

The World Bank and Human Rights: The Need for Greater Accountability

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I. INTRODUCTION

The World Bank, as an international institution receiving public financial support, has long been in the spotlight of civil society organizations concerned about the environmental and social impacts of its lending activities. After decades of lending that promoted a paradigm of economic growth but paid scant attention to the environmental and social costs of Bank projects, the public has insisted that public funds not be used for projects that harm the environment or externalize development costs to the poorest members of society.¹ In response to pressure from civil society and donor governments, the World Bank has adopted a set of binding policies governing a broad array of its activities, including mitigation of the social and environmental impacts of Bank lending.

The development of the social and environmental policy framework at the World Bank was an important step in moving the institution toward a rights-based approach to development, greater accountability, and the goal of sustainable development. On paper, the Bank's policies are considered to be among the most comprehensive in the world. The policies require Bank staff and borrowers to consult with and provide information to local communities; carefully assess and minimize the risks (economic, social, and environmental) associated with projects; avoid displacement of people and ensure that displaced persons improve or at least restore their standard of living; and respect the rights and vulnerabilities of indigenous peoples. The policies provide qualitative benchmarks against which project design and performance can be measured, and they should help guide the transition of Bank activities toward sustainable development.

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1. See Frances Seymour, *The World Bank and Environmental Sustainability*, in *LENDING CREDIBILITY: NEW MANDATES AND PARTNERSHIPS FOR THE WORLD BANK* 43, 43-44 (1996). See also CATHERINE CAUFIELD, *MASTERS OF ILLUSION* (1997).

While the shift in the discourse at the Bank has been significant, there is a gap between the rhetoric and the implementation of the policy framework. The unfortunate reality is that these “safeguard” policies are often violated, and people whose rights are harmed have only limited access to recourse and remedy. Again due to pressure from civil society and member governments, the Bank was required to improve its accountability mechanisms through the creation of a quasi-independent Inspection Panel. Yet troublesome gaps remain in the system, preventing local people whose rights are violated from obtaining an effective remedy.

There is growing recognition (especially from the outside) that the Bank’s mandate of poverty alleviation is compromised when its lending activities undermine respect for human rights and the environment. As a result, the World Bank is increasingly challenged to consider the human rights implications of its lending decisions and to recognize that respect for human rights is essential to sustainable development and poverty alleviation.

The challenges are multifaceted, reflecting the many ways that World Bank activities can undermine basic human rights. At the country level, “the disproportionate impacts of Bank-supported structural adjustment policies on the poorest sectors of society have often been cited as undermining, if not violating, economic and social rights,” as well as subverting the Bank’s overall development mission.² The Bank’s history of involvement with involuntary resettlement has been a well-documented failure, resulting in forcible impoverishment of displaced communities and having particularly severe impacts on indigenous peoples and ethnic minorities.³ The Bank is frequently criticized for providing financial backing and an aura of legitimacy to regimes that are known to have committed serious violations of human rights or that have a reputation for corruption.⁴ In addition, there are

2. David Hunter, *The Role of the World Bank in Strengthening Governance, Civil Society, Human Rights, in LENDING CREDIBILITY: NEW MANDATES AND PARTNERSHIPS FOR THE WORLD BANK*, *supra* note 1, at 65, 78. See also *The Right to Adequate Housing*, U.N. Comm. on Economic, Social, and Cultural Rights, 6th Sess., art. 11(1), Gen. Comment 4, at ¶ 19 (1991), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 (1994). “International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing.” *Id.*

3. See *infra* Part III, discussing involuntary resettlement.

4. See, e.g., Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, 15 HARV. HUM. RTS. J. 227 (2002). See also Witness for Peace, *A People Dammed: The Impact of the World Bank Chixoy Hydroelectric Project in Guatemala*, available at <http://www.witnessforpeace.org/apd.html>. The report “offers complete documentation of the massacres which occurred in Rio Negro, the area directly behind the World Bank-funded Chixoy Dam, and the continued abuses and unfulfilled commitments suffered by the massacre survivors over the past 15 years.” *Id.* Witness for Peace notes that the World Bank has acknowledged the harm and has pledged to improve the resettlement conditions of the surviving villagers. However, “by providing loans to countries where the rule of law is not upheld, or where public officials cannot be held accountable for their actions, the Bank cannot be sure that its funds will not help defray the costs of repression against people who ‘get in the way’ of a government’s plans. The Bank provided financing and technical assistance for a project carried out by a military government with a notorious record of human rights abuses Witness for Peace has added its voice to the chorus of human rights advocates who are urging that repressive governments be denied international financing by such institutions as the World Bank.” *Id.* See also KORINNA HORTA ET AL., ENVIRONMENTAL DEFENSE FUND, CENTRE POUR

situations where persons who attempt to exercise rights recognized by World Bank policies—such as participatory and consultation rights⁵ or the right to file a complaint to an accountability mechanism such as the Inspection Panel⁶—suffer human rights violations for occupying the political space provided by World Bank policies.⁷

Despite such examples of the intersection between the World Bank's activities and human rights violations, the institution has been reluctant to consider or address the human rights implications of its lending activities. Given the devastating history that lurks in the closet, the World Bank is understandably reluctant to acknowledge its responsibility for human rights concerns. It is precisely for this reason that global civil society will have to take the lead in continuing to demand justice for harms committed and a more sustainable path for the future.

Contributing to the debate over the Bank's relationship to human rights, this Article examines certain aspects of citizen-based enforcement of rights contained in the Bank's social and environmental policies. The Article specifically focuses on the Bank's policy and practice of involuntary resettlement in the context of its commitments to economic and social rights. The Article will explain the significance (and limitations) of the World Bank Inspection Panel, a citizen-driven accountability mechanism. The Article will contrast the Bank's rhetoric with the reality of its practices regarding rule of law and accountability, and make the case for further reform. Finally, the Article proposes the creation of a new mechanism that could help bridge the gap between policy and practice, protect the rights of project-affected people, and move the Bank toward the elusive goal of sustainable development.

II. THE CIVIL AND POLITICAL DIVIDE

The World Bank differentiates between human rights that are considered civil and political and those that are considered economic, social, and cultural.⁸ The Bank has described its approach as follows:

L'ENVIRONNEMENT ET LE DEVELOPPEMENT, ASSOCIATION TCHADIENNE POUR LA PROMOTION ET LA DEFENSE DES DROITS DE L'HOMME, *THE CHAD CAMEROON OIL AND PIPELINE PROJECT: PUTTING PEOPLE AND THE ENVIRONMENT AT RISK* (1999), available at http://www.environmentaldefense.org/documents/728_ChadCameroon_pipeline.pdf.

5. The principle of consultation and participation is embedded in several Bank policies, including Environmental Assessment, Poverty Reduction, Indigenous Peoples, Involuntary Resettlement, and Gender Dimensions of Development. Kay Treacle, *The World Bank and ESC Rights*, in *CIRCLE OF RIGHTS: ECONOMIC, SOCIAL, AND CULTURAL RIGHTS ACTIVISM* 521 (2000).

6. For example, Madhu Kohli, the designated representative of claimants to the Inspection Panel from Singrauli, India, was beaten after the claim was filed. More tragically, Fulgencio Manuel da Silva, a farmer, poet and activist who helped organize the families affected by the Itaparica dam and who played a major role in the filing of a claim to the Inspection Panel, was murdered on October 6, 1997.

7. For a discussion of the repercussions for human rights of repression associated with local people exercising their participatory rights under Bank policies, see Daniel D. Bradlow, *The World Bank, the IMF and Human Rights*, 6 *TRANSNAT'L. & CONTEMP. PROBS.* 47, 59 (1996).

8. This split reflects the two different documents embodying universally recognized human rights, the

Except in situations where the violation of human rights has created conditions hostile to effective implementation of projects or has other adverse economic consequences, or where there are international obligations relevant to the Bank, such as those mandated by binding decisions of the U.N. Security Council, the World Bank does not take into account the political dimensions of human rights in its lending decisions . . . Consistent with the Articles [of Agreement], the focus of the Bank's efforts in the area of human rights is on those rights that are economic and social in nature.⁹

The Bank's refusal to consider "the political dimensions of human rights" represents an old-school approach that is still quite strongly defended by key constituencies at the Bank, including senior Bank management, Bank staff, and certain powerful borrowing country governments such as China.¹⁰

The logic of this position is questionable, and it has been compromised by changes over time. The World Bank has, for instance, endorsed the right to development, which explicitly merges economic and social rights with civil and political rights. The right to development is defined as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized."¹¹ Furthermore, as discussed below, the Bank has begun focusing on issues of corruption, governance, and rule of law—issues that used to be considered political and therefore taboo, and which are now recognized as prerequisites for sustainable development. Finally, the World

United Nations International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). It is not just the World Bank that has followed this split—campaigning human rights organizations often will engage only issues that are "civil and political" rather than "economic and social."

9. WORLD BANK, GOVERNANCE: THE WORLD BANK'S EXPERIENCE 53 (1994). The relevant section of the Articles of Agreement reads: "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I." WORLD BANK ARTICLES OF AGREEMENT, art. IV, sec. 10 (as amended Feb. 16, 1989), available at <http://www.worldbank.org/html/extdr/backgrd/ibrd/art4.htm#111>.

10. The statement by the United States Executive Director at the time of Board consideration of the China/Tibet project registered great concern about China's position: "We should all reflect on the response of the Bank's largest borrower to the substantive concerns that many shareholders have about this project We were told that a borrower's use of IDA funding is an issue for it and the Bank alone. Direct engagement of IDA donor countries on substantive issues they regard as fundamentally important—such as full compliance with Bank policies—was said to constitute illegitimate interference in internal affairs." Jan Piercy, Statement on the China Western Poverty Reduction Project (June 24, 1999).

11. *Declaration on the Right to Development*, G.A. Res. 41/128, U.N. GAOR, 41st Sess., 97th plen. mtg., Annex, art. I, U.N. Doc. A/RES/41/128 (1986). According to legal scholars, "[t]he original motivation behind the concept of the right to development was the need to enhance the implementation of existing human rights standards and to stress the interdependence of civil and political rights, on the one hand, and the economic and social rights on the other." Ian Browlie, *The Human Right to Development*, ¶ 53, reprinted in DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 331 (1998).

Bank's policy framework provides rights of participation and consultation to affected communities, thereby incorporating "political" rights.

Nonetheless, tension remains, and the ban on "political" considerations continues to be frequently invoked by the Bank. This argument came into play in World Bank decision-making on two recent controversial projects, the Chad/Cameroon Oil and Pipeline Project¹² and the China Western Poverty Reduction Project,¹³ both of which involved high-profile challenges that included concerns about the human rights implications of the projects. For example, there was concern about providing World Bank support and legitimacy to both of these projects despite human rights violations in the project areas, the negative impacts on ethnic minorities, and the questioned ability of the projects to effectively address the development needs of the poorest and most marginalized members of society. Many of these arguments were deliberately ignored by senior Bank management, and were objected to by representatives of borrowing governments. In fact, during a meeting with non-governmental organizations (NGOs) on the China/Tibet project, the regional Vice President rejected the human rights concerns of Tibetan organizations by stating that the Bank could not consider "moral" and political issues.¹⁴

Presumably, the exclusion of issues deemed political also resulted in Bank staff's failure to mention that Chad was in the midst of a civil war in the Project Appraisal Document for the Chad/Cameroon pipeline project.¹⁵ The

12. The Chad/Cameroon Oil and Pipeline project involved a complicated lending package whereby the World Bank Group provided financing to the governments of Chad and Cameroon as well as Exxon-Mobil, Chevron, and Petronas to develop oil fields in southern Chad, construct a pipeline across the rainforests of Cameroon (cutting through indigenous Bakola pygmy territory) and lead the fuel offshore onto ships, destined for consumption in North America and Europe. The project was approved in June 2000. For further information, see <http://www.environmentaldefense.org>. See also Letter from Dana Clark, Center for International Environmental Law, to James Wolfensohn, President, World Bank (May 1, 2000), available at <http://www.ciel.org/Ifi/chadcamwolf.html>: "There are two core human rights issues at stake in the Chad/Cameroon project. One is the Bank's willingness to provide lucrative contracts, political risk insurance, and the ability to exploit otherwise inaccessible markets to private sector partners who have questionable records. The other issue concerns the Bank's willingness to proceed with this project despite an in-country atmosphere of repression, corruption, and armed conflict When human rights violations—by either a private sector sponsor or a borrowing country government—challenge the integrity of a Bank-financed project, the Bank has a mandate as a development institution to factor those considerations into its lending decisions."

13. The China Western Poverty Reduction Project would have involved World Bank support for China's long-standing population transfer program, shifting 58,000 predominantly Chinese farmers into an area that has traditionally been occupied by Tibetan and Mongol herders. The rationale for the project was poverty reduction for the Chinese farmers, but the Bank failed to properly assess the social and environmental impacts in the move-in area and failed to comply with its information disclosure policies. A claim to the Inspection Panel resulted in a detailed investigation that concluded that the Bank had seriously violated its most important social and environmental policies. On July 7, 2000, the Board of Executive Directors rejected Bank Management's proposal to move forward with the project. For further background information, see <http://www.ciel.org>.

14. Jean-Michel Severino, Remarks at a meeting at the World Bank between project staff and representatives of NGOs, including the author (June 17, 1999).

15. WORLD BANK, PROJECT APPRAISAL DOCUMENT: CHAD/CAMEROON PETROLEUM DEVELOPMENT AND PIPELINE PROJECT (Apr. 13, 2000), available at <http://www.worldbank.org/afr/ccproj/project/>

Project Appraisal Document is supposed to contain information that allows the Board of Executive Directors to make an informed decision about the merits of a particular project, including a risk-assessment of the project. Armed conflict clearly poses a variety of economic, environmental and social risks to the integrity and effectiveness of an oil pipeline project.

The failure to report such vital information in the Chad/Cameroon Appraisal Document is indicative of a much more systemic problem: Board members are often denied access to relevant information by Bank staff and Management. In the China/Tibet case, for example, neither Board members nor the public were ever allowed access to the resettlement plan, which allegedly provided the poverty alleviation rationale for the project; it was deemed the property of the Chinese government and therefore was not released.¹⁶

As noted by Korinna Horta in this issue, the political rationale for the exclusion of relevant information results in the Bank wearing blinders to the social context of its lending, a context that has serious implications for the effectiveness of loans, as well as for the way those loans affect local communities. Events subsequent to Board approval of the Chad/Cameroon project corroborated many of the concerns that had been consistently raised by local, national and international civil society organizations.¹⁷

Subsequent to the approval of the pipeline project, the presidential elections in Chad were manipulated by the ruling Deby regime, which had no intention of losing control over eventual oil revenues. An opposition presidential candidate, who also served as the designated representative of claimants to the World Bank Inspection Panel, was arrested and beaten by government authorities.¹⁸ He and other members of the opposition party were

tdpppad.pdf. The PAD's section on "Sustainability and Risks," does not mention armed conflict. There is only a vague reference to instability: "Concerns are being voiced about the potential for this large-scale operation to undermine stability in the project area." *Id.* at 38. The next sentence asserts that the revenue management plan will promote stability. There is no real assessment of the degree of risk or mention of the prevalent tension and occasional fighting in Chad. This information was omitted despite the fact that the Bank has recognized that "[t]here is no greater threat to human rights than war." WORLD BANK, DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK 23 (1998), available at <http://www.worldbank.org/html/extdr/rights/hrtext.pdf>.

16. A document entitled an Involuntary Resettlement plan was prepared in May 1999 and placed in the Bank's public information center in June. This document patently violated the requirements of the Bank's resettlement policy, not least because it was prepared only after public controversy broke out, and not at the time of project appraisal as stipulated by Bank policy. The Voluntary Settlement Implementation plan, which covered the 58,000 incoming Chinese farmers, was never made available.

17. The Bank was thoroughly embarrassed when its much-touted financial monitoring system, theoretically designed to respond to endemic corruption in Chad and Cameroon, failed to prevent the Chadian government's diversion of the very first payment by the oil companies into arms purchases. "It turns out that about \$4.5 million of the first payment to Chad—a \$25 million signing bonus marking the project's groundbreaking—has been secretly spent on weapons, in violation of agreements with the Bank and its sister agency, the International Monetary Fund. Officials of the bank and the IMF are incensed at this betrayal by the Chadian government. Chad argues that it needed the money for its battle with rebel forces in the north . . ." Paul Raeburn, *This Clean Oil Project Is Tainted Already*, BUS. WK. INT'L EDITIONS, Apr. 9, 2001, at 95.

18. Norimitsu Onishi, *Chad: Reelection and Arrests*, N.Y. TIMES, May 29, 2001, at A5. See also Horta, *supra*

released from prison immediately after World Bank President Wolfensohn telephoned President Deby. These events, along with a similar occurrence in the China/Tibet case,¹⁹ are among the most visible examples of the use of violence and intimidation to suppress criticism of development projects, particularly in countries where respect for human rights is weak. Moreover, they illustrate the ability—more frequently denied than exercised—of the World Bank to effectively use its leverage to intervene in human rights situations in borrowing countries.²⁰

III. ECONOMIC AND SOCIAL RIGHTS—EXAMINING THE GAP BETWEEN RHETORIC AND REALITY: THE CASE OF INVOLUNTARY RESETTLEMENT

The Bank considers itself to be in the forefront of efforts to promote economic and social human rights, asserting that “[t]hrough its support of primary education, health care and nutrition, sanitation, housing, and the environment, the Bank has helped hundreds of millions of people attain crucial economic and social rights.”²¹ Of course, fundamental economic and social rights include the right to work and the right to an “adequate standard of living,” which encompasses the rights to “adequate food, clothing, and housing, and to the continuous improvement of living conditions.”²²

The Bank’s stated commitment to economic and social rights is not upheld, however, in Bank-financed projects that require the forced displacement of people who are considered to be “in the way” of development. The World Bank has been involved in hundreds of projects, such as the construction of dams and power plants, which have resulted in the forcible eviction

note 4, at [page #]. The claim filed to the Inspection Panel is available at <http://www.worldbank.org/html/inspectionpanel/index.html>.

19. In the China Western Poverty Reduction Project, two independent researchers and their local Tibetan translator were seized by Chinese police in the project area and detained without consular access for days, during which time they were continuously interrogated. One of the men, Dajia Meston, suffered life-threatening injuries when he fell from a third-floor window while under the control of Chinese security forces. When he regained consciousness in the hospital after having his spleen removed in emergency surgery, and with a broken back and shattered heels, the interrogation continued. The Chinese government agreed to release the men only after a telephone call from President Wolfensohn to Premier Zhu Rongji. Phone call from Peter Stephens, World Bank, to Dana Clark, Center for International Environmental Law (Aug. 19, 2001) (relaying the news that President Wolfensohn had called Premier Zhu Rongji and that the Chinese government had agreed to release the men).

20. When violence broke out in East Timor, the World Bank urged the President of Indonesia “to restore peace in East Timor, and to ensure that those who would use violence to thwart the result of the referendum do not succeed For the international financial community to be able to continue its full support, it is critical that you act swiftly to restore order, and that your government carry through on its public commitment to honor the referendum outcome.” Letter from James D. Wolfensohn, President, World Bank, to His Excellency Prof. Dr. Ing. B. J. Habibie (Sept. 8, 1999).

21. WORLD BANK, *DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK*, *supra* note 15, at 3.

22. *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A(XXI), U.N. GAOR, art. 11(1), U.N. Doc. A/6316 (1976), available at http://www.unhcr.ch/html/menu3/b/a_cescr.htm. See also *Universal Declaration of Human Rights*, art. 25 (1948), available at <http://www.unhcr.ch/udhr/lang/eng.htm>.

of tens of millions of people from their homes, rendering them landless, jobless and without the skills or capacity for future income.²³

The World Bank's policy on Involuntary Resettlement requires that people displaced by Bank-financed projects share in the benefits from those projects, and that their standard of living be improved, or at least restored.²⁴ In practice, however, the minimum requirements of the policy have rarely been met. The norm is that people who are involuntarily resettled suffer a decline in their living standards.²⁵ In 1994, the World Bank Environment Department reviewed all projects in the Bank's portfolio that involved involuntary resettlement and found that overall, "projects appear not to have succeeded in reestablishing resettlers at a better or equal living standard and that unsatisfactory performance still persists on a wide scale."²⁶

Subsequent studies of Bank projects, including those done by the Environment Department,²⁷ the Operations Evaluation Department (which reviews closed projects),²⁸ and the Inspection Panel (which responds to complaints about active projects), have further documented poor performance in projects involving involuntary resettlement and the devastating effect that policy violations and performance failures have on displaced communities.²⁹

23. The Bank does not keep comprehensive records of the numbers of people displaced by Bank lending over the last five decades, or even over the two decades since the Bank has had a resettlement policy. A 1999 World Bank inventory of projects with involuntary resettlement found that more than 2.6 million people were affected by then-current projects involving involuntary resettlement. WORLD BANK, INVENTORY OF PROJECTS WITH INVOLUNTARY RESETTLEMENT (1999). A 1994 review of projects in the portfolio involving resettlement found that "[a]bout 2.5 million people have been scheduled to be moved from their homes, their lands, or both, under the 192 projects of the FY 1986-93 review . . . the number of people to be resettled by new projects has generally exceeded the number resettled under projects closed that year." WORLD BANK, RESETTLEMENT AND DEVELOPMENT: THE BANKWIDE REVIEW OF PROJECTS INVOLVING RESETTLEMENT 1986-1993 2/2 (1994) [hereinafter BANKWIDE REVIEW].

24. WORLD BANK, THE WORLD BANK OPERATIONAL MANUAL, OPERATIONAL POLICY ON Involuntary Resettlement, OP 4.12, para. 2 (2001).

25. The World Commission on Dams (WCD) undertook a review of displacement as part of a multi-year, multi-stakeholder analysis of the development impacts of large dam projects. The WCD's displacement thematic review found that "impoverishment and disempowerment have been the rule rather than the exception with respect to resettled people around the world." LEOPOLDO JOSE BARTOLOME ET AL., DISPLACEMENT, RESETTLEMENT, REHABILITATION, REPARATION AND DEVELOPMENT 7 (WCD THEMATIC REVIEW I.3, Working Paper, 2000). The WCD was an independent commission, initially established by the World Bank and the International Union for the Conservation of Nature, in response to major conflicts over dams. It was comprised of representatives from the various stakeholders affected by dams, including industry and representatives of communities affected by dams, and it was tasked with investigating the social, environmental, and economic impacts of large dams worldwide and developing guidelines for the future. The WCD's final report was issued in November 2000. See WORLD COMMISSION ON DAMS, DAMS AND DEVELOPMENT: A NEW FRAMEWORK FOR DECISION-MAKING (2000), available at <http://www.dams.org/report>.

26. BANKWIDE REVIEW, *supra* note 23, at x.

27. ENVIRONMENTAL DEPARTMENT, WORLD BANK, REGIONAL REMEDIAL ACTION PLANNING FOR INVOLUNTARY RESETTLEMENT IN WORLD BANK SUPPORTED PROJECTS (1995).

28. OPERATIONS EVALUATION DEPARTMENT, WORLD BANK, RECENT EXPERIENCE WITH INVOLUNTARY RESETTLEMENT (1998). The Operations Evaluations Department rates the development impact and performance of all the Bank's completed lending operations. See <http://www.worldbank.org/ocd/about.html>.

29. See, e.g., WORLD BANK INSPECTION PANEL, REPORT AND RECOMMENDATION, ARGENTINA/PARAGUAY YACYRETÁ HYDROELECTRIC PROJECT (1996); WORLD BANK INSPECTION PANEL, REPORT

Evidence has shown that restoration of livelihoods is one of the primary failures of involuntary displacement.³⁰

The consequences of failed resettlement are well-understood. Michael Cernea, the architect of the Bank's policy governing involuntary resettlement, has consistently explained the multi-dimensional economic, cultural, psychological, and structural impacts of forcible resettlement, concluding that "the cumulative effect of all these processes is that the social fabric is torn apart."³¹

In the Singrauli region of India, hundreds of thousands of people have been displaced in the name of development, suffering repeated waves of evictions over the past forty years to make way for eleven open-pit coal mines, six coal-fired power plants, hundreds of associated industries, and a dam project. Since 1977, the World Bank has provided core financing for the industrialization of Singrauli, and has loaned more than four billion dollars to India's National Thermal Power Corporation (NTPC).

A woman living in squalid conditions in an NTPC resettlement colony described involuntary resettlement as follows:

It's a horrible situation, if a person is displaced. I know it very well. You are wandering here and there and have nothing to survive on, neither money nor anything else. In the NTPC area next door, the women have access to water. Here we have to struggle. I have to go to a hand pump, and fetch water from a distance. I am an old person and this is hard. How is it fair? They are consuming so much, eating so much, and we are dying. They are sleeping in soft beds, and we are dying. They are riding in vehicles, and we who have given away all our lands have to walk and trudge. Today we are suffering from so many illnesses, body aches and fever. Now people die of TB, we never heard of such things before NTPC came. I have to go around the resettlement colony to seek sustenance from my neighbors; I have to beg. If we don't get any support, how will we live? The stomach wants food.³²

The impoverishment and disempowerment of displaced persons violates the Bank's mandate of poverty alleviation and directly contradicts the provisions

AND RECOMMENDATION, BRAZIL: ITAPARICA RESETTLEMENT AND IRRIGATION PROJECT (1997); WORLD BANK INSPECTION PANEL, REPORT AND RECOMMENDATION, INDIA: NTPC POWER GENERATION PROJECT (1997), available at <http://www.worldbank.org/html/inspanel/index.html>

30. Amartya Sen, winner of the Nobel Prize in Economics, has noted that "[t]here is plenty of evidence that unemployment has many far-reaching effects other than loss of income, including psychological harm, loss of work motivation, skill and self-confidence, increase in ailments and morbidity (and even mortality rates), disruption of family relations and social life, hardening of social exclusion and accentuation of racial tensions and gender asymmetries." AMARTYA SEN, DEVELOPMENT AS FREEDOM 94 (1999).

31. Michael M. Cernea, *Involuntary Resettlement: Social Research, Policy and Planning*, in PUTTING PEOPLE FIRST: SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT 195 (Michael M. Cernea ed., 2d ed 1991).

32. Interview with Mankuwan, living in Bijpur resettlement colony, Singrauli, India (Feb 2001)

of international human rights law regarding the right to an improved standard of living, the right to adequate housing, the right to property, and the right to work.

The paradox of development-induced displacement has not been entirely lost on the Bank. The World Bank's General Counsel recognized a decade ago that "[t]he heightened risk of impoverishment as a consequence of displacement runs contrary to the Bank's goal of alleviating poverty through developing the productive potential of the poor."³³ The World Bank's Environment Department also noted that "[t]he potential for violating individual and group rights under domestic and international law makes compulsory resettlement unlike any other project activity."³⁴ This is especially true when one considers that forcibly evicted communities tend to be among the most economically and politically marginalized groups in their countries.

The World Commission on Dams has documented the heavy toll that development-induced displacement has had on indigenous peoples, women and children:

Evidence suggests that for a vast majority of the indigenous/tribal peoples displaced by big projects, the experience has been extremely negative in cultural, economic, and health terms. The outcomes have included assetlessness, unemployment, debt-bondage, hunger, and cultural disintegration. For both indigenous and non-indigenous communities, studies show that displacement has disproportionately impacted on women and children.³⁵

The Bank's practice and policy of forcible resettlement directly contradicts the findings of the United Nations Committee on Economic, Social and Cultural Rights, which has determined that "instances of forced eviction are prima facie incompatible with the requirements of the [International Covenant on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant provisions of international law."³⁶ The Committee has interpreted the Covenant as requiring that "international agencies should scrupulously avoid involvement in projects which . . . promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation."³⁷ Furthermore, the Committee has warned that "the practice of forced evictions may also result in violations

33. Ibrahim El. Shihata, *Legal Aspects of Involuntary Population Displacement*, in *ANTHROPOLOGICAL APPROACHES TO INVOLUNTARY RESETTLEMENT: POLICY, PRACTICE, AND THEORY* (Michael M. Cernea & Scott E. Guggenheim eds., 1993).

34. *BANKWIDE REVIEW*, *supra* note 23, at iv.

35. *BARTOLOME*, *supra* note 25, at 6.

36. *The Right to Adequate Housing*, *supra* note 2, at ¶ 18.

37. *Id.*

of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family, and home and the right to peaceful enjoyment of possessions."³⁸

In addition to violating the rights of those evicted, large-scale displacement can also threaten the environment where people resettle and create tension and hostility between resettled persons and the host population. In the case of the China Western Poverty Reduction Project, 100% of the local people interviewed said they feared the environmental impact that would be caused by the new settlers, and many expressed concern about increased ethnic conflict over scarce resources.³⁹

Government-sponsored population transfer programs have a particularly troubled history and can lead to violence and further violations of human rights. A recent article on Indonesia determined that the government's transmigration projects and related voluntary migration are linked to "recent eruptions of violence" in the affected provinces.⁴⁰ The article also noted that "[t]he World Bank has concluded that its half billion dollars in transmigration loans produced 'irreversible impacts' on indigenous peoples—including seizure of land and destruction of traditional subsistence patterns by short-sighted development schemes."⁴¹

Despite the well-known risks to affected populations, a well-documented history of failure to meet the terms of its resettlement policy, and the inconsistency of Bank and borrower practice with international human rights law, the World Bank has failed to take responsibility for the problems generated by displacement. While the number of people affected by resettlement is increasing,⁴² the Bank is actively taking steps to limit its own responsibility for the suffering of displaced populations by weakening its resettlement policy and attempting to shift blame to borrowing governments in the context of Inspection Panel investigations.

Resentment of the injustices committed by the World Bank is growing at the grassroots level. The Bank and all member governments therefore have a vested interest in resolving the problems that plague resettlement projects.

A long history of institutional denial or inadequate response to life-threatening conditions may force people toward action on the violent end of the response continuum. And, conversely, creating and employing mechanisms that allow confrontation, negotiation, and change within the existing system may stimulate the devel-

38. *Id.* at ¶ 5.

39. See WORLD BANK, CHINA: WESTERN POVERTY REDUCTION PROJECT ENVIRONMENTAL INFORMATION PACKAGE 3, 65–66 (1999), available at <http://www4.worldbank.org/s/projects/Project.asp?pid=P046564> (last visited Feb. 20, 2002).

40. Tracy Dahlby, *Indonesia: Living Dangerously*, NAT'L GEOGRAPHIC, Mar. 2001, at 80.

41. *Id.* at 87.

42. See Raeburn, *supra* note 17.

opment of further rights-protective problem-solving mechanisms, thus minimizing the potential for future conflict.⁴³

The Bank has long turned a blind eye to the harms caused by policy violations, especially the suffering induced by Bank-supported resettlement projects. In an era of globalized protest and growing discontent by affected communities, the Bank's ostrich-like approach will only increase resentment. The impoverishment and disempowerment that has accompanied failed World Bank projects will contribute to growing social inequity and resulting unrest, making the world a less just and less stable place.

As noted recently by President Wolfensohn, "[o]nly with poverty reduction will peace be possible: an unequal planet will be a planet of war and violence."⁴⁴ Given the clear track record of impoverishment and social conflict associated with forced resettlement, it is time for the Bank and borrowers to move away from this failed development model. There should be a moratorium on new projects involving involuntary resettlement until the Bank demonstrates that it is capable of meeting the terms of its own policy. In addition, the Bank must implement a system of negotiated settlements with affected communities and develop remedial measures that address historical and ongoing violations of the Bank's resettlement policy.⁴⁵

IV. DEMANDING ACCOUNTABILITY AT THE WORLD BANK

The World Bank's social and environmental policies were developed in the 1980s and 1990s in an attempt to shift the Bank toward sustainable development through the avoidance and mitigation of the negative impact of Bank lending, and the increased involvement and participation of local people. Until the advent of the Inspection Panel, however, local people had no institutional means of defending their rights and interests when policies were violated. As a result, the Bank continued to provide financial and institutional support for many environmentally destructive projects that violated the rights and interests of affected communities.

The controversy over the Sardar Sarovar dam on the Narmada River in India was an historical watershed for the World Bank, and an important landmark in the struggle for accountability. In response to a grassroots international campaign against the Sardar Sarovar project, the Bank agreed for the first time to commission an independent review of its role in a development project. The review team for the Sardar Sarovar dam project became

43. Barbara Rose Johnston, *Crisis, Chaos, Conflict and Change*, in *LIFE AND DEATH MATTERS: HUMAN RIGHTS AND THE ENVIRONMENT AT THE END OF THE MILLENIUM* 330 (Barbara Rose Johnston ed., 1997).

44. News Release No. 2002/013/S, World Bank, Rule of Law Central to Fighting Poverty (July 9, 2001).

45. The terms of the World Bank's policies continue to apply to all projects until the loan has been repaid.

known as the Morse Commission, and its final report was devastating.⁴⁶ It found that the Bank had largely disregarded its policies on involuntary resettlement and environmental assessment, and that it had also knowingly tolerated its borrower's violation of the policies. The report also documented considerable human rights and environmental consequences of these policy violations.

The World Bank was further scandalized that same year when an internal review of the Bank's portfolio was leaked to the public. The report, authored by Bank Vice President Willi Wapenhans, documented and criticized the Bank's pervasive "culture of approval," in which the incentive structure encouraged staff to move money out the door quickly, without adequate attention to project quality or mitigation of the social and environmental impact of projects.⁴⁷

Evidence of mismanagement and poor governance from both internal and external reviews galvanized criticism of the Bank's accountability failures. Finally, in 1993, the campaign for greater accountability led the Board of Executive Directors to authorize the creation of the Inspection Panel and to approve an improved policy on information disclosure.⁴⁸ While these were landmark reforms from the perspective of affected communities, they have not been welcomed warmly at the Bank. The Inspection Panel has been under attack almost continuously since its creation, and the information disclosure policy is now being revised.⁴⁹

The recent China/Tibet investigation also demonstrated that the flawed staff incentive system and "culture of approval" originally documented by the Wapenhans report is still very strong inside the Bank. This "culture of approval" is wedded to the Bank's current emphasis on pleasing the client (the borrowing government), and such internal pressures may have greater influence with Bank staff and management than the need to comply with the objectives of the Bank's social and environmental policies.

V. THE INSPECTION PANEL: RECOURSE BUT OFTEN NO REDRESS

The Inspection Panel is a permanent, quasi-independent body that receives complaints about violations of Bank policies directly from local people affected by Bank-financed projects. The Panel provides a forum where

46. BRADFORD MORSE & THOMAS BERGER, *SARDAR SAROVAR: THE REPORT OF THE INDEPENDENT REVIEW* (1992).

47. WILLI WAPENHANS ET AL., *WORLD BANK, REPORT OF THE WORLD BANK'S PORTFOLIO MANAGEMENT TASK FORCE* (July, 1992) (on file with the Harvard Human Rights Journal).

48. In 1993, the Board of Executive Directors passed a resolution authorizing the creation of the Inspection Panel, which came into existence in 1994. World Bank, IBRD Resolution No. 93-10/ IDA Resolution No. 93-6 (1993), available at <http://www.worldbank.org/inspectionpanel> (last visited Feb. 20, 2002).

49. For a discussion of the revisions to the information disclosure policy, see <http://www.bicusa.org/mdbs/wbg/info.htm> (last visited Feb. 20, 2002).

local people can voice their concerns at the highest level of the institution.⁵⁰ The creation of the Inspection Panel was an important development in international law (which has long been considered the province of nation-states) and the governance of international institutions.

The Inspection Panel process allows two or more local people to request an independent investigation into the Bank's role in a project.⁵¹ To be eligible for review, the claim must focus on the actions or omissions of the Bank (not the borrower) and allege that those actions have caused—or are threatening to cause—material harm in violation of the Bank's policies and procedures. The jurisdiction of the Panel is defined by the Bank's policy framework: the Panel evaluates the extent to which a project is in compliance with Bank policies, and the harm, if any, suffered by the claimants as a result of policy violations. The Panel is intended to be a forum of last resort, and local people must first exhaust other remedies by raising their concerns with the Bank prior to filing a claim. Management is given an opportunity to respond in writing to allegations made in the claim, and the Panel evaluates the merits of both submissions.

Once it has conducted an investigation—which may include field visits, interviews with Bank staff, and review of relevant files—the Panel prepares a report and recommendations for the Bank's Board of Executive Directors, detailing its findings. Management then has six weeks to develop a response plan, outlining its own recommendations for bringing the project into compliance with Bank policies. According to both the Board Resolution and Panel Procedures, the Board is then required to review the Panel report and Management's response plan (often called "action plans"), and determine what remedial steps, if any, the Bank must take to rectify the problems identified by the Panel.⁵²

Herein lies the weak link in the process: the Inspection Panel does not have oversight authority over the implementation of those remedial measures; nor is it able to provide the Board with an assessment of whether Management's proposed remedial measures would satisfy the concerns of the claimants and/or bring the project into compliance with Bank policy. The

50. For further information about the Inspection Panel, see <http://www.worldbank.org/inspectionpanel>. See also DANA L. CLARK, *THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW, A CITIZEN'S GUIDE TO THE WORLD BANK INSPECTION PANEL* (1999), available at <http://www.ciel.org/Publications/citizensguide.pdf> (last visited Feb. 20, 2002).

51. A request can be filed by any two or more adversely affected people living in the project area, an appointed local representative acting as agent for the affected people, or, in exceptional circumstances, a non-local representative acting as agent for the affected people. In special cases, an Executive Director of the World Bank may file the request. World Bank Inspection Panel, *Operating Procedures*, para. 4 (1994), available at <http://www.worldbank.org/inspectionpanel>. The most common form of request is from local people and/or their local representatives. There has only been one case of "exceptional circumstances" where a claim was filed by a non-local representative acting under authorization from people in the project area—the China Western Poverty Reduction Project. In that claim, the Board also invoked its power to request an investigation by the Panel of the policy violations alleged by the claimant.

52. *Id.* at para. 55.

lack of independent oversight has meant that remedial action plans do not always lead to satisfactory remedies or action.

In several cases, however, the outcomes have satisfied the concerns of the claimants. The cleanest outcomes have been in those situations where the Panel investigation leads Management or the Board to cancel the Bank's involvement in a project, which happened in the Arun dam project in Nepal and the population transfer program in the China Western Poverty Reduction Project. Furthermore, the filing of a claim by a human rights group in Argentina resulted in the reinstatement of funding for a food security program.

Results have been more mixed, however, when projects are already in implementation. In Singrauli, for instance, there were limited improvements in the resettlement package, but affected villagers have not achieved restoration of their livelihoods or previous standards of living. In the Itaparica resettlement case, involving communities that have suffered for decades, the promised action plan has been a farce. And in the case of the Yacyretá dam in Argentina and Paraguay, very little mitigation of harm has occurred despite numerous action plans and studies.⁵³

The key problem in projects involving action plans is that neither the Panel nor the claimants have an oversight role with respect to the implementation of remedial measures. The decision to exclude the Panel from supervision of remedial activities was a deliberate decision by the Board, which emphasized in a 1999 review of the Panel that

“action plans” are outside the purview of the Resolution [creating the Inspection Panel], its 1996 clarification, and these clarifications. In the event of agreement by the Bank and borrower on an action plan for the project, Management will communicate to the Panel the nature and outcomes of consultations with affected parties on the action plan The Panel may submit to the Executive Directors for their consideration a report on their view of the adequacy of consultations with affected parties in the preparation of the action plans. The Board should not ask the Panel for its view on other aspects of the action plans nor would it ask the Panel to monitor the implementation of the action plans.⁵⁴

While denying oversight authority to the Panel, the Board failed to create an alternative mechanism for determining the success of Management's action plans in bringing projects into compliance with Bank policies.

53. These Inspection Panel cases, among others, will be profiled in a forthcoming book about the Inspection Panel, which is being co-authored by the author. Meanwhile, further information about the claims can be found at <http://www.worldbank.org/inspectionpanel>, and <http://www.ciel.org>.

54. World Bank, *Conclusions of the Board's Second Review of the Inspection Panel*, paras. 15–16 (Apr. 20, 1999), available at <http://www.worldbank.org/html/extdr/ipwg/secondreview.htm> (last visited Feb. 20, 2002).

Although each claim to the Panel has its own fact scenario, the Board generally requests that Management submit periodic progress reports on the action plans. However, the Board is overwhelmed with information and quickly loses focus on past cases. It does not have a standing committee to track the implementation of action plans or to evaluate the effectiveness of remedial measures in Inspection Panel cases. Attention to action plans is therefore minimal. There is rarely any critical discussion of Management's progress reports, and the Board largely accepts Management's word on the status of a project without independently verifying the facts on the ground or surveying the opinions of claimants. Accordingly, there is little threat of Board interference with Management's course of action. As a result, there are many "lost cases"—cases where the Inspection Panel finds violations of Bank policies resulting in harm to claimants, but where no effective remedy is provided.

The lack of a system of redress⁵⁵ is the key weakness in the Inspection Panel process and in the institutional architecture of the Bank. Achieving real change on the ground in particular projects has proven to be quite difficult. Although people affected by World Bank projects have rights under the policy framework and an adequate forum for raising concerns about violations, they are frequently denied an effective remedy. As legal wisdom dictates, a right without a remedy is no right at all.⁵⁶

VI. GOVERNANCE AND RULE OF LAW

When it comes to governance and rule of law, we face the situation where published statements by the Bank and policy advice given to governments do not match what is taking place within the institution itself. For example, the Bank recently recognized "that the rule of law was essential in the fight against corruption, the empowerment of the poor—especially women—and the proper functioning of the economy."⁵⁷ The Bank proudly states that by "helping fight corruption, improve transparency and accountability in governance, strengthen judicial systems, and modernize financial sectors, the Bank contributes to building environments in which people are better able to pursue a broader range of human rights."⁵⁸

55. Redress is defined as (1) the setting right of what is wrong; (2) relief from wrong; (3) compensation for a wrong; (4) to set right; (5) to correct or reform; (6) to remedy or relieve. THE RANDOM HOUSE DICTIONARY 750 (2d ed. 1980). In legal terms it is defined as "relief or remedy." BARON'S LAW DICTIONARY 394 (2d ed. 1984).

56. "For it is a settled and invariable principle . . . that every right, when withheld, must have a remedy, and every injury its proper redress." 3 WILLIAM BLACKSTONE, COMMENTARIES 109 (*quoted in* Marbury v. Madison, 5 U.S. 137, 163 (1803)).

57. World Bank News Release, *supra* note 44. President Wolfensohn, noting a significant and causal relationship between rule of law and income of nations, literacy and mortality, stated, "[t]here can be no good and clean government without respect for the rule of law, nor transparent and well-functioning financial markets, nor equitable and sustainable development." *Id.*

58. WORLD BANK, DEVELOPMENT AND HUMAN RIGHTS 3 (1998). These ideas were further elaborated last year in a World Bank Issue Brief which stated: "Just as the World Bank has recently turned its

In the not too distant past, Bank staff were forbidden from openly discussing corruption matters relevant to Bank projects, because corruption was labeled a "political" issue. The Bank has gradually learned, however, that corruption can undermine development. Furthermore, when public funds are diverted from the poor and used instead to enhance the power of abusive government officials or agencies, both democracy and the rule of law are compromised.

The World Bank and the United Nations Development Program have recently emphasized that "in order to improve governance and reduce poverty in developing countries, capacity-building efforts must be rooted in local ownership."⁵⁹ Ownership of reform is a critical issue not just for developing countries but also for the international institutions promoting these reforms.

In other words, in order to maintain credibility in promotion of accountability and the rule of law, the Bank must pay greater attention to its own internal accountability crisis. It is important to critically examine how principles of governance and the rule of law are applied at the Bank itself. There is a certain hypocrisy inherent in the Bank's willingness to promote these values as integral to development while failing to take steps to ensure that the Bank itself adheres to the rule of law and, at the very least, is held accountable for violations of its own policies.

There is widespread resistance inside the Bank to the principles embodied in the social and environmental policy framework, and to the Inspection Panel as a tool of accountability. Bank staff resent limitations placed on their discretion and are embarrassed by the Inspection Panel's findings of policy violations and harm. Many borrowing country governments dislike the social and environmental policies, in part because they are perceived as expensive, in part because they give rights to local people that are sometimes beyond the scope of national law, and in part because Bank Management has tended to shift the blame to borrowing countries when implementation problems are identified in the Inspection Panel process. In other words, there is a lack of institutional or borrower ownership of the hard-fought policy reforms that have changed the rhetoric of the Bank's approach to development.

The Bank's systematic process of weakening its policy framework represents another internal rebellion against the rule of law. The "reformatting" of Bank policies is generally viewed by outside experts as an attempt to shield the Bank from accountability through the Inspection Panel process. This "panel proofing" activity is beyond the scope of the present Article, although it is important to recognize that the rights-based approach to de-

attention to the problem of corruption, so, too, has it begun to include the protection of fundamental economic and social rights and the rule of law in its dialogue with its member countries." World Bank, Fact Sheets, *Development, Human Rights and Judicial Reform* (last modified Apr. 2000), *at a glance* at <http://www.worldbank.org/html/extdr/pb/pbrh.htm>

59. Press Release, United Nations Development Program (Sept. 29, 1999).

velopment causes severe discomfort within the Bank, and that the Bank is taking active steps to limit its accountability to adversely affected communities. For example, in October 2001, the Bank's Board of Executive Directors approved Management's revisions to the resettlement policy, incorporating several provisions that weaken the protection of local communities and distance the Bank from its responsibility to ensure that they benefit from Bank-financed projects, while refusing to incorporate language that would have strengthened the policy.⁶⁰

In some ways, the outcome in the China/Tibet case provides hope for the application of a rights-based approach to development. Critics of the project documented very clear violations of the Bank's social and environmental policy framework.⁶¹ After an intense fifteen-month campaign that included an investigation by the Inspection Panel, the Board of Executive Directors rejected Management's plans to continue with the project.⁶² This outcome set new precedent at the Bank, when a majority of the Board rejected a proposal advocated by Bank management. Arguably, the policy framework and the Inspection Panel process worked as intended: through a system of accountability, the Bank was prevented from getting involved in a flawed project despite intense political pressure from the borrowing government and Bank staff.

While the China/Tibet outcome might objectively be viewed as the successful application of the rule of law, the cancellation of the project has fueled anxiety within the Bank. The Bank is worried that governments will stop borrowing from them for controversial projects, such as those involving the displacement of indigenous communities or the construction of large dams, in order to avoid the Bank's high standards and some degree of accountability. Clients would instead turn to the private sector or bilateral credit agencies to finance controversial projects, which, the Bank argues, would reduce the quality of the projects and increase their negative effects.

This argument presupposes that risky projects are inevitable and will move forward without World Bank support. In fact, certain projects, such as the Chad/Cameroon pipeline project, would not take place at all if the World Bank were not involved. Furthermore, the argument implicitly as-

60. For detailed information about the World Bank's revision to the resettlement policy, see <http://www.ciel.org/Ifi/wbinvolresettle.html> (last visited Feb. 20, 2002).

61. See, e.g., Letter from Center for International Environmental Law, to James D. Wolfensohn, President, World Bank (May 28, 1999) (signed by 100 environmental and human-rights organizations); Letter from International Campaign for Tibet, to James D. Wolfensohn, President, World Bank, (June 17, 1999) (signed by 124 Tibet-support organizations). See also CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW, PRELIMINARY ANALYSIS OF WORLD BANK POLICY VIOLATIONS IN THE CHINA WESTERN POVERTY REDUCTION PROJECT, (June 15, 1999), available at <http://www.ciel.org/Ifi/tibet3.html> (last visited Feb. 20, 2002); WORLD BANK INSPECTION PANEL, CHINA WESTERN POVERTY REDUCTION PROJECT: REQUEST FOR INSPECTION (June 18, 1999), available at <http://www.worldbank.org/inspectionpanel>.

62. See News Release No. 2001/004/EAP, World Bank, China to Implement Qinghai Component of the China Western Poverty Reduction Project with its Own Resources (July 7, 2000), available at <http://www.worldbank.org> (noting that "the majority of the Executive Directors did not agree to adopt Management's recommendations").

sumes that it is acceptable for the Bank to lower its standards when dealing with repressive regimes or those that lack political will or capacity to abide by the social and environmental policies. This is contrary to the principle of the rule of law, which requires that both the powerful and the powerless be held to a set of social standards. Furthermore, history has shown that disregard for the requirements of the social and environmental policies subverts the goals of sustainable development and poverty alleviation.

The non-involvement of the World Bank in projects that violate the human rights and environmental integrity of affected communities should be viewed as a natural outcome of moving toward sustainable development: projects that are inherently unsustainable will no longer be supported or subsidized by the public. Accountability and rule of law, as applied in the context of the World Bank, should mean that in certain cases, environmental and social impacts will trump economic and technical (and, indeed, political) justifications for a project. The logical conclusion is that there will be some projects that cannot be financed by the World Bank.

Finally, the principles of accountability and rule of law imply that the Bank should be held accountable for development outcomes in projects that it has financed. As noted above, claimants to the Inspection Panel are often frustrated by the lack of real change on the ground, the failure to mitigate or adequately compensate for the harm caused by the Bank's role in policy violations, and the Bank's failure to bring projects into compliance despite well-documented problems. In addition, people who have been involuntarily resettled and whose plight has been repeatedly documented do not have an oversight process for determining that their standards of living have been improved or at least restored, the fundamental requirement of the Bank's policy. This is essentially a failure of governance and should be corrected through greater internal responsibility.⁶³

VII. THE NEED FOR EFFECTIVE REMEDIES

The Bank's demonstrated weaknesses relating to policy implementation indicates the need for improved capacity. The Bank has adopted a policy framework, but it has not taken ownership of the accomplishment of the objectives of those policies. The Bank has created an accountability mechanism that helps to bridge the information divide between decision-makers and affected communities, but it has not taken responsibility for redress of known problems.

63. Some readers of this Article—particularly those who believe that the World Bank is incapable of meaningful reform—may argue that any proposed internal remedial measures unit would be ineffective. While I recognize the validity of this concern, for purposes of this argument it seems inherent that the Bank bears responsibility for correcting mistakes of the past, and principles of governance and accountability would require the Bank to resolve these problems. If it turns out that the Bank cannot effectively or meaningfully carry out this responsibility, then an external process could be designed.

A recent report of the United Nations Subcommission on the Protection and Promotion of Human Rights examined the role of the World Bank and other multilateral development banks in the context of globalization and its impact on human rights. The report concluded that in situations where lenders' activities "have resulted in the exacerbation of poverty, a diminution of standards of livelihood, and a further distortion of existing social and global imbalances, we believe it is only just that there be a mechanism to bring those institutions into account."⁶⁴

The World Bank's lack of capacity and commitment could be addressed through the creation of a problem-solving unit that is responsible for remedying the social and environmental policy violations identified by the Inspection Panel and helping to ensure that displaced and aggrieved communities are adequately compensated and assisted to improve their standards of living. This problem-solving unit could be known as the "Development Effectiveness Remedy Team" (DERT). The DERT would be tasked with solving problems, promoting compliance, and providing technical and financial assistance to borrowers and Bank staff to help accomplish the social and environmental policy objectives.

In order to be effective and credible, certain steps would have to be taken to ensure the independence of the DERT from Bank Management. For instance, the DERT would report directly to the Board of Executive Directors. The DERT would operate in a transparent manner, with its findings and reports made available to the public, including periodic progress reports on projects under review. To ensure that the DERT itself has the capacity to effectively handle multi-faceted issues and communicate with affected communities, there must be community representatives on the DERT, including those who have directly experienced development-induced displacement. In addition, there must be established mechanisms for dialogue between affected communities and the DERT, so that local people can present and document their grievances and suggest remedial measures.

The DERT would have an explicit mandate to work with the Inspection Panel and the Board of Executive Directors in providing oversight and technical assistance to efforts to bring into compliance projects that have been the subject of Inspection Panel investigations. It would supervise the implementation of Management's action plans in Inspection Panel cases, working and consulting with the claimants and the affected community. In addition, the DERT's mandate should include addressing the legacy of failed World Bank-financed resettlement projects and, in consultation with the affected communities, structuring remedial measures to meet their development priorities and bring the projects into compliance with Bank policy.

64. J. Oloka-Onyango and Deepika Udagama, U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Globalization and its Impact on the Full Enjoyment of Human Rights*, E/CN.4/Sub.2/2001/10, para. 72 (Aug. 2001), available at <http://www.unhcr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>.

Displaced persons who have been badly resettled would receive proper compensation as well as community-based development benefits such as education, sanitation systems, health care, and community services (particularly for the elderly, mothers and children), access to clean water, access to livelihoods, and other locally determined remedial measures. By investing in these communities, the DERT would help prevent further harm by laying the groundwork for a sustainable future and helping displaced persons achieve an improved standard of living. This is basic corrective justice, and it is the bare minimum required by the Bank's resettlement policy.

Such a problem-solving mandate would, of course, require access to financial resources. The World Bank earns significant income every year, primarily from its short-term investments of capital. In fiscal year 2001, the Bank had a net income of nearly \$1.5 billion.⁶⁵ Perhaps ten percent of the Bank's annual income should be dedicated as a source of funding for the DERT.⁶⁶ The use of net income to finance remedial measures to bring into compliance projects that are in violation of the social and environmental policies would be comparable to the current use of income for special Board-approved projects such as reconstruction and rehabilitation in Kosovo and East Timor. One of the DERT's first tasks should be an exercise where stakeholders from inside and outside the Bank evaluate the scope of projects and resources available and develop a multi-year work plan to begin the process of providing remedies.

The use of Bank profits as the source of funding would ease the burden on borrowing countries by not requiring them to bear sole responsibility for solving problems that are beyond their capacities and/or where the Bank has a demonstrated role in the policy failures. In addition, the DERT could help alleviate the donor/borrower tension over the policies by providing technical and financial assistance to borrowing governments in order to help achieve compliance with the social and environmental policies.

At the moment, there is a chorus of voices inside the Bank complaining about the costs or inconveniences associated with the social and environmental policy framework, but nobody appears to be highlighting the policies' role in promoting development effectiveness. The DERT could help fill this gap by demonstrating that compliance with Bank policies helps countries protect their natural capital, reduce social tension, promote long-term sustainability and avoid costly mistakes. The DERT could help promote greater understanding of the rationale behind the policy framework, explain the significant costs of unsustainable development, and increase ownership

65. WORLD BANK, ANNUAL REPORT 2001: INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT—STATEMENT OF INCOME 36 (June 30, 2001), available at <http://www.worldbank.org/annualreport/2001/pdf/ibrd.pdf> (last visited Feb. 20, 2002).

66. At present, this income is tapped to fund the International Development Association (\$320 million) and the Heavily Indebted Poor Countries Initiative (\$250 million), and a series of special projects approved by the Board of Governors. In FY 2000 and 2001, these projects included trust funds for Gaza and the West Bank, East Timor, Kosovo, Yugoslavia, and capacity building in Africa. *Id.*

of and respect for the objectives of the Bank's policies.⁶⁷ In short, the DERT would be a problem-solving mechanism that helps promote sustainable development and poverty alleviation. By creating such a unit, the Bank would assume greater responsibility for ensuring compliance with its policy framework, as well as for meeting the needs and respecting the rights of local affected communities.

VIII. CONCLUSION

If the World Bank is to play a constructive role in promoting human rights and the rule of law, it must first take responsibility for ensuring that its activities do not undermine the rights of affected communities. Failure to respect the rights of local people and the health of ecosystems leads to impoverishment, ineffective development, and social and environmental injustice. As noted by the former General Counsel of the World Bank, "balanced development can only be achieved if the basic human rights are secured for persons adversely affected by development."⁶⁸ Effective remedies must exist in situations where World Bank-financed projects have clearly violated international human rights law or the rights of local people as expressed in the Bank's social and environmental policy framework.

This Article has identified two areas where there are glaring gaps between known problems and the commitment and capacity to implement remedies that will resolve those problems. I have proposed the creation of a Development Effectiveness Remedial Team to address the ongoing suffering caused by unsustainable development-induced displacement and to provide oversight and effective remedial assistance to local communities where the Inspection Panel has identified violations of Bank policies resulting in harm.

These ideas are offered in the spirit of moving toward solutions to difficult problems; they are not intended as definitive answers. The goal is to empower the Inspection Panel and the people who have the courage to file claims to the Panel, as well as to empower those communities whose homelands and livelihoods have been sacrificed in the name of development. It is unconscionable for the World Bank to continue to ignore the harm that has been suffered by millions of people around the world as a result of Bank-financed projects.

67. The DERT could also be responsible for the translation of policies into local languages and improving access to information about the policy framework.

68. Shihata, *supra* note 33, at 27.