

Rhetoric and Reality: Human Rights and the World Bank

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The Bank is concerned by human rights in Chad as elsewhere, but its mandate does not extend to political human rights.¹

This statement by the World Bank in the context of its support for the largest private sector investment project in sub-Saharan Africa illustrates the problem in a nutshell. Can the world's most powerful development agency achieve its goal of reducing poverty where political rights are repressed, where freedom of expression and discussion are absent and opposition forces are persecuted? This Article reflects a perspective drawn from the experience of Northern environmental organizations, such as Environmental Defense, which work closely with community groups, church groups, and development and human rights organizations as well as trade unions in many developing countries. In our experience, protecting the environment, promoting social justice and upholding human rights are inextricably linked. Or, to put it differently, the separation of development goals from politics is unrealistic. The focus here is on the World Bank because of its unmatched institutional resources and pioneering role in establishing policy frameworks designed to protect the poor and the environment. Other multilateral and bilateral financial institutions often follow the World Bank's lead as a model for their own policies and practice.

World Bank development discourse has changed over time. Following the publication of the 1987 report by the World Commission on Environment and Development, which popularized the concept of "sustainable development,"² and the 1992 United Nations Conference on Environment and Development, known as the Rio Earth Summit, the World Bank began to shift

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1. WORLD BANK, *THE INSPECTION PANEL REPORT AND RECOMMENDATION ON REQUEST FOR INSPECTION, CHAD: PETROLEUM DEVELOPMENT AND PIPELINE PROJECT, MANAGEMENT OF THE PETROLEUM ECONOMY PROJECT, PETROLEUM SECTOR MANAGEMENT CAPACITY BUILDING PROJECT* xxviii (2001).

2. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (Oxford Univ. Press 1987). The Commission's report emphasized that empowering people's organizations and strengthening local democracy are indispensable to sustainable development.

away from a single-minded preoccupation with economic growth rates. In 1993, it demonstrated its support for the new mainstream ideas of environmental protection and the need for popular participation in development by creating a high-level office, the Vice-Presidency for Environmentally and Socially Sustainable Development. Furthermore, the institution recognized that sustainable development is impossible without the protection of human rights.³

Yet upon closer inspection, the discourse does not match the reality of the financing decisions taken by the world's most prominent development agency. The institution makes a disingenuous distinction by separating political and civil rights from economic and social rights. It insists that its central mission of reducing poverty contributes to promoting economic and social rights, but that considerations of political and civil rights lie outside of its mandate.

The World Bank claims that the advancement of broadly defined human rights is not possible without development.⁴ Development, of course, is the Bank's business. Yet large amounts of money continue to flow to governments that systematically abuse human rights and have shown little commitment to alleviating poverty or protecting the natural resources on which a majority of people in developing countries depend. Financial support for an authoritarian government often leads to a further strengthening of the repressive apparatus of its regime, worsening the country's human rights situation. Under such conditions, the World Bank's stated goals of achieving broad-based economic development have to be called into question. Political and civil rights are ultimately crucial to the enjoyment of economic rights, as shown by the research of Nobel Prize-winning economist Amartya Sen.⁵

This Article argues that the contradiction between the Bank's recent discourse concerning the fight against corruption, governance reforms, and the empowerment of citizens, on the one hand, and the continuation of its technocratic and depoliticized approach to development financing, on the other, has become untenable. A possible way out of the current gridlock is the adoption of a rights-based approach to development that pays close attention to the political environment of a country by examining who holds the power and how it is exercised. World Bank President James D. Wolfensohn himself seems to recognize that civil and political rights are the foundation of development when he states that "if [countries] do not have good governance, if they do not confront the issue of corruption, if they do not have a complete legal system which protects human rights and contracts . . . their development is fundamentally flawed and will not last."⁶ Yet, as our examples in this Article attempt to show, the institution's operational policies and lend-

3. WORLD BANK, *DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK* (1998).

4. *Id.*

5. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (Alfred A. Knopf ed., 1999).

6. James D. Wolfensohn, *Coalitions for Change*, Address to the Board of Governors of the World Bank (Sept. 28, 1999) (on file with author).

ing practices so far have failed to take the indispensable step of including political considerations and human rights in their financing decisions.

The first section reviews and questions the World Bank's official discourse concerning human rights. This is followed by examples of how the Bank's seeming indifference to the need for political systems that allow for the open discussion and implementation of programmatic alternatives leads to disastrous consequences for the intended beneficiaries of World Bank funding—the poor and vulnerable population groups in developing countries. The conclusion briefly examines the influence of the major donor governments on the Bank, as well as the power of the bureaucracy itself in maintaining the current incoherent approach to development. It argues for a rights-based approach to development as a way out of the current development morass.

I. WHOSE LEGALITY?

While there may be multiple reasons for the World Bank's refusal to include human rights concerns in its operational policies and lending operations, the official explanation centers on a narrow interpretation of the institution's charter, known as the Articles of Agreement. According to this interpretation, the Bank cannot address questions of political and civil rights because the Articles of Agreement prevent it from interfering in the political affairs of its member countries. The relevant article indicates that "only economic considerations shall be relevant" in the World Bank's decision-making.⁷ However, the Bank's charter may not be as restrictive as is often claimed by its management. The Articles of Agreement are sparse and have allowed the Bank enough flexibility to change and adapt over time.⁸ The Bank's own legal counsel left some ambiguity in the interpretation of the relevant article (art. IV, sec. 10), stating that while Bank staff may not openly advocate for a particular kind of government, if a borrowing government behaves in a fashion that undermines the Bank's economic objectives, staff may be justified in calling for political changes or terminating lending.⁹

Despite the leeway afforded by the Articles of Agreement and the Bank's own insights linking empowerment to development, the operational core of the institution continues to shy away from political analysis. The depoliticized language of the project documents presents an array of issues affecting diverse populations as mere technical problems amenable to technical solutions that the Bank can provide.¹⁰ The political and social context that creates the problems is ignored because of the Bank's distinction between the

7. WORLD BANK ARTICLES OF AGREEMENT, art. 4, sec. 10 (amended 1989).

8. Michelle Miller-Adams, *The World Bank in the 1990s: Understanding Institutional Change* (1996) (paper presented at the Annual Meeting of the American Political Science Association) (on file with author).

9. Carol Lancaster, *The World Bank in Africa Since 1980: The Politics of Structural Adjustment Lending, in THE WORLD BANK: ITS FIRST HALF CENTURY* (Devesh Kapur et al. eds., 1997).

10. When development agencies channel large amounts of funding to governments, they influence access to productive resources and the structure of power and wealth in those countries.

"traditional" concept of human rights—e.g., the civil and political rights enshrined in the International Covenant on Civil and Political Rights—and other fundamental rights concerning the necessities of decent living conditions, such as those articulated in the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Right to Development.

This interpretation seems to indicate that the World Bank, a specialized agency of the United Nations,¹¹ is free to pick and choose which international agreements pertain to its activities and which it can leave aside. It must be left to legal scholars to analyze whether the Bank has an obligation to promote and protect human rights under the U.N. Charter, which might be considered hierarchically superior to the Articles of Agreement. The Charter, whose article 55 calls for "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion," also contains a provision prohibiting interference in internal political affairs.¹² However, in the U.N.'s interpretation, this provision does not apply to human rights, which are considered to be a matter of international concern and not the prerogative of a sovereign state. Why should the World Bank's Articles of Agreement be interpreted differently?¹³

Aside from the necessary legal analysis, empirical evidence suggests that the distinction between political and civil rights on the one hand and social and economic rights on the other is increasingly difficult to uphold. According to Amartya Sen, "[p]olitical rights . . . are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves."¹⁴ Sen's far-reaching research on famines, for example, concludes that in the terrible history of famines in the world, no substantial famine has ever occurred in an independent country that enjoys basic democratic freedoms.¹⁵ Along a similar line, much new thinking on development stems from the concept of "sustainable livelihoods," which has a clear political dimension. Sustainable livelihood thinking views development as consisting of support for local people's ability to have a role in society and be active participants in decision-making.¹⁶

11. The establishment of the U.N. in 1945 was preceded by the creation of the World Bank in 1944. The World Bank's status as a specialized U.N. agency is defined by a treaty known as the Relationship Agreement which recognizes that the U.N. will not make recommendations on specific loans and financing decisions. Agreement Between the U.N. & the Int'l Bank for Reconstruction and Dev., Nov. 15, 1947, 16 U.N.T.S. 346.

12. U.N. CHARTER, art. 2, para. 7.

13. An interesting paper on the subject is being prepared by Fergus Mackay of the Forest Peoples Programme in the U.K. Fergus MacKay, *Universal Rights or a Universe unto Itself? Indigenous People's Human Rights and the World Bank's Draft Operational Policy 4.10 on Indigenous Peoples* (Sept. 3, 2001) (on file with author).

14. SEN, *supra* note 5, at 154.

15. AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* 154 (Oxford Univ. Press 1986).

16. *SUSTAINABLE RURAL LIVELIHOODS: WHAT CONTRIBUTION CAN WE MAKE? PAPERS FROM THE DEPARTMENT FOR INTERNATIONAL DEVELOPMENT'S NATURAL RESOURCES ADVISERS' CONFERENCE* (Diana Carney ed., 1998).

Recent World Bank publications do seem to include a more political dimension. The flagship annual *World Development Report 2000/2001* recognizes that the unequal distribution of political power and the way state institutions operate may be particularly unfavorable to poor people. It considers "empowerment" of local people a key element in reducing poverty, defining it as effective popular participation and citizens' monitoring of state agencies.¹⁷ Unfortunately, this report, like other well-meaning World Bank publications, does not spell out the institutional mechanisms, internal incentive systems, and other measures that would be required to begin translating an "empowerment" agenda into practice.

II. SUPPORT FOR AUTHORITARIAN REGIMES

During the Cold War, the Bretton Woods institutions followed the logic of their main shareholding governments, with the United States in the lead. There was little question that development loans were meant to strengthen regimes thought to be the allies of the West as bulwarks against communism, no matter how egregious the human rights violations these regimes were committing.

The contradiction between the World Bank's stated goals of promoting local participation and governance reforms as essential to alleviating poverty and its lack of consideration of political situations became more evident when the geostrategy of Cold War alliances no longer played a role. Even after the collapse of the Berlin Wall and the disintegration of the former Soviet Union, Cold War allies remained important clients of the Bank. Support continued for both Suharto in Indonesia and Mobutu in the former Zaire until virtually the last days of each regime. It was well known to Bank staff that about one-third of its lending to Indonesia disappeared into private pockets while the regime was atrociously repressing civil and political rights, including undertaking a genocidal war in illegally occupied East Timor.¹⁸ But the money kept flowing. In the former Zaire, no matter how outrageous or obvious the theft from the public treasury, no matter how severe the repression of opposition forces, the money to Mobutu and his cronies kept flowing. According to a writer for the *Financial Times*, the funding of the regime by western donors, led by the World Bank and the IMF, "locked the society into one slow-motion economic collapse."¹⁹ The usual counter-argument made by World Bank staff is that without Bank funding the situation would be even worse. It is, however, hard to conceive of a worse

17. WORLD BANK, *WORLD DEVELOPMENT REPORT 2000-2001: ATTACKING POVERTY* (Oxford Univ. Press 2001).

18. Internal Memorandum by Stephen Dice, member of World Bank's Resident Staff, Indonesia, Summary of RSI Staff Views Regarding the Problem of "Leakage" from World Bank Project Budgets (Aug. 1997) (on file with the Harvard Human Rights Journal).

19. MICHELA WRONG, *IN THE FOOTSTEPS OF MR. KURTZ: LIVING ON THE BRINK OF DISASTER IN MOBUTU'S CONGO* 215 (2001).

situation than the one in the present-day Democratic Republic of Congo (DRC), where more than 2.5 million people have died as a result of armed conflict, where generations have been lost because of lack of access to education and basic health services, and where people manage to survive only because of their formidable ingenuity—all this in the midst of a wealth of natural resources so great that it could make the DRC the richest state on the African continent. Depriving Mobutu of his external support might have paved the way for earlier democratic change and thereby avoided the sad predicament of millions of Congolese people today.

It may be argued that these are regrettable Cold War legacies and that such logic no longer applies in the twenty-first century. There are, however, recent examples of how the World Bank continues to fund repressive and corrupt political regimes.²⁰ One such example is the Democratic Republic of Congo, where the Bank's lack of coherence concerning human rights continues to lead to disastrous consequences for the majority of people. A recent expert report for the U.N. Security Council deserves the highest praise for throwing light on the underlying causes of the ongoing war in that country.²¹ The report documents how mass-scale looting and systematic exploitation of the DRC's natural resources have led to the continuation of the war. The illegal exploitation of gold, diamonds, coltan, copper, cobalt, and other forms of wealth is being carried out through systems of control established by Rwanda and Uganda, and has led to massive financial gains for the Rwandan Patriotic Army and the enrichment of top Ugandan military commanders and civilians. The hidden agenda of some military top brass was to use military forces in various zones for the pursuit of personal business interests. The U.N. report courageously provides names, documents transportation channels, and identifies financial links with transnational corporations. According to the report, the Central Bank of Uganda acknowledged to the IMF that the staggering increase in the volume of Ugandan gold exports did not reflect domestic production levels, but rather leakage from across the border. Although Uganda has no known diamond production it is now an exporter of diamonds, which can safely be assumed to have been stolen from the DRC.

While wealth is taken from the country, keeping the war machine rolling, the suffering of the civilian population knows no end. The U.N. report states, for example, that "Humanitarian organizations working in the occupied zones told the Panel stories of a number of women in some villages who have simply stopped taking their children to the health centers because they no longer possess simple items of clothing to preserve their dignity."²²

20. The events of September 11 may further aggravate this situation because the principal donor governments may use aid as a geopolitical tool in the fight against terrorism.

21. UNITED NATIONS, SECURITY COUNCIL, REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC OF CONGO. U.N. Doc S/2001/357 (2001).

22. *Id.* at 15, para. 66.

What is the role of the World Bank in this violent system of illicit wealth accumulation? According to the U.N. report, the Bank was informed about significant increases in diamond and gold exports from Uganda that could only be explained by its theft of resources from the DRC. Yet the Bank has praised Uganda for its economic performance and portrayed its government policies as a success story; Uganda ultimately became eligible for debt relief under the Highly Indebted Poor Countries (HIPC) initiative. Rwanda was similarly rewarded by qualifying for HIPC. Both Uganda and Rwanda have received long-term loans, part of which support their increasing defense budgets.

Had the World Bank publicized the looting of the DRC by Uganda and Rwanda and threatened to cut off funding for both governments instead of rewarding them, it could have made a contribution to establishing peace, a critical pre-condition to its mission of alleviating poverty. The Bank could have barred both governments from access to international public and private finance since other financial institutions often make their own financing decisions dependent on Bank involvement in a country. This might even have been the stick needed to prompt the withdrawal of foreign troops from the DRC.

The World Bank's shadow in the DRC has been less obvious than its direct involvement in the largest project currently being built on the African continent, the Chad-Cameroon Oil and Pipeline project. The \$3.7 billion project—whose principal shareholder, ExxonMobil, is the world's wealthiest corporation—would not have gotten off the ground without World Bank co-financing. The oil companies insisted on Bank participation for two reasons: it provides political risk insurance in a volatile region and it attracts additional financing from other sources such as the European Investment Bank and a host of commercial banks.

The Doba oil fields that the project seeks to exploit are located in the southern part of Chad, which has been in armed conflict with the northern part of the country for over thirty years. Chad's government is run by clans from the northern region, and many southerners feel voiceless and persecuted. According to Amnesty International, the Chadian Government killed hundreds of unarmed civilians in the oil-producing region in the late 1990s at a time when intense project preparations were under way.²³ The U.S. State Department lists both Chad and Cameroon as major abusers of human rights and countries where citizens do not have the power to change their government via the electoral process.²⁴

23. Press Release, Amnesty Int'l, *Extrajudicial Executions/Fear for Safety* (Nov. 1997) (on file with author); Press Release, Amnesty Int'l, *Chad: Freedom of Expression Again Under Attack* (Aug. 3, 1998) (on file with author).

24. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHAD* (Feb. 23, 2001); BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT. OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CAMEROON* (Feb. 23, 2001).

The Chad-Cameroon Oil and Pipeline project provides a stark example of the increasing marginalization of poor rural communities and indigenous peoples. Despite promises of development, local villagers in Chad's oil-producing region have had their land and common property resources expropriated without adequate compensation. For example, the oil consortium has taken over fallow fields that are an integral part of local agriculture because they were considered to be empty and un-owned land. There was no proper evaluation of the value of the fruit trees, leaves, and roots that are critical to the survival of local households in order to assess adequate compensation. In cases where one-time compensation payments were made, they were inadequate and left the villagers with the erroneous belief that they would receive these payments on a regular basis. In addition, local organizations warn of an impending water emergency for local communities as oil drilling activities require large amounts of water; some village wells have already begun to dry out. EPOZOP (Entente des Populations de la Zone Pétrolière), which is the main organization working in the field on behalf of the local population, has not received legal recognition from the government and has had to suspend its activities.²⁵

On the Cameroonian side of the project, the pipeline traverses the Atlantic rainforest, posing serious risks to the indigenous Bakola Pygmy people. Contrary to the World Bank's existing Policy on Indigenous Peoples, the project includes no mechanism for the assessment of the legal recognition of indigenous peoples' rights to land and forests.²⁶ With the construction of the pipeline, the lack of land security will make it difficult to contain land invasions and the pressures on local resources on which the survival of the semi-nomadic Bakola people depends.

Overall, the project might amount to a net loss for the impoverished people of Cameroon. The floating storage and off-loading facility from where the oil will flow onto tankers is to consist of a single-hulled vessel.²⁷ The dangers of oil spills and leaks will be ever present, and sooner or later are likely to disrupt the delicate marine environment where the pipeline enters the ocean. This is a biologically diverse area where artisanal fisheries provide protein for large numbers of people. A study funded by the World Wildlife Fund calculated that the value of the renewable resources of the coastline directly affected by the pipeline would be about \$104 per capita per year in

25. Korinna Horta, Report on Visit to Chad and Mbalmayo Strategy Meeting of Chadian and Cameroonian NGOs (2001) (on file with Environmental Defense) (a report chronicling a field mission to Chad detailing the proceedings of a strategy meeting with Chadian and Cameroonian NGOs in which the status of EPOZOP was discussed).

26. WORLD BANK, THE WORLD BANK OPERATIONAL MANUAL, OPERATIONAL DIRECTIVE ON INDIGENOUS PEOPLES, OD 4.20, para. 15(a) (1991).

27. Exxon Co., Chad Export Project: Environmental Assessment, Executive Summary and Update, ch. 3, at 7 (1999).

perpetuity, compared with the stated benefits of the pipeline of about \$4 per capita per year over the thirty-year operation of the pipeline.²⁸

In view of the political repression in Chad, local civil society organizations requested that there be a moratorium on World Bank funding of the project until adequate legal frameworks and other conditions were instituted that would ensure that the oil revenues would benefit the overall Chadian population and that the environment would not be permanently damaged.²⁹ The request for a moratorium was supported by a broad coalition of NGOs from developed countries, and several of the World Bank's donor governments started raising questions about the serious risks posed by the project. In response to these concerns, the Bank set up what it claimed to be a transparent consultation process with locally affected people, and stated that the consultations had led to a wholehearted endorsement of the project. The Bank failed to mention that the oil company staff sent out to conduct these consultations were accompanied by armed military guards whose services were responsible for the recent massacres in the region.

International public pressure led the World Bank to demand that the Chadian government pass a law intended to ensure the transparent management of oil revenues by setting up a control committee in which members of civil society would be represented. A legal study by the Harvard Law School Human Rights Clinical Program showed that the law was inadequate as a tool to control how the oil income would be spent.³⁰ Bank management, however, worked ceaselessly to convince the institution's Board of Directors that the project would be the only chance to lift Chadians out of poverty. The project appraisal document went so far as to claim that "Chad has successfully put in place democratic political institutions," while not making even a reference to the massacres committed by security forces, arbitrary arrests and the general climate of fear and intimidation in the country.³¹ The World Bank's Board of Directors obliged by approving the loan in June 2000, setting in motion Africa's largest single investment.

It did not take long for the Chadian government to confirm the fears of the civil society groups. As soon as the government received the first money from the oil companies, it went shopping for armaments.³² After being initially embarrassed, the World Bank quickly declared that this little "policy slippage" would have no further consequences, and rewarded the Chadian gov-

28. A. R. G. PRICE ET AL., CAMEROON'S COASTAL CONSERVATION AND MANAGEMENT PLAN: DESK-TOP STUDY 14 (1999) (on file with the Harvard Human Rights Journal).

29. Ad hoc Coalition of Civil Society Orgs. in Chad, Declaration of Bebedja, (1999) (on file with author).

30. Briefing Paper, Harvard Law School Human Rights Clinical Program, Managing Oil Revenues in Chad: Legal Deficiencies and Institutional Weaknesses (Oct. 1999) (on file with the Harvard Human Rights Journal).

31. WORLD BANK, PROJECT APPRAISAL DOCUMENT: CHAD/CAMEROON PETROLEUM DEVELOPMENT AND PIPELINE PROJECT 122 (Apr. 20, 2000).

32. *Chad Arms Purchases Show Limits to Donors' Oversight*, 34 FIN. TIMES AFRICAN ENERGY 22 (Jan. 2001).

ernment by granting it a package of \$260 million in debt relief under the Highly Indebted Countries Initiative (HIPC). This generous gift during election time in the late spring of 2001 was justified as leading to increased expenditures on governance and social programs. In the months leading up to the fraudulent election of May 2001 in which President Deby was re-elected, Deby proceeded to thumb his nose at the Bank. He arrested all six opposition candidates. The best known among them, Ngarledjy Yorongar, was badly tortured.³³ He was only released after an NGO representative was able to alert World Bank President Wolfensohn personally about the situation, something his staff apparently had failed to do.³⁴ Mr. Wolfensohn followed up by calling President Deby, and thereby obtained the release of Mr. Yorongar and the other opposition leaders. Mr. Yorongar required treatment at the Primo Levi Center in Paris, which is especially dedicated to victims of torture.³⁵ Mr. Wolfensohn's personal intervention in this case was extraordinary, and the experience cannot be considered likely to be replicated elsewhere.

The situation in Chad and so many other countries shows that money is not the answer, but rather is frequently at the root of the problem. International development funding often strengthens the hands of an authoritarian government and eases pressure within the country for policy changes, thereby distorting the domestic political dynamic.³⁶ A World Bank study reaches a similar conclusion when it states that development funding reduces incentives to strengthen domestic accountability and economic governance.³⁷ Bank funding strengthens governments in two ways. Internally, it helps shore up the domestic image of the regimes in power and lends them an aura of invincibility because of their foreign backing. Externally, it presents a vote of confidence in a given regime, which leads other public and private financial institutions to participate in co-financing arrangements that usually are far larger than the initial loan.

One can only wonder why the World Bank's in-house research gets so little attention from the institution's operational staff. A Bank research paper on the economic causes of armed conflict concluded that the export of primary commodities is a major cause of armed conflict because it is the most lootable of all economic activities.³⁸ Both the war in the Democratic Republic of Congo and the prospect of renewed armed conflict in Chad once

33. See Norimitsu Onishi, *Chad: Re-election, and Arrests*, N.Y. TIMES, May 29, 2001, at A8; Press Release, Amnesty Intern'l (Jan. 20, 2001) (AI Index AFR/20/01/2001) (on file with author).

34. Telephone Interview with James D. Wolfensohn, President, World Bank (May 30, 2001).

35. Statement of Medical Exam carried out by Dr. Patrice Giroux of the Centre Primo Levi in Paris (June 27, 2001) (on file with the Harvard Human Rights Journal).

36. See JAMES MORTON, *THE POVERTY OF NATIONS: THE AID DILEMMA AT THE HEART OF AFRICA* (1996).

37. See WORLD BANK, *CAN AFRICA CLAIM THE 21ST CENTURY?* 244 (2000).

38. See Paul Collier, Press Briefing on the Report "Economic Causes of Civil Conflict and Their Implications for Policy" (June 15, 2000), available at <http://www.worldbank.org/html/extdr/extme/pr061500.htm>.

the oil begins to flow bear witness to the theory. Yet these research findings seem to be of limited relevance when it comes to financing decisions.

A rights-based approach by the World Bank would have prevented the institution from descending into the quagmire that the Chad-Cameroon project presents. Such an approach would have called for careful consideration of the courageous voices of civil society organizations in both countries, and may have required the Bank to limit its role to helping create the legal framework necessary for democratic change before helping to launch a multi-billion dollar project that engenders further human repression and marginalization.

III. MARGINALIZING THE POOR AND FAVORING THE RICH

In what has been described as the violence of development, an estimated two million people have been forced from their homes and land as a result of Bank-assisted projects.³⁹ World Bank policy requires that people to be resettled not be left worse off than they were before.⁴⁰ But an internal Bank review of 192 projects involving involuntary resettlement between 1986 and 1993 found that only a single project had satisfactorily compensated and rehabilitated the affected people.⁴¹ However, instead of strengthening the implementation mechanisms of its policy on involuntary resettlement, a new version of the policy will weaken them substantially.⁴² Under the new policy, people without recognized legal rights to lands and assets will not be fully consulted or compensated for loss of land when relocated by World Bank projects. This is inequitable in the context of most Bank projects because a large part of the affected people will be indigenous peoples who hold no official land titles. In addition, few developing countries have a fully established system of legal land titles either for households or for common property resources. The World Bank's proposed new policy represents a severe regression from provisions of international law such as ILO Convention No. 169, which establishes that the rights of ownership and possession of indigenous and tribal peoples over the land they traditionally occupy shall

39. See Balakrishnan Rajagopal, *The Violence of Development*, WASH. POST, Aug. 9, 2001, at A19 (comparing involuntary resettlement to ethnic cleansing). The author is director of the Program on Human Rights and Justice at the Massachusetts Institute of Technology; see also Press Release, Forest Peoples Programme, Bretton Woods Project and Center for International Environmental Law, Outcry as World Bank Set to Backslide on International Standards for Development (Apr. 3, 2001) (noting the Bank's appalling record on forced resettlement with 2 million displaced by Bank projects) (on file with author).

40. See WORLD BANK, OPERATIONAL DIRECTIVE 4.30: INVOLUNTARY RESETTLEMENT (June 1, 1990), available at http://www.ifc.org/enviro/EnvSoc/Safeguard/Resettlement/OD_430_Involuntary_Resettlement.pdf.

41. See WORLD BANK, THE WORLD BANK OPERATIONAL MANUAL, RESETTLEMENT AND DEVELOPMENT: THE BANKWIDE REVIEW OF PROJECTS INVOLVING INVOLUNTARY RESETTLEMENT 1986-1993 (Mar. 1996), available at http://www-wds.worldbank.org/servert/WDSContentServer/WDSP/IB/1996/03/01/000009265_3980728143956/Rendered/PDF/multi_page.pdf.

42. Letter from Dana Clark, Center for International Environmental Law, to Carole Brookins, Executive Director, World Bank (Oct. 10, 2001) (on file with the Harvard Human Rights Journal).

be recognized.⁴³ Similarly, the World Commission on Environment and Development has called attention to the increasing vulnerability of the world's indigenous peoples as a result of the loss of their traditional lands and has recommended, "The starting point for a humane policy for such groups is the recognition and protection of their traditional rights to land and the other resources that sustain their lives."⁴⁴

The need for a rights-based approach to development is also evident in the Bank's growing area of lending for economic reform programs. Its failure to consider civil and political rights as the foundation for social and economic rights is a central reason for the lack of success of its lending for economic reforms, known as structural adjustment programs or programmatic lending. There is no question that countries often have serious weaknesses in national policies and that structural reforms are needed. However, both the fact that the World Bank's current disclosure rules do not allow for public access to information on specific structural adjustment programs and the fact that these programs are only discussed within a small circle of officialdom contribute to the undermining of political rights. The lack of public information about the conditions and economic policies promoted by this type of lending forecloses democratic debate within the countries concerned. For example, macroeconomic policy reforms designed to promote exports, which are the centerpiece of most World Bank structural adjustment programs, often lead to further impoverishment of large sections of the population when their lands and forests are taken over for mono-crop agricultural or forestry plantations or large-scale commercial logging by the powerful interests capable of making use of Bank support. Local people's livelihoods and food security are severely affected when the forests, land, and water they traditionally rely upon for their subsistence become commercially attractive to others.⁴⁵ Yet they often have little or no opportunity to participate in the decisions that lead to this state of affairs.

In contrast to specific projects, which at least require a modicum of environmental review and public consultation, the World Bank's growing area of structural and programmatic lending continues to be exempt from environmental and social operational policies. Almost half of all Bank lending is now dedicated to these programs, part of which are now referred to as "Poverty Reduction Support Credits."⁴⁶

Current adjustment policies are based on abstract theory demanding great sacrifice in the name of purported economic growth in the future. The primary goal is to prevent a country's default on its foreign debt in the belief that this is a pre-condition for development. The primary focus on debt re-

43. See *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, Jun. 27, 1989, 169 I.L.O 1989.

44. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* 115 (1987).

45. See SOLON L. BARRACLOUGH & KRISHNA B. GHIMIRE, *FORESTS AND LIVELIHOODS* (1995).

46. WORLD BANK, OPERATIONS EVALUATION DEPARTMENT, 2001, *REVIEW OF THE BANK'S PERFORMANCE ON THE ENVIRONMENT* 20 (2001).

payment requires severe cuts in domestic spending and centers on the promotion of exports as a means of earning foreign exchange for debt servicing. Lack of government funding for environmental protection and overexploitation of natural resources are often the consequences.

The deflationary, one-size-fits-all macro-economic policy prescriptions imposed by structural adjustment loans were already criticized in 1987 by a groundbreaking study led by UNICEF.⁴⁷ The study found that IMF and World Bank-style adjustment policies reflect a failure to fully consider their distributional and poverty implications and contributed to a worsening of the situation of children in developing countries. The 1987 UNICEF findings were more recently confirmed by a series of participatory case studies undertaken by a group of independent civil society organizations, which initially had the backing of World Bank President Wolfensohn. The study reveals that the deflationary policies have led to growing poverty through depressed employment and real incomes as well as severe cuts in social expenditures. It concludes that stabilization and structural adjustment programs have been carried out at great expense to the poor and marginalized sectors of society and will have negative social impacts for generations to come.⁴⁸

IV. A WAY OUT OF DEVELOPMENT GRIDLOCK

We all can imagine international economic approaches that would provide a more positive environment for people in developing countries. One could begin by questioning the fundamental notion shared by the theories of capitalism and bureaucratic central planning that progress is a mechanistic and linear march toward a uniform future. Or one could begin with a much-needed analysis of the role of the international economy in structural underdevelopment.⁴⁹ The approach taken here is to consider what could be done within the current economic order to hold the World Bank publicly accountable to its stated commitments to poverty alleviation and sustainable development.

Environmental non-governmental organizations in North America and Europe working with civil society in developing countries have learned from their partners that the livelihoods of local people must be placed at the center of concern if the environment is to be protected. Local organizations all too often witness economic development activities leading to the dispossession of local communities and the increasing marginalization of vulnerable populations. The situation is worsened when the loss of traditional rights, such as customary rights to common property resources, is not replaced by

47. See *ADJUSTMENT WITH A HUMAN FACE* 1–8 (Giovanni Andrea Comea et al. eds., 1987).

48. See *STRUCTURAL ADJUSTMENT PARTICIPATORY REVIEW INTERNATIONAL NETWORK, THE POLICY ROOTS OF ECONOMIC CRISIS AND POVERTY* (Nov. 2001), available at http://www.saprin.org/SAPRIN_Synthesis_11-16-01.pdf.

49. See, e.g., MICHAEL REDCLIFT, *SUSTAINABLE DEVELOPMENT* (1987).

the acquisition of new rights, leaving increasing numbers of politically powerless people destitute. In essence, what we have learned is that local livelihoods depend on the political self-organization of communities and the creation of political and institutional accountability. But while experience shows the interrelatedness of these concerns, the World Bank fails to take these connections seriously. In fact, its own Evaluation Department has highlighted the missing connection in Bank operations between the environment and local livelihoods. According to one such report, "the Bank did not pursue either analytically or operationally the links between environmental sustainability and poverty alleviation."⁵⁰ Another report concludes that the result of this disconnect is that Bank-financed projects face serious problems with regard to long-term and indirect environmental impacts as well as public involvement and consultation.⁵¹

A rights-based approach to development would go a long way toward overcoming some of these shortcomings. Perhaps recognizing this, some of the European multilateral and bilateral aid agencies have taken steps in recent years to include democratization and human rights criteria in their decisions on aid flows.⁵² Yet these steps may be of limited value as long as the institution at the head of the current development juggernaut fails to incorporate a right-based dimension into its decision-making.

In order to analyze how the necessary institutional changes can be brought about, it is necessary to ask who runs the World Bank. Political science analysis has long appreciated the dualistic nature of the institution, it being both an instrument in the hands of its most powerful donor governments and a full-blown, self-interested bureaucracy with its own power base.⁵³ The influence of large donors is unmistakable when it comes to major geopolitical and international finance questions. Examples are World Bank lending guided by Cold War considerations, its management of the international debt crisis, and, more recently, a possible role for the Bank in rewarding nations for their participation in combating international terrorism.⁵⁴

The World Bank's handling of the international debt crisis continues to illustrate the influence of the main shareholding governments. Even the official history of the Bank describes the role of the institution in handling developing country debt as acting in the interest of wealthy donor govern-

50. WORLD BANK, *supra* note 46, at 12.

51. THE WORLD BANK, OPERATIONS EVALUATION DEPARTMENT, PROMOTING ENVIRONMENTAL SUSTAINABILITY IN DEVELOPMENT: AN EVALUATION OF THE WORLD BANK'S PERFORMANCE 21-22 (Sept. 15, 2000).

52. Increased attention in the Lomé Convention to human rights, democracy, and good governance led to the suspension in 1994 of aid to Nigeria, Gambia, Liberia, Somalia, Zaire, Sudan, Togo, and Equatorial Guinea. Aid to other countries, such as Kenya and Malawi, was temporarily suspended and later resumed. See AIDAN COX ET AL., HOW EUROPEAN AID WORKS 128 (1997).

53. See generally William Ascher, *New Development Approaches and the Adaptability of International Agencies: The Case of the World Bank*, 37 INT'L ORG. 415 (1983).

54. See OXFORD ANALYTICA LTD., BRIEF: THE IMPACT ON THE WORLD BANK AND THE IMF OF THE SEPTEMBER 11 TERRORIST ATTACKS ON THE UNITED STATES (Sept. 25, 2001).

ments by strengthening a creditors' cartel and banning the question of debt relief from international negotiations for many years.⁵⁵ In large part due to the international campaign on debt, wealthy donor nations have begun to acknowledge the plight of poor debtor countries and have launched the Highly Indebted Poor Country Initiative (HIPC), administered by the Bank. While HIPC may be a step in the right direction, it fails to examine the causes of the debt crisis, including the role of lenders in generating the crisis in the first place, and there remain serious doubts about its real impact on the economies of poor countries. According to a Worldwatch Institute study, most of the HIPC debt relief will go to the World Bank and other lenders for writing off debts, and not to the poor debtor countries themselves.⁵⁶

In addition to being an instrument in the hands of its most powerful donor governments, the institution falls squarely into Max Weber's definition of bureaucracies as modern systems of large-scale administration in which the administrative staff is clearly distinguished from the governing body that employs it.⁵⁷ By this definition, bureaucracies are both subject to higher authority and involved in exercising authority themselves. This discrepancy is evident in the World Bank's environmental policy guidelines, which were promoted and approved by its major donor countries but which, according to numerous internal evaluation reports, the Bank staff systematically fails to implement in practice.⁵⁸

The institution is engaged in a constant money dance in which it has to please both donor and recipient governments in order to keep the funds flowing and extend its own bureaucratic power. Its ability to raise funds depends on the goodwill of donor governments, while its ability to fully obligate funds depends on good relationships with borrower country governments.⁵⁹ This cycle of raising and obligating funds in an ever-increasing spiral has led to an internal culture which former Bank Vice President Wapenhans has described as the "approval culture."⁶⁰ Money is shoveled out the door without adequate quality controls and monitoring mechanisms in place. Unlike commercial banks, the Bank does not have to bear the consequences of loans for ill-conceived projects. Given its status as a preferred creditor, governments repay their World Bank loans irrespective of the success of the projects that were financed.

This diagnosis of the situation indicates that action must be taken on two fronts. First, the donor governments must recognize their own lack of coher-

55. See 2 *THE WORLD BANK: ITS FIRST HALF CENTURY* (Devesh Kapur et al. eds., 1997).

56. See David M. Roodman, *Ending the Debt Crisis*, in *STATE OF THE WORLD 2001* 162 (Lester R. Brown et al. eds., 2001).

57. See generally DAVID BEETHAM, *BUREAUCRACY* (2d ed. 1996).

58. WORLD BANK, *supra* note 46, at 18-19.

59. See Lancaster, *supra* note 9.

60. WILLI WAPENHANS ET AL., *WORLD BANK, A REPORT OF THE PORTFOLIO MANAGEMENT TASK-FORCE* (1992) (usually referred to as the "Wapenhans Report") (on file with author).

ence when they call for governance reforms and empowerment as key ingredients to development but shut their eyes to political and civil rights. They must give the institution a clear mandate to shift to a rights-based approach as a condition for financial backing by donor governments. Given that some donors have made inroads in this regard with regard to their bilateral aid programs, they should be aware of their double standards and move to a more coherent overall approach to development.

Second, the World Bank bureaucracy's internal incentive system must change to rid the institution of the "approval culture." Careers at the institution should be built on the foundation of high quality projects and not on the basis of how much money has been moved. If projects fail to deliver positive results, the institution must bear the financial consequences. High-quality projects require an analysis of the political and economic forces which are behind unsustainable practices and should take into account the role of the state and those who run it, as well as the relationships between classes and groups. Internal operating rules and procedures must be established to ensure consistency with human rights standards.

While the *modus operandi* of current development finance will not change overnight, there are already chinks in the institutional armor that might pave the way for near-term improvements. Neither donor governments nor the World Bank are monolithic institutions, and there is a growing recognition that current development aid is failing to meet its objectives. While an alternative development agenda has not yet been fully articulated, questions are increasingly being raised. These range from doubts about the validity of neoliberal assumptions underlying strict macroeconomic reforms⁶¹ to possible approaches to addressing the current lack of compliance of Bank staff with the institution's own policy mandates.⁶²

A possible way out of the current impasse is found in the ongoing debate about the incorporation of governance issues into decisions on financial flows. So far the World Bank has handled governance issues as being largely limited to technical reforms in public sector management and efforts to restore investor confidence by creating enabling environments for the private sector.⁶³ But the debate may have opened the door for the inclusion of human rights considerations in development finance.⁶⁴ This new approach would not be without its costs. It is likely that human rights standards in

61. Joseph Stiglitz, former chief economist of the World Bank and winner of the 2001 Nobel Prize in economics, has repeatedly called attention to the failure of orthodox structural adjustment programs. In his view, capital market liberalization and privatization are serious mistakes for countries that do not have adequate legal frameworks in place. He advocates allowing developing countries to make their own decisions regarding the process of development. Joseph Stiglitz, Remarks at a Meeting with NGOs in Washington, D.C. (Feb. 29, 2000) (notes on file with author).

62. See WORLD BANK, OPERATIONS EVALUATION DEPARTMENT PRECIS: ENVIRONMENTAL ASSESSMENTS AND NATIONAL ACTION PLANS (Dec. 1, 1996).

63. See WORLD BANK, ENVIRONMENTAL ASSESSMENTS AND NATIONAL ACTION PLANS (May 1994).

64. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, THE WORLD BANK: GOVERNANCE AND HUMAN RIGHTS (1993).

development finance would slow down the lending pipeline and reduce the lending volume at least temporarily. This would be a small price to pay, however, for making development aid relevant to its intended beneficiaries, the poor and vulnerable population groups. And this is exactly what needs to happen if we are to move to an alternative rights-based political economy where development means support for national and local-level decision-making to create sustainable livelihoods. Protection of human rights and the environment are at the very center of this challenge to the conventional development juggernaut.