April 18, 2017

Mr. Alfred de Zayas
Independent Expert on the promotion of a democratic and equitable international order
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: International financial institutions and human rights

Dear Mr. de Zayas,

Human Rights Watch welcomes the opportunity to comment on the World Bank and other international financial institutions’ (IFIs) impacts on the realization of human rights. We are pleased that this is the focus of your next report and attach our input in response to your questionnaire.

Human Rights Watch began to focus on IFIs five years ago, and in this period has documented how the World Bank Group has funded activities that violate human rights, has not worked to prevent or respond to reprisals against critics of their projects, and has not remedied human rights violations linked to its investments. While our in-depth research has focused on the World Bank Group, we have done some research on the regional development banks and the International Monetary Fund (IMF) which similarly reveals that these institutions have insufficient regard for human rights.

Key Human Rights Watch publications include:

- Abuse-Free Development
- At Your Own Risk
- Development Without Freedom
- Harassed, Imprisoned, Exiled
- Toxic Toil
- “Waiting Here for Death”
Thank you for your attention to these issues. We are keen to meet with you while you are in Washington, DC.

Best regards,

Jessica Evans
Senior Advocate on International Financial Institutions
Business and Human Rights Division
Human Rights Watch

\(^1\) NB: This article is awaiting print as of April 18, 2017, and will soon be available at the hyperlink.
1. Human Rights Obligations of the World Bank and other International Financial Institutions (IFIs)

Human Rights Watch believes it is important for UN experts to ground their work on IFIs in the human rights obligations of these institutions. With the exception of the European banks, IFIs often argue that they are bound only by their own internal standards, rather than international human rights standards. In our view it is essential to counter this.

While some have argued that the nonpolitical mandate of the World Bank outlined in its Articles of Agreement precludes it from considering human rights, few argue that the World Bank itself is permitted to violate human rights protected under international law. As an international organization the World Bank derives human rights obligations from customary international law and general principles of law. As a UN specialized agency the

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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. As you know, UN member states are obliged under article 103 of the UN Charter to comply with the Charter over other international agreements in the event of a conflict between the two. 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.

2. New Environmental and Social Framework: binding commitment to human rights remains absent

Over the course of the four-year drafting process of the Bank’s new Environmental and Social Framework (ESF), Human Rights Watch urged the Bank to commit to respect human rights within the operative text and to ensure that human rights risks and impacts were accounted for in the definition of social risks and impacts. The Bank’s final ESF, however,

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5 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.”

6 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 “Tilburg Guiding Principles on World Bank, IMF and Human Rights,” 2002, http://www1.umn.edu/humanrts/instree/Tilburgprinciples.html, (accessed March 31, 2017): “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.”

does not include a binding commitment to the protection of human rights. The Bank snubbed calls from the UN, human rights groups, and many of its shareholder governments in this glaring omission, which, in addition to other remaining problems, leaves the Bank poorly positioned to respond appropriately to the complex human rights challenges many of its projects encounter. Other multilateral development banks and international agencies have recognized that respect for human rights improves development outcomes and have subsequently incorporated human rights commitments and standards into their safeguard policies. The Bank’s rejection of the human rights framework and the suggestion that human rights are merely aspirational undermines decades of progress in international standard-setting that the governments of nearly all World Bank member countries have agreed to respect.

Having missed the opportunity to recognize and implement its human rights obligations in its new ESF, Human Rights Watch recommends that the World Bank Group embark on an inclusive process for drafting a new and separate human rights policy. Such a policy should embody a commitment from the World Bank to integrate human rights into its work by analyzing human rights issues that are relevant to development in the context of its country strategies, to work with governments to comply with their human rights commitments, and to identify and address human rights risks linked to its investments or advice.


8 In a 2013 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. 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.

9 More than 90 percent of the World Bank’s 189 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 4 have ratified the International Convention on the Rights of the Child; 183 have ratified the International Convention on the Elimination of All Forms of Discrimination against Women; 172 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; 161 have ratified the International Covenant on Economic, Social and Cultural Rights.

3. Commitment to Participatory Development Pales in the Context of Shrinking Spaces for Civil Society

Development banks have increasingly emphasized the importance of public participation for effective development. Meanwhile, in recent years, a growing number of governments have embarked upon broad and sometimes brutal campaigns to shut down the space for civil society activity, in some cases going so far as to criminalize independent human rights work. These abusive measures can prevent people from participating in decisions about development, from publicly opposing development initiatives that may harm their livelihoods or violate their rights, and from complaining about development initiatives that are ineffective, harmful, or have otherwise gone wrong. These broader trends toward repression have profound impacts for development projects. Not only do many community members and activists face an increasing risk of reprisal for speaking out against projects that enjoy government support, independent groups who could otherwise help communities articulate their concerns and perspectives about development projects face similar challenges. The World Bank Group and other IFIs have not taken meaningful steps toward creating an enabling environment for participation and accountability when they finance projects in countries that are closing or have effectively closed civil society space or routinely punish dissent.

Human Rights Watch was one of 169 organizations to draft and support a statement calling on IFIs to assume their responsibility to ensure meaningful and effective participation in development projects. We sent this statement to the World Bank and regional development banks, but we have not seen them meaningfully implement the seven recommendations outlined.

For example, the World Bank, International Finance Corporation, and the Asian Development Bank are invested in, among other sectors, the agriculture sector in Uzbekistan. The Uzbek government continues to deny freedom of speech, association, and assembly, and torture and ill-treatment are endemic to the criminal justice system, which

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suffers from a systemic lack of due process rights. Many Uzbek citizens risk politically-motivated charges to expose the harsh realities of the government’s forced labor system in the cotton sector and document other human rights abuses. For this, some are routinely harassed, detained, imprisoned, and ill-treated in custody. In this environment, the IFIs have not taken any measures—or pressed the government to take measures—to ensure that community members and independent groups can monitor forced labor and other rights issues in IFI-financed project areas without risk of reprisal. Nor have the IFIs taken steps to ensure that individuals and groups can complain to the institutions or their accountability mechanisms without risk of retaliation.

At a minimum, as Human Rights Watch and others recommended at the time, the IFIs should have included a covenant in the loan agreement allowing independent civil society and journalists unfettered access to monitor forced labor and child labor, along with other human rights abuses within the IFI project areas and to ensure that no one faces reprisals for monitoring human rights violations in the area, bringing complaints, or engaging with monitors. World Bank staff advised in response that their legal advisors had told them such a covenant was not possible.

In Azerbaijan, while the Extractive Industries Transparency Initiative (EITI) has pressed the government to reverse its crackdown on independent civil society, ultimately resulting in its suspension from the initiative on March 9, 2017, IFIs have remained silent with the exception of the EBRD. The World Bank and regional development banks have endorsed

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15 At Your Own Risk, p. 112.

the EITI, as well as generally emphasizing the importance of participation, civil society, and accountability. Despite this, the IFIs have continued to fund significant extractives industries projects without working with the government to reverse its crackdown on independent civil society, as documented in Human Rights Watch’s October 2016 report, Harassed, Imprisoned, Exiled.\footnote{Human Rights Watch, Harassed, Imprisoned, Exiled: Azerbaijan’s Continuing Crackdown on Government Critics, Lawyers, and Civil Society, October 2016, https://www.hrw.org/sites/default/files/report_pdf/azerbaijan1016_web.pdf.}

4. IFIs Do Not Work to Prevent or Respond to Reprisals Against Critics

Linked to the above point, IFIs have done little to prevent or respond to reprisals against critics of projects that they finance. Human Rights Watch’s 2015 report \textit{At Your Own Risk: Reprisals against Critics of World Bank Group Projects} documents numerous reprisals against individuals and communities critical of World Bank Group projects.\footnote{Human Rights Watch, \textit{At Your Own Risk: Reprisals against Critics of World Bank Group Projects}, June 22, 2015, https://www.hrw.org/sites/default/files/report_pdf/worldbank0615_4up.pdf.} It describes how people in Cambodia, India, Uganda, Uzbekistan, and elsewhere have faced reprisals from governments and powerful companies for criticizing projects financed by the World Bank and the International Finance Corporation (IFC). Despite this research, the World Bank Group and other IFIs have done very little to address the very real risk of reprisals. Please see Human Rights Watch’s recommendations to the World Bank Group, which apply equally to other IFIs, attached.

People affected by IFI projects can bring complaints to internal accountability mechanisms, such as the World Bank’s Inspection Panel. In response to the above-mentioned report, several IFI accountability mechanisms are in the process of developing guidelines to prevent, monitor, and respond to reprisals. For example, on March 30, 2016, the Inspection Panel published \textit{Guidelines to Reduce Retaliation Risks and Respond to Retaliation During the Panel Process}.\footnote{World Bank Inspection Panel, “Guidelines to Reduce Retaliation Risks and Respond to Retaliation during the Panel Process,” March 30, 2016, http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2016%20Retaliation%20Guidelines.pdf (accessed April 12, 2017).} This is a welcome development, which we encourage other accountability mechanisms and the institutions themselves to build on.
Human Rights Watch urges accountability mechanisms to:

- Analyze the risk of reprisals and other security risks linked to every complaint received and proactively discuss with complainants;
- Take all necessary measures to ensure complainants who ask to have their identities be kept confidential are kept so throughout the process;
- Throughout and following the accountability process, actively monitor for reprisals including by asking each of the complainants whether they or people closely associated with them had any security concerns or had faced any problems whatsoever, particularly following community visits;
- Work with the institution to develop an early warning system to identify threats or other security issues particularly for those who have filed or are considering filing a complaint or are otherwise critical of a project, to analyze the risks, and to promptly implement protection measures; and
- Work with IFI management to respond strongly to any reprisals linked to their cases to ensure that the security of complainants and others is restored and maintained, as is their ability to continue their work as human rights defenders, while also using every avenue available to respond to such reprisals directly.

5. IFIs Should Take Proactive Measures to Identify and Address Entrenched Discrimination

Discrimination can both cause poverty and be a hurdle in its alleviation. While disaggregated data is not available with respect to each marginalized group, published data suggests that more than two-thirds of extremely poor people in low-income countries and lower-middle income countries live in households where the head of household is from an ethnic minority group.\(^2^0\) It also tells us that more than three-quarters of extremely poor people live in rural areas.\(^2^1\) Furthermore, more than 80 percent of people with

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\(^{2^1}\) A. Sumner, “The New Face of Poverty?,” pp. 7.
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. Human Rights Watch has also documented discrimination on the basis of political opinion in the distribution of aid. Discrimination limits peoples' ability to participate in the development of poverty reduction strategies or government policies and limits access to justice, compounding the problem.

The fundamental human rights guarantees of equality and non-discrimination are legally binding obligations and do not need instrumental justifications. There is also a growing body of evidence that human rights-based approaches, which include an emphasis on advancing substantive equality for marginalized groups, can lead to more sustainable and inclusive development results. 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.

Human Rights Watch urges IFIs to increasingly take proactive measures to identify and address entrenched discrimination, both direct and indirect; to lend their analysis and voice to dismantling discrimination and recognizing it as a hurdle to development; and to avoid and remedy discrimination for which they may be responsible. While the World Bank has moved toward addressing discrimination in the Bank Directive Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups, the directive concerningly does not address all forms of discrimination recognized under international law, particularly language, property, birth, political opinion, and race. We encourage IFIs to


consistently, privately and publicly, raise concerns with governments when authorities discriminate against people on any prohibited grounds through either laws or practice, when opportunities arise. This would include:

- Analyzing the environment for discrimination and marginalization in every country partnership strategy or interim strategy note. Articulate forms of discrimination as challenges and risks for development and promote policies designed to realize substantive equality for marginalized and excluded groups.
- Systematically assessing the environment for discrimination and marginalization, including obstacles to substantive equality, when analyzing the risks related to and the impacts of proposed projects or programs. Throughout all stages of projects or programs, ensure 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 has the capacity to support this.
- Articulating any concerns regarding discrimination and marginalization, including obstacles to substantive equality, in both routine and high level meetings with government officials, and draw on evidence indicating that such a non-discriminatory environment leads to more sustainable development results.
- Strengthening data collection and analysis along grounds of discrimination to increasingly identify barriers to poverty eradication. It may not be feasible to disaggregate data by all potential grounds of discrimination, but at a minimum the IFIs 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.
- Ensuring systems for measuring results determine the extent to which projects reach marginalized communities and incorporate their inputs and perspectives, including the most poor, women, indigenous peoples, people with disabilities, gender and sexual minorities, ethnic, linguistic, and religious minorities, and people holding different political and other opinions.

6. IFIs Should Consistently Work to Advance Fiscal Transparency and Accountability

IFIs generally recognize the importance of avoiding corruption and fiscal transparency and accountability. In practice, however, IFIs are selective when they raise these standards. For
example, in Egypt, the IMF chose not to raise with the government the lack of transparency and accountability over the military budget when agreeing an US$12 billion loan.27 The IMF’s Manual on Fiscal Transparency, which provides guidance on the implementation of its Fiscal Transparency Code, recognizes that these standards should apply to military revenue and expenditure, but in practice the institution has not used its leverage to support progress in this area.28 Other IFIs similarly fall short in this regard.

7. IFIs Should Support Governments in Realizing their Obligations to Regulate Business

Governments have an obligation to regulate the practices of companies to ensure that they do not violate human rights.29 IFIs should assist governments in this venture, but recognition of governments' human rights obligations are absent from IFI advice about company regulation. In addition to integrating this into the advice that it provides, the IFC could support improved government regulation by including country-by-country analysis of governments’ realization of this obligation in their annual “Doing Business” report.