the Bank's safeguards review and update team setting out how safeguards need to be revised to protect the right to adequate housing.¹³⁵

Commit to Meaningful, Inclusive Participation

The World Bank is increasingly recognizing the importance of civic participation and social accountability for development, especially in the wake of the popular upheavals in the Arab world.¹³⁶ All elements of civil society play an important role in development, including grass roots movements, service providers, and advocacy groups. People should be able to participate in shaping their country's development agenda, be it through government or Bank processes.

For the World Bank to successfully implement a system of human rights due diligence, it will need to ensure that its own processes are participatory, transparent, and inclusive.

¹³² UN Declaration on the Rights of Indigenous Peoples, September 13, 2007, G.A. Res. A/RES/66/142, U.N. Doc. A/RES/61/295; International Labour Organization, Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO No. 169, 72 ILO Official Bull. 59 (Sept. 5, 1991).

¹³³ UN Declaration on the Rights of Indigenous Peoples, Art. 10.

¹³⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976; OHCHR, "Basic Principles and Guidelines on Development-Based Evictions and Displacement," Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living," U.N. Doc. A/HRC/4/18.

¹³⁵ Raquel Rolnik, "Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, Addendum, Mission to the World Bank."

¹³⁶ This enhanced focus has manifested in the World Bank's Global Partnership on Social Accountability, a new funding mechanism for nongovernmental organizations.

More Specifically, the World Bank Should:

- Take all necessary measures to ensure that affected people and civil society, including marginalized groups, can meaningfully participate in: shaping development agendas (including country partnership strategies and interim strategy notes); reforming policy and strategy documents; and identifying, preparing, and carrying out projects.¹³⁷ As the United Nations special rapporteur on extreme poverty and human rights has stated: “Consultation alone is not enough; those who are affected ... must have a say in the decisions that affect their lives.”¹³⁸
- Ensure that consultations are accessible. Unfortunately, as with the Bank’s April 5 consultation on the safeguards review in Delhi, these consultations are not always physically accessible for people with disabilities.
- Publish drafts of strategy and key project documents for a defined comment period to ensure civic participation and substantive exchange with civil society.¹³⁹ Publish comments received (with consent of the interveners) and provide them to the Board of Executive Directors. The Bank’s current process of including a short summary of consultations to the Board has on occasion produced an incomplete or skewed picture.¹⁴⁰

Unfortunately, to date the World Bank’s safeguards review and update consultation process has not lived up to this standard. First, although the Bank undertook to consult communities affected by Bank projects, it has not been participative or transparent in identifying the communities with which it will consult. At time of writing, the team has not

¹³⁷ The World Bank develops country partnership strategies (or interim strategy note) in each country it works, together with the borrower. These key documents guide the World Bank’s activities for the duration of the strategy; hence the importance of ensuring people can meaningfully participate in shaping these strategies. The Bank’s activities may include investment lending (IL), development policy lending (DPL), or program for results lending (P4R).

¹³⁸ Magdalena Sepúlveda Carmona, “Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona - Mission to Timor-Leste,” U.N. Doc. A/HRC/20/25/Add.1, May 24, 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.25.Add.1_En.PDF (accessed May 1, 2013), para. 24.

¹³⁹ As the special rapporteur on human rights and extreme poverty has noted, meaningful participation is “impossible without the dissemination of information in accessible languages and without the support of public officials who are able to communicate with minorities.” Magdalena Sepúlveda Carmona, “Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, Mission to Viet Nam,” U.N. Doc A/HRC/17/34/Add.1, May 9, 2011, <http://daccess-ods.un.org/TMP/2618596.25577927.html> (Accessed May 1, 2013).

¹⁴⁰ For instance, the summary of consultations on the Interim Strategy Note for Myanmar failed to capture the view of many members of civil society that engagement should be staged to best support governance reforms. World Bank Group, “Interim Strategy Note FY13-14: Myanmar,” October 30, 2012, <http://reliefweb.int/sites/reliefweb.int/files/resources/724580ISNoIDAooOfficialoUseoOnlyo9o.pdf> (accessed July 14, 2013), Annex 4.

publicly stated whether it has consulted with any such communities. Second, the Bank has not ensured that its consultations are accessible and inclusive. Third, while the Bank has circulated the record of consultations in draft form, the Bank has not accepted some corrections suggested by participants that are consistent with verbal submissions made during consultations.¹⁴¹

Commit to Equality and Non-Discrimination

The fundamental human rights guarantees of equality and non-discrimination are legally binding obligations. The World Bank's commitment to commitment to inclusive development and ending economic exclusion should include a commitment to work towards dismantling all forms of discrimination and address inequality.

Human rights law prohibits discrimination on the basis of a wide range of grounds. The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) prohibit discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or 'other status.'¹⁴² These lists are far from exhaustive. The ICCPR and ICESCR include further an undertaking to "ensure the equal right of men and women to the enjoyment of all" rights in their respective covenants.¹⁴³ Children are to be protected against discrimination on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal

¹⁴¹ For instance, following the April 15, 2013 focus group meeting on human rights, eight of the ten expert participants agreed on edits to the Bank's draft meeting summary. While the safeguards review team accepted the edits adding language to the record, they did not delete language that the expert participants had agreed was inaccurate. For example, the participants had asked for the language, "experts in the focus group meeting recognized the constraints imposed on the World Bank by its Articles of Agreement and the current interpretation of its mandate" to be deleted, as they had challenged the assertion of Bank staff that there were such constraints. In addition, following the March 5, 2013 meeting in Brussels, one NGO provided edits on behalf of several NGO participants who had agreed that the meeting summary excluded key points raised in the meeting. The Bank staff accepted certain edits, rewrote some, and did not accept others despite agreement among several participants that they were an accurate reflection of points raised at the meeting. In another example, the Bank staff did not accept the addition of the sentence, "Several UN bodies have called on the Bank to undertake human rights impact assessments on its activities." The requested addition of: "The World Bank should adopt safeguard policies aligned with the international human rights obligations of its member states and clients," was re-written to: "Safeguard policies do not make clear reference to obligations under human rights law."

¹⁴² Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U. N. Doc. A/810 at 1 (1948), art. 2; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, arts. 2-3; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 2-3, 26.

¹⁴³ ICESCR, arts. 2-3; ICCPR, arts. 2-3.

guardians, or family members.¹⁴⁴ Other human rights treaties have since prohibited discrimination on the grounds of marital status,¹⁴⁵ descent or ethnic origin,¹⁴⁶ disability,¹⁴⁷ nationality,¹⁴⁸ age,¹⁴⁹ and economic position.¹⁵⁰ Treaty bodies have interpreted treaties to prohibit discrimination on the basis of geographical residence, health status, and sexual orientation.¹⁵¹ Human rights law also protects against discrimination on the basis of gender identity, family status, and health status (e.g. HIV status).¹⁵²

In one of the most comprehensive statements of the meaning of discrimination and state economic, social, and cultural rights obligations, the Committee on Economic, Social, and Cultural Rights has stated that:

[D]iscrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of [human] rights. Discrimination also includes incitement to discriminate and harassment.¹⁵³

¹⁴⁴ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.

¹⁴⁵ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/34/46, entered into force September 3, 1981, art.1; Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), adopted December 18, 1990, A/RES/45/158, art. 1.

¹⁴⁶ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. res. 2106(XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), art. 1. Ethnic origin is also a prohibited ground listed in the CRC, art. 2; CMW, art. 1.

¹⁴⁷ Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006 by G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49 at 65, U.N. Doc A/61/49 (2006), entered into force May 3, 2008, art. 5.; CRC, art. 2. The Committee on Economic, Social and Cultural Rights (CESCR) has also recognized that discrimination against persons with disabilities would require “strict scrutiny.” “Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights,” U.N. Doc. E/2009/90, June 8, 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/362/90/PDF/N0936290.pdf?OpenElement> (accessed July 14, 2013), para. 17.

¹⁴⁸ CMW, art. 1.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ “Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights,” para. 17.

¹⁵² The UN Committee on Economic, Social and Cultural Rights has emphasized that “[a] person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping,” contrary to international law. CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights,” 2009, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (accessed January 8, 2013), para. 7.

¹⁵³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (2009), para. 7. See also ICERD, art. 1.; CEDAW, art. 1.; CRPD,

Both direct and indirect forms of discrimination are prohibited.

Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground.... Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of [human] rights as distinguished by prohibited grounds of discrimination.¹⁵⁴

Discrimination can cause poverty and be a hurdle in alleviating poverty, as the World Bank has recognized with respect to gender discrimination. While disaggregated data is not available with respect to each marginalized group, recently published data suggests more than two thirds of extremely poor people in low income countries and lower-middle income countries live in households where the household head is from an ethnic minority group.¹⁵⁵ It also tells us that more than three quarters of extremely poor people live in rural areas.¹⁵⁶

Further, more than 80 percent of people with disabilities live in developing countries, illustrating both the confluence of poverty and disability and the importance of proactively addressing the needs of people with disabilities in development strategies.¹⁵⁷ Human Rights Watch has also documented discrimination based on political opinion in the distribution of aid.¹⁵⁸ In addition, discrimination limits peoples' ability to participate in the development of poverty reduction strategies or government policies and limits access to justice, compounding the problem.¹⁵⁹

art. 2; UN Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), p. 26, para. 10.

¹⁵⁴ CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), U.N. Doc. E/C.12/GC/20 (2009), at para 10.

¹⁵⁵ Sumner, "The New Face of Poverty: How has the Composition of Poverty in Low Income and Lower Middle-Income Countries (excluding China) Changed since the 1990s?," *Institute of Development Studies*, 2012, <http://www.ids.ac.uk/publication/the-new-face-of-poverty-how-has-the-composition-of-poverty-in-low-income-and-lower-middle-income-countries-excluding-china-changed-since-the-1990s> (accessed January 8, 2013): "[T]his finding should be viewed as tentative due to data constraints."

¹⁵⁶ *Ibid.*

¹⁵⁷ World Programme of Action Concerning Disabled Persons, "UN Enable," 2006, <http://www.un.org/esa/socdev/enable/diswpao4.htm>, 4. (accessed December 4, 2012).

¹⁵⁸ Human Rights Watch, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*.

¹⁵⁹ Human Rights Watch, "Discrimination, Inequality, and Poverty: A Human Rights Perspective," January 12, 2013, <http://www.hrw.org/news/2013/01/11/discrimination-inequality-and-poverty-human-rights-perspective>; Human Rights

Eliminating discrimination and ensuring equality may require legislative or administrative reforms to repeal discriminatory provisions or address discriminatory practices by the government or private actors, changes in resource allocation, or educational measures, and may include temporary special measures.¹⁶⁰

Regarding Equality and Non-Discrimination, the World Bank Should:

- Systematically assess the environment for discrimination and marginalization, including obstacles to substantive equality, when analyzing the risks related to and impacts of proposed projects or programs.
- Ensure throughout all stages of projects or programs that all members of affected communities have the opportunity to meaningfully participate. Integrate a disability-inclusive approach into existing and future projects and programs, and ensure that Bank staff have the capacity to support this.
- Strengthen data collection and analysis along grounds of discrimination to increasingly identify barriers to poverty eradication in individual projects. It may not be feasible to disaggregate data by all potential grounds of discrimination, but at a minimum the World Bank should collect data disaggregated by gender, marital status, demographic group (i.e. ethnic background, language, religion), locale (rural/urban/slum household, state/territory), age, and disability.
- Ensure that its systems for measuring results determine the extent to which projects reach marginalized communities and incorporate their inputs and perspectives, including the most poor, women, people with disabilities, and ethnic, linguistic, and religious minorities.

Operationalize Human Rights Due Diligence

The World Bank’s review and update of its safeguard policies provides an opportunity for it to introduce a due diligence framework that will enable it to identify the human rights impacts of its activities, take measures to mitigate negative impacts and maximize positive impacts, and avoid projects and programs that will contribute to or exacerbate human rights violations. Due diligence will vary in complexity with the size of the programs,

Watch, “Letter to the High-level Panel of Eminent Persons on the Post-2015 Development Agenda,” March 24, 2013, <http://www.hrw.org/news/2013/03/24/letter-high-level-panel-eminant-persons-post-2015-development-agenda>.

¹⁶⁰CESCR, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), U.N. Doc. E/C.12/GC/20 (2009), para. 39.

projects, advice or other activities, the risk of severe human rights impacts, and the nature and context of its operations.

On Human Rights Due Diligence, the World Bank Should:

- Conduct human rights checks early in the project planning process, as the Bank does for environmental issues and limited social issues. Assess the present human rights situation, likely effects, and the potential for effectively mitigating adverse impacts. On the basis of this initial analysis, the Bank can determine whether a full human rights impact assessment is required. Publish the rationale for the decision.
- Automatically require human rights impact assessments in projects where past experience shows a risk that human rights may be adversely impacted, such as projects related to major infrastructure, activities within detention facilities, land titling, and those where human rights violations have been reported.
- Undertake human rights impact assessments for any projects in which there is a real risk that human rights may be adversely impacted, and possibly for projects likely to have positive human rights impacts too, so that staff can craft the project in a way that maximizes positive impacts.
- Analyze the human rights impacts throughout the lifecycle of a project and beyond since the impact of human rights violations on people's lives cannot be reduced to a single moment. For example, in the case of women's rights, Human Rights Watch has found that when women's property rights are violated, the repercussions reverberate throughout their lives, often resulting in poverty, inhuman living conditions, and vulnerability to violence and disease for women and their dependents.¹⁶¹ Human rights risks may change over time as the World Bank's operations and operating context evolve.
- In order to respect international human rights law, prohibit violations of the core content of all human rights, which are non-derogable. Only consider measures which may have retrogressive human rights' impacts after determining that there are no reasonable alternatives and that such measures are non-discriminatory, necessary, proportionate taking into account the overall human rights situation.¹⁶²

¹⁶¹ Human Rights Watch, *Double Standards: Women's Property Rights Violations in Kenya*, March 5, 2003, <http://www.hrw.org/reports/2003/03/03/double-standards-o> (accessed April 30, 2013), p. 30.

¹⁶² Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, (Oxford: Hart Publishing, 2003), p. 270

- Publicly and explicitly explain any derogation from human rights standards, justify why it should be viewed as respecting human rights, on balance, and explain measures taken to mitigate and remedy any adverse rights impacts.¹⁶³
- Ensure due diligence reporting is detailed and transparent.
- Ensure remediation measures are transparently developed and administered. Where damage is irreparable, measures should involve sufficient and prompt monetary and non-monetary compensation for victims. Access to forms of redress should not threaten or undermine access to judicial remedies.

Meaningful, Inclusive Participation at the Project Level

It is essential that people affected by World Bank activities have the opportunity to participate in their design and implementation.

The World Bank Should:

- Identify people affected by each activity, either directly or indirectly. Consider existing practices of discrimination and exclusion to ensure that all affected groups or individuals are identified, including, for instance, women of all marital statuses, indigenous peoples, women with disabilities, or people who may be perceived to not support the country's ruling party.
- Ensure that affected people are involved from the early planning stages so as their views will influence the Bank's decision whether to proceed with a proposed project.¹⁶⁴ Should the project proceed, affected people should have a role in its design and implementation, with those most affected being the most involved.¹⁶⁵
- Provide sufficient information in an accessible form to enable people to make informed decisions about projects.¹⁶⁶ This should include details of the potential impacts of the project, alternative methods for undertaking the project, and potential for mitigation of adverse impacts. The information should be sufficiently accessible to overcome cultural barriers.

¹⁶³ Daniel Bradlow, "The World Bank, the IMF and Human Rights," p. 86.

¹⁶⁴ Olivier De Schutter, "Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Mission to Mexico," U.N. Doc. A/HRC/19/59/Add.2, January 17, 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/101/51/PDF/G1210151.pdf?OpenElement> (accessed April 1, 2013), para. 40; CERD, General Recommendation No. 27, Discrimination against Roma, U.N. Doc. HRI/GEN/1/Rev.9 (Vol.II) (2000).

¹⁶⁵ Daniel Bradlow, "The World Bank, the IMF, and Human Rights," p. 82.

¹⁶⁶ Olivier De Schutter, "Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Mission to Mexico," para. 35.

- Provide individuals and communities who may be affected by a project information about potential risks as early as possible in the decision making process.
- Ensure that people can participate freely in discussions about a project, report problems associated with the project, and organize as they may wish. This requires Bank staff examining the degree to which the rights to freedom of expression, association, and assembly are protected in the country, and to take additional measures in certain contexts to ensure that people are able to freely participate in decisions related to the Bank project. In examining the context, Bank staff will need to consider practical as well as legal restrictions on these rights. For example, in certain contexts, despite constitutional protection of the right to free speech, there may be a high number of targeted killings of activists.
- Take additional measures to enable meaningful, inclusive consultation when in difficult operating environments that are not conducive to participative processes.
- Actively work to create safe environments for consultation. This may include seeking an undertaking from the government that there will be no surveillance of Bank consultations and no reprisals for people who take part. Such an undertaking should be included as a condition in the loan agreement.¹⁶⁷
- Improve training to enable staff to meaningfully consult with affected people and civil society, including working with interpreters and recognizing diversity in communities.

Human Rights Impact Assessments

The key tool used to identify and measure the effects of projects, programs, and other activities on human rights is a human rights impact assessment. While integrated environmental and social impact assessments can be used effectively to analyze human rights impacts, they have not been used to do so at the World Bank. Given the reluctance of World Bank staff to consider human rights, the World Bank should require human rights impact assessments through its safeguard policies to ensure systematic assessment of the potential impacts of projects on human rights rather than attempting to achieve this through a social impact assessment.

¹⁶⁷ As Bradlow has said, “It is irresponsible for the Bank to invite people to participate in its activities and then fail to protect them when its interventions result in reprisals from the Borrower State or its agents.” Daniel Bradlow, “The World Bank, the IMF, and Human Rights,” pp. 87-8.

How Does a Human Rights Impact Assessment Differ from a Social Impact Assessment?

- Instrumental concerns for “vulnerability” are replaced by an emphasis on “discrimination,” requiring consideration of patterns of exclusion and multiple forms of discrimination, including gender, disability, age, race, national, ethnic or social origin, language, religion, political opinion or affiliation (perceived or real), sexual orientation, gender identity, marital status, and geographic location.¹⁶⁸
- Human rights jurisprudence would assist in determining the meaning of non-discrimination and equality. This would, for example, ensure that societal biases that may lead to indirect discrimination are identified and that the potential impact of the project is analyzed within that context to consider whether additional measures are necessary to ensure it does not exacerbate discrimination or inequality or whether additional measures analyzed.
- The proposed project is examined against human rights standards, measuring the degree to which the substance of the project itself complies with human rights standards, as well as the degree to which the process of crafting and implementing the project meets these standards. It should cover all factors that might provoke or exacerbate human rights risks.¹⁶⁹
- It does not automatically accept that the project is legitimate. Such a conclusion is only arrived at after an analysis of the rights impact, adequate mitigation of negative impacts consistent with international law, and development of a system for effective monitoring and supervision, which includes a grievance mechanism.
- It should involve an analysis of accountability mechanisms to consider the potential for access to remedy should rights be violated, which few social impact assessments do.¹⁷⁰
- It should be developed in consultation with human rights organizations and other NGOs.¹⁷¹

¹⁶⁸ Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, pp. 267-8.

¹⁶⁹ Nordic Trust Fund, World Bank, “Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,” p.19.

¹⁷⁰ Ibid.

¹⁷¹ World Bank Operational Policy 4.01, para. 19. The World Bank recognizes importance of civil society consultation in Environmental processes.

Through Human Rights Impact Assessments, the World Bank Should:

- Analyze the human rights impacts of a project in its planning phase, ahead of Board consideration, when the project can be halted if human rights impacts prove insurmountable.
- Consider all human rights that could be impacted by the relevant activities, including:
 - Patterns of exclusion and multiple forms of discrimination, including gender, disability, age, race, national, ethnic or social origin, descent, religion, political opinion or affiliation (perceived or real), sexual orientation, marital status, and geographic location.¹⁷²
 - The environment for expression, association, and assembly, including whether repressive NGO laws exist or are about to be enacted, the degree to which civil society can operate freely, the extent to which public protests are allowed, and potential for violence or government reprisals against protestors, those taking strike action, or critics.
 - The framework for land ownership, whether the government forcibly evicts people in violation of international law.
 - The degree to which people whose rights are violated have access to justice, including through a formal legal system, traditional systems, as well as alternative dispute mechanisms. Consider whether grievance mechanisms are culturally appropriate; accessible in terms of language, cost, physically; transparent in decision-making; accountable; and provide measures to prevent against reprisals.¹⁷³
- Consider reports of UN treaty bodies, the UN Human Rights Council, national human rights institutions, and NGOs in order to identify the risks.
- Seek to identify ways to maximize positive human rights impacts, which would be in line with one of the stated goals of the safeguard review and update process to move away from limiting safeguards to doing no harm and emphasizing the importance of doing good.
- Consider whether there are development alternatives with less harmful impacts.
- Consider if and the degree to which adverse rights impacts can be mitigated. Mitigation measures may include: changing the project venue; measures to

¹⁷² Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, pp. 267-8.

¹⁷³ Nordic Trust Fund, World Bank, "Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development," p.19.

overcome entrenched discrimination, including quotas or special training for marginalized peoples;¹⁷⁴ and efforts to get government to commit to protect the rights of protesters, critics, and people who file complaints.

Commit to the Right to a Remedy

The right to a remedy is a core human right. Once victims of human rights violations are identified, it will be essential to remedy the violations. Victims of human rights violations have a right to equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

The World Bank Should:

- Support member states in creating and upholding strong remedies for human rights violations, including human rights violations that Bank activities have contributed to or exacerbated.

Ensure Accountability

Should the World Bank adopt in its safeguard policies commitment to respect human rights in all of its activities, the Borrower would be required to comply.

However, in practice, too often the World Bank does not sufficiently monitor and supervise implementation of the safeguards or enforce compliance. Often staff members describe these policies as “tick box” exercises or necessary for legal reasons, rather than advocating the value of such safeguards for development effectiveness. This can mean they are reluctant to encourage governments to adopt such safeguards in all development efforts. In at least one instance, a government has successfully negotiated non-application of a social safeguard to its country context.¹⁷⁵

¹⁷⁴ As the Convention on the Rights of Persons with Disabilities provides: “Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms: CRPD, art. 2.

¹⁷⁵ See, World Bank, “Country Partnership Strategy for the Federal Democratic Republic of Ethiopia,” August 29, 2012, http://siteresources.worldbank.org/INTAFRICA/Resources/257994-1337109990438/Ethiopia_CPS_SECPO_31Aug2012_CLEAN.pdf (accessed July 14, 2013), p. 47, footnote 87: “A particular risk arises because the Bank’s Operational Policy on Indigenous Peoples (OP 4.10) has not been applied in Ethiopia, in part because of GoE concerns, but also because of uncertainty as to its compatibility with the country context.”

The Inspection Panel will be able to investigate and report on compliance with the new safeguards. The Panel has previously applied international law, including international human rights law, as is currently relevant in the safeguard policies in considering complaints that come before it. This will enable communities to hold the Bank accountable for human rights violations to which it has contributed or exacerbated.

Such reform to the safeguard policies will also mean that the Independent Evaluation Group will be able to include human rights considerations in its evaluations. This will be of great value in terms of raising staff capacity and understanding of the impact of human rights on development effectiveness.

More Specifically, the World Bank Should:

- Via the Board of Executive Directors, appoint a staff member to the Inspection Panel secretariat with expertise in international human rights law.
- Ensure that project level grievance mechanisms enable people to raise concerns about alleged violations of human rights in the context of World Bank investments.
- Ensure that social accountability mechanisms monitor compliance with international human rights law.
- Require adequate project monitoring and supervision, including field visits. Allocate sufficient resources so that Bank staff can effectively supervise the implementation of Bank-financed projects and programs.
- Amend the structure of staff incentives to include criteria such as the quality of project preparation and supervision to ensure compliance with safeguards and avoid or mitigate human rights risks.¹⁷⁶
- Routinely require staff to evaluate the effectiveness of its human rights due diligence in each project to assess whether expected benefits were realized and learn what produces successful human-rights-compliant projects.¹⁷⁷ This is necessary to build staff capacity on human rights, thereby improving compliance, and to enable the Bank to identify human rights violations or situations in which people’s human rights situation has deteriorated as a result of its activities.¹⁷⁸

¹⁷⁶ Independent Evaluation Group (IEG), “The Matrix System at Work - An Evaluation of the World Bank’s Organizational Effectiveness”, 2012, [http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/6BAE8B608D80F266852579E3006DB8AF/\\$file/matrix_eval.pdf](http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/6BAE8B608D80F266852579E3006DB8AF/$file/matrix_eval.pdf) (accessed April 8, 2013).

¹⁷⁷ Daniel Bradlow, “The World Bank, the IMF, and Human Rights,” pp. 85-6.

¹⁷⁸ Sigrun Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (London: Cavendish Publishing, 2001).

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The World Bank lags behind most other development institutions as a result of its lack of commitment to respect human rights in its activities. Its failure to undertake systematic measures to guard against contributing to or exacerbating human rights violations has resulted in Bank-funded programs that facilitate government violations of the human rights of the very people the Bank's work is meant to benefit.

Drawing on Human Rights Watch research around the globe, *Abuse-Free Development: How the World Bank Should Safeguard Against Human Rights Violations* illustrates how certain World Bank programs have neither acknowledged nor mitigated human rights risks. For example, in Ethiopia the World Bank did not identify and avoid risks presented by the Ethiopian government's discrimination on the basis of political opinion or by the government's forcible relocation of some 1.5 million indigenous and other marginalized people under its "villagization" program. In Vietnam the Bank funded programs in government drug detention centers in which Human Rights Watch has documented arbitrary detention, forced labor, torture, and other forms of ill treatment.

The report urges the World Bank to introduce into its safeguard policies – the policies designed to prevent against undue harm to communities or their environment – a commitment to respect and protect human rights and to implement systematic human rights due diligence. Human rights due diligence is not about naming and shaming government partners. It is the process of identifying how the Banks' lending or other support may impact upon human rights and determining how to constructively and proactively avoid or mitigate risks of human rights violations.

The World Bank has recently adopted goals to end extreme poverty and promote shared prosperity. Human Rights Watch believes that achieving this will not be possible if respect for human rights is not central to the Banks operations.

(above) The new village of Bildak in Ethiopia's Gambella region. The semi-nomadic Nuer who were forcibly transferred there by the Ethiopian government's villagization program quickly abandoned the village in May 2011 because there was no water source for their cattle. The World Bank's Promoting Basic Services (PBS) Program has been linked to villagization in Ethiopia.

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(front cover) A detainee in a government-run drug detention center in Vietnam. People in drug detention centers in Vietnam are held without due process for years, forced to work for little or no pay, and suffer torture and physical violence. The World Bank provided funding for various HIV-related services in Vietnamese drug detention centers through a project that concluded in 2012.

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