

2014 Samuel Dash Conference on Human Rights

A Framing Paper:

Multilateral Development Banks & Human Rights

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The relationship between human rights and development has been a topic of debate since well before the 1986 Declaration on the Human Right to Development.¹ The 2014 Samuel Dash conference on human rights will examine issues, challenges and opportunities on the topic of human rights and multilateral development banks in the context of an ongoing review of World Bank lending safeguards and Inspection Panel reforms, as well as an international effort to frame a post-2015 global development agenda.

This paper seeks to frame the conference discussion and provide some background for each panel, drawing from scholarship and current policy debates. Questions for discussion will be proposed at the end of each section addressing each of the three panels.

I. Prologue: A Focus on the World Bank

There is broad global recognition of the convergence between the principles, values and goals of international development efforts and the normative obligations of international human

¹ Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?*, 33 RUTGERS L. REV. 435, 435-52 (1981); Stephen Marks, *The Human Rights to Development: Between Rhetoric and Reality*, 17 HARVARD HUMAN RIGHTS J. 137, 138 (2004).

rights law.² The United Nations Development Programme (UNDP) has led the way in incorporating human rights obligations into development policy through its human development approach, which proclaims that the focus of development efforts should not be solely aimed at achieving economic growth, but should emphasize the importance of distributing the benefits of this growth equitably.³

Various commentators have suggested that concerns derived from or coextensive with human rights norms are already recognized within the development community as “central to the success of poverty alleviation programs.”⁴ From this perspective, human rights principles can be seen as implicit in the development activities of multilateral lending institutions.⁵ Yet until relatively recently, this connection has been almost entirely implicit.

The World Bank is of particular interest when considering the relationship between human rights and international development assistance. The World Bank is both an international, social development-focused bank as well as a lending institution with a long history of its projects and activities being linked with impacts that raise questions of accountability, including for a range of human rights abuses.⁶ As a UN specialised agency, the World Bank has also attracted particular attention and criticism from scholars and advocates with regard to the extent to which it is bound by international legal obligations, under the UN Charter and otherwise, to promote, protect and fulfil human rights obligations.⁷ In comparing donor agencies, the OECD has suggested that the World Bank is a notable outlier in its approach to human rights: most other multilateral development agencies are now much more involved in human rights mainstreaming, dialogue and projects.⁸

² OECD, INTEGRATING HUMAN RIGHTS INTO DEVELOPMENT xiii (2nd ed. 2013); OECD, DAC ACTION-ORIENTED POLICY PAPER ON HUMAN RIGHTS AND DEVELOPMENT (2007), available at <http://www.oecd.org/development/governance-development/39350774.pdf>; U.N.G.A., *Keeping the promise: united to achieve the Millennium Development Goals*, U.N. Doc. A/65/L.1 (Sep. 17, 2010), available at <http://www.un.org/en/mdg/summit2010/pdf/mdg%20outcome%20document.pdf>.

³ GALIT SARFATY, *VALUES IN TRANSLATION* 25 (2012); UNDP, HUMAN RIGHTS IN UNDP: PRACTICE NOTE (2005), available at http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/human-rights-in-undp/HRPN2005_English.pdf.

⁴ Siobhán McInerney-Lankford, 'International Financial Institutions and Human Rights: Select Perspectives on Legal Obligations,' in *INTERNATIONAL FINANCIAL INSTITUTIONS & INTERNATIONAL LAW* 240, 242 (Daniel Bradlow & David Hunter eds., 2010).

⁵ The importance of participation and equality, for example, has been highlighted extensively in the Poverty Reduction Strategies adopted by the World Bank and the IMF. See, e.g., *IMF Factsheet: Poverty Reduction Strategy Papers (PRSP)*, IMF (2013), <http://www.imf.org/external/np/exr/facts/pdf/prsp.pdf>; WORLD BANK, *THE WORLD BANK OPERATIONAL MANUAL* (hereinafter 'WORLD BANK, OPERATIONAL MANUAL') OP 1.00, 4.01, 4.10, 4.12, 4.20 (Sep. 30, 2013), available at http://siteresources.worldbank.org/OPSMANUAL/Resources/EntireOM_External.pdf.

⁶ McInerney-Lankford, *supra* note 4 at 240.

⁷ Agreement between the United Nations and the International Bank for Reconstruction and Development art. 1(2), Apr. 15, 1948, 109 U.N.T.S. 341; U.N. Charter art. 55-58; MAC DARROW, *BETWEEN LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS LAW* 126 (2003); McInerney-Lankford (2010), *supra* note 4 at 254.

⁸ OECD, *supra* note 2 at 149.

Famously, the direct integration of considerations derived from human rights norms into the World Bank's operations has been partly hindered by the view that human rights are “political,” and thus legally excluded from the scope of the Bank's work by its Articles of Agreement.⁹ But there is a growing recognition of the relationship between human rights and the work of the World Bank. In this vein, the 2006 opinion of the former World Bank General Counsel Roberto Dañino proposed a purposive interpretation of the Articles, urging the Bank to disengage in cases of extensive violations of human rights, even where economic factors were not involved.¹⁰ In this view, the World Bank is permitted to adapt its position to take human rights obligations into account.

Of course, the World Bank can be described as promoting human rights through individual policies such as those relating to indigenous peoples, involuntary resettlement and the environment.¹¹ But these safeguards have mainly arisen as responses to targeted campaign work by civil society, rather than a strong commitment to the underlying values contained in such approaches – or to comply with recognized international legal obligations.¹² And there remains no over-arching approach to integrating human rights into the development work of the World Bank.

The remainder of the paper will highlight the main issues of focus of today’s conference, examining both the general topic and how the current landscape makes discussion of these issues in the context of the World Bank of significant interest.

The next section and first panel will address how the activities of multilateral development banks implicate human rights and consider in particular one mechanism for regulating those activities: lending safeguards. The World Bank is currently revising its lending safeguards. The following section and second panel will consider the role of robust and independent accountability mechanisms at multilateral development banks, and in particular those in place at the World Bank Group – the Inspection Panel and Compliance Advisor/Ombudsman. The final section and panel will examine some of the issues that form the context in which multilateral development banks, and particularly the World Bank, incorporate human rights into their work, including: internal structural issues and initiatives, such as the work of the Nordic Trust Fund at the World Bank; the emergence of a Brazil-Russia-India-China-South Africa (BRICS) Development Bank; the work of the UN in mainstreaming human rights, as well as the obligations of the World Bank as part of the UN system; and the efforts of individual states, such as the role of the United States Congress to encourage greater consideration of human rights in the Bank's lending practices.

⁹ WORLD BANK, ARTICLES OF AGREEMENT, Art. IV, §10; Art. III, § 5(b).

¹⁰ ROBERTO DAÑINO, LEGAL OPINION ON HUMAN RIGHTS AND THE WORK OF THE WORLD BANK 8 (2006). Notably, this opinion, though styled as a “Legal Opinion” was not promulgated through Board approval such that it has the legal force of a formal legal opinion by a World Bank General Counsel.

¹¹ OECD, *supra* note 2 at 5-6.

¹² DANIEL BRADLOW & DAVID HUNTER, INTERNATIONAL FINANCIAL INSTITUTIONS & INTERNATIONAL LAW, 393 (2010); McInerney-Lankford, *supra* at note 4, 244.

II. Panel One: Lending Safeguards

The World Bank is currently in the process of revising its lending safeguards. But how should human rights law and principles be incorporated into the Bank's major activity—lending? The first panel will focus on the substantive content of current lending safeguards, how certain rights are specifically implicated by the lending practices of multilateral development banks and how they might be taken into account in revised World Bank safeguards. The panel will discuss one or more area of rights and feature the experiences of those directly affected by lending.

The World Bank does not explicitly recognize any restrictions on its lending which are directly and explicitly derived from international human rights law. However, the Bank does regulate its lending activities through a number of safeguard policies.¹³ These safeguards were initially adopted during the 1980s and 1990s, largely in response to external criticism from affected communities and civil society groups in response to controversial projects, internal concern about development effectiveness, and demands that the Bank adopt a sustainable development approach to its work.¹⁴

Current safeguards policies are to be found in the Bank's Operations Manual, which contains binding Operational Policies ('OPs'), and Bank Procedures ('BPs') which give guidance on OP application.¹⁵ Existing safeguards require that borrowers mitigate risks in order to receive Bank funding.¹⁶ Contraventions of these policies can, since 1993, be raised with the Inspection Panel (a quasi-judicial body also considered in the next section). The World Bank's Independent Evaluation Group (IEG) has noted the important role of safeguards in helping “avoid or mitigate large-scale social and environmental risks in the projects financed by [the World Bank Group]”.¹⁷ The safeguard policies currently in place implicitly provide for human rights protection in relation to specific issues, such as the protection of the environment and the rights of indigenous peoples, and in addressing involuntary resettlement.

Commentators have noted that the safeguards in place generally regulate only to the extent that is politically acceptable among member states.¹⁸ They do not, however, reflect international human rights standards.¹⁹ Indeed, due to the nature of safeguards as they stand,

¹³ OECD, *supra* note 2 at 5-6.

¹⁴ Dana Clark, *Understanding the World Bank Inspection Panel*, in DEMANDING ACCOUNTABILITY: CIVIL-SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL 1, 1 (Dana Clark, Jonathan A. Fox, Kay Treakle eds., 2003).

¹⁵ WORLD BANK OPERATIONAL MANUAL.

¹⁶ WORLD BANK OPERATIONAL MANUAL OP 4.01, 4.10, 4.12.

¹⁷ INDEPENDENT EVALUATION GROUP, SAFEGUARDS AND SUSTAINABILITY POLICIES IN A CHANGING WORLD—AN INDEPENDENT EVALUATION OF THE WORLD BANK GROUP EXPERIENCE xiii (2010), *available at*: https://ieg.worldbankgroup.org/Data/reports/safeguards_eval.pdf.

¹⁸ U.N. Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Interim Report on the Promotion and Protection of Human Rights*, ¶ 53, U.N. Doc. E/CN.4/2006/97 (2006) (prepared by John Ruggie); Leonardo A. Crippa, *Multilateral Development Banks and the Human Right Responsibility*, 25 AM. U. INT'L. L. REV. 531, 558 (2010).

¹⁹ DANIEL BRADLOW & DAVID HUNTER, *supra* note 12 at 393; Leonardo A. Crippa, *supra* note 18 at 538.

many situations which potentially raise human rights concerns are excluded from their scope. A review and update of the World Bank safeguards policy is currently underway and has been ongoing since April 2013. The World Bank team had aimed to present an integrated safeguards policy framework in early 2014, although this now looks to have been delayed until June to allow for internal restructuring to take place.²⁰

Because the World Bank was the first multilateral development organization to adopt safeguards, its review and revision of its safeguards will influence the approaches of other development banks for years to come, and it is thus particularly pertinent to the wider issue of advancing human rights protections in such institutions and in the context of development more broadly.²¹ The following are a set of thematic issues that are being discussed in the context of the World Bank safeguards reform process.

Development of Comprehensive Human Rights Safeguards

The current state of affairs has led many to call for enhanced safeguards, up to and including an explicit international human rights law safeguard policy.²² Such a policy could take a similar form to the Bank's policy relating to environmental assessments, which requires consideration of a borrowing state's domestic and international obligations in order to ensure that the Bank does not fund projects which contravene these.²³ The United Nations Economic and Social Council (ECOSOC) has recognised that International Financial Institutions such as the World Bank are obligated to take measures that are in line with member states' human rights obligations.²⁴ A broad human rights safeguard policy might aid the Bank in discharging whatever obligations it has under international law. It may also help ensure that consideration is given to those obligations of borrowing countries and in turn improve accountability for human rights violations in both the work of the Bank and in the context of development more broadly.

Prioritization of Specific Areas of Rights

The former Special Representative of the World Bank to the United Nations has referred to the special role of civil society in the specific role of human rights in World Bank

²⁰ *Safeguards Review neglects people with disability, children*, BRETTON WOODS PROJECT, (Jan. 23, 2014) <http://www.brettonwoodsproject.org/2014/01/safeguards-review-neglects-people-disability-children/>.

²¹ *Initial Comments by Civil Society Organizations on the World Bank's Safeguard Policies Review and Update*, WORLD BANK (Dec. 2012), <http://consultations.worldbank.org/Data/hub/files/meetings/InitialCommentsbyCivilSocietyOrganizationsontheWorldBankSafeguardsReviewDEC2012.pdf>.

²² Dana Clark, *The World Bank and Human Rights: The Need for Greater Accountability*, 5 HARVARD HUMAN RIGHTS JOURNAL 205, 205 (2002); Rachel Ball, "Doing It Quietly": *The World Bank's Engagement with Human Rights*, 34 MONASH UNIVERSITY LAW REVIEW 331, 331 (2008); *Initial Comments by Civil Society Organizations on the World Bank's Safeguard Policies Review and Update*, WORLD BANK (Dec. 2012), <http://consultations.worldbank.org/Data/hub/files/meetings/InitialCommentsbyCivilSocietyOrganizationsontheWorldBankSafeguardsReviewDEC2012.pdf>.

²³ WORLD BANK, OPERATIONAL MANUAL OP. 4.02.

²⁴ U.N. Econ. & Soc. Council (ECOSOC), *Procedural Decisions*, ¶ 515, U.N. Doc. E/1999/22 (1999).

safeguards.²⁵ The discussion about World Bank safeguards review among civil society thus perhaps not surprisingly includes consideration of the development of additional, safeguards to fill gaps with respect to specific areas of human rights protections, including labor rights, women's rights, children's rights, the rights of people with disabilities, and land rights. And it also includes discussion of reforms and expansion of the treatment of human rights protections already implicitly included in existing safeguards.²⁶

Despite disability being selected as an over-arching theme of the ongoing safeguards review, some civil society organizations have suggested that the needs of disabled people are not being adequately addressed. The Bank Information Center (BIC) has advocated for “clear policy language on disability mainstreaming and inclusive development” to be included in the revised safeguards.²⁷ There have also been calls for prioritised consideration of children's rights in the safeguards review.²⁸ In a similar vein, the World Bank's treatment of gender equality considerations has been heavily criticized.²⁹ In its own review of its lending practices, the Inter-American Development Bank (IDB) adopted a gender-based safeguard; the World Bank might follow this example.³⁰

Commentators have pointed out that World Bank protections for labor rights are also less robust in comparison with other international organizations, including the International Financial Corporation (IFC).³¹ A new labor safeguard has been recommended by civil society organizations.³² A robust safeguard could ensure compliance with relevant International Labour Organization (ILO) conventions in order to avoid situations, such as that seemingly present in the RESP II loan to Uzbekistan, in which overwhelming evidence of child labor was overlooked in a World Bank risk assessment prior to lending.³³

²⁵ SANAE FUJITA, *THE WORLD BANK, ASIAN DEVELOPMENT BANK AND HUMAN RIGHTS* 18 (2013).

²⁶ *Id.*

²⁷ Bank Information Center (BIC), Lebanese Physical Handicapped Union, *Disability and the World Bank Safeguards Campaign Statement*, (Jan. 2013), <http://www.bicusa.org/wp-content/uploads/2013/01/Disability+Campaign+Statement.pdf>.

²⁸ Bank Information Center (BIC), *Protecting the Rights of Children through the World Bank Safeguard Policies*, (Nov. 2012), <http://www.bicusa.org/wp-content/uploads/2012/11/Child-Rights-Campaign-Document.pdf>.

²⁹ Claire Lauterbach & Elaine Zuckerman, *Assessing the effectiveness of World Bank investments: the gender dimension*, March 2013, (WIDER Working Paper No. 2013/017), available at <http://www.genderaction.org/publications/assessingeffectiveness.pdf>.

³⁰ IDB, *MID-TERM EVALUATION OF IDB-9 COMMITMENTS: ENVIRONMENTAL AND SOCIAL SAFEGUARDS INCLUDING GENDER POLICY 10*, (2013), available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=37647378>.

³¹ Lauterbach & Zuckerman, *supra* note 29.

³² *Initial Comments by Civil Society Organizations on the World Bank's Safeguard Policies Review and Update*, WORLD BANK (Dec. 2012), <http://consultations.worldbank.org/Data/hub/files/meetings/InitialCommentsbyCivilSocietyOrganizationsontheWorldBankSafeguardsReviewDEC2012.pdf>.

³³ WORLD BANK INSPECTION PANEL, *REPORT AND RECOMMENDATION: REPUBLIC OF UZBEKISTAN: SECOND RURAL ENTERPRISE SUPPORT PROJECT (P109126) AND ADDITIONAL FINANCING FOR SECOND RURAL ENTERPRISE PROJECT (P126962)* (Report No. 83254-UZ) ¶ 14 (Dec. 9, 2013); BANK INFORMATION CENTER

Another priority issue for civil society actors has been the need to review safeguards concerning involuntary resettlement. Many commentaries have observed that OP/BP 4/12, the relevant safeguard, is failing to achieve its purpose; it is the third most common complaint in Inspection Panel cases.³⁴ It is estimated that around 30% of World Bank projects trigger OP/BP 4.12 and that close to one million people are resettled involuntarily on an annual basis as a result of Bank projects.³⁵ Researchers have provided evidence of a number of controversial cases involving 'villagization' in Ethiopia, where approximately 1.5 million people in five regions have evidently been relocated against their will.³⁶ An improved safeguard policy covering involuntary resettlement may help curb such problems, which often disproportionately impact minority groups, and have also been linked to violence, arbitrary arrest and detention.³⁷

In addition, strong calls have been made for the Bank's safeguards on indigenous persons policy to be reformed and made consistent with international human rights standards, particularly the UN Declaration on the Rights of Indigenous Peoples.³⁸ The Indian Law Resource Center, for example, has recommended that the principle of free, prior and informed consent be included in the bank's safeguard on this topic, which currently requires only "free, prior and informed *consultation*" (emphasis added), and "broad community support."³⁹ Critics of the current language note that independent verification of the existence of the latter support is not currently required, which further weakens the standard in practice.⁴⁰

(BIC), HUMAN RIGHTS AND THE WORLD BANK: CASE STUDIES FROM IDA COUNTRIES 7 (2014) *available at* <http://www.bicusa.org/wp-content/uploads/2014/01/Human-rights-case-studies.pdf>.

³⁴ Natalie Bugalski & David Pred, *Reforming the World Bank Policy on Involuntary Resettlement: Submission to the World Bank Safeguards Review*, INCLUSIVE DEVELOPMENT INTERNATIONAL (IDI) ¶ 4 (Apr. 2013) <http://www.inclusivedevelopment.net/wp-content/uploads/2013/04/Reforming-the-World-Bank-Policy-on-Involuntary-Resettlement.pdf>.

³⁵ INDEPENDENT EVALUATION GROUP (IEG), SAFEGUARDS AND SUSTAINABILITY POLICIES IN A CHANGING WORLD : AN INDEPENDENT EVALUATION OF THE WORLD BANK GROUP EXPERIENCE 84 (2010), *available at* http://siteresources.worldbank.org/EXTSAFANDSUS/Resources/Safeguards_eval.pdf.

³⁶ WORLD BANK INSPECTION PANEL, REPORT AND RECOMMENDATION: ETHIOPIA: PROTECTION OF BASIC SERVICES PROGRAM PHASE II PROJECT ADDITIONAL FINANCING (P121727) AND PROMOTING BASIC SERVICES PHASE III PROJECT (P128891) (Report No. 75199-ET) ¶ 17 (Feb. 8, 2013); INCLUSIVE DEVELOPMENT INTERNATIONAL, HUMAN RIGHTS AND THE WORLD BANK SAFEGUARDS REVIEW: LESSONS FROM ETHIOPIA: FORCED VILLAGIZATION AND THE PROTECTION OF BASIC SERVICES PROJECT (2013), *available at* <http://www.inclusivedevelopment.net/wp-content/uploads/2013/10/Human-Rights-and-the-World-Bank-Ethiopia-Case-Study.pdf>; William Davison, *Ethiopia plans ambitious resettlement of people buffeted by East Africa drought*, CHRISTIAN SCIENCE MONITOR, (Aug. 1, 2011) <http://www.csmonitor.com/World/Africa/2011/0801/Ethiopia-plans-ambitious-resettlement-of-people-buffed-by-East-Africa-drought>.

³⁷ INCLUSIVE DEVELOPMENT INTERNATIONAL (IDI), *supra* note 34.

³⁸ Leonardo A. Crippa, Gretchen Gordon, Chris Foley, *Submission to the World Bank on the Review and Update of its Social and Environmental Safeguard Policies*, INDIAN LAW RESOURCE CENTER 15 (2013), *available at* <http://www.indianlaw.org/sites/default/files/ILRC%20WB%20Submission%20Final.pdf>.

³⁹ *Id.* at 41-43.

⁴⁰ *Id.*

Expanding the Scope of Lending Safeguards

As the World Bank moves away from investment loans in specific projects and towards development policy loans (DPLs), it may also be critical to ensure that safeguards are expanded so that they apply to a broader range of Bank activities.⁴¹ Bank analysts have noted that DPLs can have significant impacts on human rights in the context of lending activities, but, because DPLs are not subject to safeguards in the same manner as other lending activities such as investment lending, they are both less well-regulated and harder for civil society organizations and others to monitor.⁴² Inspection Panel reports have found the Bank's assessments in some cases involving DPLs to be flawed and inadequate.⁴³ However, the World Bank has stated that the current Safeguards Review will not consider the application of safeguards to DPLs; this may be a major shortcoming of any reform efforts.⁴⁴

Requiring Human Rights Due Diligence

Some commentators have also articulated the need for safeguards that would require Bank borrowers to undertake due diligence, including an impact assessment and measures to address, or provide redress for, adverse consequences involving human rights violations. This has been advocated by Human Rights Watch in particular.⁴⁵ A possible structure for human rights impact assessments, as well as the benefits that these may bring, has been commissioned by the Nordic Trust Fund at the World Bank.⁴⁶

Panel One questions for discussion include the following:

- What role do lending safeguards have in facilitating compliance by both multilateral development banks and member states with international human rights obligations?
- What are the key changes to be achieved by the safeguards review in terms of the protection and advancement of human rights?

⁴¹ *World Bank Safeguards & Development Policy Lending: A Primer on Why DLPs Should Be Part of the Safeguards Review*, BANK INFORMATION CENTER (BIC), Figure 1 (Apr. 2013), available at <http://www.bicusa.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>.

⁴² *Id.*

⁴³ WORLD BANK INSPECTION PANEL, INVESTIGATION REPORT: DEMOCRATIC REPUBLIC OF CONGO: TRANSITIONAL SUPPORT FOR ECONOMIC RECOVERY GRANT (TSERO) (IDA GRANT NO. H 1920-DRC) AND EMERGENCY ECONOMIC AND SOCIAL REUNIFICATION SUPPORT PROJECT (EESRP) (CREDIT NO. 3824-DRC AND GRANT NO. H 064-DRC) (Report No. 40746-ZR) 139 (Aug. 31, 2007).

⁴⁴ Letter from Joachim von Amsberg, Vice President of World Bank Operations Policy and Country Services, to Hana Heineken, Global Witness, in response to Initial Comments by CSOs on the World Bank Safeguard Review (Jan. 11, 2013), available at <http://www.bicusa.org/wp-content/uploads/2013/01/EXC-2012-03360+World+Bank+Reply+to+Letter+on+Safeguards+Policies+Review+01-11-13.pdf>.

⁴⁵ HUMAN RIGHTS WATCH, ABUSE-FREE DEVELOPMENT: HOW THE WORLD BANK SHOULD SAFEGUARD AGAINST HUMAN RIGHTS VIOLATIONS 7 (July 2013) available at http://www.hrw.org/sites/default/files/reports/worldbank0713_ForUpload.pdf.

⁴⁶ THE NORDIC TRUST FUND/WORLD BANK, STUDY ON HUMAN RIGHTS IMPACT ASSESSMENTS (2013), available at http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf.

- Would it be desirable for the Bank to create a single, comprehensive human rights safeguard?
- Should individual areas of rights be covered by specific safeguards, or is it more appropriate to take a ‘mainstreaming’ approach and incorporate human rights protections in other ways?
- In order to ensure protection of human rights in the context of development projects funded by multilateral development banks, must the scope of safeguards be expanded?
- Should multilateral development banks conduct ‘human rights impact assessments’?
- Are there lessons to be learned for multilateral development banks in the recent normative developments in the area of business and human rights, particularly with regard to impact assessments?

III. Panel Two: Robust and Independent Accountability Mechanisms

The second panel will focus on oversight mechanisms, including the World Bank Inspection Panel, which many view as under threat by potential reforms. This panel will focus on what is required to make accountability mechanisms effective (including procedural requirements, like staffing and independence, and substantive requirements, like remedial powers and clear safeguards). The panel will also discuss how oversight works (or does not work) at other bilateral and multilateral donor agencies and World Bank Group entities, including by looking at recent examples, such as the findings of the International Financial Corporation's Office of the Compliance Advisor/Ombudsman in the Dinant case.

It is commonly said that there is no right without a remedy (*ubi jus ibi remedium*) – indeed, *accountability* may be the primary way in which the recognition of human rights obligations in the context of development could contribute to improving the practices of the World Bank.

Although the World Bank has always been able to be held accountable for its actions by its shareholders, its member states, a series of projects in Brazil, Indonesia and India in the 1980s led to calls for increased transparency and public accountability.⁴⁷ Pressure to create an independent accountability mechanism primarily grew from external actors, such as civil society organizations, as well as from the U.S. Congress – and in particular Congressman Barney Frank – particularly in the 1992 hearings on the replenishment of the International Development Association (IDA).⁴⁸ In addition to this, the publication of the Morse Commission's report on the controversial Narmada Dam in India, and the Wapenhans Report on the effectiveness of implementation of World Bank programs and lending heightened pressure within the World Bank and eventually led to the creation of the Inspection Panel in 1993. The Compliance Advisor/Ombudsman (CAO) was created as an accountability mechanism for the IFC and the Multilateral Investment Guarantee Agency (MIGA) in 1999.

Experts have described the advent of the Inspection Panel as a “fundamental change in

⁴⁷ Richard E. Bissell & Suresh Nanwani, *Multilateral Development Bank Accountability Mechanisms: Developments and Challenges*, 6 *Manchester J. Int'l Econ. L.* 2, 1, 5 (2009). These projects include the Polonoroeste road project in Brazil, the Saradar Sarovar, or Narmada, dam in India, and the Kedung Ombo Multipurpose Dam in Indonesia. *Id.*

⁴⁸ *Id.* at 6; Clark, *supra* note 14 at 8.

international governance:” a formal mechanism under which two or more individuals who have been adversely affected by World Bank-funded projects can file a complaint and seek redress.⁴⁹ Indeed, it was the first forum in which individuals could collectively hold an international organization to account in such a direct manner.⁵⁰ The Inspection Panel responds to complaints by affected individuals by carrying out a fact-finding investigation of the Bank's role in specific projects and determining whether it has complied with its own lending safeguards.

Although the creation of accountability mechanisms within the World Bank Group were a major innovation, many now point to weaknesses and limitations within these systems.⁵¹ The benefit of experience as well as current safeguards review and Bank restructuring may suggest that the time is right to critically evaluate their operation and implement improvements.⁵² This may be particularly appropriate in light of the imminent issuance of revised Operating Procedures for the Inspection Panel.⁵³ The following are a set of thematic issues that are on the table in the context of the Inspection Panel in particular.

A More Expansive Mandate

The fact that the Inspection Panel's jurisdiction is limited to the examination of the World Bank's conduct against a limited set of internal standards appears to have the result of inextricably linking its efficacy to the quality and nature of the Bank's safeguard policies.⁵⁴ From that perspective, the success of the Inspection Panel at ensuring compliance with human rights norms and principles is open for debate. By contrast, the problem-solving focus adopted by the CAO and its ability to consider complaints from at least one individual who has, broadly, “been harmed by an operation of the IFC” may hold lessons with regard to Inspection Panel jurisdiction.⁵⁵ The adoption of a similar approach – broadening the mandate of the Inspection Panel – might enhance its ability to assess projects against human rights law standards not explicitly included in World Bank safeguards.⁵⁶

⁴⁹ Bissell et. al, *supra* note 47 at 3.

⁵⁰ E. Hey, *The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law*, 2 HOFSTRA J. L. & POLICY 61, 62 (1997); This development arguably impacted upon international law through the recognition of such a relationship as legally relevant.

⁵¹ Clark, *supra* note 14 at 12-13.

⁵² FUJITA, *supra* note 25 at 197.

⁵³ THE INSPECTION PANEL AT THE WORLD BANK INSPECTION PANEL, DRAFT OPERATING PROCEDURES (as adopted Apr., 2013, (Oct. 24, 2013), available at <http://ewebapps.worldbank.org/apps/ip/Pages/Updated%20Operating%20Procedures%20-%20Public%20Comments.aspx>.

⁵⁴ World Bank Res. No. IBRD 93-10 (Resolution Establishing the Inspection Panel), ¶ 12, Sept. 22, 1993.

⁵⁵ Daniel Bradlow, *Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions*, 36 GEO. J. OF INT'L L. 403, 458 (2005).

⁵⁶ S. R. Roos, *The World Bank Inspection Panel in its Seventh Year: An Analysis of its Process, Mandate, and Desirability with Special Reference to China (Tibet) Case*, 5 MAX PLANCK YEAR BOOK OF UNITED NATION LAW 473, 498 (2001).

Indeed, some have suggested that the Inspection Panel's explicit consideration of the Bank's human rights obligations in the *Chad Pipeline* case (albeit only insofar as they related to the Bank's own safeguards) and its statement that such considerations were "within the boundaries of [its] jurisdiction" might create openings for future investigations to directly address human rights arguments.⁵⁷ Expanded jurisdiction of the Inspection Panel to cover human rights considerations more broadly might also encourage a more holistic approach by staff in the development of lending projects.⁵⁸

Revised Complaint Requirements

Ensuring that affected individuals have access to accountability mechanisms at multilateral development banks such as the World Bank is essential to guaranteeing their effectiveness.⁵⁹ Some argue that the compliance-focused nature of Inspection Panel procedures requires a level of knowledge of the operational rules and safeguards at the World Bank that limits access.⁶⁰ Complicated rules of procedure increase the need for the expertise of external groups and organizations in assisting with the complaint-making process, in contrast to the more simplified process of the CAO.⁶¹ Increased outreach by the Panel Secretariat through information sessions in affected countries and regions has been recommended as one additional solution, though this has not been included in the draft Operating Procedures currently proposed.⁶²

Scope of Remedies

The Inspection Panel is not empowered to offer compensation to affected individuals who have suffered harm as a result of Bank activities, nor can it recommend remedies or directly order the World Bank to change its conduct in response to its findings.⁶³ The role of the Inspection Panel is instead to submit a written report with findings and recommendations to the Board of Directors, which decides how to proceed with the project in light of the Inspection Panel findings. As the lack of implementation of these decisions remains an issue (see below), the Panel's lack of authority to respond to investigations in its own capacity, or guarantee an individual remedy, may be seen as an issue.⁶⁴

⁵⁷ ANDRIA NAUDÉ FOURIE, *THE WORLD BANK INSPECTION PANEL AND QUASI-JUDICIAL OVERSIGHT*, 262-263 (2009).

⁵⁸ Bradlow, *supra* note 55 at 463.

⁵⁹ *Id.* at 465.

⁶⁰ *Id.* at 466.

⁶¹ *Id.*

⁶² Letter from Inclusive Development International (IDI) to Eimi Watanabe, Inspection Panel Chair (Jan. 31, 2014) *available at* <http://ewebapps.worldbank.org/apps/ip/Documents/IDICommentsoOperatingProcedures.pdf>.

⁶³ Bradlow & Hunter, *supra* note 12, 393

⁶⁴ *Id.* at 467

Panel Independence

Despite the existence of various requirements aimed at ensuring the independence of Inspection Panel members, there has been serious criticism of the perceived lack of independence of the mechanism in relation to the Bank.⁶⁵ In a number of cases prior to 1999, Bank Management was observed to have pre-empted Panel investigations by submitting 'remedial action plans' which may have interfered with the exercise of the Panel's investigatory functions.⁶⁶ Although the situation has arguably improved since this time, the Inspection Panel is still required to report to the Executive Directors and the President of the Bank, who decide whether to authorize an inspection and how to respond to the Panel's recommendations.⁶⁷ Calls for the creation of a more strictly independent review mechanism remain.⁶⁸ Recent proposed changes with regard to the staffing of the Inspection Panel have also been construed as a significant threat to the operational independence of the Panel.⁶⁹

Implementation of Decisions

Perhaps the greatest source of criticism surrounding the Inspection Panel is the fact that there remains no entity at the World Bank which is empowered to monitor and evaluate the implementation of the Board's final decision in relation to the Panel's reports on its investigations.⁷⁰ Although the CAO does operate in such a role with regard to the IFC and MIGA, it has increasingly condemned the IFC for the IFC's denials of CAO findings as well as its failure to act with regards to CAO findings.⁷¹ In January 2014, the IFC was criticized particularly harshly for failing to adequately respond to a CAO report implicating it in large-

⁶⁵ World Bank Res. No. IBRD 93-10 (Resolution Establishing the Inspection Panel), ¶ 5, 8, 6, 10, Sept. 22, 1993; MAC DARROW, *BETWEEN LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS LAW* 225 (2003).

⁶⁶ DARROW, *supra* note 65 at 225.

⁶⁷ Albeit that the second review of the Inspection Panel Rules limited the Board's ability to reject the Panel's recommendations to objective technical grounds. WORLD BANK, *CONCLUSIONS OF THE BOARD'S SECOND REVIEW OF THE INSPECTION PANEL* ¶ 9 (1999); Bradlow, *supra* note 59 at 419.

⁶⁸ Letter from Civil Society Organizations to World Bank, (Feb. 31, 2014), *available at* <http://www.forestpeoples.org/sites/fpp/files/publication/2014/02/feb-13-2014-world-bank-inspection-panel-letter-concern.pdf>. Such a body may have the "power to investigate complaints against the Bank, full access to internal files, power to review and investigate violations of international law in World Bank-funded projects, and with findings and recommendations that are binding." A. Orford, *Globalisation and the Right to Development*, in *PEOPLE'S RIGHTS* 127, 153 (Philip Alston ed., 2001).

⁶⁹ *Keep the World Bank accountable*, DEVEX (Feb. 13, 2014), <https://www.devex.com/news/keep-the-world-bank-accountable-82844>; U.S. Dept. of the Treasury, *U.S. Position on "Changes in the Senior Management Positions of the Inspection Panel Secretariat and Formalization of Selection Procedures for its Executive Secretary in Accordance with the Resolution Establishing the Inspection Panel"* (Feb. 14, 2014) [http://www.treasury.gov/resource-center/international/development-banks/Documents/\(2014-2-14\)%20Inspection%20Panel%20Statement%20vFINAL%20%20%20for%20Treasury%20website.pdf](http://www.treasury.gov/resource-center/international/development-banks/Documents/(2014-2-14)%20Inspection%20Panel%20Statement%20vFINAL%20%20%20for%20Treasury%20website.pdf).

⁷⁰ Bradlow, *supra* note 59 at 467.

⁷¹ *Id.* at 419; *CSO Response to the CAO investigation into IFC investment in Corporación Dinant, Honduras* (2014), OXFAM INTERNATIONAL (Jan. 20, 2014) <http://www.oxfam.org/sites/www.oxfam.org/files/cso-statement-cao-investigation-ifc-dinant-investment-20jan2014.pdf>.

scale human rights abuses by the Dinant Corporation in Honduras. In one of the most damning reports issued by the CAO to date, the IFC was condemned for failing to ensure that consideration was given to the risks and impacts of the Dinant project through its environmental and social (E&S) review system.⁷² The audit suggests that the IFC knew about human rights abuses, including the killing, kidnapping and forced evictions of farmers in the region.⁷³ This experience may demonstrate that even mechanisms which provide for implementation monitoring may not fully protect against adverse impacts from the activities of multilateral development institutions – suggesting that such mechanisms must be particularly robust.

Panel Two questions for discussion include the following:

- In what respect could existing accountability mechanisms at the World Bank be improved, and how might such improvements be achieved?
- To what extent could streamlined complaint procedures facilitate broader consideration of the human rights impact of the Bank's work?
- Could expansion of the power of the Inspection Panel to issue decisions on remedies increase the Bank's protection of human rights?
- What provisions ensuring the independence of the Inspection Panel are required to ensure the Panel's ability to discharge its existing or an expanded mandate?
- How could changes in the way the Inspection Panel's decisions are implemented expand protection of human rights affected by the World Bank's activities and programs?

IV. Panel Three: What Shapes How Multilateral Development Banks Promote Human Rights?

The final panel will focus on key external factors that can advance or inhibit the role of human rights in the work of multilateral development banks such as the World Bank. Topics may include the proposed new BRICS development fund, UN efforts to mainstream human rights, and the actions of individual donor governments, such as efforts by the United States Congress to condition assistance and by Nordic Countries to target assistance. The panel will also discuss the role of affected individuals and civil society in shaping the development agenda of multilateral development banks.

Multilateral development banks are complicated institutions with a diverse range of stakeholders, voting structures and power arrangements. As a result, the context in which they incorporate human rights into their development work varies significantly. The following are a set of issues that form much of the context of the way in which the World Bank incorporates (or chooses not to incorporate) human rights into its programs and activities.

⁷² OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN (CAO) FOR THE INTERNATIONAL FINANCE CORPORATION (IFC) & MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA), CAO AUDIT OF IFC INVESTMENT IN CORPORACIÓN DINANT S.A. DE C.V., HONDURAS, C-I-R9-Y12-F161 (Dec. 20, 2013), available at: http://www.cao-ombudsman.org/cases/document-links/documents/DinantAuditCAORefC-I-R9-Y12-F161_ENG.pdf.

⁷³ *Id.*; John Vidal, *World Bank facing renewed pressure over loan to Honduran palm oil firm*, THE GUARDIAN (Mar. 12, 2014), <http://www.theguardian.com/global-development/2014/mar/12/world-bank-honduras-loan-palm-oil-company-dinant>.

Legal Mandate

Human rights legal obligations in the context of development activities are said to be some of the “most important yet least explored aspects of public international law.”⁷⁴ Given that a “significant body” of international legal obligations exist for states with respect to civil and political rights, as well as economic, social and cultural rights, the application of these legal obligations to multilateral development banks, and particularly the International Financial Institutions (IFIs), is an issue “ripe for analysis.”⁷⁵ Indeed, the status of IFIs as international legal persons has been noted as a source of legal obligations to comply with international human rights law.⁷⁶ At a minimum, arguably, IFIs are required to respect the human rights principles in the UN Charter, the core human rights treaties, custom and general principles of law, as well as the legal obligations of their member states.⁷⁷ With regard to the World Bank, these obligations under international law have generally been construed as subordinate to the organization’s Articles of Agreement.⁷⁸ Thus the extent of the direct human rights obligations of the World Bank has been viewed as uncertain, and as a result, has not been interpreted to constrain lending activities.

In light of this, some suggest an incremental, indirect approach: that the World Bank should focus on facilitating state fulfilment of human rights obligations already well-established as state obligations.⁷⁹ The World Bank's role would thus be ‘collaborative’ and ‘complementary’ to that of its UN partners in respecting, protecting and promoting human rights globally.⁸⁰ There are myriad questions about how such an approach could be adopted in practice. It has been suggested that the World Bank could gather data on the compliance of borrower states with human rights obligations and then base loan conditionalities on their findings.⁸¹ As the previous sections have suggested, whether the World Bank should adopt such a limited strategy or pursue a much greater role in actively promoting compliance with international human rights obligations is a key area of debate.⁸²

World Bank Institutional Culture and Initiatives

The internal culture of the Bank is an important factor in shaping how revised safeguards or

⁷⁴ McInerney-Lankford, *supra* note 4 at 239.

⁷⁵ Ana Palacio, *The Way Forward: Human Rights and the World Bank*, in Sunetra Puri ed., DEVELOPMENT OUTREACH HUMAN RIGHTS, 35-36 (Sunetra Puri ed., 2006).

⁷⁶ DARROW, *supra* note 65 at 126.

⁷⁷ McInerney-Lankford, *supra* note 4 at 254.

⁷⁸ DARROW, *supra* note 65 at 129.

⁷⁹ McInerney-Lankford, *supra* note 4 at 278-279.

⁸⁰ Roberto Dañino, *The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 30-32 (Philip Alston & Mary Robinson eds., 2005); Palacio *supra* note 75 at 36.

⁸¹ Daniel Bradlow & Claudio Grossman, *Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF*, 17 HUMAN RIGHTS QUARTERLY 411, 439 (1995).

⁸² SARFATY, *supra* note 3 at 58; HUMAN RIGHTS WATCH, *supra* note 45.

enhanced accountability mechanisms might have practical effect in protecting human rights. Although World Bank employees are required to apply safeguards, research suggests that they do not do so consistently.⁸³ It has been suggested that safeguards are sometimes viewed as impediments to projects, and thus to incentives and rewards for Bank staff. In this view, safeguards create disincentives to pursuing projects that might benefit particular marginalized groups in order to escape the extra burden of compliance – such as the limited consultation with indigenous populations required by existing safeguards.⁸⁴ Internal reform of management and incentive structures may be required in order to ensure that safeguards and standards established by the Inspection Panel are adequately respected in practice.

As a result of what began as a working paper produced by Nordic countries on the World Bank and human rights, the Nordic Trust Fund was created in 2009 with the aim of carrying out empirical research, case studies and providing outreach and training on human rights issues across the World Bank.⁸⁵ This internally-focused program has the further goal of promoting and developing Bank activities which connect human rights considerations to the work of the Bank by relating human rights to the Bank's overall goal of poverty reduction and the achievement of economic growth. “Task teams” across the Bank are supported by the Nordic Trust Fund by way of grants to incorporate human rights into projects, strategies, tools and research.⁸⁶ The approach taken by the Nordic Trust Fund would appear to be emblematic of an incremental strategy to integrate human rights into Bank activity.⁸⁷ By relating human rights concerns to economic effectiveness, the Trust Fund has been seen to be “economizing human rights” in order to gradually introduce changes in a way which is palatable to internal actors from a variety of backgrounds.⁸⁸ Although the work of the Trust Fund raises the profile of human rights within the Bank, such an approach may not be sufficient to ensure that human rights are effectively protected in the Bank's activities and programs.

BRICS Development Bank

The proposed creation of a new development bank by the BRICS states may hinder the development of a human rights agenda at the World Bank.⁸⁹ As announced on March 27, 2013, the BRICS Development Bank will “[mobilize] resources for infrastructure and sustainable development projects in BRICS and other emerging economies,” apparently supplementing the work of other multilateral development institutions.⁹⁰ Serious concerns

⁸³ Galit Sarfaty, *Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank*, 103 AM. J. INT'L L. 647, 669 (2009).

⁸⁴ *Id.* at 670.

⁸⁵ Siobhan McInerney-Lankford, *Postscript on The World Bank Nordic Trust Fund*, in *THE WORLD BANK AND SUSTAINABLE DEVELOPMENT: LEGAL ESSAYS* 37, 37 (David Freestone ed., 2013).

⁸⁶ OECD, *supra* note 2 at 51.

⁸⁷ Sarfaty *supra* note 83 at 682.

⁸⁸ *Id.* at 679, 682.

⁸⁹ Namely Brazil, Russia, India, China and South Africa.

⁹⁰ 'Fifth BRICS Summit: Statement by BRICS leaders on the establishment of a BRICS-led development bank,' BRICS, March 27, 2013, <http://www.brics5.co.za/statement-by-brics-leaders-on-the-establishment-of-the->

remain about whether a BRICS fund will adopt safeguards or other policies to ensure the protection of human rights for those affected by the projects it funds.⁹¹ This might result in a 'race to the bottom,' or at least pressure in that direction, as the World Bank and other lending institutions are forced to compete with a BRICS Bank that is significantly less protective of human rights in its lending criteria. Although some see significant potential for the BRICS Bank to redress the imbalance of influence between Western nations and emerging economies, the devil may be in the details.⁹² Detail remains elusive at present, with the BRICS Bank still in the process of formation as countries agree to contribution amounts.⁹³ There is currently no formal mechanism to carry out consultation between the BRICS countries and civil society organizations or otherwise ensure that human rights concerns are adequately respected in the structure and policies of whatever new Bank emerges.⁹⁴

United Nations Efforts to Mainstream Human Rights

The extent to which the World Bank incorporates human rights may also be influenced by recent attempts by the United Nations to mainstream such considerations within the UN system. In 2009, at the request of the UN Secretary General, the UN Development Group's Human Rights Mainstreaming Mechanism (UNDG-HRM) was created with the aim of institutionalizing the mainstreaming of human rights in UN development work.⁹⁵ The UNDG-HRM supports UN country teams in their efforts to aid governments in fulfilling their own human rights commitments. With the World Bank only having observer status in the UNDG, it does not currently participate in this effort.⁹⁶ Nevertheless, as a UN agency, the increasing shift towards human rights mainstreaming may influence the World Bank.⁹⁷

The Role of the US Congress and Executive Branch

In mid-January 2014, the United States Congress approved appropriations ordering US

[brics-led-development-bank/](#).

⁹¹ Sameer Dossani, *BRICS Bank: New bottle, how's the wine?*, BRETTON WOODS PROJECT (Feb. 27, 2014) <http://www.brettonwoodsproject.org/2014/02/brics-bank-new-bottle-hows-wine/>; Claire Lauterbach, *A New BRICS Development Bank: Will It Work for Women?*, THE WORLD POST (Feb. 4, 2013) http://www.huffingtonpost.com/claire-lauterbach/a-new-brics-development-b_b_3001140.html.

⁹² Dossani, *supra* note 91; Rulleska Singh, *BRICS Bank must put poverty and inequality reduction at heart of its mission*, OXFAM INTERNATIONAL (Mar. 27, 2013), <http://www.oxfam.org/en/pressroom/reactions/brics-bank-must-put-poverty-and-inequality-reduction-heart-its-mission>.

⁹³ Andrey Ostroukh, *BRICS Bank Creation May Take Five Years-Russia Deputy Fin Min*, WALL ST. J. (Feb. 25, 2014), <http://online.wsj.com/article/BT-CO-20140225-705318.html>.

⁹⁴ Dossani, *supra* note 91.

⁹⁵ *Fact Sheet: Mainstreaming Human Rights For Better Development Impact and Coherence*, U.N. DEVELOPMENT GROUP (2013), <http://www.undg.org/docs/12555/UNDG%20Human%20Rights%20Fact%20Sheet.pdf>.

⁹⁶ *UNDG Members*, U.N. DEVELOPMENT GROUP, <http://www.undg.org/index.cfm?P=1503>.

⁹⁷ In particular, the Bank may transpose its own human rights obligations under international law by encouraging borrowing governments to reflect in their development practice the human rights treaties to which they are a party, as discussed above. For discussion on the World Bank's obligations under international human rights law. See McInerney-Lankford, *supra* note 4 at 242.

members of international financial institutions to ensure “that each such institution responds to the findings and recommendations of its accountability mechanisms by providing just compensation . . . to individuals and communities that suffer violations of human rights.”⁹⁸ Particular provisions also specifically address the need to ensure reparations for displaced persons as a result of the Chixoy Dam project in Guatemala and the Boeung Lake project in Cambodia, both of which were at least partially-funded by the World Bank. US Senator Patrick Leahy led public calls for the appropriations bill to require that IFIs have in place a mechanism requiring outside, independent evaluations of each project consistent with effective safeguards, or risk the withholding of funding.⁹⁹ In the legislation, the US Executive Director at the World Bank is urged to oppose any involvement in the construction of large hydroelectric dams and/or large-scale industrial logging operations, because these have been associated with widespread human rights abuses.¹⁰⁰

In spite of the work of Congress in this regard, the US Agency for International Development (USAID) has reportedly sought to contribute to funding one of the world's costliest and most controversial hydroelectric projects, the Inga Dam III in the Democratic Republic of Congo.¹⁰¹ With the World Bank recently agreeing to fund the project, the US Executive Director is expected to oppose the move as required by the Consolidated Appropriations Act of 2014, in spite of another US government agency publicly backing the project.¹⁰²

Congressional action has been a major factor in the World Bank's adoption of previous reforms, including the establishment of the Inspection Panel. The conflict in the approaches of USAID and that required by the US Executive Director at the Bank by Consolidated Appropriations Act creates a significant opportunity for clarifying the US position with regard to the role of human rights in the context of development, and in particular, at the World Bank.

Panel Three questions for discussion include the following:

- How much of an impediment is the lack of clarity of the World Bank's international legal obligations to the protection of human rights within the work of the Bank?
- How can internal obstacles to reform at the World Bank be overcome in order to ensure that human rights are given adequate consideration and protection?
- What is the role of internal initiatives like the Nordic Trust Fund in promoting the protection of human rights implicated by the Bank's programs and activities?
- What can we expect from the BRICS Development Bank and how might it impact the

⁹⁸ H. R. Res. 3547, 113th Cong. (2014) (enacted).

⁹⁹ Howard Schneider, *U.S. pushes for outside oversight of World Bank, opposes push toward 'big hydro,'* WASHINGTON POST (Jan. 24, 2014), http://www.washingtonpost.com/business/economy/us-pushes-for-outside-oversight-of-world-bank-opposes-push-toward-big-hydro/2014/01/24/fb41bb7c-8516-11e3-8099-9181471f7aaf_story.html.

¹⁰⁰ *Id.*

¹⁰¹ Toh Han Shih, *US mulling partnership with China in Congo Inga 3 Dam project*, SOUTH CHINA MORNING POST (Jan. 20, 2014) <http://www.scmp.com/business/china-business/article/1409212/us-mulling-partnership-china-congo-inga-3-dam-project>.

¹⁰² Peter Jones, *World Bank set to approve financing for Congo's Inga dam*, REUTERS (Mar. 14, 2014), <http://in.reuters.com/article/2014/03/14/congo-democratic-inga-idINL6N0MB1W020140314>.

- manner in which the World Bank incorporates human rights into its work?
- How can United Nations efforts to mainstream human rights into its development work best influence the manner in which the World Bank incorporates human rights into its work?
 - How far can Congressional action influence IFIs such as the World Bank with regards to human rights?